

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 4, affiliated with
UNITED FOOD AND COMMERCIAL
WORKERS UNION

and

Case 19-CB-9602

GERALD E. RASMUSSEN, an Individual

and

Case 19-CB-9605

CARLA CRANDALL, an Individual

**ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT
AND NOTICE OF HEARING**

Gerald E. Rasmussen, an individual, herein called Rasmussen, has charged in Case 19-CB-9602, and Carla Crandall, an individual, herein called Crandall, has charged in Case 19-CB-9605, that United Food and Commercial Workers Union Local 4, affiliated with United Food and Commercial Workers Union, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Sec. 151, et seq., herein called the Act.

Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned pursuant to Section 102.33 of the Board's Rules and Regulations, orders that these cases be consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1.

(a) The Charge in Case 19-CB-9602 was filed by Rasmussen on April 23, 2007, and was served on Respondent by mail about that date.

(b) The Charge in Case 19-CB-9605 was filed by Crandall on May 4, 2007, and was served on Respondent by mail about that date.

2.

(a) Safeway, Inc., herein called the Employer, is a State of Delaware corporation, with an office and place of business in Polson, Montana, where it is engaged in the operation of a retail grocery store.

(b) The Employer, during the past 12 months, which period is representative of all times material, in the course and conduct of its business operations, purchased and received at its Polson, Montana facility goods and supplies valued in excess of \$50,000 directly from suppliers located outside the State of Montana.

(c) The Employer has been at all material times an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3.

Respondent is, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

4.

(a) At all material times, Nicolai B. Cocergine, held the position of Respondent's President and has been an agent acting on behalf of Respondent within the meaning of Section 2(13) of the Act.

5.

(a) At all material times and at least since December 2004, by virtue of Section 9(a) of the Act, Respondent has been the exclusive bargaining representative of the following two units of employees of the Employer, herein collectively called the "Unit":

(Meat department employees) All full-time and regular part-time employees who perform cutting, handling, wrapping, processing and preparing of fish products, poultry, meat (fresh, frozen, chilled or smoked); excluding all other employees, including employees engaged in the preparation of food for on-premises consumption, temporary employees, office clerical employees, transportation employees, and guards and supervisors as defined by the Act.

(Clerks) All full-time and regular part-time employees, including front end managers and scanner coordinators; excluding store managers, assistant managers, second assistant managers or third persons, produce managers, deli managers, janitors, meat department employees, bakery production employees, managerial employees and guards and supervisors as defined by the Act.

(b) At all material times and at least since December 2004, Respondent and the Employer have maintained and enforced two collective-bargaining agreements covering the Unit, and each contains the following conditions of employment, herein called the "Union Security Provision:"

(Meat department employees) Section 2.2 It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the date on which this Agreement is signed, become and remain members in good standing in the Union. It shall also be a condition of employment

that all employees covered by this Agreement and hired on or after the date on which the Agreement is signed, shall, on the 30th day following the beginning date of such employment, become and remain members in good standing in the Union. Good standing shall be defined as in Section 8(a)(3)(B) of the National Labor Relations Act as amended. The Employer will not be asked by the Union to discharge any employee for non-payment of Union dues, fees, or failure to become a member of the Union until seven (7) days after written notice of delinquency in dues, fees, or failure to join the Union has been sent to the Employer. If payment of delinquent dues, fees, or joining the Union, whichever the case may be, is made within this seven (7) day period, the employee will be allowed to continue working.

(Clerks) Section 2.1 Employer agrees that within thirty (30) days after employment or thirty (30) days after the execution of this Agreement, whichever last occurs, employees must be or become members of the Union.” Further, employees shall thereafter remain members of the Union in good financial standing with respect to the payment of their initiation fees and uniform, regular periodic dues. Section 2.2 Employees not meeting the requisites of this Article shall be discharged by the Employer upon receipt of written directions from the Union stating the reasons for the discharge. Affected employees shall have a period of seven (7) days within which to become reinstated following receipt of the written notice by the Employer.

(c) Respondent expends the monies collected pursuant to the Union Security Provision on activities germane to collective bargaining, contract administration, and grievance adjustment, herein called representational activities, and on activities not germane to collective bargaining, contract administration, and grievance adjustment, herein called nonrepresentational activities.

6.

(a) At all material times and at least since October 23, 2006, Respondent has enforced the Union Security Provision with respect to Unit employees Rasmussen, Crandall and all other Unit employees by requiring them to comply with the Union Security Provision as a condition of employment, or telling them of their need to comply.

(b) At no time since at least October 23, 2006, has Respondent notified Rasmussen, Crandall or any other Unit employee of their right to be and remain nonmembers pursuant to *NLRB v. General Motors*, 373 U.S. 734 (1963) (“*GM Rights*”).

(c) At no time since at least October 23, 2006, has Respondent notified Rasmussen, Crandall or any other Unit employee of the following information pursuant to *Communications Workers of America v. Beck*, 487 U.S. 735 (1988): the right of nonmembers to object to paying for nonrepresentational activities and to obtain a reduction in fees for such nonrepresentational activities; that they have the right to be given sufficient information, including information that will apprise potential objectors of the percentage of union dues chargeable to them in order to enable them to intelligently decide whether to object; and/or that they have the right as a nonmember to be apprised of any internal union procedures for filing objections (“*Beck Rights*”).

7.

(a) Since at least April 2, 2007, Respondent has required that Unit employees’ union membership resignation letters be notarized, mailed by certified mail, set forth case law citations and/or be individually submitted (“Resignation Requirements”).

(b) Since at least on or about April 2, 2007, Respondent has failed and/or refused to accept union membership resignation letters from Rasmussen, Crandall and other Unit employees because they failed to comply with Respondent’s Resignation Requirements.

8.

(a) Since at least on or about April 2, 2007, the employees named above in paragraph 7(b) notified Respondent, in writing, that they objected to the payment of dues and/or fees for nonrepresentational activities.

(b) Since on or about April 2, 2007, Respondent has failed and/or refused to recognize the employees named above in paragraph 7(b) as objecting nonmembers, and has continued to seek from said employees full dues and/or fees as a condition of their continued employment with the Employer.

(c) At all material times, Respondent has maintained a procedure governing the reduction in dues and/or fees for nonmember employees covered by the Union Security Provision who object to the payment of dues and/or fees for nonrepresentational activities, herein called the Procedure.

(d) The Procedure requires that objecting nonmember employees, who wish to file objections and request a reduction in dues and/or fees, must do so in writing to Respondent's Post Office Box in Butte, Montana, and must include the employee's name, home address, Social Security Number, job title, work location, home and work telephone numbers.

(e) Since at least on or about April 2, 2007, Respondent has applied the Procedure to Unit employees named above in paragraph 7(b), and since said date has refused to recognize said employees as objecting nonmembers and has continued to seek from said employees full dues and/or fees as a condition of their continued employment with the Employer.

9.

(a) On or about December 16, 2006, Respondent threatened in writing, a Unit employee by telling her that Respondent will have the Employer discharge her for failing to comply with the Union Security Provision.

(b) In or about late April 2007, Respondent threatened in writing, a Unit employee by telling her that Respondent will have the Employer discharge her for failing to comply with the Union Security Provision.

(c) On or about May 20, 2007, Respondent threatened in writing, Unit employees with suspension of their union membership, and threatened to impose reinstatement fees on them.

(d) On or about June 5, 2007, Respondent suspended Van Ausdle's union membership, imposed a \$25.00 reinstatement fee, and threatened Van Ausdle by telling her that Respondent will have the Employer discharge her for failing to comply with Union Security Provision.

(e) Respondent engaged in the conduct described above in paragraphs 9(a) through (d), even though Respondent had failed to first notify Unit employees Crandall, Van Ausdle, Rasmussen and Howlett of their respective *GM* and/or *Beck* rights.

10.

(a) Since on or about October 23, 2006, and continuing thereafter, the specific dates better known to Respondent, Respondent requested in writing, that the Employer discharge Unit employees Van Ausdle, Howlett, Crandall, Kellie Farris, Ben Martinez, Erin Bennett, Yvonne Langston and other Unit employees.

(b) By the conduct described above in paragraph 10(a), Respondent attempted to cause the Employer to discharge Unit employees Van Ausdle, Howlett, Crandall, Farris, Martinez, Bennett, Langston and other Unit employees.

(c) Respondent engaged in the conduct described above in paragraph 10(a) at a time when it had never:

- advised Unit employees of their *GM* and/or *Beck* rights;
- advised Unit employees of their obligations under the Union Security Provision and the consequences of nonpayment;
- correctly itemized the exact amount owed by the Unit employees;
- advised the employees how the respective amounts were calculated.

11.

By the acts described above in paragraph 10, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(2) and Sections 2(6) and (7) of the Act.

12.

By the acts described above in paragraphs 6, 7, 8, 9, 10, and 11, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Sections 2(6) and (7) of the Act.

WHEREFORE, as a partial remedy of the unfair labor practices alleged herein, the General Counsel seeks remedies that Respondent:

Advise all Unit employees by written notice of their *Beck* and *GM* Rights, and upon request, grant such rights to any Unit employee who so elects, retroactive to October 23, 2006, including rescission of any internal discipline imposed on such *GM*

electees and refund of appropriate *Beck* amounts to all such *Beck* electees, including refund of reinstatement amounts.

NOTICE OF HEARING

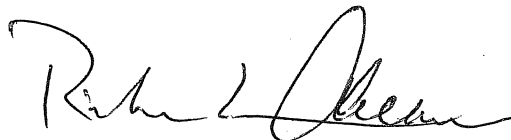
PLEASE TAKE NOTICE that on the 18th day of September 2007, at 9:00 a.m., at a place to be determined in Polson, Montana, and continuing on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in the Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Consolidated Complaint. The Answer must be **received by this office on or before August 14, 2007, or postmarked on or before August 13, 2007**. Respondent should file an original and four (4) copies of the Answer with this office and serve a copy of the Answer on each of the parties.

An Answer may also be filed electronically by using the E-filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt

and usability of the Answer rests exclusively upon the sender. A failure to timely file an Answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. When an Answer is filed electronically, an original and four paper copies must be sent to this office so that it is received no later than three business days after the date of the electronic filing. Service of the Answer on each of the other parties must be accomplished by means allowed under the Board's Rules and Regulations. The Answer may not be filed by facsimile transmission. If no Answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

DATED at Seattle, Washington, this 31st day of July 2007.



Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174