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Subject: Kroger Co. and Dillon Companies d/b/a King Soopers, Case 27-CA-336005 and Albertson Companies, Inc. and Safeway, Inc., Case 27-CA-336012 (case-closing email)
Date: Wednesday, July 16, 2025 10:18:46 AM

The Region submitted these cases for advice regarding whether: 1) a series of emails from January 2022 between two separate employers (King Soopers and Albertsons/Safeway) stating that Albertsons/Safeway did not intend to hire King Soopers' striking employees, constituted an agreement that violated Section 8(a)(3) and (1) of the Act; and 2) King Soopers and Albertsons/Safeway violated Section 8(a)(5) by failing and refusing to furnish those emails to the Union in response to contemporaneous information requests for "any agreement or understanding" between the two employers that could impact collective bargaining or any disputes with the Union.^[1] We conclude the Employers did not violate Section 8(a)(3), because they did not take any employment-related action to encourage or discourage Union activity. We also conclude that, the e-mail communication was not an agreement to be turned over, and in any event issuing a complaint as to the Section 8(a)(1) and (5) allegations would not effectuate the purposes and policies of the Act.

FACTS

Kroger Co. and Dillon Companies d/b/a King Soopers and City Market ("King Soopers") and Albertsons Companies, Inc. and its subsidiary Safeway, Inc. ("Albertson/Safeway") operate retail grocery stores nationwide (collectively the "Employers"). For over twenty years, the United Food and Commercial Workers Local 7 ("Union") has represented roughly 12,000 King Soopers employees and 6,000 Albertsons/Safeway employees at stores in Colorado and Wyoming. The parties have historically coordinated their bargaining, including allowing representatives of King Soopers to be present for and sit at the table for bargaining sessions between the Union and Albertsons/Safeway, and the same for Albertsons/Safeway.

In late 2021, as the parties' then-current collective-bargaining agreements neared their expiration dates, the parties began bargaining successor agreements to cover the bargaining units at the Employers' stores. As the parties had done in the past, a representative for Albertsons/Safeway attended the bargaining sessions between the Union and King Soopers and a representative for King Soopers attended bargaining sessions between the Union and Albertsons/Safeway. However, after numerous bargaining sessions occurred covering each employer, the Union determined that insufficient progress was being made in the negotiations with King Soopers. On January 3, 2022, the Union issued a press release stating its membership had voted to strike against King Soopers over alleged unfair labor practices.

On January 4, 2022, the Union met with King Soopers to bargain. That same day, the Union emailed King Soopers an information request seeking copies of "any agreements and/or understandings (oral and/or written) [between King Soopers and] Safeway and/or Albertsons that relate to the present ongoing collective bargaining negotiations and/or potential disputes with this Union."

On January 5, 2022, Albertsons/Safeway emailed King Soopers asking "... whether [the Union] could actually afford to take a strike." Meanwhile, on January 5 and 6, 2022, before the Union's collective-bargaining agreements with King Soopers were set to expire on

January 8, 2022, the Union and King Soopers met for bargaining, but no agreement was reached. At about this time, the Union sent a letter to the membership, which was posted on social media, that the strike could commence against King Soopers beginning on January 9, 2022.

On January 6, 2022, the Union informed Albertsons/Safeway that the Union would commence a strike against King Soopers. The Union asked Albertsons/Safeway if it was working with King Soopers against the Union. Albertsons/Safeway replied no, and that it wanted to avoid any labor dispute with the Union. The Union advised Albertsons/Safeway that it should prepare for an influx of business from King Soopers' customers who refused to cross the picket line, including ramping up its staffing. That same day, the Union agreed to extend its collective-bargaining agreements with Albertsons/Safeway indefinitely until either party provided written notice to terminate.

On January 7, 2022, the Union published a press release announcing that its members planned to strike King Soopers for three weeks starting on January 12, 2022. That same day, King Soopers replied to the Union's January 4, 2022 information request by stating: "King Soopers hereby confirms there are no agreements or other materials responsive to your request."

Later, on January 7, 2022, King Soopers sent Albertsons/Safeway a Union document containing FAQs for potential King Soopers strikers, which advised the employees they could not work at King Soopers during a strike but were free to work elsewhere, including Safeway. The Union communication also advised employees who normally fill prescriptions at King Soopers to use different pharmacies, including Safeway. King Soopers' January 7, 2022, email also stated: "We have also heard union representatives inform our associates that if there is a strike that they should go work at Safeway. Can you please inform me of Albertsons/Safeway intent as to how you plan to handle this to [sic] subjects?"

On the morning of January 9, 2022, Albertsons/Safeway replied: "We don't intend to hire any King Soopers [sic] employees and we have already advised the Safeway division of our position and the division agrees." Albertsons/Safeway further responded that it would not "solicit or publicly communicate that King Soopers [sic] employees should transfer their scripts to us" but that it would not inquire "why the customer is transferring or where they work, nor do we make it a practice to turn away customers."

On January 12, 2022, King Soopers employees began their strike. On January 14, 2022, the Union emailed King Soopers, stating the Union had not received a response to its January 4, 2022 information request and renewed the request. Later that morning, King Soopers replied that it had previously responded on January 7, 2022, and that it "reverif[ied] that there are no agreements related to your request at this time." Also on January 14, 2022, the Union emailed Albertsons/Safeway an information request seeking "any agreements and/or understandings (oral and/or written) with King Soopers and/or City Market that relate to the present ongoing collective bargaining negotiations and/or potential disputes with this Union." Albertsons/Safeway promptly replied that "at this time we have no written or oral agreements/understandings with King Soopers and/or City Markets related to the present ongoing collective-bargaining negotiations."

On January 21, 2022, the Union and King Soopers reached an agreement on successor collective-bargaining agreements and the Union ended its strike. There is no evidence that any King Sooper employee applied for a job at Albertsons/Safeway. On about February 16, 2022,

the Union and Albertsons/Safeway concluded their bargaining and entered into a successor collective-bargaining agreement.

Nearly two years later, on February 14, 2024, the Colorado Attorney General held a press conference to announce an antitrust lawsuit against the proposed merger between King Soopers' parent company, Kroger, Inc., and Albertsons, filed in Colorado state court. The Colorado Attorney General also published the state's complaint and related exhibits in that lawsuit, including copies of King Soopers and Albertsons/Safeway's January 5, 7, and 9, 2022 email correspondence in which Albertsons/Safeway's stated it did not intend to hire the striking King Soopers employees. On February 15, 2024, the Union filed the instant ULP charges against King Soopers and Albertsons/Safeway.

In late 2024, the parties began bargaining for their next successor collective-bargaining agreements. Bargaining was acrimonious, resulting in the Union commencing a strike on February 6, 2025, against King Soopers that would last for eleven days. To date, the parties have yet to reach agreement on successor collective-bargaining agreements.

ACTION


We conclude that there is no Section 8(a)(3) violation because the e-mail correspondence does not constitute an agreement between Albertsons/Safeway and King Soopers regarding striking employees.^[2] Further, there is no evidence that any King Soopers employee even applied for a position, let alone was denied employment. An essential element of a Section 8(a)(3) violation is that an employer takes some employment-related action to encourage or discourage union activity. *See, e.g., Troy Grove*, 372 NLRB No. 94, slip op. at 2 (2023) (issuance of layoff notices did not violate Section 8(a)(3) because layoffs were rescinded before they took effect and before employees finished their work for the day; therefore, "the record fail[ed] to show a necessary element of an 8(a)(3) violation—an adverse employment action"); *Bellagio, LLC*, 362 NLRB 1426, 1427–28 (2015), *enforcement denied on other grounds*, 854 F.3d 703 (D.C. Cir. 2017). Although the Board has found an employer's refusal to consider or hire job applicants in retaliation for their strike against another employer to violate Section 8(a)(3), in those cases, unlike here, there were identified striking employees who had applied to work with the non-struck employer. *See, e.g., Allina Health System d/b/a Abbott Northwestern Hospital*, 343 NLRB 498, 499–501 (2004).

We further conclude that there is insufficient evidence to find a Section 8(a)(5) and (1) violation. As noted, the e-mail correspondence did not constitute an agreement regarding striking employees between Albertsons/Safeway and King Soopers. Thus, there was no "agreement" to be provided in response to the Union's information request. Moreover, any need the Union may have had for this information is effectively moot because it obtained copies of the pertinent emails through the actions of the Colorado Attorney General's state-court lawsuit.

Accordingly, the Region should dismiss both charges, absent withdrawal.

Please contact us with any questions.

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[1] The instant charges contain identical allegations in the basis of the charge that King Soopers and Safeway/Albertsons failed to “bargain in good faith” with the Union, which the Region has interpreted as referring to King Soopers and Albertsons/Safeway’s alleged refusal to furnish information. However, Case 27-CA-336005 filed against King Soopers does not list 8(a)(5) in the charge, while Case 27-CA-336012 against Albertsons/Safeway contains an 8(a)(5).

[2] A statement of “intent” does not constitute an agreement between parties. Here, Albertsons/Safeway simply stated in an email, “We don’t intend to hire any King Soopers [sic] employees...”

Please be aware that this email may be subject to public disclosure under the Freedom of Information Act or other authorities, though exceptions may apply for certain case-related information, personal privacy, and other matters.