

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO  
CASE NO. 11 01-10779 SA

IN RE: )  
)  
FURR'S SUPERMARKETS, INC. )  
Federal I.D.# 75-2364418 )  
New Mexico Tax I.D. 02-159595-0 )  
)

NOTICE OF PENDENCY OF  
UNFAIR LABOR PRACTICE LITIGATION

TO: All potential purchasers

You are hereby notified of the pendency of unfair labor practice litigation against Furr's Supermarkets, Inc., the above named debtor. Specifically, the United Food and Commercial Workers Union, Local 1564 of New Mexico, AFL-CIO, herein called the Union, has filed charges with the National Labor Relations Board in Case 28-CA-16664. On November 30, 2000, the Acting Regional Director for the National Labor Relations Board, Region 28, issued a Complaint and Notice of Hearing against the debtor. Said Complaint alleges that the debtor violated Section 8(a)(1) and (5) of the National Labor Relations Act in that it failed and refused to furnish certain information to the Union; delayed in furnishing other information to the Union; unilaterally changed the contractual grievance/arbitration procedure, and its past practice of processing written pay complaints; unilaterally removed the work of stocking tortillas, ordering and stocking non-foods and variety products and ordering and stocking Holiday Candy from bargaining unit employees and assigned or subcontracted this work to individuals outside the bargaining units; unilaterally began using prepackaged ground beef in its meat departments; unilaterally changed the duties of meat wrappers at stores 883, 881, and 880 from on or about July 16, 2000, through July 23, 2000; and made certain threats to employees and solicited the

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resignation of employees who supported the Union. A copy of said Complaint and Notice of Hearing, marked Appendix A, is attached hereto and made a part hereof.

Based upon the Complaint, if the allegations contained therein are successfully litigated and/or settled by the National Labor Relations Board, an appropriate remedy for such conduct would include, *inter alia*, an order requiring that the debtor make whole certain employees in the bargaining unit for pay and fringe benefits they lost because of the unilateral changes, rescinded the changes and restore the status quo, provide the Union with certain information, and post a Notice to Employees. The exact amount of the claims would be liquidated by the National Labor Relations Board in a formal proceeding, absent agreement by the parties.

You are hereby notified that anyone who becomes a successor to said debtor with knowledge of the unfair labor practice proceedings, may be required, under the National Labor Relations Act, 29 U.S.C. Sec 151 *et. seq.*, to remedy any unfair labor practices found, by *inter alia*, making employees whole for losses suffered on account of any such unfair labor practices committed by the debtor. See *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

This notice is intended to advise potential purchasers of the debtor's assets of their potential liability, so that the price for the debtor's assets may be reflective thereof. This notice is not intended to be a complete statement concerning a successor employer's obligation or rights under the National Labor Relations Act.

Dated: April 9, 2001

  
\_\_\_\_\_  
Cornele A. Overstreet  
Regional Director  
National Labor Relations Board  
Region 28  
234 North Central Avenue, Suite 440  
Phoenix, AZ 85004-2212

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**FURR'S SUPERMARKETS, INC.**

**and**

**Case 28-CA-16664**

**UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 1564  
OF NEW MEXICO, AFL-CIO**

**COMPLAINT AND NOTICE OF HEARING**

It having been charged in Case 28-CA-16664 by United Food and Commercial Workers, Local Union No. 1564, AFL-CIO (herein called the Union), that Furr's Supermarket, Inc. (designated in the caption hereof by its correct name and herein called the Respondent), has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq. (herein called the Act), the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board (herein called the Board), by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. (a) The original charge in this proceeding was filed by the Union on August 4, 2000, and a copy thereof was served on the Respondent by regular mail on the same date.

(b) The first amended charge herein was filed by the Union on August 22, 2000, and a copy thereof was served on the Respondent by regular mail on the same date.

(c) The second amended charge herein was filed by the Union on November 30, 2000, and a copy thereof was served on the Respondent by regular mail on the same date.

2. (a) The Respondent is now, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New Mexico.

(b) At all times material herein, the Respondent has maintained an office and place of business in Albuquerque, New Mexico, and other offices and places of business at other locations in the State of New Mexico (herein called the Respondent's New Mexico facilities), where it is engaged in the retail sales of groceries, meats, and related products.

(c) During the 12-month period ending August 4, 2000, the Respondent, in the course and conduct of its business operations described above in paragraph 2(b), derived gross revenues therefrom in excess of \$500,000.

(d) During the 12-month period ending August 4, 2000, the Respondent, in the course and conduct of its business operations described above in paragraph 2(b), purchased and received at its New Mexico facilities goods and materials valued in excess of \$50,000 directly from points outside the State of New Mexico.

(e) The Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.

3. The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

4. (a) At all times material herein, the persons named below have occupied the positions set forth opposite their respective names, and are now, and have been at all times material herein, supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent, acting on its behalf, within the meaning of Section 2(13) of the Act:

|            |   |                                |
|------------|---|--------------------------------|
| Candy Baca | - | Director of Meat Merchandising |
| Pam Biles  | - | Director of Human Resources    |

(b) At all times material herein, Tammie Matthews has occupied the position of the Respondent's Human Resources Coordinator, and is now, and has been at all times material herein, an agent of the Respondent, acting on its behalf, within the meaning of Section 2(13) of the Act.

5. (a) The following employees of the Respondent (herein collectively called the Retail Clerk Units and individually referred to as Units A through T, respectively) constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees working for the Respondent in Bernalillo/Sandoval Counties, New Mexico (Unit A); Roswell, New Mexico (Unit B); Santa Fe, New Mexico (Unit C); Las Cruces, New Mexico (Unit D); Ruidoso, New Mexico (Unit E); Artesia, New Mexico (Unit F); Belen, New Mexico (Unit G); Carlsbad, New Mexico (Unit H); Clovis, New Mexico (Unit I); Deming, New Mexico (Unit J); Espanola, New Mexico (Unit K); Hobbs, New Mexico (Unit L); Las Vegas, New Mexico (Unit M); Los Alamos, New Mexico (Unit N); Los Lunas, New

Mexico (Unit O); Lovington, New Mexico (Unit P); Silver City, New Mexico (Unit Q); Socorro, New Mexico (Unit R); Taos, New Mexico (Unit S); Tucumcari, New Mexico (Unit T); who are engaged in handling or selling merchandise, or performing other services incidental thereto, Control Room Clerks, Direct Store Delivery (DSD) Clerks, Pharmacy Clerks, and hourly paid Bakery Production Managers; excluding overall Store Director, Assistant Store Managers, all employees working exclusively in the Meat Department, professional employees, supervisors within the meaning of the Labor Management Relations Act, as amended, salaried Tortilleria Manager, and salaried Bakery Production Manager in Scratch Bakeries, for all current stores owned, operated, or controlled by the Respondent, operating under the name of Furr's or any other name, whether such store is operating under a division, subsidiary or other subdivisions of the Respondent.

(b) Since about 1991, a more precise date being presently unknown to the undersigned, but which date is within the knowledge of the Respondent, and at all times material herein, the Union has been designated as the exclusive collective-bargaining representative of the Retail Clerk Units and since said date the Respondent has recognized the Union as such representative. Such recognition has been embodied in successive respective collective-bargaining agreements, the most recent of which are effective by their terms for the period from November 1, 1998, to October 27, 2001 (herein called the Retail Clerk Agreements).

(c) The following employees of the Respondent (herein collectively called the Meat Department Units and individually referred to as Units U through W, respectively) constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees engaged in the retail and wholesale distribution of all fresh meats and all other meat products, including rabbits, fish and domestic fowls of all kinds, regardless of their origin, and all other products historically processed and handled by the Meat Department, within the boundaries of Bernalillo and Sandoval Counties, New Mexico (Unit U); in northern New Mexico (Unit V); in southern New Mexico (Unit W); in Farmington, New Mexico (Unit X), within the jurisdiction of the Union, for all current or accreted stores owned, operated, or controlled by the Respondent, operating

under the name of Furr's or any other name, whether such store is operating under a division, subsidiary or other subdivision of the Respondent, excluding all other employees.

(d) Since about 1991, a more precise date being presently unknown to the undersigned, but which date is within the knowledge of the Respondent, and at all times material herein, the Union has been designated as the exclusive collective-bargaining representative of the Meat Department Units and since said date the Respondent has recognized the Union as such representative. Such recognition has been embodied in successive respective collective-bargaining agreements, the most recent of which are effective by their terms for the period from November 1, 1998, to October 27, 2001 (herein called the Meat Department Agreements).

(e) At all times material herein, the Union, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the Retail Clerk Units for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(f) At all times material herein, the Union, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the Meat Department Units for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

6. (a) On or about the dates specified below, all occurring in year 2000, the Union, in written grievances filed pursuant to the Retail Clerk Agreements and the Meat Department Agreements, respectively, requested that the Respondent furnish the Union with the following information:

- (1) March 20, copies of any written statements or documents used to suspend Jessica Chavez;
- (2) April 17, the schedules of all non-food/variety managers and clerks, from the week of April 8, until the grievance is resolved over contracting out the work of ordering and stocking non-food and variety items;
- (3) June 5, all documentation used to discipline Calvin Campbell, including, but not limited to, copies of written statements, videotapes, and prior Corrective Action Notices;
- (4) June 9, any and all statements the Respondent obtained in the Corrective Action Notice issued to Chris Miller, including a copy of any Corrective Action Notice issued to employee Marissa Romero for the same incident;
- (5) June 27, all documentation used by the Respondent in its decision to terminate Jane Salas, including prior Corrective Action Notices, videotapes, witness statements, and Company guidelines regarding head clerk authority and responsibilities;
- (6) July 6, a copy of the work schedule relating to a request by Sheryl "Renee" Claffy to claim another employee's schedule;
- (7) July 6, a copy of the bakery work schedule for the week ending July 8, 2000, relating to a request by Frank A. Buonauro to claim another employee's schedule;
- (8) July 14, copies of the weekly timecards for Lupe Flores and Julian Lasky from October 1999 to present, and to review timecards for employees in stores 866 and 868 from October 1999 to present, regarding claims by Flores and Lasky that

they had not been paid overtime as required by the Retail Clerk Agreement, and the possibility that other employees in these stores had not been paid as required by the Retail Clerk Agreements;

(9) July 17, copies of all documents used by the Respondent in its decision to suspend and subsequently terminate Felix Tafoya;

(10) July 17, all documents used by the Respondent in its decision to suspend and subsequently terminate Maggie Urban;

(11) July 21, the Till Accountability Sheet, Safe Accountability Sheet, and any relevant documents to show the Control Room Clerk's signature and/or initials for the dates in question pursuant to a reduction in hours for Control Room Clerk Clara Zamora; and,

(12) July 28, a list of all items ordered, stocked, and received from Holiday Candies, and a copy of invoices to all stores which would show the stocking of these items.

(b) The information requested by the Union, as described above in paragraphs 6(a)(1) through (12), is necessary for, and relevant to, the Union's performance of its function as the exclusive collective bargaining representative of one or more of Retail Clerk or the Meat Department Units.

(c) Since on or about the dates set forth above when the information was requested, and continuing to date, the Respondent has failed and refused, and is continuing to fail and refuse, to furnish the Union with the information described above in paragraphs 6(a)(1), (2), (3), (6), (7), (8), (11) and (12).

(d) On or about the dates indicated below, the Respondent delayed in providing the information described above in paragraph 6(a) and its respective subparagraphs:

- (1) Paragraph 6(a)(4): from June 9, until August 21;
- (2) Paragraph 6(a)(5): from June 27, until September 14;
- (3) Paragraph 6(a)(9): from July 17, until August 21; and,
- (4) Paragraph 6(a)(10): from July 17, until September 13.

7. (a) On or about the dates set forth below, all occurring in year 2000, the Respondent implemented the following changes:

- (1) For the six months preceding August 4, and continuing to date, changed the grievance/arbitration procedures of the Retail Clerk Agreements and the Meat Department Agreements;
- (2) For the six months preceding August 4, and continuing to date, changed its past practice with the Union of processing written complaints made by the Union concerning employees in the Retail Clerk Units and Meat Department Units of not being paid as required by the Retail Clerk Agreement and the Meat Department Agreement, respectively;
- (3) On or about February 14, removed the work of stocking tortillas from the employees in the Meat Department Units and assigned this work to individuals outside the Meat Department Units;
- (4) On or before April 17, on a date which is not presently more specifically known to the undersigned, but which date is within the knowledge of the Respondent, removed the work of ordering and stocking non-foods and variety products from

the employees in the Retail Clerk Units, and subcontracted this work to individuals outside Retail Clerk Units;

(5) On or about May 23, began using prepackaged ground beef in its meat departments in the Meat Department Units;

(6) From on or about July 16 through on or about July 23, changed the duties of meatwrappers at stores 883, 881, and 880 in Unit U;

(7) On or before July 17, on a date which is not presently more specifically known to the undersigned, but which date is within the knowledge of the Respondent, removed the work of ordering and stocking Holiday Candy from the employees in the Retail Clerk Units, and subcontracted this work to individuals outside the Retail Clerk Units.

(b) The subjects set forth above in paragraphs 7(a)(1) through (7) relate to rates of pay, wages, hours of employment, and other terms and conditions of employment of the Retail Clerk Units and the Meat Department Units, respectively, and are mandatory subjects for purposes of collective bargaining.

(c) The Respondent engaged in the acts and conduct described above in paragraphs 7(a)(1) through (7) unilaterally, without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the respective Retail Clerk Units and Meat Department Units with respect to such acts and conduct and the effects of such acts and conduct.

(d) By its overall acts and conduct, including the acts and conduct described above in paragraphs 6 and 7, and their respective subparagraphs, the Respondent

has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Retail Clerks Units and Meat Department Units.

8. On or about April 21, 2000, the Respondent, at its Albuquerque District Office, by Candy Baca:

- (a) threatened to engage in unilateral conduct;
- (b) threatened to eliminate employees' jobs by its unilateral conduct;
- (c) made an implied threat of retaliation against employees who supported the Union; and,
- (d) solicited the resignation of employees who supported the Union.

9. By the acts and conduct described above in paragraphs 6(a), 6(c), 6(d), 7(a), 7(c), 7(d), 8(a), and 8(b), and by each of said acts and conduct, the Respondent has failed and refused to bargain collectively, and is continuing to fail and refuse to bargain collectively, with the Union as the exclusive collective-bargaining representative of the Retail Clerks Units and the Meat Department Units, respectively, and the Respondent thereby has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act.

10. By the acts and conduct described above in paragraphs 6(a), 6(c), 6(d), 7(a), 7(c), 8, and its respective subparagraphs, and 9, and by each of said acts and conduct, the Respondent has interfered with, restrained, or coerced, and is continuing to interfere with, restrain, or coerce, employees in the exercise of the rights guaranteed in Section 7 of the Act, and the Respondent thereby has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

11. The acts and conduct of the Respondent described above in paragraphs 6 through 10, occurring in connection with the operations of the Respondent described above in paragraph 2, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states of the United States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

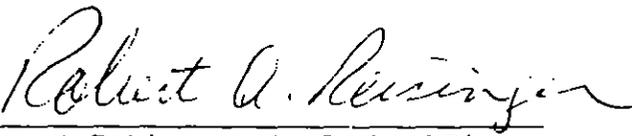
12. The acts and conduct of the Respondent described above constitute unfair labor practices within the meaning of Sections 8(a)(1) and (5) of the Act which affect commerce within the meaning of Sections 2(6) and (7) of the Act.

**PLEASE TAKE NOTICE** that commencing at 9:00 a.m. (local time), on the 29<sup>th</sup> day of May, 2001, and continuing on consecutive days thereafter until concluded, a hearing will be conducted at a place to be later designated in Albuquerque, New Mexico, before a duly designated administrative law judge of the Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

**YOU ARE FURTHER NOTIFIED** that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, the Respondents shall file with the undersigned, acting in this matter as an agent of the Board, an original and four copies of an answer to said complaint within 14 days from the service thereof, and that, unless it does so, all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board. You are also notified that pursuant to said Rules and Regulations, the Respondents shall serve a copy of the answer on each of the other parties.

Form NLRB-4668. Summary of Standard Procedures in Formal Hearing Held Before the National Labor Relations Board in Unfair Labor Practice Proceedings Pursuant to Section 10 of the National Labor Relations Act, is attached.

Dated at Phoenix, Arizona, this 30<sup>th</sup> day of November, 2000.

  
Robert A. Reisinger, Acting Regional Director