

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL
UNION, LOCAL 7, AFL-CIO

Plaintiffs,

v.

DILLON COMPANIES, LLC d/b/a KING SOOPERS,

Defendant.

PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

COMES NOW United Food and Commercial Workers International Union, AFL-CIO, Local 7 (collectively, the “Plaintiff” or “Local 7”), by and through undersigned counsel, respectfully moves for a preliminary injunction pending pursuant to Fed. R. Civ. P. 65(a) as more fully set forth herein.

OVERVIEW AND FACTUAL BACKGROUND

This action arises out of a series of collective bargaining agreements (the “CBAs”) entered into between Plaintiff and Defendant Dillon Companies, LLC d/b/a King Soopers (hereinafter “Defendant” or “King Soopers”). Pursuant to the terms of the CBAs,¹ the bargaining

¹ Local 7 represents the vast majority of the employees in the Defendant’s represented stores, but the employees in a given store are typically divided into a “retail” unit and a “meat” unit. The meat unit is generally comprised of employees in the Meat/Seafood and Deli Departments, and where applicable, the Cheese and Starbucks kiosks. Kim C. Cordova Declaration at ¶ 3. Generally, the remaining employees are included in a “retail” bargaining unit, which

unit workers represented by Local 7 have the exclusive right to perform work “connected with the handling or selling of merchandise” within the stores, with certain exceptions discussed herein. In or around November of 2021, Plaintiff first became aware that King Soopers was utilizing third-party staffing services to provide employees performing bargaining unit work.

Bargaining unit members and Local 7 staff have discovered that at least two different entities, Retail Odyssey and Day Ready/People Ready, whose workers were in the stores performing bargaining unit work. Although these entities apparently provide what is, at times, permissible services (according to King Soopers representatives, Day Ready/People Ready provide sanitation and floor maintenance services² within the stores and Retail Odyssey performs store resets³), they were instead observed stocking the shelves (in one case, a frozen case), which is exclusively bargaining unit work.

The collective bargaining agreement covering retail clerk workers provides:

ARTICLE 2 BARGAINING UNIT WORK JURISDICTION

Section 2. All work and services performed in the bargaining unit connected with the handling or selling of merchandise to the public shall be performed exclusively by bargaining unit members except as provided below. Store Managers, Assistant Managers, Field Merchandisers can perform all duties in the store. Delicatessen, Coffee, and Cheese Clerks, and the department managers (Deli Manager, Assistant Deli Manager, Coffee Lead, and Cheese Steward} can perform all work in the bakery.

includes employees working in the checkstands, pharmacy, produce, dairy, and other departments not included in the meat unit. Cordova Declaration at ¶ 3. *See also* Complaint at ¶¶ 15, 16. Bargaining units are comprised of the respective employees across a store or stores in a given geographical area. *See* Exhibit 1 at Arts. 1, Exhibit 2 at Arts. 2; *see also* Complaint at ¶¶ 14-16. The retail and meat agreements contain nearly identical language restricting vendor work in the stores. *See supra* and Exhibit 1 at Art. 2, Exhibit 2 at Art. 2.

² Sanitation and Floor maintenance work is specifically permitted to be outsourced by the CBAs. Exhibit 1 at Article 2; Exhibit 2 at Article 2.

³ The CBAs also permit up to three store “resets” per year to be performed by direct store vendors. Exhibit 1 at Article 2; Exhibit 2 at Article 2. A “reset” involves moving numerous products normally placed for sale in one area of the store to another area of the store, and otherwise shuffling the respective placement of a multitude of products within the store. *See* Cordova Declaration at ¶ 7.

Bargaining Note: Bakery Clerks shall remain in the Clerks Pension.

AUTHORIZED WORK FOR VENDORS

Section 3. Vendor Work: Direct store vendors who deliver the product categories of beverages (including juice sold in produce/deli departments), cookies and crackers, bakery, pizza, ice cream, chips, specialty/gourmet/natural foods, greeting cards (and related products such as bows, wraps, candles, balloons, ribbons), newspapers, magazines, books and related products shall be allowed to perform all work in connection with the sale of their products directly delivered to the store. For purpose of this provision, the product categories as used herein shall be interpreted to include all products delivered by such vendor. Additionally, all vendors shall be allowed to stock and otherwise maintain any J-Hook or Clip strip program. Additionally, all vendors may perform: any work in connection with promotional and seasonal displays; facing in connection with the service of product; rotation of product; cleaning of product, shelves and racks; affixing coupons and other promotional materials to products; vendors shall be permitted to perform three (3) major resets per store per section per calendar year. Additionally, vendors may perform work, as necessary to accommodate the introduction of new items, or removal of discontinued items, from the set; checking of code dates and removal of outdated product; and any work in connection with the opening of a new store and the two (2) week period thereafter, or during the two (2) weeks before and after a store remodel.

Section 4. Work Jurisdiction. Except for sanitation and floor maintenance, the Employer agrees not to subcontract operations existing within the stores. The Employer agrees that no employee classified as a Sanitation Clerk or Sanitation Manager on May 11, 1996 shall be laid-off or reduced in hours as a result of the subcontracting of floor care or expansion of Courtesy Clerk duties. However, the Employer reserves the right to promote Sanitation Clerks and/or Managers to All Purpose Clerk vacancies in order to provide for the use of outside contractors for floor maintenance and sanitation work. It is understood that before a full-time Sanitation Clerk is advanced to a full-time All Purpose Clerk position, such employee must have more seniority than the most senior employee on the All-Purpose Clerk full-time list for the vacancy. It is understood that Sanitation Clerks protected herein may be assigned hours in lower classifications, at their sanitation rate, for purpose of meeting the job security provision of this section.

Subcontracting is defined as a contractual relationship with another employer whereby employees of that employer perform the work of bargaining unit employees. A purchase order is not a subcontracting agreement.

The collective bargaining agreement covering meat bargaining unit workers provides:

ARTICLE 2
SERVICE IN MEAT-DELICATESSEN DEPARTMENTS, PLANTS

Section 2. All work performed in the meat, delicatessen and seafood department(s) will be done by members of the bargaining unit, except Store Managers, Assistant Store Managers, and Field Merchandisers may perform all duties in the meat department without restriction. Bakery Clerks and the department managers (Bakery Manager and Assistant Bakery Manager) can perform all work in the Delicatessen, Coffee, and Cheese Departments. For the purpose of this agreement, the meat department is defined as the area occupied by the meat storage rooms, the meat preparation rooms and the service and/or self-service display cases where fresh, smoked, cooked and frozen meats, poultry, fish and seafood are offered for retail sale, with the exception of poultry products, the pricing of all meat products shall be done on the premises except as provided herein. Notwithstanding, the Employer may have specialized sanitation work, such as cleaning of ceiling tiles, grease traps, drains, walls, etc., performed by personnel outside the bargaining unit.

Bargaining Note: Bakery Clerks are not permitted to work in the Meat and Seafood/Butcher Block.

Section 2 A. Bargaining unit employees shall perform the work of cutting or preparation of meats that are cut, processed or prepared on the Employer's premises for immediate consumption.

All fresh, cured, smoked or frozen meat, refrigerated luncheon meats, fish, poultry and rabbits shall be handled by employees within the bargaining unit. Nothing in this agreement shall be construed to prevent non-bargaining unit employees from selecting customer purchases from the sales floor throughout the entire store, including the storage and retrieval thereof.

No one other than employees covered by this agreement shall be permitted to perform the cutting or preparation of meat in the meat departments, meat markets, seafood or delicatessen departments on the employer's premises, except as set forth below:

- 1) This does not include the transaction of the checkstand.
- 2) No representative of management above the level of head meat cutter (except for owners, partners and/or officers of the Employers) shall perform the work customarily assigned to employees in the bargaining unit except:
 - (a) when a bargaining unit employee who has been scheduled to work fails

to report to work as scheduled; (b) in connection with the instruction or training of an employee or employees; or (c) in connection with the first thirty days of the opening of a new or remodeled market; or (d) in connection with simple straightening of display cases; or (e) in connection with the removal of outdated, distressed or damaged merchandise from display cases; or (f) in connection with floor maintenance work performed by a member of the retail clerks bargaining unit in connection with work related to the meat, delicatessen and seafood departments; or (g) in response to a specific customer request.

Section 2 B. Vendor Work. Direct store vendors who deliver the product categories of beverages (including juice sold in produce/deli departments), cookies and crackers, bakery, pizza, ice cream, specialty/gourmet/natural foods and chips, shall be allowed to perform all work in connection with the sale of their products directly delivered to the store. For purposes of this provision, the product categories as used herein shall be interpreted to include all products delivered by such vendor. Additionally, all vendors shall be allowed to stock and otherwise maintain any J-Hook or Clip strip program. Additionally, all vendors may perform: any work in connection with promotional and seasonal displays; facing in connection with the service of product; rotation of product; cleaning of product, shelves and racks; affixing coupons and other promotional materials to products; vendors shall be permitted to perform three (3) major resets per store, per section, per calendar year. Additionally, vendors may perform work, as necessary to accommodate the introduction of new items, or removal of discontinued items, from the set; checking of code dates and removal of out-dated product; and any work in connection with the opening of a new store and the two (2) week period hereafter, or during the two (2) weeks before and after a store remodel.

Section 2 C. A Journeyman Meat Cutter shall be on duty in each store a minimum of eight (8) hours per calendar day. Hours scheduled in the classifications of Head Meat Cutter and 1st Cutter may be used to satisfy this obligation. The Employer agrees not to layoff a Journeyman Meat cutter hired and assigned to a retail store position on or before March 5, 2005 as the direct result of this section.

Section 2 D. Retail Clerks may assist in meat department cleanup work, provided such assignments do not conflict with applicable child labor and/or health and safety regulations.

Section 3. It is understood that the cutting or preparation of meats that are cut, processed or prepared on the Employer's premises for immediate human consumption will continue to be performed in the market located on the Employer's premises, unless the Employer transfers said work, in which case the following paragraph will be applicable: If the Employer transfers the cutting and fabricating of retail cuts of fresh meats performed in its retail store or stores covered by this

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