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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FEDERAL TRADE COMMISSION, et)	
al.,)	
)	
Plaintiffs,)	Case No. 3:24-cv-00347-AN
)	
v.)	
)	
THE KROGER COMPANY and)	August 28, 2024
ALBERTSONS COMPANIES, INC.,)	
)	
Defendants.)	Portland, Oregon
)	

PRELIMINARY INJUNCTION HEARING
DAY 3 - MORNING SESSION
BEFORE THE HONORABLE ADRIENNE NELSON
UNITED STATES DISTRICT COURT JUDGE

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TRANSCRIPT OF PROCEEDINGS

(August 28, 2024)

(In open court:)

THE COURT: Please be seated. Good morning.

We're continuing the trial of the FTC, et al. v. Kroger Company and Albertsons Companies, Incorporated.

Case No. 3:24-cv-00347. This is day three of a three-week preliminary injunction hearing.

And I will ask counsel to identify, if they have new counsel that need to state their appearances on the record.

If you have already had your appearance stated, you don't need to stand and do that again. We're trying to be as efficient as -- and I -- I'm beginning to recognize you.

MR. HAMBURGER: Good morning, Your Honor.

Jacob Hamburger from the FTC.

MR. MATHESON: Daniel Matheson from the Federal Trade Commission.

THE COURT: All right.

MR. PERRY: Good morning, Your Honor. Mark Perry for Kroger. We have three new folks, I think today. Rebecca Sivitz.

MS. SIVITZ: Good morning.

THE COURT: Good morning.

MR. PERRY: Mr. Luke Sullivan, who I believe has been here, but I'm not sure; so just in case.

1 THE COURT: Okay.

2 MR. PERRY: And Mr. Sebastian Laguna.

3 THE COURT: All right. Thank you.

4 MS. MAINIGI: None for us today, Your Honor.

5 THE COURT: None for you. Okay.

6 You may call your next witness.

7 MS. MUSSER: Your Honor, before I do, can I just
8 address a brief housekeeping item?

9 THE COURT: Oh, absolutely.

10 MS. MUSSER: I just want to give an update on kind
11 of the schedule and the cadence of plaintiffs'
12 case-in-chief. We are moving a little quickly, which is
13 great. I like it when we're more efficient versus less. We
14 are still anticipating being able to complete our
15 case-in-chief next Wednesday.

16 THE COURT: Okay.

17 MS. MUSSER: We do have a couple of scheduling
18 issues that might impact witness availability on Friday.
19 Specifically, we have some pre-planned vacations for third
20 parties and other issues that prevent folks from testifying
21 and are -- a couple of our experts might be out-of-pocket as
22 well, which is all to say, if we're running quick, we might
23 request this Court to end early, if we need to, on Friday,
24 but, of course, I don't think I would affect our ability to
25 end our case-in-chief on time next Wednesday, but I wanted

1 to be transparent to this Court about the cadence and how
2 quickly we're moving.

3 THE COURT: All right. That's fine.

4 MR. PERRY: (Indicating.)

5 THE COURT: Okay. That's fine.

6 I was like, "Resistance?"

7 With that, we can have your first witness.

8 MR. DICKINSON: Good morning, Your Honor.

9 Charles Dickinson from the Federal Trade Commission.

10 The plaintiffs call Jon McPherson.

11

12 JON MCPHERSON,

13 called as a witness in behalf of the Plaintiffs, being first
14 duly sworn, is examined and testified as follows:

15

16 THE WITNESS: I do.

17 DEPUTY COURTROOM CLERK: Thank you. Have a seat,
18 sir. Please speak into the microphone. State and spell
19 your first and last name for the record.

20 THE WITNESS: Jon McPherson. J-o-n is the first
21 name. McPherson. M-c-P-h-e-r-s-o-n.

22 THE COURT: Good morning.

23 MR. DICKINSON: Your Honor, may we approach with a
24 binder for the witness --

25 THE COURT: Yes.

McPherson - D

1 MR. DICKINSON: -- and the Court?

2 Thank you.

3

4 DIRECT EXAMINATION

5 BY MR. DICKINSON:

6 Q. Good morning, Mr. McPherson.

7 A. Good morning.

8 Q. My name is Charles Dickinson. I'm an attorney with the
9 Federal Trade Commission.

10 Would you please tell the Court where you currently
11 work.

12 A. At Kroger Corporation.

13 Q. What is your title at Kroger?

14 A. I'm the vice president of labor -- of associate and
15 labor relations.

16 Q. How long have you worked in labor relations at Kroger?

17 A. About 12 years. A little over 12 years.

18 Q. Prior to joining Kroger, you worked in labor relations
19 for the Kellogg Company for about 12 years as well?

20 A. Correct.

21 Q. In your current role at Kroger, you oversee the labor
22 relations activities of the company?

23 A. Yes, I do.

24 Q. And your responsibilities include negotiating
25 collective bargaining agreements?

McPherson - D

1 A. Yes, they do.

2 Q. And maintaining the company's union relationships?

3 A. Yes, sir.

4 Q. I want to ask you a few questions about the union
5 workforce at Kroger. Okay?

6 A. Okay.

7 Q. Kroger provides good union grocery jobs; right?

8 A. Correct.

9 Q. Fair wages?

10 A. Correct.

11 Q. Good benefits?

12 A. Yes.

13 Q. You value your union workers at Kroger?

14 A. Yes, we do.

15 Q. Kroger's a proud union employer?

16 A. Yes, we are.

17 Q. Kroger is the largest unionized employer in the United
18 States; right?

19 A. One of them.

20 Q. Okay. And Kroger's job postings typically indicate
21 whether a position is union or nonunion; right?

22 A. In some instances.

23 Q. In some areas of the country, like the Denver area, for
24 example, you're not aware of any other unionized grocery
25 chains; right?

McPherson - D

1 A. In the Denver area?

2 Q. Yes.

3 A. Yes, there are.

4 Q. You are aware of other unionized grocery chains?

5 A. Yes, I am.

6 Q. And which ones are those?

7 A. It would be Albertsons and Safeway.

8 Q. Okay. As union workers at Kroger stores gain
9 seniority, you find that employee turnover decreases; right?

10 A. Yes, we do.

11 Q. And employee turnover decreases with seniority because
12 of the good benefits that Kroger offers its union workers?

13 A. I think it's a promotional opportunity. It's wages and
14 the -- from a benefits standpoint.

15 Q. You've compared the health benefits available to union
16 employees to the health benefits offered to nonunion
17 employees at Kroger; right?

18 A. Yes, we have.

19 Q. And you find that the benefits are richer on the union
20 side; correct?

21 A. I think that's a broad statement. I would say,
22 generally speaking, they're a little bit better.

23 Q. And union employees also receive more generous pension
24 benefits than nonunion employees too; right?

25 A. Oh, I think the benefits, from a retirement standpoint,

McPherson - D

1 were close to the 401(k) plan that we offer.

2 Q. But they're a little bit more generous on the union
3 side, though? You would agree?

4 A. Maybe just a little bit.

5 Q. Now, for the more-senior workforce at Kroger,
6 healthcare and pension benefits are more of a demand,
7 typically, than wages; right?

8 A. No, they are not.

9 Q. Well, they're at least equal to if not a little bit
10 more of a demand than wages?

11 A. No, they are not.

12 Q. Okay. You gave sworn testimony in a -- in this case,
13 correct, sir, before today?

14 A. Yes, I did.

15 Q. In fact, you gave sworn testimony twice. Once at an
16 investigational hearing before the Federal Trade Commission
17 on October 11, 2023?

18 A. Yes, I believe.

19 Q. And again in a deposition on June 10, 2024?

20 A. Yes, sir.

21 Q. And you told the truth in your testimony both times?

22 A. Yes, I did.

23 Q. If you could please open your binder in front of you to
24 the investigational hearing transcript, which is going to be
25 PX4015, and I'd like you to look at page 139, starting at

McPherson - D

1 line 23.

2 A. You said that was the third tab of 4015?

3 Q. That's correct.

4 A. The page number here on the bottom of mine goes up to
5 74.

6 Q. It will be the little page numbers in the top of each
7 corner of the transcript.

8 A. Okay.

9 Q. If you could find page 139.

10 A. Okay. Okay.

11 Q. You were asked: Question: Do union employees receive
12 more generous or richer pension benefits than nonunion
13 employees?

14 Answer: I would say they're about equal. Maybe a
15 little bit more on the union side.

16 Question: And why is that?

17 Answer: Again, it's that senior workforce that shows
18 up to the table that usually healthcare and pension are
19 equal to, if not a little bit more, of a bargaining demand
20 than the wage side.

21 Did I read that correctly?

22 A. Yes, you did.

23 But I would say that what I've seen in the last four
24 years, that changed dramatically, that wages has been the
25 primary focus.

McPherson - D

1 Q. I did read your testimony correctly; right,
2 Mr. McPherson?

3 A. Correct.

4 Q. Okay. The geographic area where Kroger competes for
5 labor is a local area; right?

6 A. I think it depends on collective bargaining agreement.

7 Q. Typically, it's usually a city or a town?

8 A. A city or a town, or it could be a division. Although
9 I think it varies through our 300 collective bargaining
10 agreements.

11 Q. Okay. And Kroger tries to stay competitive on wages by
12 surveying what others are paying in that particular
13 geographic area; right?

14 A. Correct.

15 Q. The most common geographic areas that are relevant to
16 those wage surveys are the areas covered by the CBAs; right?

17 A. It would be the area that we are competing for labor on
18 for the -- for individual stores.

19 Q. And that would be the area covered by the CBAs; right?

20 A. It may not be.

21 Q. Okay. Can you please return to your investigational
22 hearing testimony?

23 That's at PX4015 on page 82.

24 Are you there, sir?

25 A. Yes, I am.

McPherson - D

1 Q. Okay. At line 23 you were asked: Question: What
2 would you say is the most common area that is relevant to a
3 wage survey, geographically?

4 Answer: For my purposes, it's what the collective
5 bargaining agreements typically cover.

6 Did I read that correctly?

7 A. Yes. But if you look up above there, it's by ZIP Code
8 and those types of things. I did clarify that.

9 Q. Okay. You would agree that the majority of Kroger's
10 collective bargaining agreements will specify a geographic
11 area of coverage; right?

12 A. In some cases. That's correct.

13 Q. And, in fact, it's a majority of cases?

14 A. I would say a majority. I would.

15 Q. Next, I'd like to ask you about collective bargaining.
16 Okay?

17 Some terms in CBAs are what's known as mandatory
18 subjects of bargaining; right?

19 A. Correct.

20 Q. In order for Kroger to make changes to mandatory
21 subjects of bargaining, Kroger would have to bargain those
22 changes with the union?

23 A. Correct.

24 Q. For example, some of Kroger's CBAs have good cause
25 protections; right?

McPherson - D

1 A. Yes, they do.

2 Q. That means a worker covered by a CBA with a good cause
3 protection cannot be discharged from their job other than
4 for good cause; right?

5 A. Correct.

6 Q. Kroger does not have discretion to remove good cause
7 protections from a CBA; right?

8 A. Correct. We'd have to bargain out.

9 Q. Now, good cause protections to nonunion workers, those
10 are offered at Kroger's discretion; right?

11 A. Correct.

12 Q. Similarly, Kroger could not unilaterally change or
13 eliminate union workers' premium pay, such as extra pay or
14 night work; correct?

15 A. Correct.

16 Q. But if Kroger wanted to change the premium pay rates
17 for nonunion workers, that's something Kroger could do at
18 its discretion?

19 A. Yes, it is.

20 Q. Are you familiar with multi-employer bargaining?

21 A. Yes, I am.

22 Q. Multi-employer bargaining, as you understand it, is
23 where multiple employers are bargaining at the same time
24 with common objectives?

25 A. Yes, sir.

McPherson - D

1 Q. Ultimately, each of those employers present their own
2 proposals to the union, though; right?

3 A. Correct.

4 Q. So the union can agree to a CBA with one employer and
5 strike another employer; right?

6 A. Yes, they could.

7 Q. Albertsons is the only employer in the country that
8 Kroger does multi-employer bargaining with; right?

9 A. Correct.

10 Q. Now, coordinated bargaining is similar to
11 multi-employer bargaining, except that there may be certain
12 proposals where employers do not have common objectives;
13 right?

14 A. Correct.

15 Q. They're not perfectly aligned?

16 A. Correct.

17 Q. Kroger engages in coordinated bargaining with
18 Albertsons too; right?

19 A. Yes, we do.

20 Q. And, again, Albertsons is the only employer in the
21 country that Kroger does coordinated bargaining with?

22 A. Correct.

23 Q. Are Albertsons and Kroger always aligned on common
24 bargaining objectives?

25 A. No, we are not.

McPherson - D

1 Q. Today Kroger and Albertsons may have different business
2 strategies that would cause you to not be aligned?

3 A. Correct.

4 Q. For example, you typically feel that Albertsons takes a
5 more short-term view than Kroger when it approaches union
6 negotiations?

7 A. I do, correct.

8 Q. I want to talk a little bit about strikes, and I'd like
9 to explore how strikes play out in your bargaining. All
10 right?

11 A. Okay.

12 Q. Now, you use strikes as an economic weapon that the
13 unions have; right?

14 A. Yes. It's a tool in their toolbox. Correct.

15 Q. Strikes give unions leverage in collective bargaining
16 negotiations; correct?

17 A. Correct. It's a tool they can use.

18 Q. You are familiar with the term "whipsaw strike"?

19 A. Yes, I'm familiar with it.

20 Q. And what is a whipsaw strike?

21 A. It's one where we're negotiating at the table and
22 there's at least two employers involved where the union
23 reaches an agreement with one employer and then threatens to
24 strike the other employer if they don't agree to those
25 terms.

McPherson - D

1 Q. In a market where there is only one employer who is
2 unionized, unions cannot use the tactic of a whipsaw strike;
3 correct?

4 A. Correct. A whipsaw strike? They cannot.

5 Q. And why is that?

6 A. Because they would -- they could -- they would having
7 an offer with another employer.

8 Q. So there needs to be at least two unionized employers
9 negotiating with the union in order to use that tactic?

10 A. Correct.

11 Q. In your experience, it's a normal tactic of the unions
12 to get Kroger to agree to a contract term that the union
13 reached with Albertsons?

14 A. I see it used very little.

15 Q. You don't think that's a normal tactic of the unions?

16 A. No, I do not.

17 Q. Could you please turn to your deposition transcript,
18 Mr. McPherson. This is going to be PX4113 in your binder.

19 If you could turn to page 131, line 8 -- excuse me,
20 line 9.

21 Are you there, Mr. McPherson?

22 A. 138?

23 Q. Page 131, line -- it is line 8. Excuse me.

24 A. Okay.

25 Q. You were asked the question: Question: Do unions ever

McPherson - D

1 attempt to get Kroger to agree to a contract term or to an
2 agreement that they have reached with Albertsons?

3 You answered: I would say that's part of a normal
4 tactic. And it's not just Albertsons. It's anybody else
5 that they have a reference data point to.

6 Do you see that?

7 A. Yes, I do.

8 Q. When two companies, such as Kroger and Albertsons, are
9 in different economic situations, the unions may try to
10 leverage those differences; right?

11 A. They -- yes, they can.

12 Q. For example, when Albertsons put itself up for sale a
13 few years ago, you thought that gave the unions an
14 opportunity to leverage the different economic situations
15 with Kroger and Albertsons?

16 A. Yes, they could.

17 Q. In fact, you thought Albertsons' short-term view led
18 Albertsons to give in more to the union on wages; right?

19 A. Correct.

20 Q. While Kroger was more focused on pension and healthcare
21 benefits?

22 A. We were focused on the entire package. Correct.

23 Q. And, again, you witnessed the unions taking what
24 Albertsons gave on wages; right?

25 A. We've seen that in some cases, but I've seen the exact

McPherson - D

1 opposite in the last four years.

2 Q. And in those cases, when the unions took what
3 Albertsons was willing to give on wages, you then saw that
4 they were really beating the drum on the wage side in their
5 negotiations with Kroger?

6 A. Yes. We've had those instances, correct.

7 Q. Are you familiar with the term "mutual strike
8 assistance agreement"?

9 A. Yes, I am.

10 Q. And if I use the abbreviation "MSAA," you'll understand
11 me to mean a mutual strike assistance agreement?

12 A. Yes.

13 Q. An MSAA is an agreement between to employers; correct?

14 A. Yes.

15 Q. And what happens is, if the union struck one employer,
16 the other employer would lock out their employees?

17 A. Correct.

18 Q. MSAA's benefit employers during the negotiation with
19 unions by being a tool you, the employer, can use to keep
20 the union at the bargaining table?

21 A. Correct.

22 Q. In fact, do you agree that MSAA's give employers, like
23 Kroger, a ton of leverage at the bargaining table with
24 unions?

25 A. Correct. I think it keeps them at the bargaining

McPherson - D

1 table.

2 Q. And that's because you know that the unions don't want
3 to have that many of their members out on strike at the same
4 time?

5 A. Correct.

6 Q. During strikes, unions lose revenue and have higher
7 costs due to strike contingency payments?

8 A. Yes, it would.

9 Q. MSAAAs make a strike even more costly for a union
10 because of all the additional people the union has to
11 manage; right?

12 A. Yes. I believe so.

13 Q. And so when there's an MSAA, the unions are more
14 motivated to find a way to reach agreement.

15 A. Yes. I think it's a tool in the toolbox.

16 Q. You think of MSAA as a way for Kroger to use its
17 leverage and size to make it more difficult for the union to
18 strike?

19 A. It's a mutual strike assistance agreement. So it would
20 be multi -- multiple employers and, again, I think the tools
21 to keep the union at the bargaining table to reach an
22 agreement, which is what we're there to do.

23 Q. And that's again -- it's a way for Kroger to use its
24 leverage and size; right?

25 A. It would -- it would -- to me, yeah, it would, yes.

McPherson - D

1 Q. Where a negotiation has an MSAA involved, you believe
2 the unions are less likely to go out on strike?

3 A. Yes. I think it's a leverage.

4 Q. And you will typically tell the unions you're
5 discussing an MSAA even if you don't even sign one?

6 A. Yes, we will.

7 Q. And the mere fact that you are discussing an MSAA gives
8 the employer the same leverage as having actually signed
9 one?

10 A. I think it keeps them at the bargaining table, yes.

11 Q. So it gives you the same leverage, whether you've
12 signed it or not; right?

13 A. Yeah. I think it has similar impact.

14 Q. Okay. Let's talk about a strike situation that
15 happened right here in Portland, and not the one currently,
16 but the one in 2019 or 2020.

17 A. Yes.

18 Q. Now, in late 2019 Kroger and Albertsons were engaged in
19 multiple bargaining for a new CBA with the UFCW Local 555
20 here in Portland?

21 A. Correct.

22 Q. And that contract covered about 14,000 workers in this
23 area?

24 A. I think it's less than that. About 4,500, I believe.

25 Q. Okay. We can move on from that.

McPherson - D

1 At some point during those negotiations in Portland,
2 the union started talking about a potential strike?

3 A. Yes, it did.

4 Q. You thought it would have been extremely helpful to
5 Kroger to have an MSAA in place during those negotiations;
6 right?

7 A. Yes. I think it would have kept them at the bargaining
8 table.

9 Q. And the MSAA would have been extremely helpful because
10 it could have been a tool Kroger could use to hopefully
11 avoid a strike?

12 A. Correct.

13 Q. But even though you asked Albertsons to sign an MSAA,
14 Albertsons, as an independent company at the time, never did
15 sign one in Portland; right?

16 A. Correct.

17 Q. The companies did not come to an agreement on an MSAA?

18 A. No, we did not.

19 Q. And in the end, workers here in Portland went out on
20 strike against Kroger?

21 A. Yes, they did.

22 Q. And the Local 555 union said that strike resulted in
23 the best contract they'd ever had?

24 A. I don't know what they said about that.

25 Q. You don't recall that?

McPherson - D

1 A. I don't recall that.

2 Q. Okay. Let's move forward to another year, to late
3 2021, early 2022.

4 Now, Kroger and Albertsons engaged in multi-employer
5 bargaining for a new CBA with the UFCW Local 7 in Denver in
6 late 2021; right?

7 A. Correct.

8 Q. During that negotiation, the union announced they were
9 going to take a strike vote of their members; right?

10 A. Correct.

11 Q. And you felt the union was attempting to whipsaw Kroger
12 and Albertsons?

13 A. No, they were not. Because they had already signed an
14 extension with -- with Albertsons.

15 Q. If you could turn to your deposition transcript,
16 Mr. McPherson.

17 This is PX4113, page 165, line 2.

18 Are you there, Mr. McPherson?

19 A. Yes, I am.

20 Q. You were asked: Question: And the second talking
21 point reads: As you are aware, we are currently in the
22 final weeks of negotiations for our Denver area stores.
23 UFCW this week conducted a strike vote alleging that Kroger
24 has committed an unfair labor practice, which is simply not
25 true. Based on this allegation, they are attempting to

McPherson - D

1 whipsaw our two companies.

2 What does it mean that the UFCW was attempting to
3 whipsaw Kroger and Albertsons?

4 You gave the answer: Again, I was drafting this for
5 Tim to have some clarity around executive discussions,
6 meaning they were trying to pit one company against the
7 other.

8 Did I read that correctly?

9 A. Yes, you did. But this was talking points that I
10 prepared for a senior leadership to have discussions with
11 Albertsons to try to sign a mutual strike assistance
12 agreement to keep the union at the bargaining table.

13 Q. Okay. Let's look at those talking points.

14 Would you please look at document that's been marked at
15 PX1033.

16 It should be in your binder, Mr. McPherson, and should
17 come up on your screen as well.

18 Do you see the document?

19 A. Yes, I do.

20 Q. Great.

21 You wrote the email at the bottom of this page in your
22 capacity as a vice president of labor relations at Kroger?

23 A. Yes, I did.

24 Q. You sent this to your boss Tim Massa?

25 A. Correct.

McPherson - D

1 Q. Mr. Massa is Kroger's top HR executive; right?

2 A. Correct.

3 Q. The subject of your email was Albertsons' Talking
4 Points on Mutual Strike Assistance Agreement?

5 A. Correct.

6 MR. DICKINSON: Your Honor, I'd move to admit
7 PX1033 into evidence.

8 MS. BARRINGTON: No objection, Your Honor.

9 THE COURT: It will be received.

10 MR. DICKINSON: Thank you.

11 BY MR. DICKINSON: (Continuing):

12 Q. Mr. McPherson, let's look at your talking points that
13 begin on page 2 of this document. This document lists the
14 talking points that you recommended to your boss, Mr. Massa,
15 and other senior executives at Kroger, to give senior
16 executives at Albertsons, including their COO, Susan Morris,
17 and their CEO, Vivek Sankaran; right?

18 A. Correct.

19 Q. Again, in the second bullet there, this is the one we
20 talked about before, you wrote: As you are aware, we are
21 currently in the final weeks of negotiations for our Denver
22 area stores. The UFCW this week conducted a strike vote
23 alleging that Kroger has committed an unfair labor practice,
24 which is simply not true. Based upon this allegation, they
25 are attempting to whipsaw our two companies. If our two

McPherson - D

1 companies allow the UFCW to continue to leverage this
2 strategy, as they recently did to both of us in Portland,
3 then our expected settlements will be much greater than
4 either of us planned.

5 Portland. That's referring to Portland, Oregon; right?

6 A. Correct.

7 Q. You were worried that if Kroger and Albertsons allowed
8 the UFCW to continue to leverage this whipsaw strategy, as
9 they did in Portland, then the union contracts settlements
10 would be more costly for Kroger; right?

11 A. At this point in the negotiations, right.

12 First of all, this was talking points to try to get
13 executives to talk about a subject that they normally don't;
14 and, second of all, in this one, we weren't sure if the
15 union was going to target Albertsons or Kroger.

16 Q. And so, just to make sure it's clear, you were worried
17 that this -- the strategy would lead to more costly
18 contracts for Kroger, meaning more money you'd have to pay?

19 A. Yeah. Again, this was a talking point for senior
20 executives.

21 Q. Okay. In the fourth bullet point, you wrote, quote:
22 Based upon this, as we have done in past years, we think
23 entering into a mutual strike assistance agreement provides
24 both companies with as much leverage as possible to avoid
25 the UFCW's current whipsaw tactics.

McPherson - D

1 That was the argument you wrote for your bosses to make
2 the Albertsons in 2022; right?

3 A. Yes.

4 Q. Ultimately, Kroger and Albertsons could not agree to
5 sign an MSAA in Denver either; right?

6 A. Correct.

7 Q. And the union ended up striking just Kroger in Denver?

8 A. Correct.

9 Q. And you felt that Albertsons hadn't been very
10 transparent with Kroger during those Denver negotiations;
11 right?

12 A. I think that they had told us that they had a strategy,
13 and then they backed away from that, yes.

14 Q. Albertsons' failure to be transparent with Kroger
15 during those negotiations made bargaining more difficult for
16 Kroger?

17 A. No. It just meant we didn't have the tool in our
18 toolbox for our mutual strike assistance agreement, and we
19 were on our own.

20 Q. You don't think that made bargaining a little more
21 difficult for Kroger?

22 A. No. Because I had my own strategy on what we were
23 willing to settle for.

24 Q. If you could please turn to your deposition transcript
25 PX4113, page 176, line 15.

McPherson - D

1 Are you there, Mr. McPherson?

2 A. Yes, I am.

3 Q. You were asked the question: Question: How did
4 Albertsons' failure to be transparent about its bargaining
5 objectives in Denver affect Kroger?

6 You gave the answer: It made multi-employer bargaining
7 a little more difficult, but that didn't change Kroger's
8 overall objectives.

9 Do you see that?

10 A. Yes, I do.

11 Q. Okay. You can put that document aside.

12 Let's move forward a few more months to Southern
13 California in about March of 2022.

14 A. Okay.

15 Q. Kroger and Albertsons engaged in multi-employer
16 bargaining for a new CBA with the UFCW Local 324 in Southern
17 California in early 2022; right?

18 A. Yes, we did.

19 Q. At the beginning, Kroger was making headway and
20 reaching common bargaining objectives with Albertsons that
21 time; right?

22 A. Correct.

23 Q. But you had a concern that Albertsons might not hang in
24 there with you and end up agreeing to higher wage increases;
25 right?

McPherson - D

1 A. Correct.

2 Q. And that was a concern because, if Albertsons agreed to
3 higher wage increases, the union would use that as a data
4 point against Kroger; right?

5 A. They would use that as a data point, correct.

6 Q. One area where you did reach alignment with Albertsons
7 was that neither Kroger nor Albertsons was interested in
8 accepting the settlement that Stater Bros. took with the
9 union; right?

10 A. Correct.

11 Q. During those negotiations, once again, Kroger proposed
12 that Albertsons sign a mutual strike assistance agreement
13 with Kroger?

14 A. Correct.

15 Q. And there were some social media references about the
16 Southern California local unions once again looking at a
17 potential strike?

18 A. That's correct.

19 Q. You wanted that tool, that MSAA, to avoid another
20 strike, like in Portland and in Denver, because of the
21 strike threat you heard about in the media?

22 A. Yes. I thought it would apply a little pressure for
23 the bargaining parties at the table to reach an agreement.

24 Q. You went ahead and forwarded a draft of a mutual strike
25 assistance agreement; right?

McPherson - D

1 A. Correct.

2 Q. Kroger and Albertsons did not end up agreeing to an
3 MSAA in Southern California negotiations either; right?

4 A. Correct.

5 Q. At the outset, at least, Albertsons agreed to stay
6 aligned with Kroger on the wage increases that they would
7 offer the union?

8 A. Correct.

9 Q. But, ultimately, Albertsons reached agreement with the
10 union on wages that were higher than they previously told
11 you was their highest offer?

12 A. Correct.

13 Q. I'd like to introduce one more document, Mr. McPherson,
14 included in your binder. PX1282.

15 Do you recognize this document, Mr. McPherson?

16 A. Yes, I do.

17 Q. And this is a text message discussion between you and
18 your boss, Mr. Massa?

19 A. Yes.

20 Q. You wrote the messages here, again, in your capacity as
21 a vice president of labor relations at Kroger?

22 A. Yes, I did.

23 Q. And you sent this to your boss, the senior vice
24 president and the head of HR at Kroger; right?

25 A. Correct.

McPherson - D

1 Q. And this was during the time that you were involved in
2 negotiations with UFCW Local 324 in Southern California?

3 A. That's correct.

4 MR. DICKINSON: Your Honor, I move to admit
5 PX1282.

6 MS. BARRINGTON: No objection, Your Honor.

7 THE COURT: It will be received.

8 MR. DICKINSON: Thank you.

9 BY MR. DICKINSON: (Continuing):

10 Q. Now, Mr. McPherson, towards the top of page 2 you wrote
11 to Mr. Massa, quote: It looks like Albertsons is going to
12 \$2.00, \$1.00, \$1.25, and that gets the Ralphs deal done.

13 You wrote that; correct?

14 A. Correct.

15 Q. And those numbers refer to a three-year wage
16 progression for workers?

17 A. It's the top-rated wage increases. Correct.

18 Q. That means that union workers would get an extra \$2.00
19 per hour in the first year of the new contract; right?

20 A. Yeah. And they were in the top rate of the scale,
21 correct.

22 Q. And \$1.00 in the second year?

23 A. Correct.

24 Q. And \$1.25 extra in the third year?

25 A. Correct.

McPherson - D

1 Q. Your union contracts are typically three years; right?

2 A. Yeah. Typically, they're three years.

3 Q. And so this reflects that Albertsons agreed to an extra
4 \$0.25 an hour in the third year for workers?

5 A. Correct.

6 Q. And that extra money for workers is higher than
7 Albertsons previously told you was the highest offer they
8 were going to make?

9 A. Correct.

10 Q. Mr. Massa asked you to figure out what that extra money
11 would cost Kroger; right?

12 A. Correct.

13 Q. Now, for confidentiality reasons, I don't want to read
14 this next number out loud, since your counsel said it
15 shouldn't be shared with the public, but you have an
16 unredacted version, so you'd be able to see it.

17 On the screen, Kroger calculated that extra \$0.25 for
18 workers would cost Kroger several million dollars; right?

19 A. Correct.

20 Q. On the third page, third message down, Mr. Massa wrote,
21 quote: Did they sign mutual strike agreement? Sounds like
22 they are going out on their own, end quote.

23 That's a reference to Albertsons; right?

24 A. Correct.

25 Q. And you replied: Okay. No MSAA because they are good

McPherson - D

1 with the extra \$0.25, end quote.

2 Do you see that?

3 A. Yes, I do.

4 Q. And the word "they" used here, that refers to
5 Albertsons again?

6 A. Correct.

7 Q. So you've tried at least three times in the last five
8 years to enter MSAAs with Albertsons in Portland, Denver,
9 and Southern California, and each time you have not been
10 able to agree with Albertsons; is that correct?

11 A. Correct.

12 Q. Mr. Massa wrote to you: Uhm, wow. So much for
13 thinking they were aligned with us.

14 "They" refers to Albertsons again there?

15 A. Correct.

16 Q. And the alignment refers to what you thought was a
17 common understanding on the top wage rate increases that
18 Albertsons would agree to pay its union workers; right?

19 A. Correct.

20 Q. Now, later, on page 4, at the bottom, Mr. Massa wrote
21 to you, quote: Really disappointed in Albertsons, end
22 quote.

23 Do you see that?

24 A. Yes, I do.

25 Q. And you replied, quote: They are poor negotiators, and

McPherson - D

1 we get stuck with their deal every time, end quote.

2 Those are your words, Mr. McPherson?

3 A. Yes, it is, but it was referring to, again, frustrated
4 at out -- this time. Again, we were in a pandemic, so I
5 didn't have my normal wage survey information, because wages
6 were doing something different than we've ever seen and I've
7 ever seen in the last 35 years, and they were a data point
8 for the -- for the union.

9 Q. And you were frustrated with Albertsons again here;
10 right?

11 A. Correct.

12 Q. And you concluded, quote: I need to figure a way out
13 of it, end quote.

14 Do you see that?

15 A. Yes.

16 Q. You agree that the acquisition of Albertsons is the
17 perfect way out of this problem for Kroger?

18 A. No, I do not.

19 Q. But you would agree that acquiring Albertsons is
20 certainly one way out of the problem; right?

21 A. No. I think I'll still see this tactic.

22 MR. DICKINSON: I have no further questions,
23 Your Honor.

24 THE COURT: Any cross-examination?

25 MS. BARRINGTON: Yes, Your Honor.

McPherson - X

1 Your Honor, I just wanted to clarify that Mr. McPherson
2 is a witness we share with the Government.

3 THE COURT: I'm not sure if your microphone is
4 working.

5 MS. BARRINGTON: How about now?

6

7

CROSS-EXAMINATION

8 BY MS. BARRINGTON:

9 Q. I'm Luna Barrington on behalf of the Kroger Company.

10 Good morning, Mr. McPherson. I know you don't like
11 talking about yourself, but could you please just briefly
12 describe your educational background for the Court?

13 A. Yes. I went to Bowling Green State for my
14 undergraduate, and I went to University of Findlay for my
15 master's.

16 Q. And I know you talked about this a little bit before,
17 but can you describe briefly your labor relations experience
18 before you joined Kroger?

19 A. Oh, yeah. I'd say it starts in my undergrad, from a --
20 from a United Parcel Service standpoint. I was an hourly
21 worker there for about three years. And then graduating --
22 once I graduated, Aeroquip. I was a labor -- a labor
23 relations manager. And then I went from there to Campbell
24 Soup Company as labor relations manager. I had various jobs
25 there. And then I went from there to Kellogg, where I had

McPherson - X

1 various jobs in labor and HR, and now I'm at Kroger as the
2 vice president of associate and labor relations.

3 Q. And what was your first experience with the unions?

4 A. I was a member of the Teamsters during my undergrad
5 work.

6 MS. BARRINGTON: Before I move further,
7 Your Honor, may we approach the bench to pass out binders?

8 THE COURT: Yes.

9 BY MS. BARRINGTON: (Continuing):

10 Q. Can you describe your responsibilities as vice
11 president of associate and labor relations?

12 A. Yes. I oversee collective bargaining agreements --
13 about 300 of them -- as part of my primary responsibility.

14 I also have responsibility for associate experience
15 within our stores and making sure that our associates have a
16 great experience, and then I also oversee our associate
17 choice function.

18 Q. Does Kroger have a labor relations strategy?

19 A. Yes, we do.

20 Q. What is that strategy?

21 A. It's to make sure that we're market-competitive for our
22 wages and benefits while also making sure we provide a good
23 experience in balancing the financials of the -- of the
24 company for a sustainable growth.

25 Q. Do you have responsibility for setting Kroger's labor

McPherson - X

1 relations strategy?

2 A. Yes. I draft it, and I review that with senior
3 management.

4 Q. Do you have a role in implementing that strategy?

5 A. Yes, I do.

6 Q. Now I wanted to talk a little bit about Kroger's
7 workforce.

8 How many hourly associates does Kroger employ?

9 A. About 400,000.

10 Q. And where do those hourly associates primarily work?

11 A. Primarily, in our store operations.

12 Q. And of those 400,000 hourly associates, how many are
13 under a collective bargaining agreement?

14 A. About 300,000.

15 Q. How many Kroger associates work in a typical Kroger
16 store?

17 A. I would say between 180 and 220.

18 Q. And generally what kind of positions does Kroger hire
19 for?

20 A. Typically, its entry-level courtesy clerks and clerks
21 in our stores.

22 Q. What position makes up the majority of associates that
23 work at Kroger?

24 A. Our clerk role in the store.

25 Q. And what type of experience is typically required for

McPherson - X

1 those positions?

2 A. No previous experiences.

3 Q. Are there any grocery-specific skills that are needed
4 to serve as a courtesy clerk?

5 A. No, there are not.

6 Q. And does Kroger provide training for its associates?

7 A. Yes, we do.

8 Q. And can you describe what kind of training Kroger
9 provides?

10 A. We provide on-the-job training for all of our
11 positions.

12 Q. So what is Kroger primarily looking for in candidates
13 when it's hiring?

14 A. Typically, people with good customer service qualities.
15 Being friendly. We think a good associate experience,
16 that -- that leads to good customer feedback and keeps them
17 coming to our stores.

18 Q. Does Kroger offer promotional opportunities for its
19 existing associates?

20 A. Yes, we do.

21 Q. Can you describe for us what those promotional
22 opportunities look like?

23 A. Someone could come in as a courtesy clerk and go to the
24 clerk role. They could work in various departments
25 through -- throughout the store. They can become a

McPherson - X

1 department assistant and lead -- lead a department.

2 Q. Is that true across all of Kroger stores that are both
3 union and nonunion?

4 A. Yes, it is.

5 Q. Generally speaking, Mr. McPherson, who does Kroger
6 compete with for labor?

7 A. Everybody in the market in our surrounding store --
8 stores is where we compete for labor.

9 Q. Can you provide us with some examples?

10 A. Yeah. It would be McDonald's, Home Depot, Lowe's,
11 Macy's, all those.

12 Q. Does Kroger compete with only union companies for
13 labor?

14 A. No.

15 Q. Does Kroger compete only with grocery retailers for
16 labor?

17 A. No.

18 Q. Now, you're also responsible for retention at Kroger?

19 A. Yes, I am.

20 Q. And can you describe what Kroger's labor relations
21 strategy is as it relates to retention?

22 A. Our number one goal is to drive down the turnover of
23 our associates.

24 Q. Why is that a priority for Kroger?

25 A. It's a priority. One, it's good for our associates

McPherson - X

1 because it means we're working on the environment that they
2 work in. It is also just good from a financial standpoint.
3 It limits the amount of training and, plus, our customers
4 love a store where they're coming in and seeing the same --
5 same people each day.

6 Q. Does Kroger attract store turnover?

7 A. Yes, we do.

8 Q. Do you have a general sense of what the turnover rate
9 is?

10 A. Yes. Just north of 50 percent.

11 Q. Is north of 50 percent, in your experience, high or
12 low?

13 A. We think we're industry-leading in the -- and have a
14 low turnover for our folks compared to other competitors.

15 Q. What has the turnover rate at Kroger been historically?

16 A. I know when I started it was 100 percent.

17 Q. And why is the turnover rate more challenging in your
18 Kroger stores?

19 A. Why is it more challenging?

20 Q. Yeah.

21 A. Just because there's a lot of opportunities in
22 entry-level jobs for people. A lot of people will come out
23 of high school as their first job, and then they leave to go
24 to college. Other people find other career opportunities;
25 so the turnover rate is pretty high.

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1 Q. I want to now introduce DX2705.

2 Now, Mr. McPherson, do you recognize this document?

3 A. Yes, I do.

4 Q. Can you describe what this document is?

5 A. Yes. This is a report that is generated at Kroger, you
6 know, basically on a period basis that basically looks at
7 survey information from associates that are exiting the
8 company.

9 Q. Now, what is the date of this report?

10 A. This is exiting survey information from our associates
11 where we're asking them questions on why they're leaving and
12 where they're going to.

13 Q. Did you receive a copy of this report, Mr. McPherson?

14 A. Yes, I did.

15 MS. BARRINGTON: Your Honor, I would like to move
16 DX2705 into evidence, please.

17 MR. DICKINSON: No objection.

18 THE COURT: It will be received.

19 BY MS. BARRINGTON: (Continuing):

20 Q. How does Kroger get this data?

21 A. Again, we ask exiting associates to fill out a survey,
22 Just asking, kind of, why they're leaving us; and if they're
23 leaving for other employment, where they would be going.

24 Q. What does Kroger use this data for?

25 A. We look at trends to see if there's different companies

McPherson - X

1 that people are going to. If they're going for wages, then
2 that's something that we could try to work through. If it's
3 the store environment or whatever, those type of things, we
4 try to look at trends and try to address them.

5 Q. Now, if you can please turn to the second page of the
6 survey report, I'd like to direct your attention to where it
7 says: Spotlight Exit Survey. Where Are Exiting Associates
8 Going?

9 Do you see that, Mr. McPherson?

10 A. Yes, I do.

11 Q. Can you please describe what the survey results show?
12 Where are exiting associates going?

13 A. It looks like they're going to a variety of places.
14 They are going to the medical and healthcare industry.
15 They're going to Walmart, Amazon, government positions,
16 delivery companies. Some of them are self-employed. Other
17 grocery retailers, home improvement, Target, fast food,
18 pharmacy, restaurants, dollar -- dollar stores, Meijer's, a
19 whole host of places.

20 Q. Are any of the companies on this list union companies?

21 A. Yes, they are.

22 Q. And does Kroger compete with all of these companies for
23 labor?

24 A. Yes, we do.

25 Q. Now, I think you mentioned some of these companies are

McPherson - X

1 union companies. Are there nonunion companies on this list?

2 A. Yes, there are.

3 Q. Are your associates leaving to go to other grocery
4 retailers?

5 A. Yes, they are.

6 Q. And can you describe for the Court which grocery
7 retailers they are leaving to go to?

8 A. Looks like, according to this one, they are going to
9 Trader Joe's, Safeway, Sprouts, Publix, Albertsons, Giant,
10 Food Lion, WinCo, and Fresh Market.

11 Q. Are all of these grocery retailers union companies?

12 A. No, they are not.

13 Q. Do Kroger associates typically leave to go to
14 companies -- to go to other union companies?

15 A. No. Not really.

16 Q. And when these associates leave Kroger for nonunion
17 jobs, do they retain any of their union benefits?

18 A. No. They -- can you restate the question?

19 Q. Of course.

20 When these associates leave for nonunion jobs, do they
21 retain any of their union benefits?

22 A. No, they do not.

23 Q. So why do you think Kroger associates leave to go to
24 nonunion jobs?

25 A. Because of wages or they think it's a better

McPherson - X

1 opportunity for them.

2 Q. In your experience, are associates focused on wages?

3 A. No, they are not.

4 Q. So what are they focused on, Mr. McPherson?

5 A. Typically wages and better -- better opportunities, if
6 they think that's the case.

7 Q. Now, you testified earlier that the market is very
8 competitive for labor. What has Kroger done to compete for
9 labor?

10 A. We -- we do make sure that we're paying market wages.
11 We do a lot of wage surveys to make sure that we're
12 competitive in the areas that we're competing for labor.

13 Q. And has Kroger made it a priority to invest in wages?

14 A. Yes, we have.

15 Q. When did that initiative start?

16 A. I would say four to five years ago.

17 Q. And since -- since the initiative began, how much has
18 Kroger invested in wages?

19 A. Over \$2 billion.

20 Q. And has Kroger invested in wages and benefits for all
21 of its associates, both in its union and its nonunion
22 stores?

23 A. Yes.

24 Q. Now I'd like to introduce another exhibit. This is
25 PX1323.

McPherson - X

1 Mr. McPherson, do you recognize this document?

2 A. Yes, I do.

3 Q. And can you please describe what this document is.

4 A. Yes. This is a document that we reviewed with senior
5 leadership, looking at average hourly rate for our
6 associates.

7 Q. And did you receive a copy of this slide deck that's
8 attached here?

9 A. Yes, I did.

10 MS. BARRINGTON: Your Honor, I would like to move
11 into evidence PX1323.

12 MR. DICKINSON: No objection.

13 THE COURT: It will be received.

14 BY MS. BARRINGTON: (Continuing):

15 Q. Now, if you can turn to Slide 2 of the presentation,
16 assigned average hourly rate.

17 MS. BARRINGTON: Can you keep going, Alex?

18 Thank you.

19 BY MS. BARRINGTON: (Continuing):

20 Q. Can you describe what this slide shows?

21 A. Yes. This slide shows the average hourly rate by each
22 of our operating divisions, and it shows at this point in
23 time that our average across all divisions was \$14.91;
24 however, they varied from \$11.96 to \$19.37.

25 Q. How does Kroger's average hourly rate compare to the

McPherson - X

1 minimum wage in the states that Kroger operates in?

2 A. From -- it's above minimum wage.

3 Q. Now I'd like to turn to Slide 6 of this presentation,
4 and this is the slide titled: Starting Hourly Rate
5 Competitive Landscape.

6 Can you describe what this slide shows?

7 A. Yeah. At this time there was a lot of competitors that
8 we compete for labor on, either declaring that they were
9 going to go to \$15 an hour starting rates or higher or they
10 were already there.

11 Q. Which competitors are listed here?

12 A. On this list, from a Walmart, Target, Costco, Ahold,
13 Albertsons, Amazon, CVS, Walgreens, Starbucks.

14 Q. And other than Albertsons and Ahold, are any of these
15 companies union grocery store employers?

16 A. No. I know Costco has a few stores that are union, and
17 I know Starbucks has a few locations, but the rest of them
18 are not union.

19 Q. And why is Kroger looking at these competitors?

20 A. Because they're national competitors of which we
21 compete for labor.

22 Q. What did Kroger decide to do on wages as a result of
23 this senior leadership meeting?

24 A. We decided to make more investment in wages to make
25 sure we're competitive.

McPherson - X

1 Q. Now let's talk about how Kroger determines the wages
2 that it will pay. How does Kroger do that?

3 A. We have a process where our total rewards team goes out
4 and conducts regular surveys of the market where we're
5 competing for labor. They use third-party vendors to do
6 that. And then they come back and compare those rates with
7 our rates that we're paying with -- at Silver level.

8 Q. So does Kroger rely on market data to determine wages?

9 A. Yes, we do.

10 Q. Are these wage surveys specific to each market?

11 A. Yes, they are.

12 Q. And which competitors is Kroger comparing its wages to?

13 A. Any competitor that is in the market that we believe
14 we're competing for labor in.

15 Q. Does Kroger look to Albertsons?

16 A. They're a data point.

17 Q. And are there other ways in which you track competitor
18 wages?

19 A. Yes. We research the media, see what they're doing.
20 There's a lot of articles on wages, and we look at other
21 settlements that we see across the country.

22 Q. Let's take a look at an example of a wage survey.

23 If we can please pull up DX1213.

24 Mr. McPherson, do you recognize this document?

25 A. Yes, I do.

McPherson - X

1 Q. Can you describe for the Court what this document is?

2 A. Yes. This would have been an example of wage survey
3 that we did in 2021 for our Denver, Colorado, area as we
4 were preparing for contract negotiations.

5 Q. Did you receive a copy of this survey?

6 A. Yes, I did.

7 MS. BARRINGTON: I'd like to move DX1213 into
8 evidence.

9 MR. DICKINSON: No objection.

10 THE COURT: It will be received.

11 MS. BARRINGTON: Thank you.

12 BY MS. BARRINGTON: (Continuing):

13 Q. Now, which market -- I think you mentioned this, but
14 which market is this survey looking at?

15 A. Denver. Denver area market.

16 Q. And who participated in this survey?

17 A. It looks like Bath & Body Works, Macy's, Home Depot,
18 Dick's Sporting Goods, Target, Walgreens, DSW, Kohl's, and
19 Walmart.

20 Q. Is Albertsons listed here?

21 A. No, they are not.

22 Q. Are any of these competitors to you in grocery stores?

23 A. No, they are not.

24 Q. Why is Kroger interested in what these companies are
25 paying in wages in the Denver market?

McPherson - X

1 A. Because they were significant competitors in the Denver
2 area that we were competing for labor with.

3 Q. And I would like to just direct you to the bottom
4 right-hand corner there. Mr. McPherson, are any of these
5 companies union companies?

6 A. No, they are not.

7 Q. Now, does Kroger only use wage surveys to monitor wages
8 in the market?

9 A. No.

10 MS. BARRINGTON: I'd like to introduce another
11 exhibit. This is DX108.

12 BY MS. BARRINGTON: (Continuing):

13 Q. Mr. McPherson, do you recognize this document?

14 A. Yes, I do.

15 Q. And can you describe for the Court what this document
16 is.

17 A. Yeah, this was an email to me, back in March of '21,
18 from Sara Parker, who was at the time our HR leader for our
19 Fred Meyer division, and she was concerned about two of her
20 stores. One in Bend -- Bend and Redmond were the two
21 stores.

22 Q. And is Bend and Redmond -- are those stores in the --
23 in Oregon?

24 A. Yes, they are.

25 Q. And is Bend a store that's represented by Local 555?

McPherson - X

1 A. Yes, it is.

2 Q. And how about Redmond?

3 A. That is an associate choice store.

4 Q. And by "associate choice," do you mean it's a nonunion
5 store?

6 A. Correct.

7 Q. Can you read what Ms. Parker writes at the top there?

8 A. She said: Yes, as followed up on the quarterly review
9 discussion with Mark on significant hiring challenge to our
10 Bend and Redmond, Oregon, market area. Please see below for
11 the information compiled by our division HR team to support
12 wage review for Bend, Store 21, and Redmond, Store 650.
13 Bend is represented by Local 555, and Redmond is associate
14 choice. These stores are approximately 25 minutes apart.

15 Q. So were both these stores facing significant hiring
16 challenges at this time?

17 A. Yes, they were.

18 Q. And was Kroger conducting a wage review for these two
19 stores to better compete with the market?

20 A. Yes. The division had conducted a survey of their
21 competitors for which they compete for labor.

22 Q. If you look at the paragraph right below that, what was
23 the minimum wage in Denver at this time -- excuse me -- in
24 Oregon at this time?

25 A. It was \$12.00.

McPherson - X

1 Q. And what was Kroger paying?

2 A. We were paying \$13.00 for our nonfood associates and
3 \$13.25 for our grocery Schedule B associates. That are
4 typically our service deli, Starbucks, bakery, pickup
5 positions, and then we were paying \$14.00 an hour starting
6 rate for our grocery and our checkers.

7 Q. If we can turn to the next page, Ms. Parker has a
8 section here titled Competitor Rates, and are these a list
9 of competitors that Kroger was comparing wages to?

10 A. Yes, it is.

11 Q. And can you tell the Court which competitor were we
12 looking at in the Bend store?

13 A. We were looking at, for Bend, McDonald's, Kentucky
14 Fried Chicken, Carl's Jr., Big 5, Home Depot, Target, and
15 Chick-fil-A.

16 Q. Are any of these competitors union grocery stores?

17 A. No, they are not.

18 Q. Let's take a look at the Redmond store. What
19 competitors are listed here for the Redmond store?

20 A. McDonald's, Burger King, Kentucky Fried Chicken,
21 Chick-fil-A, Safeway, Consumer Cellular, ibex Call Center,
22 and some gas stations.

23 Q. Other than Safeway, are or any of these union grocery
24 stores?

25 A. No, they are not.

McPherson - X

1 Q. Now, did Kroger raise its wages for its Bend and
2 Redmond, Oregon, stores as a result of this?

3 A. Yes, we did. We approved a wage investment for these
4 two stores.

5 Q. And how much did Kroger approve to raise wages to?

6 A. I think we went to just over \$14.00 an hour starting
7 wage.

8 Q. Now, does the union look at competitors outside of the
9 grocery industry when they're comparing Kroger's wages?

10 A. Yes, they do.

11 Q. And does the union also look at nonunion companies when
12 they're comparing Kroger's wages?

13 A. Yes, they do.

14 Q. I'd like to introduce DX114.

15 Mr. McPherson, do you recognize this document?

16 A. Yes, I do.

17 Q. And can you describe for the Court what this document
18 is?

19 A. This is an email forwarded to me from
20 Leroy Westmoreland, and it's an exchange with him and
21 Kim Cordova.

22 MS. BARRINGTON: Your Honor, I would like to move
23 DX114 into evidence, please.

24 MR. DICKINSON: No objection.

25 THE COURT: It will be received.

McPherson - X

1 MS. BARRINGTON: Thank you.

2 BY MS. BARRINGTON: (Continuing):

3 Q. Mr. McPherson, who is Kim Cordova?

4 A. She is union president of Local Union 7?

5 Q. And is Ms. Cordova also on the executive board of the
6 international union?

7 A. Yes, she did.

8 Q. Who is Mr. Westmoreland?

9 A. He was a senior director working for me that had
10 responsibility for the King Soopers division.

11 Q. Can you describe what this email is saying?

12 A. Yes. Kim was writing back to the division because we
13 were looking at improving our entry-level rates for some of
14 the area stores.

15 Q. And who was Ms. Cordova comparing Kroger's wages to
16 here?

17 A. She goes and states in her email that -- she said that
18 proposing rate wage rates are significantly below market
19 rates and Denver, counting minimum wages, Walmart, Safeway,
20 Costco, Target, and Whole Foods are all hiring at \$15.00 an
21 hour or higher. Fast food restaurants are hiring as high as
22 \$20.00 an hour.

23 Q. Other than Safeway, are any of these competitors that
24 Ms. Cordova lists here union stores?

25 A. No, not in the Denver area.

McPherson - X

1 Q. And do you consider, Mr. McPherson, fast food
2 restaurants to be part of the grocery industry?

3 A. No, I do not.

4 Q. Do you compete with all of these companies for labor?

5 A. We certainly do.

6 Q. Now, When Kroger wants to raise wages for its
7 associates in its union stores to compete for labor, how
8 does Kroger do that?

9 A. We end up talking to the union.

10 Q. Is Kroger able to raise wages on its own?

11 A. We have some contracts that have a contract minimum,
12 but we still talk to the union, but most of the time it's a
13 mandatory subject of bargaining.

14 Q. How many times has Kroger engaged in mandatory
15 bargaining in order to increase its wages to its associates?

16 A. I've had probably over a dozen times where we've
17 approached the union to pull a contract forward to invest in
18 wages so we could be competitive.

19 Q. And why does Kroger do that?

20 A. To make sure that we can recruit and retain the best
21 associates.

22 Q. Now, does Kroger review other collective bargaining
23 agreements when they're making decisions about wages?

24 A. Yes, we do.

25 Q. And what kind of agreements are Kroger -- is Kroger

McPherson - X

1 looking at?

2 A. Anything that we think shows a trend. We looked at
3 auto workers from any of the big settlements. Is that a
4 trend for us? Like I say, look at all these settlements and
5 see -- see trends.

6 Q. And why do you track -- do you track only grocery
7 industry agreements?

8 A. No, we do not.

9 Q. Why do you track agreements outside of the industry?

10 A. Because we think that could set a wage trend for the
11 market that we compete for labor with.

12 Q. Now I would like to switch topics and talk about
13 Kroger's relationship with its unions. How long has Kroger
14 been a union company?

15 A. Over 60 years.

16 Q. What percentage of Kroger's associates are represented
17 by unions?

18 A. Over 65 percent.

19 Q. Does Kroger continue to create new union jobs today?

20 A. Yes, we do.

21 Q. And in the last decade, how many new union jobs has
22 Kroger created?

23 A. Over 100,000.

24 Q. Which union represents the majority of Kroger's
25 associates?

McPherson - X

1 A. From a -- from a -- United Food and Commercial Workers
2 represent the vast majority.

3 Q. And how many of Kroger's associates are represented by
4 the UFCW?

5 A. I'd say about 270,000.

6 Q. Can you describe Kroger's relationship with the UFCW?

7 A. I would say overall good.

8 MS. BARRINGTON: I'd like to introduce another
9 document. This is DX877.

10 BY MS. BARRINGTON: (Continuing):

11 Q. Do you recognize this document, Mr. McPherson?

12 A. Yes, I do.

13 Q. Can you describe for the Court what this document is?

14 A. Yes. This was an email that Tim Massa sent out to some
15 key members of our executive team on a top-to-top meeting
16 that we were having with Marc Perrone and Milton Jones to
17 give them an update on the business.

18 Q. Why did Kroger once have a top-to-top meeting with
19 UFCW?

20 A. We try to have a top-to-top meeting with them usually
21 two, three times a year, just to give them insights into
22 what we're doing in the business, see if they have any
23 concerns, anything that we need to talk about. But we think
24 the more that they understand about the business and where
25 we're heading, that that helps as we're bargaining contracts

McPherson - X

1 and working with the locals around what we need to do in --
2 with the workforce.

3 Q. Is it important for Kroger to maintain a good
4 collaborative relationship with the UFCW?

5 A. Yes, it is.

6 Q. I would like to turn to the presentation that's
7 attached to this email.

8 Mr. McPherson, was this deck presented to the UFCW on
9 May 9, 2022?

10 A. Yes, it was.

11 Q. If you can turn to the next page, which is the agenda,
12 who is present at this meeting?

13 A. Present here was Rodney McMullen, CEO for the company;
14 Gary Millerchip, finance; Mary Ellen Adcock, who oversees
15 our store operations; Tim Massa, in charge of HR; myself;
16 and we had Marc Perrone from International; and Milton
17 Jones.

18 Q. And was one of the agenda's -- agenda items here an
19 update on Kroger's business and people?

20 A. Yes, it was.

21 Q. Were you present at this meeting as well,
22 Mr. McPherson?

23 A. Yes, I was.

24 MS. BARRINGTON: Your Honor, I would like to move
25 this exhibit into evidence, please.

McPherson - X

1 MR. DICKINSON: No objections.

2 THE COURT: It will be received.

3 BY MS. BARRINGTON: (Continuing):

4 Q. And, Mr. McPherson, if we can turn to Slide 7 of this
5 deck, this is associate experience.

6 Can you tell the judge what this slide shows?

7 A. Yeah. This shows that as part of our overall business
8 strategy is to make sure we service every customer every
9 time, and we do that by having a full, fresh, and friendly,
10 which means we have full stores for our customers, we have
11 fresh product, and we have friendly associates.

12 MS. BARRINGTON: And if we can turn to this next
13 slide.

14 And one more over, please.

15 BY MS. BARRINGTON: (Continuing):

16 Q. There's a slide here titled: Investing in Our
17 Associates.

18 Can you please tell the Court what this slide shows.

19 A. Yes. We're showing Marc Perrone and Milton Jones the
20 average hourly rate increase and the wage investments that
21 we had made for the period of 2017 through 2021. We showed
22 almost a 26 percent increase by going from \$17.56 an hour to
23 \$21.11 an hour.

24 Q. Does this reflect some of the wage investments that we
25 were talking about earlier?

McPherson - X

1 A. Yes, it does.

2 MS. BARRINGTON: You can turn to the next slide,
3 please.

4 BY MS. BARRINGTON: (Continuing):

5 Q. This is a slide that's called: For Kroger. Our
6 Investments and Associates go beyond wages.

7 Can you describe for the Court with this slide shows?

8 A. Yeah. We wanted to share with the union that our
9 investments are not only in wages, but we wanted to share
10 with them that we invested over \$2 billion in associates'
11 pensions for the period of 2018 through 2021.

12 We continue to invest in affordable healthcare for our
13 associates to the tune of about \$1.8 billion a year.

14 Q. Does Kroger also invest in the associates' -- in your
15 associates' education?

16 A. Yes, we do. We have a policy that we invest up to
17 \$21,000 for both part-time and full-time associates.

18 Q. Does Kroger also offer scholarship funds for its
19 children of associates?

20 A. Yes, we do.

21 Q. Now, if you can look towards the bottom middle there,
22 it says: Advancement.

23 Can you tell us a little more -- excuse me -- can you
24 tell us a little bit more about what this slide shows?

25 A. Yeah. It's showing that we invest a lot in training

McPherson - X

1 and development of our associates, and we're -- a proud fact
2 that we have almost 70 percent of our store management teams
3 were part-time clerks at one point in time for us.

4 Q. Now, this Kroger offer these same benefits to all of
5 its associates, whether they're union or nonunion?

6 A. Yes. I would say, for the most part. Except instead
7 of the pension investment, we would have a 401(k) of similar
8 investment.

9 Q. Does Kroger invests overall the same amount of money
10 into all of its -- into its -- excuse me. Does Kroger
11 invest the same amount of money into all of its associates,
12 whether it's union or nonunion?

13 A. Yes, we do.

14 Q. I'd like to turn to Slide 11.

15 Can you describe what this slide shows?

16 A. Yeah. We were sharing with Marc and Milton that we
17 work really hard to negotiate contracts that balance
18 competitive wages and affordable healthcare and pension
19 investments in our associates while keeping groceries
20 affordable for our customers.

21 Q. And on the second bullet there, it says: Our
22 obligation is to do this in a way that maintains a
23 financially sustainable business.

24 Can you describe what this bullet means?

25 A. Yes. We wanted to have the dialogue with Marc that we

McPherson - X

1 need to do this in a prudent way to make sure it's a
2 sustainable business model for us.

3 Q. Now, I would like to talk about, if I could, Kroger's
4 collective bargaining agreements. How many collective
5 bargaining agreements is Kroger a party to?

6 A. 300 about.

7 Q. And how many of those contracts are with the UFCW?

8 A. I would say about 100 and -- or about 350, -60 of those
9 are with them.

10 Q. How long are the terms of those agreements?

11 A. Typically, they're about a three-year period. Some of
12 them are a little shorter or longer, but typically three.

13 Q. So in any given year, how many collective bargaining
14 agreements is Kroger negotiating?

15 A. Right around 100. It ranges each year, but right
16 around 100 on average.

17 Q. What do the -- what do these collective bargaining
18 agreements cover?

19 A. They cover wages, healthcare, pension, operational
20 flexibility, management rights, terms, those type of things.

21 Q. Do all of the collective bargaining agreements also
22 cover the same number of stores?

23 A. No, they do not. They range vastly.

24 Q. Does Kroger have a collective bargaining agreement that
25 covers just one store?

McPherson - X

1 A. Yes. We have single-store contracts. We have some
2 stores that will cover five, some that will cover 130
3 stores. So, yeah, they -- they range vastly.

4 Q. And do the scopes -- now, do you participate in union
5 negotiations?

6 A. Yes, I do.

7 Q. Can you walk us through the process of how Kroger
8 prepares for its negotiations?

9 A. Yeah. We have a 12-month preparation process where we
10 start 12 months out from an expiration of a contract where
11 we're collecting data. So we're collecting area wage
12 surveys, like you saw here. We also conduct survey --
13 surveys, our Total Rewards team does, for healthcare and
14 pension. We have dialogue with our leadership and division
15 leadership on what they're looking for out of a collective
16 bargaining agreement. And then usually at about four months
17 prior we're putting together the overarching mandate that
18 we're looking for out of a collective bargain agreement.

19 Q. And in your recent experience, Mr. McPherson -- when
20 you're at the bargaining table with the unions, can you tell
21 the Court: What are unions most focused on?

22 A. I would say in the last five, six years, it's been
23 wages.

24 Q. Are unions focused on benefits?

25 A. No. Very rarely. We'll talk about them a little bit,

McPherson - X

1 but the driving discussion at the bargaining table is wages.

2 Q. Do the unions have a number of different bargaining
3 tools that they use to gain leverage over Kroger in
4 negotiations?

5 A. Most certainly.

6 Q. Can you describe for the Court what sort of leverage
7 unions use?

8 A. A ton. Right?

9 They usually get strike authority with their -- from
10 their members. That places pressure on it to use media
11 outlets and the press to do it. Social media. They put
12 fliers in our stores. All those type of things to place
13 pressure on us.

14 Q. Now, on direct, I think you spoke with Mr. Dickinson
15 about whipsaw bargaining. What do you understand whipsaw
16 bargaining to be?

17 A. It's when two or more employers are negotiating with
18 the union, and they strike an agreement with one of those
19 employers, and then they inform the other that if you don't
20 agree to those terms, that they threaten to strike.

21 Q. Can you give the Court an example of whipsaw
22 bargaining?

23 A. I would -- I would say -- I would probably say Southern
24 California was probably the best example of where they
25 struck a deal with Albertsons.

McPherson - X

1 Again, it was just different times at that time. We
2 didn't have our normal wage data because the market was
3 moving so quick because of the pandemic, where they struck a
4 deal with Albertsons and then threatened to strike us.

5 Q. Well, let's talk about Southern California.

6 Were you looking at what Walmart was paying in Southern
7 California when you were negotiating with the unions at that
8 time?

9 A. Yes, we would have looked to see what they were paying.

10 Q. And did you look at other competitors and what they
11 were paying in the market when you were negotiating that
12 Southern California CBA?

13 A. Yes, we did.

14 Q. In that negotiation, did you increase your wages in
15 order to compete with Albertsons?

16 A. We did. Because, again, the market we had just -- we
17 had Stater Bros. settle. We had seen Albertsons now settle.

18 And, again, although we looked at those competitors in
19 Southern California, the market was moving so quick that all
20 of it was a data point that was relevant.

21 Q. What other data points does Kroger consider when
22 they're thinking about negotiations in settling with the
23 unions?

24 A. I think we're looking at a lot of the survey
25 information. We're looking at articles in the paper and

McPherson - X

1 what's happening trend-wise. We're looking at it all to
2 make sure that we're competitive in the area for which we're
3 competing for labor.

4 Q. Would Kroger ever agree to a proposal just because
5 Albertsons has agreed to a proposal?

6 A. No.

7 Q. And why not?

8 A. Because we have a long-term strategy to make sure we
9 have a viable business. So we have very clear objectives on
10 what we will and will not do at the bargaining table.

11 Q. Now, is whipsaw bargaining just one tool that unions
12 used during negotiations?

13 A. Yes, it is.

14 Q. Are there other forms of whipsaw bargaining?

15 A. Yeah. Like I said, I know I've been at the table
16 several times where the union will point to, like, a Walmart
17 increasing their starting wages to \$15.00 and point to other
18 competitors -- they'll even point to the Big Three
19 automakers' settlement and what they're getting as far as a
20 percentage and think that they ought to get it. So they're
21 always -- they're always comparing us to somebody else and
22 whatever aligns with their proposals at the table.

23 Q. Have the unions ever pointed to what Kroger is paying
24 in other markets to gain leverage in a negotiation?

25 A. Oh, most definitely.

McPherson - X

1 Q. And can you think of an example where a union has
2 pointed to what Kroger has paid in other markets to gain
3 leverage?

4 A. Yeah. I'll tell you right here in Portland the union
5 has compared us to our own Seattle settlement.

6 Q. Can you describe for the Court what that means?

7 A. Yeah. They look at what we previously negotiated in
8 Seattle, and that that's about \$4.00 an hour higher, based
9 on the cost of living being 17-and-a-half percent higher
10 there, but the union doesn't really care about the
11 difference in the cost of living, and they want the same
12 terms and conditions that we settled in that agreement here.

13 Q. And what is the primary disagreement at the table
14 between Kroger and Local 555 today?

15 A. In our current bargaining?

16 Q. Yes.

17 A. It's all about wages.

18 Q. Have they mentioned -- has Local 555 mentioned
19 Albertsons at all in their negotiations with Kroger?

20 A. No, they have not.

21 They've actually reached an -- an extension of their
22 agreement with Albertsons.

23 Q. And what does that mean, to reach an extension with
24 Albertsons?

25 A. It means that they agree that the terms and conditions,

McPherson - X

1 including not -- the ability not to strike, they've agreed
2 with Albertsons we'll -- we'll continue.

3 Q. So can Local 555 strike Albertsons today?

4 A. No, they cannot.

5 Q. And I'd like to just address the strike for a moment.

6 Mr. McPherson, is Local 555 currently on strike?

7 A. Yes, they are. As of 6:00 a.m. this morning, they went
8 out on strike.

9 Q. Can you explain why Local 555 is on strike to the
10 Court, please.

11 A. Because we have a major gap in their proposals on wages
12 and what we're willing to do.

13 They're looking for, in the first year, for \$4.30 and
14 top-rate increases. Again, that's the first year, \$2.00 in
15 the second, \$1.00 in the third, which is astronomical,
16 compared to what the market's offering.

17 They also have some other provisions in there that all
18 of our B scale employees go to A scale, which is another
19 \$2.30, and they're looking for a longevity pay of another --
20 for anybody with 10 years of service or more, another \$1.50
21 an hour.

22 Q. Did Kroger make efforts to avoid a strike?

23 A. Yes, we have.

24 Q. What kind of efforts did you make?

25 A. We put a better offer on the table this time than they

McPherson - X

1 got last time, along with some ratification bonuses and
2 other incentives to try to get the deal done.

3 Q. And now, did you ask Albertsons to sign an MSAA in
4 these current negotiations?

5 A. No, I did not.

6 Q. And where are you going to go after you leave the
7 courthouse today, Mr. McPherson?

8 A. We're going to meet with the union and try to resolve
9 the strike here in Portland.

10 Q. Can unions still use this whipsaw bargaining technique
11 in a post-merger world?

12 A. Yes, they can.

13 Q. And can you explain how they can still do that?

14 A. One, you know, I would still have a multi-employer
15 relationship here because C&S will step into the shoes of
16 them, so -- so we still have that. But the tactic that
17 they're using today, Albertsons is sitting on the sideline
18 and they're just bargaining with Kroger at this point in
19 time.

20 Q. In your experience, Mr. McPherson, you bargained a lot
21 of contracts over the course of your career and in all parts
22 of the country. In your experience, do unions approach
23 negotiations differently when there is another union grocer
24 in the area?

25 A. No.

McPherson - X

1 Q. And in your experience, what impact do other union
2 grocers have on the outcome of Kroger's negotiations with
3 the unions?

4 A. Very little.

5 Q. Now, you said that the unions have a number of
6 different tools, and you mentioned strikes in particular.
7 In your experience, how often do unions strike?

8 A. I would say very rarely. Until today, I've only had
9 two, for nine -- nine days total, and now I've got a third,
10 in my 12 -- 12 years.

11 Q. Why are strikes so rare?

12 A. I think everybody hates a strike. Right? Companies
13 hate it for the loss of revenue; but, to me, I've seen it on
14 the associates' side where associates don't -- don't get a
15 paycheck. So I've seen them lose homes, cars, all that
16 stuff, and it's just bad for a relationship. They would
17 rather be working. We would rather have them working. So I
18 don't think anybody wins in a strike.

19 Q. Does Kroger have concerns whenever there is a strike?

20 A. Yes, we do.

21 Q. Can you describe what some of those concerns are?

22 A. I would say it's loss of sales, reputation with the
23 customer, not being able to serve them, those types of
24 things.

25 Q. When there is a strike, which competitors is Kroger

McPherson - X

1 concerned about losing sales to?

2 A. All of them in the market.

3 Q. Is Kroger ever concerned about just losing sales to
4 Albertsons during a strike?

5 A. No. They're one of them, but there's many others out
6 there.

7 Q. And you've heard of the term "whipsaw strike"?

8 A. Yes, I have.

9 Q. What do you understand a whipsaw strike to mean?

10 A. It's when two or more employers are bargaining, and the
11 union reaches an agreement with one of those employers and
12 then threatens to strike if the other employer doesn't
13 accept those terms.

14 Q. And I want to talk about one of the strikes that you
15 discussed with Mr. Dickinson, and that was the Local 7
16 strike in Denver, Colorado.

17 In 2022, did Local 7 strike Kroger?

18 A. Yes, they did.

19 Q. And what was the reason for that strike?

20 A. We had another disagreement on wages.

21 Q. Now, was Albertsons involved in negotiations at the
22 time during the strike?

23 A. We were in multi-employer bargaining, but the union had
24 offered them an extension of their agreement so they
25 couldn't strike them.

McPherson - X

1 Q. During the strike, did Local 7 encourage customers to
2 shop at other stores besides Albertsons?

3 A. Yes, they did.

4 Q. Did Local 7 direct customers to other nonunion stores?

5 A. Yes, they did.

6 MS. BARRINGTON: I'd like to introduce another
7 exhibit. DX2954.

8 BY MS. BARRINGTON: (Continuing):

9 Q. Do you recognize this document, Mr. McPherson?

10 A. Yes, I do.

11 Q. And can you describe what this document is?

12 A. Yes. This is a flier that UFCW Local 7 was handing out
13 to our customers, that they were on strike, and they would
14 encourage them to go shop at other grocery chains and
15 specifically listed Safeway, Albertsons, Sprouts,
16 Trader Joe's, and Whole Foods.

17 Q. Did you receive a -- did you receive a copy of this
18 flier?

19 A. Yes, I did.

20 MS. BARRINGTON: Your Honor, I'd like to move
21 DX2954 into evidence.

22 MR. DICKINSON: Your Honor, I would actually
23 object to this one. This is a document from the UFCW. It's
24 a third party. You can see, from the Bates number, it's not
25 from Kroger's files, and it was created by a different party

McPherson - X

1 that the defendants haven't put on their witness list.

2 MS. BARRINGTON: Your Honor, he just --
3 Mr. McPherson testified that he has seen this document
4 before.

5 THE COURT: But he didn't create it.

6 MS. BARRINGTON: That's right, Your Honor.

7 THE COURT: Sustained.

8 MR. DICKINSON: Thank you.

9 BY MS. BARRINGTON: (Continuing):

10 Q. Now, Mr. McPherson, when Local 7 -- you testified that
11 when Local 7 struck Kroger in 2022, Local 7 directed
12 customers to other nonunion stores?

13 A. Correct.

14 Q. Do you recall, off the top of your head, which stores
15 they directed those unions to?

16 A. Yes. It would have been Trader Joe's, Sprouts, and
17 Whole Foods.

18 Q. And are those -- any of those stores union stores?

19 A. No, they are not.

20 Q. Did they also direct customers to Albertsons?

21 A. Yes, they did.

22 Q. Does Kroger have any concerns about a whipsaw strike as
23 opposed to other types of strikes?

24 A. No. I think it's a tool in their toolbox.

25 Q. Can a union threaten to strike Kroger even if there is

McPherson - X

1 no Albertsons in the market?

2 A. Most definitely.

3 Q. And has that actually happened? Have unions threatened
4 to strike Kroger in areas where there is no Albertsons
5 store?

6 A. Yes. I've seen that in Houston, mid-Atlantic, several
7 areas across the country.

8 Q. And did Kroger view those strikes as credible?

9 A. Yes, we did.

10 Q. Would a strike cause Kroger to lose sales even if
11 there's not an Albertsons in the market?

12 A. Yes, it would.

13 Q. And would food spoilage still be a concern even if
14 there's not an Albertsons in the market?

15 A. Yes, it would.

16 Q. Would Kroger still suffer harm to its reputation even
17 if there's not an Albertsons in the market?

18 A. Yes, it would.

19 Q. I'd like to talk, Mr. McPherson, about mutual strike
20 assistance agreements, and I think this is -- you briefly
21 touched on this with Mr. Dickinson.

22 Do MSAAAs provide Kroger with leverage in negotiations
23 with its unions?

24 A. Yeah. I think it's a tool in our toolbox. Out of the
25 thousands of collective bargaining agreements I've done,

McPherson - X

1 we've only tried to enter into them probably less than a
2 dozen times.

3 Q. Now, what leverage do the MSAAAs give Kroger?

4 A. I think it's a great tool to try to keep the parties at
5 the bargaining table to reach an agreement, and that's what
6 I think we're there to do.

7 Q. Is that why you asked Albertsons to enter into an MSAA
8 in the three examples that Mr. Dickinson provided, which is
9 to keep the unions that the bargaining table?

10 A. Yes, it is.

11 Q. Now, does Kroger often use MSAAAs?

12 A. No. Very rarely.

13 Q. Has Kroger ever entered into an MSAA?

14 A. I think, in our history, I've seen where we've entered
15 into four of them in the last, oh, 20, 20-plus years.

16 Q. And one of the MSAAAs that Kroger entered into in
17 Southern California, did that result in a strike?

18 A. Yes, it did.

19 Q. How long did that strike last?

20 A. It was 141 days.

21 Q. So do you believe, in that instance, that the MSAA gave
22 Kroger leverage?

23 A. No, I do not.

24 Q. Why not?

25 A. Because the strike lasted 141 days.

McPherson - X

1 Q. Now, when you sign an MSAA, I think you testified that
2 the unions would strike one employer and the other employer
3 would lock out their employees.

4 A. Correct.

5 Q. Are lockouts good for the companies?

6 A. No, they are not, and that's why you don't see them
7 across the country. I can't think of -- I can only think of
8 a handful in the last 30 years that have been done.

9 Q. Why are lockouts not good for employers?

10 A. Because I think lockouts cause irreparable harm to the
11 relationship with associates because you're locking them out
12 and not allowing them to work.

13 Q. Now, I would like to talk about the post-merger world.

14 In a post-merger world, do you believe, Mr. McPherson,
15 that unions will still be able to use all of these tools in
16 their negotiations with Kroger?

17 A. Yes, I do.

18 Q. And in a post-merger world, do you believe that unions
19 will still be able to credibly threaten a strike against
20 Kroger?

21 A. Yes, I do.

22 Q. And in a post-merger world, do you believe that unions
23 could actually still strike Kroger?

24 A. Yes, I do.

25 Q. From your perspective, Mr. McPherson, will the unions

McPherson - X

1 have greater leverage over Kroger in a post-merger world?

2 A. I think they'll have greater leverage.

3 Q. And why is that?

4 A. When I look at my Southern California contract today,
5 it covers 24,000 associates and in post -- post-merger
6 world, that's going to be about 50,000 associates. So I
7 think that supplies a lot of leverage to them.

8 Q. And if this merger closes, do you believe that Kroger's
9 relationship -- labor relations strategy will change?

10 A. No, I do not.

11 Q. And why not?

12 A. Because I think we will still be focused in on the
13 associate experience, making sure we're providing
14 market-competitive wages and benefits to our associates and
15 making sure that that associate experience is good, that
16 relates into customer service and experience in our stores.

17 MS. BARRINGTON: Thank you, Mr. McPherson.

18 Your Honor, no further questions.

19 THE COURT: We're going to take a 15-minute
20 morning break. Court is in recess.

21 (Recess taken.)

22 DEPUTY COURTROOM CLERK: All rise. This court is
23 again in session.

24 THE COURT: Please be seated.

25 MS. MAINIGI: Your Honor, for appearances

McPherson - ReD

1 purposes, I want to note that James Fishkin from Dechert is
2 up here with us.

3 THE COURT: All right.

4 MR. DICKINSON: Thank you, Your Honor.

5

6 REDIRECT EXAMINATION

7 BY MR. DICKINSON:

8 Q. Mr. McPherson, your counsel asked you some questions
9 about the benefits Kroger offers its union workers; right?

10 A. Correct.

11 Q. And you talked about pension benefits?

12 A. Yes, I did.

13 Q. So Kroger has a pension plan for union workers?

14 A. Yes, we do.

15 Q. And Kroger has a multi-employer pension plan and some
16 workers have a single-employer pension plan; right?

17 A. Correct.

18 Q. How long does it take to vest in the pension?

19 A. About five years.

20 Q. And this may be obvious, but a pension plan is what
21 employees use when they retire; right?

22 A. Correct.

23 Q. And how many employees currently participate in your
24 pension plans?

25 A. I would -- I don't know off the top of my head.

McPherson - ReD

1 Q. Okay. You talked a little bit about the number of
2 actual strikes you've experienced over the years.

3 Strike votes that unions take are much more frequent;
4 correct?

5 A. Correct.

6 Q. And you mentioned you've been involved in, I think,
7 thousands of negotiations?

8 A. Correct.

9 Q. Not all of those negotiations are in areas where
10 Albertsons operates; right?

11 A. Correct.

12 Q. And not all of those negotiations are taking place when
13 Albertsons is negotiating with the same union at the same
14 time?

15 A. Correct.

16 Q. Your counsel asked you some questions about other types
17 of retailers besides supermarkets that employ people.

18 Do you recall those questions?

19 A. Yes, I do.

20 Q. And we talked earlier about the CBA areas where Kroger
21 conducts wage surveys; right?

22 A. Correct.

23 Q. Within those CBA areas, Kroger surveys will look to see
24 who's paying what specifically in the job classifications
25 that Kroger is looking to hire in; right?

McPherson - ReD

1 A. Correct.

2 Q. And by "job classification," you're talking about
3 positions like courtesy clerks; right?

4 A. Correct.

5 Q. And floral department heads?

6 A. Correct.

7 Q. Deli department workers?

8 A. Correct.

9 Q. Meat cutters?

10 A. Correct.

11 Q. For companies you mentioned, you mentioned one of them,
12 Lowe's Home Improvement; right?

13 A. Correct.

14 Q. And Macy's?

15 A. Correct.

16 Q. Now, for companies like Lowe's Home Improvement, they
17 don't have any meat cutters; right?

18 A. Correct.

19 Q. But Kroger has meat cutters?

20 A. Correct.

21 Q. And retailers like Lowe's, they don't have any deli
22 department clerks; right?

23 A. Correct.

24 Q. Kroger has deli department clerks?

25 A. Yes, we do.

McPherson - ReD

1 Q. And those companies don't have floral department heads;
2 right?

3 A. They would have department leaders that are similar in
4 skills and --

5 Q. Can you provide a few other examples of the job
6 classifications you'll find at a Kroger but you would never
7 find at a Lowe's?

8 A. I would say meat cutter is a big one that you
9 mentioned; but, to me, there's a lot of transferable skills,
10 as far as leadership skills and customer service skills, and
11 those type of things, that are transferable.

12 Q. And so for retailers like Lowe's Home Improvement that
13 do not have all the same job classifications of a grocery
14 store, the wage surveys Kroger gets are only going to look
15 at the job classifications that are relevant to those other
16 employers; right?

17 A. Yeah. They would look at similar knowledge, skills,
18 and ability for the job. Correct.

19 Q. Okay. Now, in the Seattle market, the local area
20 market where Kroger competes for labor, has different pay
21 rates for general merchandise clerks compared to grocery
22 clerks; right?

23 A. Correct. Based on our store formats.

24 Q. And that's because in that local market Kroger competes
25 against other companies that -- for general merchandise

McPherson - ReD

1 clerks?

2 A. Correct.

3 Q. But, again, in that local market in Seattle, grocery
4 clerks are going to make more than general merchandise
5 clerks because that market -- that market in which Kroger
6 competes for grocery clerks is different; right?

7 A. Correct.

8 Q. You agree that some positions in a supermarket can be
9 filled by entry-level hires without retail experience?

10 A. Correct.

11 Q. And those, again, are typically courtesy clerks, you
12 mentioned?

13 A. Courtesy clerks and regular clerks.

14 Q. And you would also agree that for other positions, such
15 as meat cutters, deli department clerks, bakery department
16 heads, et cetera, prior experience may not be strictly
17 required, but Kroger certainly prefers that new hires have
18 some prior experience; right?

19 A. Yeah. There's very few new hires in those positions.
20 Those are usually promoted within.

21 Q. Okay. And that's because it's good for business when
22 those type of workers have prior experience?

23 A. Yeah. That would be preferred.

24 Like I say, a lot of our folks are promoted within and
25 trained.

McPherson - ReD

1 Q. And you also testified a little bit about C&S; right?

2 A. Yes, I did.

3 Q. And you testified about what C&S might do with Kroger's
4 union contracts after the divestiture.

5 Do you recall that?

6 A. Correct. I think I referenced that.

7 Q. But you don't actually know what C&S will do with the
8 union contracts after the merger; right?

9 A. I know that they have agreed to assume those collective
10 bargaining agreements as part of the agreement.

11 Q. And that'll be a decision for C&S to make, not you?

12 A. Going forward, it will be, yeah; but, initially,
13 they're going to assume those collective bargaining
14 agreements.

15 Q. And some of those collective bargaining agreements
16 expire, like, next year; right?

17 A. Correct.

18 Q. Okay. And when you -- when those contracts expire, you
19 don't know what C&S will do with those union contracts;
20 right?

21 A. I know, but it's still a union contract.

22 Q. Do you have an understanding of how C&S is perceived by
23 the unions today?

24 A. No, I do not.

25 Q. Okay. Has Kroger begun effects bargaining related to

McPherson - ReD

1 the proposed divestiture to C&S?

2 A. We have attempted to, but no unions agreed to do
3 effects bargaining yet.

4 Q. Okay. Just to be clear, effects bargaining is a labor
5 term that describes the bargaining that has to happen with
6 the union when there's a change in something significant in
7 the contract, like a divestiture?

8 A. Correct. But I would say, since they're assuming the
9 collective bargaining agreement, there's very few topics to
10 really talk about.

11 Q. Okay. But C&S will have to complete effects bargaining
12 with the unions before ownership of that union store can
13 transfer over from Kroger; right?

14 A. It can happen, I believe, post.

15 Q. Okay. But it has to happen first, before that store
16 transfers; right?

17 A. I think the purchase can go through and then they can
18 still complete the effects bargaining.

19 Q. Okay. Just a few more questions, Mr. McPherson.

20 You testified with your counsel about Kroger's
21 relationship with the UFCW; right?

22 A. Correct.

23 Q. Kroger has an associate choice strategy too; right?

24 A. Correct.

25 Q. And "associate choice" refers to union-free stores;

McPherson - ReD

1 right?

2 A. Correct.

3 Q. Now, not all the UFCW local unions are in favor of this
4 merger; right?

5 A. Correct.

6 Q. Local 555 is opposed to this merger; correct?

7 A. They were in favor of it until recently. They oppose
8 it.

9 Q. And a number of other locals are very publicly opposed
10 to the merger; right?

11 A. Yes.

12 Q. You've heard that Local 3000, for example, is very
13 opposed to the merger?

14 A. Yes, I have.

15 Q. And Local 7?

16 A. Yes, I have.

17 Q. Local 400?

18 A. Yes, I have.

19 Q. Local 770?

20 A. Yes, I have.

21 Q. Local 324?

22 A. Yes.

23 Q. Local 99?

24 A. I have not heard that out of Local 99.

25 Q. And the international union?

McPherson - ReD/ReX

1 A. We have had a lot of discussions with the
2 international, and although they are officially of --
3 politically opposing the merger, I believe they believe it's
4 going to go through, is my dialogue with them.

5 MR. DICKINSON: Thank you, Your Honor. No further
6 questions.

7 MS. BARRINGTON: Just very briefly, Your Honor.

8

9

RECROSS-EXAMINATION

10 BY MS. BARRINGTON:

11 Q. Mr. McPherson, counsel asked you about Kroger's
12 associate choice strategy. Do you recall that?

13 A. Yes.

14 Q. Can you explain to the Court why Kroger has an
15 associate choice strategy?

16 A. Because we believe the best relationship with our
17 associates is a direct relationship, but where we have a
18 unionized workforce, we make sure that we partner with our
19 union in the best way we can.

20 MS. BARRINGTON: Thank you, Mr. McPherson. No
21 further questions.

22 THE COURT: You can step down.

23 THE WITNESS: Thank you.

24 THE COURT: You may call your next witness.

25 MR. MATHESON: Thank you, Your Honor.

Clay - D

1 Daniel Matheson from the Federal Trade Commission. The
2 Federal Trade Commission calls Mr. Dan Clay.

3 Your Honor, as a housekeeping matter, for your
4 information, Mr. Clay's attorney, Ciaran Connelly, has been
5 invited to sit close to the microphones, and we'll create
6 some space for him in case there's any occasion for him
7 to --

8 THE COURT: He needs to come into the well and
9 state his appearance for that record.

10 MR. CONNELLY: Good morning, Your Honor.
11 Ciaran Connelly, McDermott, Weaver, Connelly, Clifford, for
12 the witness.

13 THE COURT: All right. I think they made a seat
14 for you.

15 MR. O'CONNOR: Fantastic. Thank you.

16

17 DANIEL CLAY,
18 called as a witness in behalf of the Plaintiff, being first
19 duly sworn, is examined and testified as follows:

20

21 THE WITNESS: I do.

22 DEPUTY COURTROOM CLERK: Thank you. You may have
23 a seat. If you would please speak into the microphone,
24 state and spell your first and last name for the record.

25 THE WITNESS: Okay. My name is Daniel Clay

Clay - D

1 D-a-n-i-e-l. C-l-a-y.

2

3

DIRECT EXAMINATION

4 BY MR. MATHESON

5 Q. Good morning, Mr. Clay.

6 MR. MATHESON: May I proceed, Your Honor?

7 THE COURT: Yes.

8 MR. MATHESON: Thank you.

9 BY MR. MATHESON: (Continuing):

10 Q. Are you currently employed, Mr. Clay?

11 A. Yes.

12 Q. Where are you employed?

13 A. I'm employed by the United Food & Commercial Workers,
14 Union Local 555.

15 Q. What's your title at Local 555?

16 A. I'm president of that union.

17 Q. Can you give the Court a brief background of your
18 employment history?

19 A. Yeah. I started with Local 555 on May 15th of 2000. I
20 was a representative organizer.

21 In 2008 I ran for president of the union. I won. And
22 I've been president of the union since January of 2009.

23 Q. What were you doing prior to the time you joined
24 Local 555?

25 A. I was in school. I took that -- my first job with the

Clay - D

1 union was a temporary six-week job.

2 Q. Where from you in school?

3 A. I went to Multnomah Bible College over on 82nd and 84th
4 or whatever and Glisan.

5 Q. Glisan. Is that close to Portland?

6 A. Yeah.

7 Q. And were you awarded a degree?

8 A. Yes.

9 Q. Which degree were you awarded?

10 A. I have a degree in Biblical theology.

11 Q. Turning our attention to the details of Local 555, how
12 many members does Local 555 currently represent?

13 A. About 35,000.

14 Q. Roughly, how many of those members work in a grocery
15 store owned by Kroger or Albertsons?

16 A. I believe about 25,000.

17 Q. And where are the members of Local 555 located?

18 A. We have members throughout Oregon, Southwest
19 Washington, Idaho, and a little portion of Wyoming.

20 Q. Is Local 555, to your knowledge, the largest single
21 private sector labor union local in Oregon?

22 A. Depending on how you group the Teamsters, yes. I'm not
23 sure about their count overall. But as far as one local,
24 yes, we're the largest private sector labor union in Oregon.

25 Q. Who are the larger employers your members work for?

Clay - D

1 A. The largest employers are Fred Meyer and then -- pardon
2 me -- Albertsons or Safeway.

3 Q. And do you also have Local 555 members employed by QFC?

4 A. Yes.

5 Q. And are Fred Meyer and QFC Kroger banners?

6 A. Yes.

7 Q. Is Local 555 a party to collective bargaining
8 agreements at this time with both Kroger and Albertsons?

9 A. Yes.

10 Q. Do you have an estimate of how many collective
11 bargaining agreements Local 555 is a party to, in total, at
12 the present time?

13 A. I don't have an exact number, but it's 160 or 170.

14 Q. What are your responsibilities as president of
15 Local 555?

16 A. Ultimately, most everything that the union does, I
17 supervise. I'm in charge of supervising staff, negotiating
18 contracts, managing both health and welfare and pension
19 trusts, contract enforcement.

20 Q. Do you play any role in negotiating contracts on behalf
21 of Local 555?

22 A. I do.

23 Q. How would you describe your responsibilities when you
24 participate in negotiating contracts on behalf of Local 555?

25 A. It's my responsibility to make sure that the contract

Clay - D

1 that we reach is acceptable to the members and protects
2 their interests that they may not have a firm grasp on, like
3 trust funds, for example.

4 Q. Do you personally participate in negotiations between
5 Local 555 and employers?

6 A. Not every negotiation, but certainly the larger
7 negotiations I'm involved in.

8 Q. Have you personally participated in negotiations
9 between Local 555 and grocery store workers?

10 A. Yes.

11 Q. And have you personally participated in negotiations
12 between Local 555 in both Kroger and Albertsons?

13 A. Yes.

14 Q. How many collective bargaining agreement negotiations
15 with employers would you say you've participated in during
16 your tenure as president of Local 555?

17 A. 20 or 30 different bargain -- probably more than that,
18 I guess, if you would count smaller ones; but, certainly,
19 every three years I've participated with the major employers
20 in grocery negotiations, and then I get involved in smaller
21 contracts. And those are kind of hard to quantify off the
22 top of my head; but certainly, 30, 40, 50. It's hard for me
23 to say.

24 Q. Among the major grocery negotiations, would you
25 characterize both Kroger and Albertsons as among the major

Clay - D

1 grocery negotiations?

2 A. Yes.

3 Q. When you're negotiating with employers on behalf of
4 Local 555's members, is it one of your goals to obtain
5 higher wages?

6 A. Yes.

7 Q. Apart from higher wages, do you attempt to negotiate
8 other benefits that are important to the members of
9 Local 555?

10 A. Yes.

11 Q. What are some of the non-wage benefits that are
12 important to your members when you're negotiating with
13 employers on behalf of Local 555?

14 A. I am very concerned about health and welfare coverage
15 and pension coverage; and then, you know, protections in the
16 workplace for our members as well. So it's pretty
17 broad-ranging.

18 Q. Focusing solely on the wage element of your
19 negotiations with employers, how do you determine what your
20 opening wage proposal will be?

21 A. We poll our members and ask about expectations. We
22 look at what other employers are paying in the area. We
23 look at -- and staffing ability as well.

24 You know, are the -- are the wages high enough to be
25 able to attract people to work in the location and all of

Clay - D

1 that, and I guess one other thing is we look at the cost of
2 living in the area.

3 Q. Shifting focus from the wage to the non-wage elements
4 of your contract negotiations, how do you determine what
5 Local 555 will seek in negotiations regarding the non-wage
6 elements of a contract?

7 A. So I work with consultants on both the health and
8 pension trusts to determine the amount of money necessary to
9 be able to maintain benefits for the participants and the
10 beneficiaries of those trusts.

11 As far as other things that we negotiate over is
12 largely based on polling our members or our bargaining team
13 that sits at the bargaining table with us who are
14 rank-and-file members working in stores.

15 Q. Is it common for Local 555 to identify nonunion
16 employers that are offering attractive benefits, such as
17 retirement and healthcare, that provide a baseline for Local
18 555's negotiations?

19 A. Yeah.

20 MR. MATHESON: Your Honor, may we approach the
21 witness to provide him with a binder of materials?

22 THE COURT: Yes.

23 BY MR. MATHESON: (Continuing):

24 Q. Sir, we handed you a binder of materials, including
25 several documents that are separated by tabs, starting with

Clay - D

1 PX. The final tab is PX4138.

2 Before I direct your attention to a specific page
3 within that tab, sir, is it your understanding that Walmart
4 and Amazon provide non-wage benefits to their employees that
5 Local 555 has been able to use as a baseline when
6 negotiating with employers?

7 A. Not -- we -- we certainly know that they provide some
8 benefits. I don't know that I have great detail into what
9 those benefits are, sitting here, off the top of my head.

10 Q. Is it your impression, when you're negotiating with
11 employers on behalf of your members, that Walmart and Amazon
12 provide non-wage benefits to their employees that are
13 similar to the non-wage benefits that Local 555 has been
14 able to secure for its members?

15 A. I mean, they're only similar in that they're benefits,
16 but as far as the quality of the benefit and what it
17 provides for the employees working there, I don't think
18 they're comparative at all.

19 Q. And when you say they're not comparative at all, in
20 your view, is Local 555 providing -- able to secure superior
21 non-wage benefits than those offered by Walmart and Amazon?

22 A. Yes.

23 Q. Sir, are you familiar with the term in labor
24 negotiations that's referred to as "whipsaw"?

25 A. Yeah.

Clay - D

1 Q. What is your understanding of what it means, in the
2 context of labor negotiations, to whipsaw a company?

3 A. I would -- I would describe it as negotiating the best
4 terms you can with one employer and then using that as
5 leverage to get the other employer to match those benefits.

6 Q. In your experience negotiating on behalf of Local 555
7 with Kroger and Albertsons, have -- has Local 555 employed a
8 whipsaw strategy at times?

9 A. While we've never called it that, I think that's fair,
10 yes.

11 Q. Does Local 555 currently have members employed at a
12 Fred Meyer store in Bend, Oregon?

13 A. Yes.

14 Q. Approximately when was the current collective
15 bargaining agreement that covers the Fred Meyer store in
16 Bend, Oregon, executed?

17 A. It was January -- or I guess it would have been -- it
18 would have been settled December of 2021, I believe.

19 Q. When you say it was "settled," is that the date on
20 which the parties agreed to terms or the date on which the
21 agreement was executed and entered into force?

22 A. It's the date in which the parties agreed on a fully
23 recommended offer to present to the members of the
24 bargaining unit for ratification.

25 Q. When you say "a fully recommended offer," who is making

Clay - D

1 that recommendation?

2 A. The union and the union bargaining committee.

3 Q. And to whom is the recommendation made?

4 A. It's been made to members who would be covered under
5 that agreement, that -- that would be voting on whether or
6 not to accept it.

7 Q. Okay. So prior to the time that Local 555 began to
8 negotiate the agreement that was recommended in
9 December 2021 regarding Bend, Oregon, was it your sense that
10 starting wages for grocery workers in the Bend community
11 were lower than starting wages for grocery workers and other
12 communities in Oregon?

13 A. Significantly lower.

14 Q. Do you have a sense for approximately what was the
15 dollar-per-hour starting wage that was offered to workers at
16 the Kroger store in Bend, Oregon, prior to the negotiations
17 that ended in December of 2021?

18 A. It would have been around \$13.00 or \$14.00 an hour.

19 Q. As a result of the negotiations that ended in December
20 of 2021, did Local 555 and Kroger agree to a starting wage
21 that was higher than \$13.00 or \$14.00 an hour?

22 A. Yes.

23 Q. How much higher?

24 A. I believe starting wages went up in excess of \$6.00 an
25 hour. I think the number is \$6.15, but at least for -- for

Clay - D

1 starting, it increased very close to \$6.00 an hour.

2 Q. Did increasing starting wages \$6.00 an hour, from
3 approximately \$13.00 or \$14.00, represent a positive outcome
4 from Local 555's point of view?

5 A. I had members that wept at the ratification meeting.

6 Q. Did they weep because they were unhappy?

7 A. No. They wept because they said, "I always dreamed I
8 could take my children to Disneyland, and now I can do
9 that."

10 Q. Beyond just increasing starting wages, did Local 555's
11 negotiations with Kroger in Bend, Oregon, achieve wage
12 increases for all the workers at that Kroger-owned store?

13 A. Yes.

14 Q. Were the wage increases that Kroger was able to achieve
15 significant from the point of view of all of the workers
16 employed at that Bend, Oregon, store?

17 A. Yeah. I believe -- I think that's fair, yes.

18 Q. Does Local 555 also have members employed at
19 Albertsons-owned grocery stores in the Bend, Oregon,
20 community?

21 A. We do.

22 Q. How many Albertsons-owned stores in Bend employ members
23 of Local 555?

24 A. Six. Six or seven.

25 Q. Within the Bend, Oregon, community, does Local 555 have

Clay - D

1 more members employed in Albertsons-owned stores than are
2 employed in Kroger-owned stores?

3 A. There are more people employed in Albertsons-owned
4 stores than in Kroger-owned stores, yes.

5 Q. Do you have a sense for how many times more?

6 A. I think four or five times more. Although it may be
7 more than that.

8 Q. At the time that Local 555 was negotiating with Kroger
9 to reach an agreement that was agreed to in December of
10 2021, was Local 555 also in discussions with Albertsons
11 about a contract affecting its Bend, Oregon, locations?

12 A. Can you repeat that for me?

13 Q. At the time that Local 555 was negotiating with Kroger
14 for the agreement that was reached in December 2021
15 regarding Bend, Oregon, was Local 555 also in discussions
16 with Albertsons regarding the contracts in effect at
17 Albertsons' Bend, Oregon, locations?

18 A. Yes. We were in discussion with -- discussions with
19 both employers. Although Albertsons wasn't there the
20 particular day that we settled, but they had been there the
21 previous 50 days or 40 days of bargaining, or whatever it
22 was.

23 Q. After Local 555 and Kroger reached an agreement on the
24 new wages to be paid in the December 2021 agreement, did
25 Local 555 use that information to negotiate higher wages

Clay - D

1 with Albertsons for Bend, Oregon, locations?

2 A. Yes.

3 Q. How did Local 555 make use of this information to
4 negotiate wages with Albertsons affecting Bend, Oregon,
5 locations?

6 A. We made Albertsons aware of the settlement with Kroger
7 and basically took the position that we couldn't be settling
8 with Albertsons or Safeway stores for less than what Kroger
9 had just settled for.

10 Q. How did Albertsons respond?

11 A. Well, they didn't like it, but they did -- we did reach
12 an agreement.

13 Q. When you said you reached an agreement, were you
14 successful in leveraging the wage increases achieved with
15 Kroger in Bend, Oregon, to negotiate higher wages for
16 Local 555 members at Albertsons stores in Bend, Oregon?

17 A. Yes.

18 Q. Were the wage increases -- or strike that.

19 Were the wages to which Albertsons agreed following
20 these negotiations similar in magnitude to the wage
21 increases you were able to negotiate with Kroger?

22 A. I mean, they were similar in magnitude. No question.
23 They were packaged a little different, but they were the
24 same wage increases, yes.

25 Q. Did you consider your negotiations with Albertsons,

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1 regarding Bend, Oregon, stores in 2021, to be a success?

2 A. Yes.

3 Q. In your experience, can labor disputes have an impact
4 on where customers go to shop for their groceries?

5 A. Yes.

6 Q. Can you explain why you believe that?

7 A. So I think that customers care about many of the people
8 that work in those stores and go to the stores because of
9 the people that are working there; and I can tell you, from
10 experience, when there's been a strike in the past, that
11 customers tend to stay away and then, you know, sometimes,
12 like, whatever alternative they went to, stay there.

13 So I think customers support the workers in the stores
14 and tend to go elsewhere during a strike.

15 Q. Have there been instances in which Local 555 has called
16 for a strike at Kroger stores and encouraged customers to
17 shop elsewhere?

18 A. Yes.

19 Q. In those instances, is it preferable, from Local 555's
20 point of view, to encourage customers to shop at a unionized
21 grocery store rather than non-unionized grocery store?

22 A. Definitely preferable, yes.

23 Q. Why is that preferable, from Local 555's point of view?

24 A. I guess keeping customers shopping at stores that are
25 represented by a union keeps customers going to stores where

Clay - D

1 workers are paid well and have better benefits than just the
2 random employer out there.

3 Q. And is it Local 555's hope that, to the extent
4 customers continue to shop at a store they shop at due to a
5 strike, that that store is a union store rather than a
6 nonunion store?

7 A. Yes.

8 Q. When Local 555 has, in the past, in your experience,
9 called for a strike at Kroger locations, has Local 555
10 directed its picketing workers to tell customers going to a
11 Kroger store to go into a Safeway or Albertsons store
12 instead?

13 A. Yes.

14 Q. To focus on a specific example of a Kroger -- of a 555
15 strike against Kroger stores, did Local 555 declare a strike
16 against Kroger stores in December 2021?

17 A. Yes.

18 Q. Was this an unfair labor practices strike?

19 A. It was, yes.

20 Q. What is an unfair labor practices strike?

21 A. An unfair labor practice strike is really a strike, not
22 over economics, but strike to force or compel an employer to
23 follow federal labor law as part of the process.

24 Q. Can an unfair labor practices strike create leverage
25 for Local 555 when engaged in contract negotiations?

Clay - D

1 A. I think so, yeah.

2 Q. During the December 2021 strike against Kroger stores,
3 did Local 555 workers encourage Kroger customers to shop at
4 Safeway and Albertsons stores instead of Kroger stores?

5 A. We did, yes.

6 Q. During the time the strike was happening in
7 December 2021, was Local 555 in negotiations with
8 Albertsons?

9 A. Yes.

10 Q. Did Albertsons' representatives express to Local 555,
11 during those negotiations, that the Kroger strike and the
12 resulting actions of Local 555's picketing workers led to an
13 increase in sales at Albertsons stores?

14 A. Well, it was a one-day strike, so I'm not sure how
15 much; but, without question, it led to an increase in
16 business on that day, yeah.

17 Q. And when you say "an increase in business," did
18 Local 555's strike and the actions of its workers lead to an
19 increase in sales at Albertsons stores?

20 A. I believe so, yes.

21 Q. And that was true even though the strike lasted for
22 less than 24 hours; is that right?

23 A. Yeah.

24 Q. Was it Local 555's expectation that striking at Kroger
25 and directing Kroger customers to Safeway and Albertsons

Clay - D

1 stores had an impact on Local 555's negotiations with
2 Albertsons?

3 A. Indirectly, it certainly did, because we ended up with
4 a better contract with Kroger that then we could use to get
5 a better contract with Safeway and Albertsons; but I don't
6 know -- I haven't really thought through whether the act of
7 sending customers there directly -- indirectly, without
8 question. Directly? I don't think so.

9 Q. Okay. So, indirectly, the strike may have impacted
10 Local 555's negotiations with Albertsons?

11 A. Indirectly, definitely, yes.

12 Q. In your view -- strike that.

13 I'd like to ask some questions regarding the details of
14 the December 2021 strike against the Kroger stores.

15 A. Okay.

16 Q. Approximately, how many Kroger stores were involved in
17 that strike?

18 A. Off the top of my head, I think it was 28.

19 Q. In what geographic regions?

20 A. Well, I need to -- that's wrong. I think it was -- I
21 think it was more. I think it was 30.

22 Q. In what geographic regions were the relevant Kroger
23 stores located?

24 A. It was in the Portland Metro area, in the Bend area,
25 and then the Klamath Falls area. I believe those were the

Clay - D

1 three areas.

2 Q. At the conclusion of the December -- of the strike
3 we're discussing, Local 555's strike against Kroger stores,
4 did Kroger agree to wage increases that the union had
5 proposed that were above Kroger's prior and best final
6 offer?

7 A. Yes. The wages were definitely higher than Kroger's
8 last offer.

9 Q. Did the December 2021 Local 555 strike against Kroger
10 lead to a contract that Local 555 believed to be a positive
11 outcome for its members?

12 A. Yes.

13 Q. How did the wage increases that Local 555 was able to
14 achieve in December 2021 after striking compare to wage
15 increases that had been secured in recent negotiations
16 between 555 and Kroger preceding that?

17 A. The wage increases following the strike were the
18 biggest wage increases we had seen with a major employer.
19 Any major employer, but certainly Kroger.

20 Q. In addition to wage increases, was Local 555 able to
21 secure any non-wage improvements in its contracts with
22 Kroger following that strike?

23 A. Yeah. There were -- there were other benefits that
24 were -- that were improved as well, yeah.

25 Q. Were those other benefits demanded by Local 555, or

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1 were they offered for free by Kroger?

2 A. No. They were all things that we had demanded at the
3 bargaining table.

4 Q. Were those benefits important to your members?

5 A. Yeah.

6 Q. Can you -- can you think of any examples of benefits
7 you were able to achieve, by striking in December 2021, that
8 were important to your members?

9 A. I believe that there was an increase in the amount of
10 money that was paid into the pension. There were -- there
11 were -- off the top of my head, sitting here now, I can't
12 tell you definitively what they were; and I apologize, but
13 there were definitely other improvements.

14 Q. There's absolutely no need for an apology. It was
15 years ago.

16 At the present time, has Local 555 -- has Local 555
17 declared a strike against Kroger?

18 A. Yes.

19 Q. Which locations? Which Kroger locations are relevant?

20 A. Just the stores in the Portland Metropolitan area.

21 Q. Have you been personally involved in the negotiations
22 between 555 and Kroger that have led to the strike that's
23 been recently declared?

24 A. Yes.

25 Q. And when was that strike declared?

Clay - D

1 A. The notice was given yesterday, and the strike began
2 today.

3 Q. Who has been involved in those negotiations on behalf
4 of Kroger?

5 A. A bunch of people. Locally -- are you looking for
6 names, or are you looking for general categories?

7 Q. If you could, provide a few general categories.

8 A. So the local -- local people who work out of Portland
9 have been involved; and then the -- the people who move
10 around the country and negotiate; and then there are some
11 people from Cincinnati, who I believe are Cincinnati-based
12 anyway, that have been involved as well.

13 Q. Is this an unusually large bargaining team from Kroger,
14 in your experience?

15 A. Yes.

16 Q. Has Jon McPherson been involved in the current
17 negotiations between 555 and Kroger?

18 A. Yeah.

19 Q. Has Mr. Todd Kammeyer been involved in those
20 negotiations?

21 A. Not that I'm aware of directly, but he's been involved
22 in it. He's made statements, and those kinds of things,
23 about negotiations.

24 Q. Has Albertsons participated at all in the negotiations
25 between 555 and Kroger that have led to the recent strike?

Clay - D

1 A. The Alberstons bargainer has sat at the table with
2 Kroger bargainers when we were bargaining with Kroger.

3 Q. If the current strike against Kroger results in a fair
4 contract that Local 555 workers can accept, will you use
5 that outcome in your next negotiation with Albertsons?

6 A. Yes.

7 Q. How will you use the outcome of the Kroger strike, if
8 you are able to obtain a contract that's acceptable to your
9 membership, to leverage better wages with Albertsons?

10 A. Well, similarly to what happened in Bend, but also, you
11 know, I think it's something that we would talk to the
12 public about.

13 Q. Are you concerned that Kroger's current offer, that is
14 the subject of the negotiations that are ongoing right now,
15 would impact workers' healthcare plans?

16 A. Yes.

17 Q. In what way are you concerned their current offer would
18 impact Local 555 members' health -- healthcare plans?

19 A. I believe, based on both my own analysis and analysis
20 from a consultant that's a professional in that area, that,
21 without removing many, many, many people from the medical
22 plan, that the proposal would bankrupt the medical plan
23 prior to the expiration of the current contract -- or the
24 contract that we're currently negotiating.

25 Q. Have retirement benefits for Local 555 members played

Clay - D

1 any role in the recent negotiations between Kroger and
2 Local 555?

3 A. We have asked for an increase in retirement benefits.
4 They haven't been increased in decades, and we thought that
5 an increase is in order, and we've asked for that.

6 Q. Has Kroger agreed?

7 A. Kroger did not agree.

8 Q. Do you agree that Local 555's current negotiations with
9 Kroger, that have led to a strike, are all about wages?

10 A. No. There's a lot of different moving parts that
11 impact what a settlement looks like.

12 Q. Is one of those moving parts healthcare benefits
13 available?

14 A. Without question.

15 Q. Is another moving part retirement benefits?

16 A. Yes.

17 Q. Let's just switch gears slightly from the specific to
18 the general.

19 Have you heard the term "multi-employer bargaining" in
20 the context of labor negotiations?

21 A. I have.

22 Q. What does multi-employer bargaining mean in the context
23 of labor negotiations?

24 A. So in a traditional bargain, a union would bargain with
25 one employer. In a multi-employer bargain, employers would

Clay - D

1 bargain together, either for one contract or for separate
2 contracts, but they would be bargaining together -- I think
3 legally linked -- for one resolution for everybody.

4 Q. In the past, has Local 555 engaged in multi-employer
5 bargaining with Kroger and Albertsons?

6 A. Yes.

7 Q. In Local 555's experience, did engaging in
8 multi-employer bargaining with Kroger and Albertsons
9 increase or, instead, decrease Kroger and Albertsons'
10 leverage compared to a situation in which Kroger and
11 Albertsons separately bargained with Local 555?

12 A. We found that, in multi-employer bargaining, that it
13 increases the employer's leverage.

14 Q. Sir, can I ask you to turn in your binder to a tab that
15 bears the number PX3920.

16 Do you recognize this document, sir?

17 A. I do.

18 Q. What is this document?

19 A. It appears that it is the list of things that I wanted
20 to be included in our quarterly meeting reports to our
21 membership.

22 MR. MATHESON: Your Honor, I move to admit PX3920.

23 MS. BARRINGTON: No objection, Your Honor.

24 THE COURT: It will be received.

25 ///

Clay - D

1 BY MR. MATHESON: (Continuing):

2 Q. Focusing on the highlighted language, for what purpose
3 are you sending to Ms. Humphrey what you call "My quarterly
4 meeting report"?

5 A. She puts together the quarterly meeting reports for the
6 whole organization and then distributes -- distributes them
7 to the people who are going to be running the quarterly
8 meetings around our jurisdiction. So I sent that to her to
9 make sure that my items were included.

10 Q. And what are quarterly meetings, as you've just
11 referred to that?

12 A. It's an opportunity for members to come get an update
13 on the status of their -- what's going on through the union,
14 we talked through finances. We talk about what's coming
15 and, you know, what's been going on.

16 Q. And when you sent this email on March 15, 2023,
17 approximately when would the relevant quarterly meeting
18 occur?

19 A. It would have been April of 2023.

20 Q. I'd like to focus your attention, sir, to the last sort
21 of large paragraph on the first page of PX3920 that begins,
22 "The Kroger/Albertsons merger."

23 Do you see that, sir?

24 A. I do.

25 Q. You write: The Kroger/Albertsons merger is still being

Clay - D

1 considered by the Federal Trade Commission. While some very
2 minor new information is available, the companies are
3 refusing to release information on which stores they believe
4 that they will need to divest or who they are talking to
5 about selling the divested stores.

6 Do you see that language, sir?

7 A. I do.

8 Q. At the time you sent this email in March of 2023, had
9 Local 555 written to both Kroger and Albertsons to seek
10 information regarding which stores the companies believed
11 they would need to divest?

12 A. Well, I know that we did that. I don't know a date off
13 the top of my head, but I -- but I believe that we had.

14 Q. Why was it important for you to understand which stores
15 might be divested in order to understand the likely impact
16 of the merger on the members of Local 555?

17 A. So members would like to know, and also, from my
18 perspective, I wanted to know how many stores were being
19 divested and where they were, to determine whether or not --
20 I guess, to determine what impact it was going to have on
21 the future of our membership or the future of negotiations.

22 Q. At what -- at what time -- when you wrote to Kroger and
23 Albertsons -- I'll strike that.

24 Do you recall that you did write to both Kroger and
25 Albertsons at one point in time requesting information

Clay - D

1 regarding the stores that would be divested?

2 A. Yes, I do know that we did do that.

3 Q. Sitting here today, you cannot recall exactly when you
4 wrote; is that correct?

5 A. I don't recall specifically when that was.

6 Q. If I were to show you the correspondence you wrote,
7 could that refresh your recollection, sir?

8 A. That would be very helpful.

9 Q. Could you please turn to the tab you have that's
10 labeled PX3856.

11 MR. MATHESON: And there's no need to display the
12 document on the screen.

13 BY MR. MATHESON: (Continuing):

14 Q. I just want to ask you if this document refreshes your
15 recollection regarding the correspondence you sent to Kroger
16 and Albertsons?

17 A. PX3856. Yes.

18 Q. Please take whatever time you need, sir, and let me
19 know if this document has refreshed your recollection.

20 A. Yes. It looks like it was December 1st of 2022.

21 Q. Sitting here today, do you recall that you reached out
22 to Kroger and Albertsons in December 2020 to seek
23 information regarding the stores that would be divested?

24 A. Yes. We reached out to both companies, and I believe
25 that they were sent the same day.

Clay - D

1 Q. Did you receive responses, from both Kroger and
2 Albertsons, to your correspondence sent in December 2022?

3 A. We did.

4 Q. Did Kroger or Albertsons agree to provide you with any
5 of the information you sought regarding the stores that
6 would be divested?

7 A. The information -- well, certainly not on what stores
8 or how many or any information like that, that I recall.
9 That's -- that was fairly recent.

10 The responses didn't include a lot of information, as I
11 recall.

12 Q. When you say "fairly recent," approximately when did
13 you become aware of the stores that Kroger and Albertsons
14 proposed to divest?

15 A. Within the last couple of months, I believe.

16 Q. Even though you requested this information in
17 December 2022, you did not receive this information until
18 the last couple of months?

19 A. Yeah. I believe that's correct, yeah.

20 Q. Returning our attention, sir, to PX3920, the second
21 issue raised in the highlighted portion there is after the
22 stores the companies believe they will need to divest, you
23 reference who they are talking to about selling the divested
24 stores.

25 Do you see that, sir?

Clay - D

1 A. Yes.

2 Q. Why was it important to Local 555 to understand who the
3 stores might be divested to in order to understand the
4 impact that the divestiture might have on your members?

5 A. Various groups own grocery stores. Sometimes it's
6 private equity. Sometimes it's a company like Kroger. And
7 then there's, you know, groups that would like to get into
8 the grocery business that haven't been in the grocery
9 business, and -- and which one of those groups it is, I
10 think, would have an impact on my members' lives.

11 Q. Focusing still on PX3920, you next write: It appears
12 that literally no one wants this to go through except those
13 on Wall Street.

14 And when you said "this to go through," you're
15 referring to the Kroger and Albertsons merger. Is that
16 fair?

17 A. Yes.

18 Q. Why is it that in March of 2023 you believed that
19 literally no one wanted the Kroger and Albertsons merger to
20 go through except those on Wall Street?

21 A. Well, I just -- I hadn't talked to a lot of people that
22 were wanting this to happen. It certainly wasn't popular
23 with my members and the -- you know, my members who work in
24 the stores.

25 Just, generally speaking, it's something people were

Clay - D

1 pretty concerned about.

2 Q. Did you form an understanding, as of March 2023, as to
3 the reasons that the members of Local 555 were concerned
4 about this merger and did not want it to proceed?

5 A. So there's concern around -- there were concerns around
6 too much -- too much power. There were concerns about there
7 not being another place to work that's similar, if an
8 employee wasn't able to work at one or the other, and -- and
9 my members that work at Albertsons and Safeway would rather
10 work at Albertsons and Safeway than Kroger.

11 Q. In your experience, have members of Local 555 switched
12 from working at an Albertsons-owned store to working at a
13 Safe -- at a Kroger-owned store?

14 A. Yeah.

15 Q. In the event that occurs, can a member that switches
16 from an Albertsons-owned union store to a Kroger-owned union
17 store retain their union benefits?

18 A. They can retain some, and there are some that they
19 can't retain; but they definitely can retain certain
20 benefits. Like wages, for example, could be maintained,
21 and -- and then even some benefits where there might be a
22 break, there might be a short break versus a long break.

23 So, for example, health and welfare, if you were to
24 switch from one employer to the other, there -- I don't
25 believe you have to go through a requalification period or

Clay - D

1 something like that.

2 So there are definitely benefits, but wages and several
3 other things, they do get to essentially pick up where they
4 left off with a previous employer.

5 Q. Sir, could you turn, in your binder, to the document
6 behind tab PX3934.

7 You've had a chance to look at it briefly, sir. Do you
8 recognize this document?

9 A. Well, I -- yeah, it -- it would have been a document --
10 yes, I do, I guess.

11 Q. What is it?

12 A. I believe it is a document in which we're playing out
13 what goes into our member communication newsletter.

14 MR. MATHESON: Your Honor, move to admit PX3934.

15 MS. BARRINGTON: No objection, Your Honor.

16 THE COURT: It will be received.

17 BY MR. MATHESON: (Continuing):

18 Q. Directing your attention, sir, to the third page of the
19 document, PX3934-003, what is the document that begins on
20 this page?

21 A. The -- that is the front page of the June 23rd
22 Register, which is our newsletter to our members.

23 Q. And is this document related to the Register
24 distributed to Local 555 members in June of 2023?

25 A. Yes.

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1 Q. What is the purpose of distributing this document to
2 the members of Local 555?

3 A. It's -- it's to let them know what's going on at their
4 union, and then there are some legal requirements that it
5 fulfills as well.

6 Q. Directing your attention, sir, to PX3934-005, which is
7 the fifth page of the document. Page number appears in the
8 bottom right-hand corner. It's titled: The Ninth Regular
9 UFCW International Convention.

10 Do you see that page, sir?

11 A. I do.

12 Q. The text begins on the first paragraph: The Ninth
13 Regular Convention of the UFCW International Union recently
14 brought together delegates from all over the United States
15 and Canada to set a course for the next five years.

16 Do you see that, sir?

17 A. Yes.

18 Q. Did members of the Local 555 attend the Ninth Regular
19 Convention of the UFCW International Union?

20 A. Yes.

21 Q. Did you personally attend that convention?

22 A. I did.

23 Q. Approximately how many other people attended that
24 convention?

25 A. Thousands. 3- or 4,000 I would -- I would estimate.

Clay - D

1 Q. At the convention, at the Ninth Regular Convention of
2 the UFC International Union, did the convention address a
3 resolution opposing the merger between Kroger and
4 Albertsons?

5 A. Yes.

6 Q. Did the Local 555 delegates who attended that
7 convention support the resolution that opposed the
8 Kroger-Albertsons merger?

9 A. Yeah. I mean, it's not like it's a voice vote, so I'm
10 not sure how every single person voted; but, overall, yes,
11 they supported the resolution.

12 Q. And this is the June 2023 newsletter. Do you recall
13 when the Ninth Regular Convention of the UFCW International
14 Union occurred?

15 A. I think it was in April of that same year.

16 Q. So was it in April of 2023 that the Local 555 delegates
17 who attended this convention agreed to support the
18 resolution that opposed the Kroger-Albertsons merger?

19 A. Yes.

20 Q. Did the resolution pass?

21 A. It did.

22 Q. Did it pass unanimously?

23 A. If it wasn't unanimous, it was very close to unanimous.

24 Q. Directing your attention, sir, back to PX3934-005,
25 there's a paragraph that begins at the bottom of the middle

Clay - D

1 column and then spills over to the next column.

2 The paragraph begins: Some of the biggest news of the
3 week.

4 Do you see that section, sir?

5 A. Yes, I do.

6 Q. A sentence appears in this newsletter distributed to
7 members of Local 555, lower down in that paragraph: For the
8 sake of our communities, workers everywhere, and especially
9 our members, this merger cannot be allowed to succeed.

10 Do you see that, sir?

11 A. Yes.

12 Q. As of June of 2023, did you agree with the statement in
13 the Local 555 June 2023 newsletter that this merger cannot
14 be allowed to succeed?

15 A. Yes.

16 MR. MATHESON: You can take that document down.
17 Thank you.

18 BY MR. MATHESON: (Continuing):

19 Q. Skipping forward in time from June of 2023 to the fall
20 of 2023, in the fall of 2023, did Local 555 propose a
21 resolution to the Oregon ALF-CIO that opposed the
22 Kroger-Albertsons merger?

23 A. Yes.

24 Q. Were you part of the decision made by Local 555 to
25 propose a resolution to the Oregon AFL-CIO opposing the

Clay - D

1 Kroger-Albertsons merger?

2 A. I was.

3 Q. Did you approve of Local 555's proposing to the Oregon
4 AFL-CIO a resolution opposing the Kroger-Albertsons merger?

5 A. I did.

6 Q. Skipping forward in time from the fall of 2023 to early
7 2024, did you meet with representatives of C&S in early
8 2024?

9 A. I did.

10 Q. Do you recall when that meeting occurred?

11 A. I believe it was January of 2024.

12 Q. Was that the first time that representatives of
13 Local 555 met with representatives of C&S?

14 A. Yes.

15 Q. Who from Local 555 participated in the January 2024
16 meeting with C&S?

17 A. I participated. My assistant participated. His name
18 is Esai Alday. And our secretary-treasurer, Sandy Humphrey,
19 may have. But I'll admit I'm a little hazy on that. I'm
20 not -- I'm not sure if she did or not.

21 Q. How many representatives from C&S participated in this
22 meeting?

23 A. There were three.

24 Q. Was one of those representatives Mark McGowan?

25 A. Yes.

Clay - D

1 Q. Do you recall how Mr. McGowan started off the meeting?

2 A. I mean, it was a friendly --

3 MS. BARRINGTON: Objection, Your Honor. Hearsay.

4 THE COURT: He can describe his impression. It
5 was an observation. Only from his perspective.

6 MS. BARRINGTON: Thank you for that clarification,
7 Your Honor.

8 THE COURT: Question: How much longer do you
9 have?

10 MR. MATHESON: Approximately 20-something minutes,
11 Your Honor.

12 THE COURT: We will -- after he answers this
13 question, we're taking a lunch break.

14 MR. MATHESON: Okay. Thank you, Your Honor.

15 BY MR. MATHESON: (Continuing):

16 Q. Just to refresh you on the question, sir. Do you
17 recall how Mr. McGowan started off the meeting?

18 A. So there was friendly introductions talking about
19 people's history and how they got to where they are today
20 and just figuring out who the people were in there, and then
21 I recall -- I recall there being some discussion over not
22 being able to answer the -- any of the questions that I
23 wanted answers to, or something along those lines, and then
24 we got into talking about other -- other, you know, parts of
25 the potential merger and so forth.

1 MR. MATHESON: Thank you so much, Your Honor.

2 THE COURT: We will recess until 1:00.

3 Thank you.

4 (Morning session concluded at 12:08 PM.)

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C E R T I F I C A T E

Federal Trade Commission v. Kroger, et al.

3:24-cv-00347-AN

Preliminary Injunction Hearing - Day 3 - AM Session

August 28, 2024

I certify, by signing below, that the foregoing is a true and correct transcript of the record, taken by stenographic means, of the proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Jill L. Jessup, CSR, RMR, RDR, CRR, CRC

Official Court Reporter
Oregon CSR No. 98-0346

Signature Date: 8/28/2024
CSR Expiration Date: 9/30/2026

BY MR. DICKINSON:
(Continuing): [2] 611/11
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BY MR. MATHESON:
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701/17 704/18 706/15

BY MS. BARRINGTON:
(Continuing): [13] 622/9
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MR. CONNELLY: [1]
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MR. HAMBURGER: [1]
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MR. MATHESON: [12]
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MR. O'CONNOR: [1]
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