

8 February 2006

Memorandum: Store Closings and the Sale of Corporate Assets, the Position of Union Employees

I. The current Situation

A. RALPH S has announced the closing of another ten (10) of the 35 Ralph's stores in Northern California, two in the Monterey/Salinas area, with the remaining eight in the region ranging from Napa/Sonoma to Sacramento/Roseville/Auburn These Closings will affect 600 employees out of a total of 1,100 Ralph's employees in Nor Cal.

In addition, it is likely that the **Cala/Bell** stores in San Francisco, Marin, and the Peninsula (a Division of **Ralph s** will be sold, either as a whole or on a store-by-store basis. (The South San Francisco store and two San Francisco stores have been dosed in the past year or so. Union employees have been absorbed into existing operations with 'minor" layoffs]

Potential purchasers for the Cala/Bell stores include Union-contract Employers such as Mollie Stone's and Lunardi's, and non-Union employers such as Whole Foods. Some properties have been acquired by non-grocery companies.

B. ALBERTSON S has begun the process of selling all of its assets to an investment group composed of three companies: **Supervalu, Inc.**, **CVS Corp.** (a drugstore chain), and **Cerberus Capital Management**. The process of sale and acquisition should be completed by mid-year 2006.

- 1. CVS Corp.** will obtain 700 stand-alone **SAV-ON** and **OSCO** drugstores and a distribution center in So Cal.
- 2. Supervalu, Inc.** will acquire 1124 grocery and retail stores in various regions Including So Cal.
- 3. Cerberus** will acquire a total of 655 Albertson's grocery stores in various regions (Texas, Florida, Rocky Mountains, Southwest) including the 177 Albertson's stores in Northern California Cerberus has stated that it plans to operate these stores under the Albertson's name.

C. ANDRONICO s has been mentioned in unconfirmed reports or the sale or four or more of Its Bay Area stores. The only purchaser of one or more of these stores mentioned to date has been nonunion **Whole Foods**.

SUMMARY: By mid-2006, at least **190** grocery stores under Union Contract in Northern California will have been affected by closures or sales of company, representing approximately **11,000** union employees .

There may be, as well, serious effects upon the current and future Contracts of Union employees not immediately involved in this transformation of the grocery industry In Nor Cal; among these may be the status of the Heath and Welfare Trusts, Pension Trusts, and the course or future negotiations on wages, work rules, and other matters.

II. Store Closings and Corporate Asset Acquisition: The Rights of Union Employees:

A. Employees without a Union Contract: Employees of a company who works without a Union contract are subject to the predominance of the “at will” doctrine, which is the foundation of employment law in the US.

1. With the exceptions provided under other laws (Civil Rights Act, Title VII; the National Labor Relations Act; etc.) regarding discrimination, employees have no ‘right’ to a job to be hired, to continue employment, to avoid termination and discharge by an employer, including a new owner or employer.

2. Employees do have rights of notification of layoffs and plant closings under, and employers are limited by the Federal and California WARN acts. The applicable California law requires 60-day written notice at a layoff or plant closing to each employee (by mail or with their paycheck) by a company operation with 50 or more employees at a single site.

Certain California officials, Union officers in the Jurisdiction (If applicable), and the CEO of the local government affected must also be notified in written form

3. California employees have the right to Unemployment Insurance benefits should they meet the eligibility requirements (out of work due to no fault or their own; physically actively seeking work; ready to accept work) to an additional 13 weeks of Unemployment Insurance If the state unemployment rate is at or above 5%, and to continued Unemployment benefits under the California Training benefits Program (CTB) while attending an approved training/re-training program to acquire new Job skills.

B. Employees under a Union Contract: the same Employee rights and Employer limitations under the Federal and California WARN laws, as well as the California EDD/Unemployment rules also apply to Employees under a Union Contract.

In addition, there are further Employee rights and limits on a company’s activity for Members of a Union working under a Union Contract.

1. **Closing and Union Contract:** In cases of a ‘pure’ store closing [for example, should a company’s lease on a property run out and not be renewed or a company decides to close a store due to lack of profitability) Union employees have the right, under their Contract, to be absorbed into other stores of the same company, with layoffs or work-hour reductions, if necessary on the basis of company seniority, Should a company with a only single store close its business, this is not applicable. In either case, the NLRA requires the Employer to engage In “good faith” bargaining with the Union regarding the closure. Failure to do so could result in Unfair Labor Practice charges and findings against the company with the NLRB.

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2. Closing and Sale: The NLRA: Under the National Labor Relations Act Section 8 (a) (5), a current Employer is required to engage in good Faith bargaining with a Union, regarding changes in the terms and conditions of employment deriving from the closing of a plant or worksite or the sale or company assets to another party. Failure to engage in such negotiations is an 'Unfair Labor Practice' and charges may be filed by the Union with the NLRB,

UFCW Local 99 in Arizona for example has proposed to Albertson's a successor employer clause including reasonable notification and Member/employee retention guarantees.

This is not to say that such bargaining will, by necessity, produce any agreement, merely that such good faith negotiation must occur.

3. Successor clauses Nor Cal UFCW contracts contain Successor employer clauses, which seek to maintain the terms and conditions of the current Contract under new Employer.

This clause reads: **NEW OWNER: this Agreement shall be binding upon the successors and assigns of the parties hereto. Except as set forth in Section (11 in BAC Contract; 7 In Local 648 Contract], Vacations, during the life of this Agreement employee benefits provided for herein shall not be affected by the sale or transfer of the business for those employees who are retained by the new Employer for a period of more than sixty (60) calendar days. For employees who choose to be employed by such a new owner such sixty (60) calendar day period shall be considered a probationary period during which time employees may be terminated without recourse to the grievance procedure unless such termination is in violation of Section [2.4.2. in BAC Contract; 4(a) in Local 648 Contract] or Section [3.1 in BAC Contract; 4(c) in Local 648 Contract] of this Agreement.**

a. The clauses of these contracts (Section 1.8 in BAC Contracts; Section 1 (d) in Local 648 contracts) do not provide for a guarantee of Member s retention as Employees under new ownership.

Under this "successor employer" clause, a current Member is considered a new Employee with a 60-day probation period during which the Employee may be terminated for any reason, without recourse to the Grievance/Arbitration process, excepting those which might violate laws against discrimination (e.g., Civil Rights Act, Title VII; the NLRA; ADA; etc.)

From the other perspective, successor owners have no legal obligation to hire existing Employees, including Union members; they may hire or maintain the employment of some, all, or none.

In this situation, a distinction is to be made between the continuation of the current Contract on the one hand, and the retention or current Employees/Members who have been at work under that Contract, on the other hand.

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It is possible that, under certain circumstances, an existing Contract could be maintained if the Union and the successor employer agree, even while current Employees/Members are, or have been discharged and replaced.

3. A “successor employer” clause is binding on the company selling the business or assets **but not necessarily legally binding on the purchaser, i.e. the successor employer.**

For the successor, there might be delay and expense while waiting for arbitration and/or litigation between the Union and the selling Employer but with an uncertain outcome for the Employee/Members of the Union.

4. The National Labor Relations Act and successor employers:

For a company that purchases and assumes the operations of another company, there are three primary directions it may take regarding its Union employees.

a. The new owners may discharge the Union employees of the previous owner, under the “at will” doctrine of employment, replacing them with a non-Union workforce.

This would require the Union to undertake a campaign, under the terms of the National Labor Relations Act, to organize the new workforce and win recognition of the Union as the collective bargaining agent and, then, to bargain with the Employer for a Contract **which would not necessarily be identical to the previously existing Contract.**

b. The new Employer may maintain all or part of the existing Union workforce and undertake bargaining with the Union under the NLRA successorship” rules.

These rules mandate that the successor employer negotiate in “good faith” with the Union regarding the terms and conditions of employment **but do not require that an existing Contract be maintained.** In consequence, the Union would be required to undertake a campaign similar to any other Contract campaign.

c. The successor employer may voluntarily adopt the existing Contract or, under the NLRA, if it is found by the NLRA to be an “alter ego” or the prior owner (i.e. when the selling company and the purchasing company are found by the Board to have substantially the same management, business purposes, operations, equipment, customers and ownership), it may be compelled to assume the existing Contract.

This process of “alter ego” determination is, or could be, of some duration requiring time, determination and expense by the Union while it seeks remedy under the law.

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5. Worker Retention Laws: Based in part on public sector ordinances the City of Los Angeles has enacted a Grocery Worker Retention Ordinance which will go into effect on 13 February 2006

The Ordinance mandates that a successor employer for grocery stores larger than 15000 square feet: retain current employees For a period 90 days past the legal assumption of operations, maintain a list of all current employees reduce hours and enact layoffs, if necessary, on the basis or seniority, and hire new employees from the list of current (prior Owner) employees.

For employees currently under a Union Contract, this would retain a Union workforce but not by necessity affect the NLRA requirement for a successor employer to bargain with the Union in good faith” for a Contract which might or might not be identical to the previous Contract.

Additionally, there will certainly be legal challenges to this and other such Ordinances, which may delay their implementation or, conceivably overturn such mandates

III. Summary and Conclusions: the Position of Union Grocery Employees

Union employees in the retail grocery industry In Northern California:

- > the right to 60-day notification in most cases
- > the right to Unemployment insurance benefits and retraining benefits under California eligibility rules
- > the right to bargain regarding store closures, single-and multi-store Companies
- > the right to maintain employment with a multi-store company that, while some closing stores, remains under Union Contract in its remaining stores; based on seniority with the company
- > the right to bargain with a company that is selling some or all of its stores
- > the right to organize for collective bargaining with a successor company that refuses to negotiate a Union Contract
- > the right to bargain with a successor company that recognizes the Union but refuses to accept the current Union Contract
- > the right to file Unfair Labor Practice charges, through the Union, with the National Labor Relations Board for the remedy of violations of the National Labor Relations Act relating to successor employers

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The direct interests of the **11,000 +** Union grocery workers in Northern California who may be affected by the transformations in the industry are:

- > the retention of their jobs and employment
- > to maintain the terms and Conditions of their current Union Contract (wages, benefits, pensions, etc.)
- > in the longer term, to Improve the terms and conditions of their employment in future negotiations with employers, avoiding a further degradation of their Contract

For the Union administration the Locals and the International Union, its interests are:

- > to retain current Members avoiding the losses of membership that would result from the expansion of non-union employers
- > to maintain the current Union Contract to the greatest extent possible with the largest number, of employers possible
- > to avoid concessions to successor employers which would weaken the current Contract

It is evident that while these two sets of interests Coincide for the most part, they are not absolutely identical.

It is also evident that it will be possible to succeed in the achievement of these goals only through the strength, determination and energy of the Members in their Union.

In a situation in which there are few or no guarantees Union Members will be compelled to create their own certainties, and their own futures, with each other. These certainties can only be created on the shop floors, with our public, in our Union halls, in our centers of government, and ultimately, it need be, on the streets in the exercise of our inherent strength.