

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

In re:

FURR'S SUPERMARKETS, INC.,

**Case No. 11-01-10779-SA
Chapter 11**

Debtor.

**UNION'S VERIFIED PETITION FOR ORDER COMPELLING
ARBITRATION UNDER COLLECTIVE BARGAINING AGREEMENT**

1. This is a Verified Petition for an Order Compelling Arbitration brought pursuant to the § 301(a) of the Labor Management Relations Act ("LMRA"), as amended, 29 U.S.C. § 185 (a). This court has jurisdiction under 29 U.S.C. § 185(a) and 28 U.S.C. § 1331.

2. This matter would normally be brought, pursuant to 29 U.S.C. § 185(c), in the U.S. District Court for the District of New Mexico, since the United Food and Commercial Workers, ("UFCW") Local 1564, is engaged in representing its members throughout New Mexico. However, the current bankruptcy proceedings make this an appropriate forum to address this matter.

PARTIES

3. The Petitioner, UFCW Local 1564 is a "labor organization" representing employees or former employees of Furr's for the purposes of collective bargaining within the meaning of § 2(5) of the National Labor Relations Act ("NLRA"), 29 U.S. C. § 152(5). The UFCW Local 1564 is a duly organized unincorporated association, authorized to do and doing business in the State of New Mexico, and representing employees of Furr's Supermarkets ("Furr's"), in an industry affecting commerce within the meaning of § 301(a).

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4. Furr's is an employer in an industry affecting commerce withing the meaning of § 2(2) of the NLRA, 29 U.S.C. § 152(2). Furr's has at all relevant times been a corporation operating under the laws of New Mexico and authorized to do business in the State of New Mexico.

PETITION

5. On or about November 1, 1998, and from year to year thereafter, UFCW Local 1564 and Furr's have been signatories to collective bargaining agreements. The most recent agreement was signed on or about September 8, 2001, and expires on October 27, 2001. A true and correct copy of the collective bargaining agreement is attached to the Motion of United Food and Commercial Workers Union Local 540 and 1564 to Order Allowing and Requiring Immediate Payment of Administrative Expenses; Memorandum of Points and Authorities, Exhibit "A" previously filed with this Court and incorporated herein by reference to the "Collective Bargaining Agreement" or "Agreement."

6. Section 21.1 of the Collective Bargaining Agreement sets forth a grievance and arbitration procedure, which requires the parties to submit to final and binding arbitration "[a]ny and all matters of controversy, dispute or disagreement of any kind or character whatsoever existing between the Employer and the Union or Members of the Bargaining Unit and arising out of or in any way involving the interpretation or application of the terms of this Agreement shall be settled and resolved by the procedures and in the manner herein set forth." Under Section § 21.1 of the Collective Bargaining Agreement, any dispute concerning an alleged violation of the terms of the Agreement, which cannot be settled pursuant to the grievance procedure must be submitted to an Arbitrator for final and binding resolution.

7. There are three grievants who have exhausted the procedures articulated in § 21.1 and

have submitted arbitration requests. Those grievants include, John Paz, Bari Jewczuk and Leonard Lente.

8. The Union requested arbitration on behalf of John Paz on October 6, 2000, asserting that the collective bargaining agreement had been violated. A true and correct copy of the demand for arbitration is attached hereto as Exhibit "A". Pursuant to the provisions of the Agreement, an additional panel of arbitrators was requested by Furr's. Finally, in July 2001, the Union and Furr's struck for an arbitrator pursuant to the Agreement. The Arbitrator was notified that she had been selected to arbitrate this dispute. The Arbitrator forwarded a request for payment and the dates that she was available. Furr's has not responded to the Arbitrator's concerns regarding payment and has not responded to counsel's attempt to set dates for this arbitration.

9. The Union requested arbitration on behalf of Bari Jewczuk on October 6, 2000, asserting that the collective bargaining agreement had been violated. A true and correct copy of the demand for arbitration is attached hereto as Exhibit "B". The parties, pursuant to the Agreement, requested additional panels of arbitrators. The final panel was received in late July 2001. The Union contacted Furr's on a number of occasions to strike for an arbitrator. The Union has tried many times to pursue this matter by initially contacting outside counsel for Furr's, contacting the Human Resources Manager, and contacting the General Counsel for Furr's. Furr's has ignored the Union's attempt to pursue this arbitration.

10. The Union requested arbitration on behalf of Leonard Lente on May 7, 2001, asserting that the collective bargaining agreement had been violated. A true and correct copy of the demand for arbitration is attached hereto as Exhibit "C". The Union has contacted Furr's in an effort to advance this arbitration, but Furr's has not responded.

11. A controversy, dispute or disagreement exists with regards to all three of the above-referenced grievances and Furr's has failed to comply with its obligations under the terms of the Agreement to proceed with arbitration as the final and binding resolution method.

12. Furr's failure to proceed to arbitration on these grievances is without merit, frivolous, and done in bad faith.

13. The UFCW Local 1564 has been forced to retain counsel to bring this Petition to enforce UFCW's contractual rights.

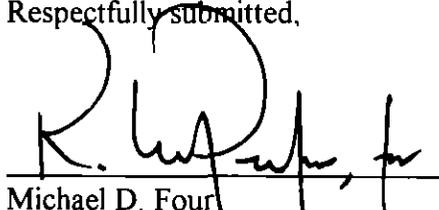
14. Local counsel for debtor was contacted concerning the above Petition and consent was not obtained. It is therefore submitted as an opposed Petition.

WHEREFORE, the UFCW Local 1564 prays for relief as follows:

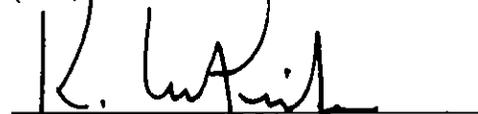
1. For an order of the Court compelling Furr's to advance the aforementioned grievances through the arbitration process pursuant to the terms of the collective bargaining agreement;
2. For an order that all of Furr's costs and fees associated with the arbitrations be paid from the most recent cash collateral budget;
3. For its reasonable attorneys' fees;
4. For costs of suit incurred herein; and
5. For such other relief as this Court deems just and proper.

DATED: October 16, 2001

Respectfully submitted,


Michael D. Four
Schwartz, Steinsapir, Dohrmann &

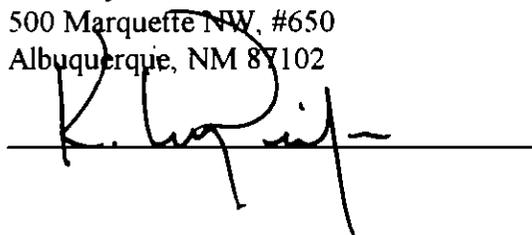
Sommers, LLP
6300 Wilshire Blvd., Suite 2000
Los Angeles, CA 90048-5202
(323)655-4700



K. Lee Peifer
Law Offices of K. Lee Peifer
108 Wellesley S.E.
Albuquerque, NM 87110
(505)266-4335

I hereby certify that a true and correct
copy of the foregoing pleading was
sent via U.S. Mail this 16th day of
October 2001 to:

Robert H. Jacobvitz
Jacobvitz, Thuma & Walker, P.C.
Attorney for Debtor
500 Marquette NW, #650
Albuquerque, NM 87102



United States Trustee
P.O. Box 608
Albuquerque, NM 87103-0608

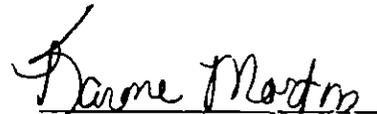
VERIFICATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, DIANE KIMBERLE, after being sworn and upon oath state that I have read the foregoing, and it is true to the best of my knowledge and belief.


DIANE KIMBERLE

Subscribed and sworn to before me on this 15th day of October 2001 by Diane Kimberle.


Notary Public

My commission expires:
9/10/05

United Food and Commercial Workers Union

Local No. 1564 of New Mexico

Post Office Box 80390 • 130 Alvarado Drive, N.E.
Albuquerque, New Mexico 87198

Diane J. Kimberle, *President and Chief Executive Officer*
Greg Frazier, *Secretary-Treasurer*

Telephone: (505) 262-1986 Facsimile: (505) 262-1983
New Mexico Toll-Free: (800) 264-1986

October 6, 2000

Ms. Pam Biles
Furr's Supermarkets, Inc.
P.O. Box 10267
Albuquerque, NM 87184

Re: **Request for Arbitration - Grievance No. 00-00433**
John Paz, Termination, Furr's 899

Dear Ms. Biles:

In accordance with the terms and conditions of the Collective Bargaining Agreement between Furr's Supermarkets, Inc. and UFCW Local No. 1564, based upon your most recent response to the grievance, it is our desire to submit the above referenced matter to arbitration.

Accordingly, as specified in our Collective Bargaining Agreement, we are making a request to the Federal Mediation and Conciliation Service, on behalf of both parties pursuant to the provisions of the Grievance and Arbitration provisions thereof, for a panel of seven (7) qualified arbitrators. A copy of such request is enclosed for your files.

As a joint request on behalf of both parties, the costs of obtaining this panel is to be equally divided between the Employer and the Union. We will advise you of your portion of the costs and expect your Company to reimburse this Local Union promptly.

As soon as we are in receipt of the panel, Shane Youtz, our legal counsel, will be in contact with you to strike the panel and select an impartial arbitrator.

Sincerely yours,



Diane Kimberle
President

DK/ln

Enc: Copy of FMCS Form R-43, Request for Arbitration Panel

cc: Shane Youtz, Esq.

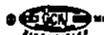


Exhibit A

United Food and Commercial Workers Union

Local No. 1564 of New Mexico

Post Office Box 80390 • 130 Alvarado Drive, N.E.
Albuquerque, New Mexico 87198

Diane J. Kimberle, *President and Chief Executive Officer*
Greg Trazier, *Secretary-Treasurer*

Telephone: (505) 262-1986 Facsimile: (505) 262-1988
New Mexico Toll-Free: (800) 264-1986

October 6, 2000

Ms. Pam Biles
Furr's Supermarkets, Inc.
P.O. Box 10267
Albuquerque, NM 87184

Re: **Request for Arbitration - Grievance No. 00-00382**
Bari Jewczuk, Suspension/Working Off the Clock, Furr's 899

Dear Ms. Biles:

In accordance with the terms and conditions of the Collective Bargaining Agreement between Furr's Supermarkets, Inc. and UFCW Local No. 1564, based upon your most recent response to the grievance, it is our desire to submit the above referenced matter to arbitration.

Accordingly, as specified in our Collective Bargaining Agreement, we are making a request to the Federal Mediation and Conciliation Service, on behalf of both parties pursuant to the provisions of the Grievance and Arbitration provisions thereof, for a panel of seven (7) qualified arbitrators. A copy of such request is enclosed for your files.

As a joint request on behalf of both parties, the costs of obtaining this panel is to be equally divided between the Employer and the Union. We will advise you of your portion of the costs and expect your Company to reimburse this Local Union promptly.

As soon as we are in receipt of the panel, Shane Youtz, our legal counsel, will be in contact with you to strike the panel and select an impartial arbitrator.

Sincerely yours,



Diane Kimberle
President

DK/ln

Enc: Copy of FMCS Form R-43, Request for Arbitration Panel

cc: Shane Youtz, Esq.

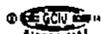


Exhibit B

United Food and Commercial Workers Union Local No. 1564 of New Mexico

Post Office Box 80390 • 130 Alvarado Drive, N.E.
Albuquerque, New Mexico 87198

Diane J. Kimberle, *President and Chief Executive Officer*
Greg Frazier, *Secretary/Treasurer*

Telephone: (505) 262-1986 Facsimile: (505) 262-1983
New Mexico Toll-Free: (800) 264-1986

Certified Mail No. 7099 3400 0016 8019 8841

August 10, 2001

Tammie Matthews
Human Resources Coordinator
Furr's Supermarkets, Inc.
PO Box 10267
Albuquerque NM 87184

Re: Request for Arbitration - Grievance Number 01-00122
Leonard Lente, Furr's 884, Albuquerque, New Mexico

1907 2 1 90V
RECEIVED

Dear Ms. Matthews:

In accordance with the terms and conditions of the Collective Bargaining Agreement between Furr's Supermarkets, Inc. and UFCW Local 1564, based upon your most recent response to the grievance, it is our desire to submit the above referenced matter to arbitration.

Accordingly, as specified in our Collective Bargaining Agreement, we are making a request to the Federal Mediation and Conciliation Service, on behalf of both parties pursuant to the provisions of the Grievance and Arbitration provisions thereof, for panel of seven (7) qualified arbitrators. A copy of such request is enclosed for your files.

As a joint request on behalf of both parties, the costs of obtaining this panel is to be equally divided between the Employer and the Union. We will advise you of your portion of the costs and expect your Company to reimburse this Local Union promptly.

As soon as we are in receipt of the panel, we will be in contact with you to strike the panel and select an impartial arbitrator.

Sincerely yours,



Greg Frazier
Secretary/Treasurer

GF/cb

cc: Angela Cornell

Enclosure: Copy of FMCS Form R-43, Request for Arbitration Panel

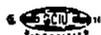


Exhibit C