UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

June 2004 Grand Jury

UNITED STATES OF AMERICA, Plaintiff, v. RALPHS GROCERY COMPANY, Defendant.	CR No. 05-_____ **I N D I C T M E N T** [18 U.S.C. § 371: Conspiracy To Commit Federal Offenses; 42 U.S.C. § 408(a)(7)(B): False Representation Of Social Security Number; 18 U.S.C. § 1028(a)(7): Identity Fraud; 18 U.S.C. § 1001(a)(1): Falsification And Concealment Of Material Facts Within Federal Agency Jurisdiction; 18 U.S.C. § 1956(h): Money Laundering Conspiracy; 18 U.S.C. § 1956(a)(1)(B)(i): Concealment Money Laundering; 18 U.S.C. § 1027: False Statements And Concealment Of Facts Relating to Employee Benefit Plan; 18 U.S.C. § 1001(a)(2): False Statement To Federal Agency; 18 U.S.C. § 1503: Obstruction Of Justice; 18 U.S.C. § 2: Aiding And Abetting And Causing An Act To Be Done]

The Grand Jury charges:

JBI:AHB:JKW:JDM

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INTRODUCTORY ALLEGATIONS

I. DEFENDANT RALPHS GROCERY COMPANY

1. Defendant RALPHS GROCERY COMPANY ("RALPHS") is a Delaware corporation headquartered in Compton, California, whose principal business is operating supermarkets in California under the "Ralphs Supermarkets" ("Ralphs") and "Food 4 Less Warehouse Supermarkets" ("Food 4 Less") banners.

2. During the time relevant to this Indictment:

a. RALPHS operated approximately 300 supermarkets in Southern California under the Ralphs banner.

b. RALPHS' principal competitors in Southern California were Albertson's, Inc. ("Albertsons") and Vons, a Safeway Company ("Vons"), which included Vons supermarkets operated under the "Pavilions" banner.

c. RALPHS employed approximately 19,000 grocery clerks and meat cutters (collectively, "grocery workers") to staff its Southern California stores. Almost all of these employees were members of one of seven local unions of the United Food and Commercial Workers Union, AFL-CIO-CLC (collectively, the "Unions"; individually, the "Union").

d. Each RALPHS store was managed by a Store Director, who was assisted in most instances by a Manager of Operations. Store Directors and Managers of Operations were the only non-union management personnel present in RALPHS stores on a permanent basis.

e. RALPHS stores were grouped into Zones, each of which was headed by a Zone Manager. Each Zone consisted of

between approximately 18 to 20 stores. Store Directors reported to Zone Managers.

f. Zones were grouped into three Divisions: Southern, Central, and Northern. Each Division was headed by a Group Vice-President, who was assisted by an Assistant Zone Manager. Zone Managers reported to their respective Group Vice-President.

g. The three Group Vice-Presidents reported to the Executive Vice-President for Store Operations, who, in turn, reported to the President of Ralphs.

h. Ralphs and Food 4 Less shared certain support functions, including the Human Resources, Labor Relations, Personnel, Public Relations, and Security Departments, all of which reported to the Group Vice-President for Human Resources/Labor Relations, who, in turn, reported directly to the Presidents of Ralphs and Food 4 Less.

3. RALPHS is indirectly owned and controlled by The Kroger Co. ("Kroger"), a publicly-traded Ohio corporation headquartered in Cincinnati, Ohio, which, as of January 2003, operated supermarket chains in 32 states.

4. As used in this Indictment, "RALPHS' senior management" refers to the following non-union management positions at RALPHS, among others: the President of Ralphs, the Executive Vice-President of Store Operations of Ralphs, the Group Vice-Presidents for the Southern, Central, and Northern Divisions of Ralphs; and the Group Vice-President of Human Resources/Labor Relations, the Vice-President of Human Resources, the Director of Labor Relations, and the Director of Personnel & Benefits of Ralphs and Food 4 Less.

II. APPLICABLE FEDERAL LABOR LAW PRINCIPLES

A. The National Labor Relations Act

5. The National Labor Relations Act ("NLRA") is the primary law governing relations between labor organizations (such as unions) and employers whose operations affect interstate commerce.

6. Section 7 of the NLRA (Title 29, United States Code, Section 157) creates in employees certain rights, including: the right to organize, to join, and to assist a labor organization; the right to bargain collectively with their employer through a representative of their own choosing; and the right to engage in concerted activities for purposes of collective bargaining and mutual aid and assistance, such as to strike and picket their employer.

7. The NLRA seeks to protect the exercise of these rights by deeming certain employer conduct to be an "unfair labor practice." For example:

a. Section 8(a)(1) of the NLRA (Title 29, United States Code, Section 158(a)(1)) makes it an unfair labor practice for an employer to interfere with employees in their exercise of the rights guaranteed them by Section 7 of the NLRA;

b. Section 8(a)(3) of the NLRA (Title 29, United States Code, Section 158(a)(3)) makes it an unfair labor practice for an employer to discriminate in regard to the hiring, tenure, or conditions of employment of employees to discourage their membership in a labor organization; and

c. Section 8(a)(5) of the NLRA (Title 29, United States Code, Section 158(a)(5)) makes it an unfair labor practice

for an employer to refuse to bargain collectively with the employees' representative.

B. <u>The National Labor Relations Board</u>

8. The National Labor Relations Board ("NLRB") is an agency that is part of the executive branch of the United States government. The NLRB has two primary functions:

a. To determine, by secret-ballot elections, whether employees want to be represented by a union in dealing with their employer, and, if so, by which union; and

b. To deter and remedy unfair labor practices.

9. The NLRB has primary responsibility for adjudicating charges that an employer is engaging, or has engaged, in an unfair labor practice.

10. Under the NLRA, if the NLRB determines that an employer is engaging, or has engaged, in an unfair labor practice, it may order the employer to, among other things:

a. Cease and desist from further violating the NLRA;

b. Reinstate affected employees with backpay;

c. Make contributions to an employee benefit plan that the employer was required, but failed, to make;

d. Reimburse the employees' bargaining representative for expenses incurred in the course of negotiating a new collective bargaining agreement; and/or

e. Reimburse a party for its litigation expenses, including attorneys' fees.

C. <u>Collective Bargaining</u>

11. The NLRA imposes on an employer and the employees' bargaining representative the mutual obligation to meet at

reasonable times and confer in good faith with respect to the negotiation of a written agreement regarding the wages, hours, and other terms and conditions of employment of represented employees. Such an agreement is known as a "collective bargaining agreement" ("CBA"), and the employees covered by such an agreement are referred to as "bargaining unit members."

12. Unions may bargain together on behalf of their respective memberships in a "multi-union bargaining unit." Employers may likewise bargain together in a "multi-employer bargaining unit." Employers in a multi-employer bargaining unit may, within certain limits, coordinate their activities for purposes of responding to a labor action or the threat of one.

13. During negotiations to produce a new CBA, and as part of its obligation to bargain in good faith, an employer may not (with limited exceptions) unilaterally change the terms and conditions of employment as specified in an expired CBA, unless or until an "impasse" in negotiations is declared. Before an impasse in negotiations is declared, such unilateral changes may constitute an unfair labor practice in violation of Section 8(a)(5) of the NLRA.

14. As further part of its obligation to bargain in good faith, an employer may neither disregard a union as the authorized bargaining representative of its members nor negotiate directly with those members regarding wages, hours, and other terms and conditions of employment. Such "direct dealing" may constitute an unfair labor practice in violation of Section 8(a)(1) of the NLRA.

D. **Lockouts**

15. A lockout is the withholding of employment by an employer from its employees, usually for the purpose of creating and maintaining economic pressure on the union and its membership to accept the employer's lawful bargaining position. A lockout, if conducted properly, is a lawful bargaining tactic that may serve as the employer's response to a threatened or actual strike.

16. An employer may continue to operate its business during a lockout by hiring temporary replacement workers who are not union members. An employer generally may not retain or rehire bargaining unit members to work as temporary replacement workers. Retaining or rehiring bargaining unit members as temporary replacement workers may constitute an unfair labor practice in violation of Sections 8(a)(1) and (a)(3) of the NLRA.

17. A "selective" lockout, also known as a "partial" lockout, occurs when an employer retains or rehires only some of the bargaining unit members it has locked out.

18. Generally, an employer may not selectively lock out bargaining unit members, unless the employer has a demonstrable, legitimate, and substantial business justification for doing so. Engaging in an improper selective lockout may constitute an unfair labor practice in violation of Sections 8(a)(1), (a)(3), and (a)(5) of the NLRA.

19. An employer that declares a total lockout of all or a defined group of bargaining unit members may not act inconsistently with that declaration and selectively retain or rehire only some of the otherwise locked-out bargaining unit

members. Such inconsistent conduct may constitute an unfair labor practice in violation of Sections 8(a)(1) and (a)(3) of the NLRA.

20. An employer that selectively retains or rehires only some members of a locked-out bargaining unit during negotiations toward a new CBA (even if such selective retention or rehiring is otherwise proper) must adhere to most of the terms and conditions of the expired CBA. Unilaterally changing the terms and conditions of employment of such retained or rehired bargaining unit members may constitute an unfair labor practice in violation of Sections 8(a)(1), (a)(3), and (a)(5) of the NLRA.

E. <u>Union Access To Relevant Information</u>

21. As part of its obligation to bargain in good faith, an employer generally has a duty to give a union requested information, to the extent the information is "relevant" to the union's performance of its duties as bargaining representative. To be relevant, requested information need only:

a. Have some bearing upon an issue that has arisen between the union and the employer; and

b. Be of probable use to the union in carrying out its duties as bargaining representative.

22. An employer may not refuse outright to comply with what it considers to be an ambiguous or overbroad union request for information. Rather, the employer must seek clarification from the union, or comply with the union's request to the extent the request seeks relevant information.

23. An employer's unjustified refusal to produce relevant information requested by a union may constitute an unfair labor

practice in violation of Section 8(a)(5) of the NLRA.

III. PRE-STRIKE NEGOTIATIONS BETWEEN RALPHS, ALBERTSONS, VONS, AND THE UNIONS TOWARD A NEW COLLECTIVE BARGAINING AGREEMENT

24. On or about October 5, 2003, a collective bargaining agreement (the "Old CBA") between, on the one hand, RALPHS, Albertsons, Vons, and Stater Brothers Markets (collectively, the "Food Employers"), and, on the other hand, the Unions, was due to expire.

25. The Old CBA governed the terms and conditions of employment for grocery clerks, meat cutters, and pharmacists employed by the Food Employers, including: hourly wage rates for different classifications of employees; premium pay for overtime hours and hours worked on holidays; minimum hours for part-time and full-time employees; seniority rules; vacation pay; transfers between stores and geographic areas; layoffs and reinstatement following a layoff; and discharge for cause.

26. During the Summer of 2003, RALPHS, Albertsons, Vons, and the Unions began negotiations toward a new collective bargaining agreement. Although a party to the Old CBA, Stater Brothers Markets was not involved in these negotiations because it had entered into a so-called "me too" agreement with the Unions, by which Stater Brothers Markets agreed to be bound by the terms of any new CBA negotiated between RALPHS, Albertsons, and Vons, and the Unions, and, in return, the Unions agreed not to strike, picket, or take any other labor action against Stater Brothers Markets in the event of a labor dispute.

IV. THE SECRET MUTUAL STRIKE ASSISTANCE AGREEMENTS

27. On or about September 5, 2003, RALPHS, Albertsons, and Vons (collectively, the "Three Employers") entered into two virtually identical "Mutual Strike Assistance Agreements" (collectively, the "MSAA"). The MSAA was intended to be, and was, kept secret from the Unions.

28. The MSAA provided for close coordination and communications between the Three Employers in negotiating with the Unions and in responding to a strike against one of the Three Employers. The MSAA provided, among other things, that:

a. "In the event an Employer signatory to this Agreement is struck by the Unions . . . and other Employers are not struck, the signatory Employers shall, within 48 hours, lock out all employees represented by the Unions";

b. "If the Employers unanimously agree, and only in conformity with federal law, they may implement a partial lockout . . ."; and

c. "[T]he existence of this Agreement is to remain confidential at all times and under no circumstances to be disclosed to the Union, except as required by law or legal processes."

29. The MSAA also provided "a mechanism for sharing certain costs of a strike or lockout among the Employers." The amount of any cost-sharing payments to be made by any of the Three Employers was to be calculated by a public accounting firm, selected by the Three Employers, pursuant to a formula specified in the MSAA. The formula adjusted revenue among the Three Employers by comparing the revenue of each of the Three Employers

during the eight weeks immediately preceding a strike with their respective revenue during and shortly after the strike.

30. Under the MSAA, if the Unions struck one of the Three Employers, the other two were obligated to lock out their employees. To ensure that an employer did not hire striking or locked-out employees of another employer as temporary replacement workers, the Three Employers agreed to exchange identifying information regarding their respective grocery workers, so that each employer would be able to determine whether or not an applicant for a temporary replacement position was actually a union member employed by one of the other employers.

V. THE JOINT EMPLOYER-UNION ADMINISTERED BENEFIT AND PENSION FUNDS

31. The Old CBA required the Food Employers to make monthly contributions to two joint employer-union administered employee benefit funds (collectively, the "Funds"):

a. The United Food and Commercial Workers Unions and Food Employers Benefit Fund (the "Benefit Fund"), which pays health-related benefits on behalf of eligible bargaining unit members and their spouses and dependents, as well as vacation benefits and certain supplemental benefits; and

b. The Southern California United Food and Commercial Workers Unions and Food Employers Joint Pension Trust Funds (the "Pension Fund"), which pays pension benefits to eligible retired bargaining unit members.

32. At all times relevant to this Indictment, the Funds were jointly administered by the Food Employers and the Unions as follows:

a. Each Fund was administered by a Board of Trustees (the "Board");

b. Each Food Employer and each Union appointed one trustee and one alternate trustee to the Board (collectively, the "Trustees");

c. The Food Employer-appointed trustees collectively could cast one vote, and the Union-appointed trustees collectively could cast one vote;

d. If there was a deadlock between the Food Employer trustees and the Union trustees, the deadlock would be broken by a neutral arbitrator; and

e. The Trustees delegated day-to-day administration of each Fund to an administrator (the "Administrator"), who was assisted by an assistant administrator and a staff.

33. During most of the time relevant to this Indictment, RALPHS' Director of Labor Relations served as its appointed trustee ("RALPHS' Trustee"), and its Group Vice-President for Human Resources/Labor Relations served as its appointed alternate trustee ("RALPHS' Alternate Trustee").

34. The Old CBA provided that "[p]ayment of contributions by the Employer required to be made to [the Funds] . . . shall be made on or before the twentieth (20th) day of each month based upon hours worked exclusive of overtime hours during the preceding calendar month by each employee covered by this collective bargaining Agreement." During the time relevant to this Indictment, the amounts of each Food Employer's monthly contributions to the Funds was determined, in part, by applying contribution rates to the number of hours worked by bargaining

unit members for that employer.

35. The Old CBA provided that a Food Employer's monthly contributions "shall be accompanied by a list of the names of the employees for whom such contribution is made, showing the number of hours worked, exclusive of overtime hours, by each such employee during the preceding month."

36. In accordance with this provision, each month RALPHS submitted 57 completed "Food Employer Report Forms" to the Administrator. Each completed Food Employer Report Form was accompanied by a computer print-out, which included the following information for each employee listed: name, social security number, date of birth, date of hire, store location, and number of straight-time and total hours worked.

37. For each completed Food Employer Report Form, the RALPHS Benefits Administrator had to sign under penalty of perjury an "Employer Certification," which confirmed, among other things, that "[t]his report . . . certifies that all persons working as employees in the bargaining unit covered by the [Old CBA] and all hours worked . . . during the period reported are included."

38. References in this Indictment to "Remittance Reports" are to the combined: (a) completed and certified Food Employer Report Forms; and (b) their accompanying computer print-outs.

VI. THE STRIKE/LOCKOUT

39. On or about October 5, 2003, the Old CBA expired without the Three Employers and the Unions having negotiated a new CBA.

40. On or about October 8, 2003, the membership of the Unions voted overwhelmingly to reject the new CBA being proposed by the Three Employers, and authorized the Unions to call a strike if necessary.

41. On or about October 11, 2003, the Unions struck Vons and began picketing Vons stores.

42. On or about October 11, 2003, RALPHS' Director of Labor Relations sent letters to the Presidents of all seven Unions, "[t]o advise you that effective 6:00 a.m. on October 12, 2003 Ralphs Supermarkets will be locking out bargaining unit members, with the exception of pharmacists, who will be permitted to continue working for public health and safety reasons. . . . Bargaining unit employees will be allowed to return to work when the strike against Vons is concluded."

43. On or about October 12, 2003, RALPHS and Albertsons, in accordance with the terms of the secret MSAA, locked out all of their grocery clerks and meat cutters (but not pharmacists) who were members of the seven Unions. The Unions thereafter began picketing RALPHS and Albertsons stores.

44. RALPHS, Albertsons, and Vons all continued to operate their stores during the strike/lockout using temporary replacement workers, as well as non-union management and other personnel brought in temporarily from other divisions.

45. On or about October 31, 2003, the Unions stopped picketing RALPHS stores, which resulted in a substantial increase in business at most RALPHS stores. Because RALPHS' senior management was not expecting the Unions to stop picketing, RALPHS was ill-prepared for the increase in business at these stores.

46. During the lockout (especially after the Unions removed the picket lines from RALPHS stores), RALPHS needed several hundred well-trained, experienced, and reliable grocery workers who could: (a) operate its stores by competently and efficiently performing necessary functions, such as receiving, bookkeeping, price integrity, stocking, rotating and displaying produce, and cutting and displaying meat; and (b) train and supervise temporary replacement workers to perform these functions.

47. The Three Employers and the Unions continued to negotiate during the strike/lockout. Although negotiating sessions were held only intermittently, an impasse in negotiations was never declared by either side.

48. On or about February 26, 2004, the Three Employers and the Unions entered into a "Labor Dispute Settlement Agreement." On or about February 28 and 29, 2004, the membership of the Unions voted to ratify the new CBA proposed by the Three Employers (the "New CBA"). On or about March 1, 2004, striking Vons and locked-out RALPHS and Albertsons employees began returning to work.

49. In the New CBA, RALPHS achieved all of its primary bargaining objectives.

50. In or about April 2005, Kroger announced publicly that RALPHS had made payments to Albertsons and Safeway totaling approximately $147 million pursuant to the revenue-sharing provisions of the MSAA. These payments were the result of the substantial increase in revenue at RALPHS stores after the Unions had stopped picketing them.

51. The Southern California grocery workers labor action (the "labor action") affected 65,000 to 70,000 grocery workers and lasted approximately four and one-half months, making it the largest and longest labor dispute involving the grocery industry in United States history.

VII. OVERVIEW OF RALPHS' CRIMINAL CONDUCT

52. During the lockout, RALPHS engaged in a company-wide course of criminal conduct involving the hiring of locked-out employees under false names, social security numbers, and documentation, which was intended to, and did, undermine the labor action. As described further below, as part of this course of criminal conduct:

a. RALPHS selectively recruited locked-out employees to secretly return to work as temporary replacement workers under false identities;

b. RALPHS covertly hired and employed hundreds of locked-out employees to work during the lockout under:
(i) names and social security numbers of other people; or
(ii) fictitious or altered names and social security numbers;

c. RALPHS adopted and followed a corporate policy that, as applied, permitted, encouraged, condoned, and deliberately ignored the hiring of locked-out employees under false names and social security numbers;

d. RALPHS Store Directors falsely completed government verification of identity and eligibility to work forms (known as INS Forms I-9) for locked-out employees hired under false identities, falsely attesting in these forms that they had personally examined genuine identification documents presented by

such employees;

e. RALPHS caused locked-out employees who agreed to return to work during the lockout to falsely complete government tax withholding allowance certificates (known as IRS Forms W-4) using false names and social security numbers;

f. RALPHS generated thousands of false hiring and employment records for locked-out employees who were rehired under false names and social security numbers to work during the lockout;

g. RALPHS issued hundreds of weekly payroll checks to locked-out employees in the false names they were using, and then allowed these employees to cash the checks at RALPHS stores;

h. RALPHS affirmatively acted to conceal its hiring of locked-out employees from the Unions by, among other things, assigning locked-out employees to work at stores far from the stores at which they regularly worked, moving locked-out employees to new stores when they were seen working by Union members, and refusing and failing to give the Unions requested and relevant information that would have revealed that RALPHS was selectively rehiring locked-out employees;

i. RALPHS issued hundreds of false IRS Forms W-2 to locked-out employees who had worked under false names and social security numbers, and submitted copies of these false forms to the Social Security Administration ("SSA"), which thereafter furnished them to the Internal Revenue Service ("IRS");

j. RALPHS submitted to the Funds dozens of false Remittance Reports, which omitted thousands of hours worked at RALPHS stores during the lockout by secretly rehired locked-out

and striking employees;

k. RALPHS caused its Benefits Administrator to falsely certify the accuracy of false Remittance Reports submitted to the Administrator of the Funds;

l. RALPHS falsified thousands of documents and electronic records it was required by law to maintain as necessary to the administration of the Funds;

m. RALPHS concealed, and caused its Trustee and Alternate Trustee to conceal, information from the other Trustees and from the Administrator of the Funds that RALPHS was legally required to disclose; and

n. RALPHS caused its Trustee and Alternate Trustee to violate their fiduciary duties of loyalty, honesty, and candor to the Funds, the other Trustees, and the Administrator of the Funds.

53. When, during the lockout, the NLRB began investigating allegations that RALPHS was secretly rehiring locked-out employees under false names and social security numbers, RALPHS made materially false statements to the NLRB to defeat the Unions' unfair labor practice charges that RALPHS was engaged in an illegal selective lockout.

54. Late in the labor action, when federal law enforcement agencies began to investigate RALPHS' secret hiring of locked-out employees under false names and social security numbers, RALPHS' senior management first attempted to falsely minimize the extent of the company's illegal conduct, and then attempted to shift responsibility for that conduct to lower levels of management, falsely blaming Store Directors and others for not complying with

RALPHS' purported policy against the hiring of locked-out and striking employees during the lockout.

55. When a federal grand jury began to investigate RALPHS' secret hiring of locked-out employees under false names and social security numbers, RALPHS sought to obstruct and impede the grand jury's investigation by, among other things, concealing, withholding, and delaying the production of documents responsive to grand jury subpoenas.

56. RALPHS' covert hiring and employment of locked-out employees under false names, social security numbers, and documentation undermined the labor action in the following ways, among others:

a. For locked-out employees who wanted to work during the lockout, effectively conditioning their ability to do so on their joining with RALPHS in an illegal conspiracy whose objects included defeating the labor action, deceiving their Unions, and committing violations of federal and state laws, including criminal laws;

b. Depriving the Unions of relevant information to which they were entitled regarding matters crucial to their negotiating positions and strategy;

c. Undermining union solidarity and morale;

d. Prolonging the labor dispute and thereby draining the Unions of their financial resources; and

e. Shielding RALPHS from the greater economic harm that a lawful and complete lockout of grocery workers would have caused it.

57. Furthermore, by concealing from the Unions and the NLRB material information concerning its hiring of locked-out employees, RALPHS avoided a possible finding by the NLRB that it had engaged in an illegal lockout, a finding that RALPHS internally estimated could cost it $50 million to $100 million or more.

COUNT ONE

[18 U.S.C. § 371]

[Conspiracy To Commit Federal Offenses]

58. The Grand Jury hereby repeats and realleges paragraphs 1 through 51 of this Indictment.

I. THE OBJECTS OF THE CONSPIRACY

59. Beginning on a date unknown to the Grand Jury but as early as in or about June 2003, and continuing until the date of this Indictment, within the Central District of California and elsewhere, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, together with others known and unknown to the Grand Jury, knowingly conspired, combined, and agreed to commit the following offenses against the United States:

a. Knowingly, with intent to deceive, and for various purposes relating to the labor action (as further described in paragraph 102 below), to cause locked-out employees to falsely represent social security numbers to be the social security numbers assigned to them by SSA, when, in fact, those social security numbers had not been assigned to them by SSA, in violation of Title 42, United States Code, Section 408(a)(7)(B) and Title 18, United States Code, Section 2;

b. Knowingly, and with intent to commit and to aid and abet unlawful activity constituting violations of Federal law (as described further in paragraphs 98 and 99 below), to cause locked-out employees to transfer and use, without lawful authority, in and affecting interstate commerce, means of identification of other persons, in violation of Title 18,

United States Code, Sections 1028(a)(7) and 2; and

c. Knowingly and willfully to falsify, conceal, and cover up, and cause others to falsify, conceal, and cover up, by trick, scheme, and device, material facts within the jurisdiction of SSA and IRS, agencies of the executive branch of the United States government, in violation of Title 18, United States Code, Sections 1001(a)(1) and 2.

II. THE MANNER AND MEANS OF THE CONSPIRACY

60. The objects of the conspiracy were achieved in the manner and by the means described below.

A. RALPHS' Corporate Policy Regarding The Hiring Of Locked-Out Employees

1. Background: RALPHS' Prior Policy And The Policies Of Albertsons and Vons

61. In or about the Summer of 2002, RALPHS was preparing for a possible labor action by employees who were members of the International Brotherhood of Teamsters Union ("Teamsters"). As part of its preparation, in or about August 2002, RALPHS distributed a confidential strike manual to its non-union management personnel that set forth the procedures and policies to be followed in the event of such a labor action. With respect to the hiring of locked-out employees, the strike manual emphasized: "Locked out members cannot be allowed to work, even if they wish to do so." (underline in original).

62. In or about the Summer of 2003, Albertsons and Vons were preparing for a possible labor action by the Unions.

a. As part of its preparation, in or about August or September 2003, Albertsons distributed a confidential strike manual to its non-union management personnel, which emphasized,

among other things, that "in the event of a lockout, Albertson's cannot permit <u>any</u> bargaining associate to work even if she is willing to work and/or cross the picket line, obtain financial case status, or resign from the Union." (underline in original).

b. As part of its preparation, in or about September 2003, Vons instructed its district managers that:

i. The answer to the question "whether a store manager may use an existing retail clerk from another area during a labor dispute" is "an emphatic NO" (capitalization in orginal);

ii. "Discipline may be considered for anyone hiring an existing employee";

iii. "You need to make sure your managers are aware that not only can they not use our employees, they may not hire anyone who works from [sic] Albertson's or Ralphs"; and

iv. **"Under no circumstances may you hire any existing Ralphs or Albertsons employees as strike help in your store. NO EXCEPTIONS WILL BE ALLOWED. This is your official notification regarding this directive. Violation of this directive will result in disciplinary [sic] up to and including discharge."** (bold and capitalization in original).

2. <u>The RALPHS "Not Knowingly Hire" Policy</u>

63. In or about the Summer of 2003, RALPHS, like Albertsons and Vons, began preparing for a possible labor action by the Unions.

64. As part of its preparation, in or about September 2003, RALPHS distributed a confidential strike manual to its non-union management personnel that set forth the procedures and policies to be followed in the event of such a labor action.

While nothing prevented RALPHS from adopting a policy that absolutely and unequivocally prohibited the hiring of locked-out and striking employees in the event of a lockout (as Albertsons and Vons had done and as RALPHS itself had done in 2002 in anticipation of the Teamsters labor action), RALPHS instead adopted the following policy:

> Under no circumstances should [Store Directors] ***knowingly hire*** members from the striking bargaining unit. This would include striking union members employed by competitors involved in the labor dispute. In order to leverage our bargaining position, we must enforce this policy. (bold and italics added).

65. This policy came to be known within RALPHS as the "not knowingly hire" policy. On its face, this policy was different from the Albertsons and Vons policies and RALPHS' earlier policy, as it did not absolutely and unequivocally prohibit the hiring of locked-out and striking employees in all circumstances. Instead, it could be, and was, applied to allow Store Directors to hire locked-out and striking employees if they could plausibly deny knowing that applicants for temporary replacement positions were union members.

66. In fact, Zone Managers and Store Directors came to understand the "not knowingly hire" policy to be tacit approval, if not encouragement, by RALPHS' senior management to hire locked-out and striking employees as temporary replacement workers. This understanding resulted from a number of facts and circumstances, including the following:

a. As RALPHS' senior management knew, in past labor actions involving grocery workers (including a strike by grocery

clerks in 1978 and a lockout of meat cutters in 1985), Store Directors had rehired locked-out employees under false identities. As a result, Store Directors could again be expected to rehire locked-out employees under false identities unless RALPHS adopted and enforced an absolute and unequivocal policy prohibiting and penalizing such conduct.

b. Unlike in most cases involving new and important corporate policies, RALPHS' senior management did not require Store Directors to execute a written acknowledgment that they had read the "not knowingly hire" policy, understood and would comply with it, and knew that they would be subject to disciplinary action, up to and including termination, if caught violating it.

c. RALPHS' senior management considered, but decided against, specifying whether or what disciplinary action would be taken against Store Directors caught violating the "not knowingly hire" policy.

d. In explaining the "not knowingly hire" policy to Zone Managers, RALPHS' senior management emphasized the word "knowingly," which resulted in Zone Managers emphasizing the word "knowingly" when explaining the policy to Store Directors.

e. Leading up to and during the lockout, RALPHS' senior management made statements and comments to Zone Managers and Store Directors that tended to confirm that Store Directors were permitted, if not expected, to hire locked-out employees as necessary to help operate their stores.

f. When members of RALPHS' senior management visited stores during the lockout and recognized locked-out employees working, they did not instruct the Store Directors to immediately

terminate these employees, nor did they take any action against the Store Directors for having hired such employees in violation of the "not knowingly hire" policy.

g. As RALPHS' senior management knew and understood (especially after the Unions stopped picketing RALPHS stores), Store Directors could not operate their stores in the manner demanded by RALPHS' senior management without a cadre of well-trained and experienced grocery workers. As RALPHS' senior management also knew and understood, however, the only large and available pool of such workers was locked-out and striking employees.

h. Between the beginning of the lockout on October 12, 2003, and early January 2004 (when RALPHS' hiring of locked-out employees under false names and social security numbers was first reported in the press), RALPHS' senior management made only minimal and disingenuous efforts to monitor compliance with and enforce the "not knowingly hire" policy. For example:

i. RALPHS conducted only one search during this period of the databases containing the identifying information for locked-out Albertsons and striking Vons employees to determine if any such employees had been hired by RALPHS as temporary replacement workers;

ii. RALPHS conducted only a few sporadic searches during this period of its own database to determine if it had hired any of its own locked-out employees as temporary replacement workers; and

iii. RALPHS' senior management ignored, or failed to diligently investigate, reports that Store Directors were hiring locked-out employees under false names and social security numbers.

B. RALPHS' Hiring Of Temporary Replacement Workers

67. Leading up to and during the lockout, RALPHS Store Directors were responsible for recruiting, hiring, and training temporary replacement workers.

68. For a Store Director to hire a temporary replacement worker, the following documents had to be completed by the applicant and the Store Director (or by delegation the Manager of Operations):

a. Temporary Work Employment Application: This form was required to be completed by the applicant. It required the applicant to state, among other things, his or her name, social security number, current and/or latest employment, and whether he or she had ever previously worked for RALPHS. It also required the applicant to certify that "the information and answers given by me in this Employment Application are true and correct to the best of my knowledge[.]"

b. Payroll Authority - Temporary Employee: This form was typically completed by the Store Director and signed by the applicant. It required, among other things, the applicant's name and social security number. It also asked whether the applicant had previously worked for RALPHS.

c. INS Form I-9, Employment Eligibility Verification: RALPHS was required by law to complete this form for all new hires, including temporary replacement workers.

i. Section 1 of the form had to be completed by the applicant. It required the applicant to list, among other things, his or her name, date of birth, social security number, and address. It also required the applicant to attest that he or she was "aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with completion of this form."

ii. Section 2 of the form had to be completed by the Store Director. It required the Store Director to verify the applicant's identity and eligibility to work by personally examining certain acceptable forms of identification documents, and to record information about each document examined. It also required the Store Director to sign a "Certification," by which the Store Director "attest[ed], under penalty of perjury, that [he or she had] examined the [identification] document(s) presented by the above-named employee, [and] that the above-listed document(s) appear to be genuine and to relate to the employee named[.]"

d. IRS Form W-4, Employee's Withholding Allowance Certificate: Each applicant was required by law to complete this form and to sign it under penalty of perjury. It required the applicant to list, among other things, his or her name, social security number, and address, as well as the total number of allowances claimed for federal income tax purposes.

69. Before a temporary replacement worker was formally hired and entered into the RALPHS electronic timekeeping and computerized payroll systems, the Store Director (or by delegation the Manager of Operations) had to enter certain

information into the RALPHS Human Resources Information System ("HRIS"). This information included: the applicant's name, social security number, date of birth, and home address; whether the applicant was a union member; and whether the applicant was eligible to receive health, pension, and other welfare benefits.

70. If an applicant was an existing RALPHS employee, HRIS would so indicate when the Store Director entered the applicant's social security number and would not permit the Store Director to complete the hiring process.

C. RALPHS' Recruitment Of Locked-Out Employees To Work During the Lockout

71. Leading up to and during the lockout, a number of RALPHS Zone Managers asked their Store Directors to identify grocery workers who might be willing to work during a strike or lockout. A number of Zone Managers also attempted to assemble "roving teams" of grocery workers who could assist at different stores within a Zone in the event of a strike or lockout. A number of Zone Managers also discussed among themselves "swapping" grocery workers who might be willing to work during a strike or lockout.

72. In meetings with Store Directors before the lockout, a number of Zone Managers suggested that Store Directors could hire locked-out employees as temporary replacement workers, as long as the Store Directors could plausibly deny knowing that the applicants were locked-out employees.

73. Store Directors most frequently targeted "key persons" (that is, highly experienced grocery workers entrusted with store-level management responsibility) when recruiting locked-out

employees to return to work. Store Directors recruited key persons because they: (a) were experienced, skilled, and trusted employees; (b) tended to be loyal toward RALPHS due to their long tenure with the company; and (c) might want to impress RALPHS' management with their loyalty to enhance their chances of obtaining a promotion to a management position.

74. In some instances, Store Directors induced and persuaded locked-out employees to return to work by suggesting or implying that by working during the lockout they would be in a better position to obtain a promotion or other favorable treatment after the lockout ended.

75. Locked-out employees who wanted to return to work were told by Store Directors, or understood from word of mouth, that they could only work during the lockout if they agreed to use a false name and social security number.

D. RALPHS' Hiring Of Locked-Out Employees Under False Names, Social Security Numbers, And Documentation

76. During the lockout, RALPHS Store Directors knowingly hired hundreds of locked-out employees under false names, social security numbers, and documentation. These locked-out employees were hired in the following ways, among others:

a. Some locked-out employees were hired and worked as temporary replacement workers at the stores at which they regularly worked (their "home stores").

b. Some locked-out employees were hired as temporary replacement workers at their home stores, and then assigned to other stores at which they worked as temporary replacement workers (sometimes as part of a swap of locked-out employees).

c. Some locked-out employees were referred by the Store Directors at their home stores to other stores at which they were hired and worked as temporary replacement workers (also sometimes as part of a swap of locked-out employees).

d. Some locked-out employees approached Store Directors at stores other than their home stores, on their own initiative, and were hired and worked as temporary replacement workers at the other stores.

77. Locked-out employees who agreed to work during the lockout had to work under false names and social security numbers, or else they could not be entered into HRIS. Locked-out employees who worked during the lockout chose, or were assigned, false names and social security numbers in the following ways, among others:

a. Some locked-out employees provided Store Directors with, and worked under, the names and social security numbers of family members, such as a spouse, child, brother, or sister.

b. Some locked-out employees provided Store Directors with, and worked under, entirely fictitious names and social security numbers.

c. Some locked-out employees provided Store Directors with, and worked under, altered versions of their names and social security numbers.

d. Some female locked-out employees provided Store Directors with, and worked under, their maiden names and false social security numbers.

e. Some Store Directors, on their own initiative, transposed the last two digits or otherwise altered locked-out

employees' social security numbers and slightly changed employees' names in HRIS, and then assigned the employees the false names and social security numbers.

78. In hiring locked-out employees to work during the lockout, Store Directors (or in some cases Managers of Operations):

a. Falsely completed Payroll Authorities by listing false names and social security numbers for applicants;

b. Caused applicants to falsely complete Section 1 of the INS Forms I-9 by causing them to list false names, social security numbers, dates of birth, and addresses;

c. Falsely certified under penalty of perjury on Section 2 of the INS Forms I-9 that they had personally examined genuine identification documents presented by applicants who were locked-out employees;

d. In some instances, altogether failed to complete INS Forms I-9 for applicants who were locked-out employees, in violation of RALPHS' legal obligation to complete this form whenever it hired any new worker;

e. Caused applicants to falsely complete Temporary Work Employment Applications by causing them to list false names, social security numbers, dates of birth, addresses, and employment histories; and

f. Caused applicants to falsely complete IRS Forms W-4 by causing them to list false names, social security numbers, and addresses, and to sign these false forms under penalty of perjury.

79. In hiring locked-out employees under false names and social security numbers, Store Directors (or in some cases Managers of Operations) entered false information into HRIS including, among other things, false names, social security numbers, dates of birth, and addresses, as well as false information that applicants were not bargaining unit members and were not eligible to receive employee benefits.

80. Because of the configuration of RALPHS' computerized hiring system, RALPHS' senior management knew and understood that locked-out employees could not be hired as temporary replacement workers unless they were assigned and agreed to work under false names and social security numbers.

E. RALPHS' Issuance Of Payroll Checks In False Names To Locked-Out Employees Who Worked Under False Names And Social Security Numbers

81. Temporary replacement workers were paid by check on a weekly basis, for work performed during the preceding week.

82. During the lockout, RALPHS issued hundreds of weekly paychecks to locked-out employees who were working under false names and social security numbers. To conceal and disguise that these temporary replacement workers were actually bargaining unit members, RALPHS issued these paychecks in the false names under which the locked-out employees were working.

83. Because these checks had been issued in false names, most locked-out employees could not cash them at a bank or other reputable check-cashing institution. To further conceal and disguise that locked-out employees were working under false names and social security numbers, RALPHS, knowing that the checks had

been issued in false names, permitted locked-out employees to cash them at RALPHS stores.

F. RALPHS' Deliberate Actions To Conceal Its Hiring Of Locked-Out Employees From The Unions

84. During the lockout, RALPHS took the following deliberate actions, among others, to conceal its hiring of locked-out employees from the Unions:

a. RALPHS required that locked-out employees who returned to work during the lockout adopt and use false names when working in their assigned stores, including wearing name badges displaying their false names.

b. RALPHS assigned locked-out employees to work at stores other than their home stores, including in many instances stores that were considerable distances from their home stores.

c. Store Directors assigned locked-out employees to perform tasks that kept them away from the front of the store, or to work shifts when the stores were closed to the public.

d. When locked-out employees working at RALPHS stores were recognized by other union members, they were transferred to other RALPHS stores, and, in some instances, assigned new false names and social security numbers.

e. The President of Ralphs and other members of RALPHS' senior management made statements to the public and to the Unions and their membership that created the false and misleading impression that RALPHS intended to, and had, locked out all grocery workers covered by the Old CBA.

f. Zone Managers used code words, such as "experienced workers," "experienced help," "skilled workers," and

"skilled help," when communicating with members of RALPHS' senior management about the recruitment and hiring of locked-out employees.

g. RALPHS refused and failed to comply with Union requests for relevant information, made in October 2003 and again in December 2003, that would have revealed that it was hiring locked-out and striking employees as temporary replacement workers.

h. RALPHS falsified its hiring and employment records (as described in paragraphs 78 and 79 above) to conceal and disguise its hiring of locked-out employees in the event the Unions were able to obtain access to those records.

i. RALPHS omitted from Remittance Reports, which were submitted to the Administrator of the Funds and available to the Unions, thousands of hours worked by locked-out employees during the lockout (as described further in paragraphs 129 and 130 below).

G. RALPHS' Efforts To Cover Up The Full Extent Of Its Hiring Of Locked-Out Employees Under False Names And Social Security Numbers

85. On or about January 1, 2004, a local San Diego County newspaper reported that certain RALPHS stores in that area had rehired locked-out employees under false names and social security numbers. The newspaper article quoted RALPHS' Director of Public Relations as falsely stating that RALPHS was "not aware of that happening at any of our stores, and that certainly is not our policy." In fact, as RALPHS' senior management was well aware, Store Directors had been hiring locked-out employees under false names and social security numbers since the beginning of

the lockout, and it was RALPHS' policy to permit and encourage such hiring.

86. The newspaper article was circulated to and read by RALPHS' senior management on or about the day of its publication.

87. Immediately after the article was published, members of RALPHS' senior management directed Zone Managers, who, in turn, directed Store Directors, to begin inconspicuously terminating any temporary replacement workers known or believed to be locked-out or striking employees.

88. In terminating temporary replacement workers known or believed to be locked-out or striking employees, Store Directors listed false and fictitious reasons for the terminations.

89. On or about January 2, 2004, the Unions filed a civil lawsuit against RALPHS in Los Angeles County Superior Court, alleging that RALPHS had violated California wage and hour laws by rehiring locked-out employees under false names and social security numbers (the "State Civil Action").

90. Between on or about January 22, 2004, and on or about February 25, 2004, RALPHS, through its outside civil counsel, conducted depositions of eight Union representatives in the State Civil Action, who provided evidence that more than 50 locked-out employees had been seen by fellow union members working at RALPHS stores.

91. On or about January 26, 2004, RALPHS hired a private investigation firm, which it had used in the past, to investigate the Unions' allegations in the State Civil Action. The firm, however, was terminated after only ten days, just as it began uncovering evidence tending to implicate RALPHS' senior

management in the alleged illegal conduct.

92. On or about January 27, 2004, two of the Unions served RALPHS with discovery requests in the State Civil Action. While the State Civil Action remained pending, RALPHS refused to comply with the Unions' discovery requests.

93. Beginning in or about late-January 2004, RALPHS' senior management attempted to conceal its involvement and complicity in the hiring of locked-out employees under false names and social security numbers, and to falsely shift responsibility for such incidents to Zone Managers and Store Directors, by, among other means, falsely asserting that:

a. RALPHS' corporate policy absolutely prohibited Store Directors from hiring locked-out and striking employees during the lockout;

b. RALPHS had made extensive efforts to ensure compliance with this policy; and

c. Store Directors who had hired locked-out employees during the lockout, and Zone Managers who had permitted or encouraged such actions, were rogue managers acting in violation of RALPHS' corporate policy.

H. <u>RALPHS' Issuance And Filing Of False Tax Documents</u>

94. In or about mid-January 2004, RALPHS issued hundreds of materially false IRS Forms W-2 for 2003. These forms were false in the following ways:

a. IRS Forms W-2 issued to locked-out employees who worked during the lockout under entirely fictitious names and social security numbers: (i) falsely stated the employees' names, social security numbers, and addresses; (ii) falsely attributed

the income the employees received during the lockout to fictitious persons; and (iii) falsely applied the social security contributions withheld from such income to non-existent social security accounts of fictitious persons.

b. IRS Forms W-2 issued to locked-out employees who worked during the lockout under the names and social security numbers of other persons: (i) falsely stated the employees' names, social security numbers, and in some instances addresses; (ii) falsely reported the income the employees had received during the lockout as having been earned by other persons; and (iii) falsely applied the social security contributions withheld from such income to the social security accounts of other persons.

c. IRS Forms W-2 issued to locked-out employees in the employees' true names for work performed prior to the lockout: (i) falsely underreported the total amount of income the employees had received during 2003, by omitting the income they had received during the lockout; and (ii) falsely understated the amount of social security contributions that should have been withheld from the employees' total annual income.

95. In or about March 2004, RALPHS electronically filed copies of these false IRS Forms W-2 with SSA, for processing by SSA. In filing these false forms with SSA, an authorized RALPHS representative certified, among other things, that: "I understand that I may be subject to penalties if I submit fraudulent information," and "I am aware that any person who . . . intends to deceive the Social Security Administration as to the true

identity of an individual could be punished by a fine or imprisonment, or both."

96. As RALPHS knew and reasonably could have foreseen, in or about May 2004, SSA electronically furnished the false IRS Forms W-2 to IRS, for processing by IRS.

97. During the time relevant to this Indictment, RALPHS had an ongoing legal obligation under the Internal Revenue Code to correct any IRS Forms W-2 that it knew or later learned contained false or inaccurate information. This obligation required RALPHS to issue to employees, and file with SSA, IRS Forms W-2c containing corrected information, as soon as possible after discovery of an error. In violation of this obligation, and to conceal from SSA and IRS that it had rehired hundreds of locked-out employees under false identities and issued them false IRS Forms W-2, RALPHS failed to issue and file, and delayed issuing and filing, hundreds of IRS Forms W-2c.

I. RALPHS' Intent To Commit And To Aid And Abet Unlawful Activity Constituting Violations Of Federal Law

98. In causing locked-out employees to use other individuals' names, social security numbers, and other means of identification to work during the lockout, RALPHS intended to commit, and intended to and did aid and abet, the following unlawful activity that constituted violations of Federal law:

a. Causing locked-out employees to falsely complete IRS Forms W-4 using other individuals' names and social security numbers, and signing these false forms under penalty of perjury, in violation of Title 26, United States Code, Section 7205(a) and Title 18, United States Code, Section 1001(a)(2);

b. Issuing materially false IRS Forms W-2 to locked-out employees who worked during the lockout using other individuals' means of identification, in violation of Title 26, United States Code, Section 7204;

c. Filing these materially false IRS Forms W-2 with SSA, knowing that SSA would subsequently furnish these false forms to IRS, in violation of Title 18, United States Code, Section 1001(a)(2);

d. Concealing from SSA and IRS the true and actual amounts of income received in 2003 by locked-out employees who worked for RALPHS during the lockout using other individuals' means of identification, in violation of Title 18, United States Code, Section 1001(a)(1);

e. Failing to correct false information submitted to SSA and IRS by, among other things, failing to file, or timely file, IRS Forms W-2c with SSA, upon learning that false IRS Forms W-2 had been issued to locked-out employees who worked during the lockout using other individuals' means of identification, in violation of Title 18, United States Code, Section 1001(a)(1); and

f. Concealing from SSA and IRS the true identities of locked-out employees who worked during the lockout using other individuals' means of identification, in violation of Title 18, United States Code, Section 1001(a)(1).

99. In causing locked-out employees to use other individuals' names, social security numbers, and other means of identification to work during the lockout, RALPHS also intended to commit the following unlawful activity that constituted

violations of Federal law:

a. Conditioning the ability of locked-out employees who wanted to work during the lockout on the employees' agreement to: (i) join an illegal venture that involved violations of federal and state laws, including criminal laws; and (ii) engage in covert conduct harmful to and destructive of the labor action and their Unions, in violation of Sections 8(a)(1) and (a)(3) of the NLRA;

b. Selectively retaining or rehiring locked-out employees without a legitimate and substantial business justification, in violation of Sections 8(a)(1), (a)(3), and (a)(5) of the NLRA;

c. Declaring a complete lockout of grocery workers covered by the Old CBA, and then, contrary to and inconsistent with this declaration, secretly and selectively retaining and rehiring such locked-out grocery workers, in violation of Sections 8(a)(1) and (a)(3) of the NLRA;

d. Circumventing the Unions as the authorized bargaining representatives of locked-out employees and instead dealing directly with those employees regarding their wages, hours, and other terms and conditions of employment during the lockout, in violation of Section 8(a)(1) of the NLRA;

e. Hiring and employing locked-out employees as temporary replacement workers, in violation of Sections 8(a)(1) and (a)(3) of the NLRA; and

f. Employing locked-out employees under terms and conditions different from those set forth in the Old CBA, including terms and conditions governing wages, hours, seniority,

transfers, layoffs, reinstatement, discharge, and employer contributions to the Funds, in violation of Sections 8(a)(1), (a)(3), and (a)(5) of the NLRA.

III. OVERT ACTS

100. In furtherance of the conspiracy, and to accomplish its objects, RALPHS, by and through its officers, employees, and agents, together with others known and unknown to the Grand Jury, committed and caused others to commit the following overt acts, among others, in the Central District of California and elsewhere:

Overt Act No. 1: On or about June 12, 2003, at a meeting of the Task Force created to prepare RALPHS' confidential strike manual, Task Force members discussed, among other things:

a. What would be the penalty for Store Directors who knowingly hired locked-out or striking employees *"with 'bad' social security [numbers]"*;

b. Whether RALPHS' policy would be *"Absolutely No"* rehiring of locked-out and striking grocery workers or whether *"there [would be any] gray area"*; and

c. How well each of the Three Employers would follow an absolute policy against the rehiring of locked-out and striking grocery workers.

Overt Act No. 2: On or about June 12, 2003, a Task Force member prepared and distributed to the other Task Force members and to RALPHS' senior management a memorandum (the "June 12 memorandum") that purported to summarize the discussions at

the Task Force's meeting that day as follows:

- What will the penalty be for Store Director's [sic] who knowingly hire Ralphs, Safeway or Albertsons retail clerks/meatcutters?
- Need to confirm if the Company's position is "absolutely NO Retail Clerks/Meatcutters" or is there any gray area. (quotation marks and capitalization in original).
- *The team is concerned with how well all 3 companies are going to adhere to this* (italics in original).

In recounting these discussions, the June 12 memorandum omitted any mention of the hiring of locked-out or striking employees *"with 'bad' social security [numbers],"* although this subject had been discussed at the June 12, 2003 Task Force meeting.

Overt Act No. 3: Between on or about June 12 and on or about June 16, 2003, RALPHS' Vice-President of Human Resources directed the author of the June 12 memorandum to remove the reference to "is there any gray area" from the portion of the June 12 memorandum quoted in Overt Act No. 2 above.

Overt Act No. 4: On or about June 16, 2003, the author of the June 12 memorandum distributed to Task Force members and to RALPHS' senior management a revised version of the June 12 memorandum, which was marked "Confidential" and dated June 16, 2003 (the "June 16 memorandum"). The June 16 memorandum purported to describe the discussions regarding the hiring of locked-out and striking employees, but revised the description by omitting the "is there any gray area" language that appeared in the June 12 memorandum.

Overt Act No. .5: On or about June 16, 2003, a revised version of the June 16 memorandum was distributed to Task Force members and to RALPHS' senior management that was identical to

the original June 16 memorandum, except that it was falsely backdated to June 12, 2003.

Overt Act No. 6: In or about August and/or September 2003, RALPHS' senior management held one or more meetings, at RALPHS' corporate headquarters, attended by Zone Managers, at which:

a. Copies of the confidential strike manual containing the "not knowingly hire" policy were provided to Zone Managers for distribution to their Store Directors;

b. RALPHS' Vice-President of Human Resources explained the "not knowingly hire" policy to Zone Managers, placing particular and repeated emphasis on the word "knowingly"; and

c. RALPHS' senior management refused to change the language of the "not knowingly hire" policy to absolutely and unequivocally prohibit the hiring of locked-out employees, or adopt penalties for Store Directors who violated that policy, after a Zone Manager who was a member of the Task Force predicted that Store Directors would rehire locked-out employees as they had done in past labor actions, without a more strongly worded policy and without any specified penalties for violating that policy.

Overt Act No. 7: In or about September 2003, the Zone Manager for Zone 7 met with his Store Directors and read the "not knowingly hire" policy verbatim, using hand gestures to emphasize the word "knowingly" in the same manner as had the RALPHS Vice-President of Human Resources.

Overt Act No. 8: In or about mid-September 2003, the Zone Manager for Zone 7 instructed his Store Directors to identify RALPHS grocery workers who might be willing to work during a labor action.

Overt Act No. 9: In or about mid-September 2003, the Store Director for Store No. 34 in Laguna Niguel, acting in accordance with the instructions of the Zone Manager for Zone 7, asked his meat and seafood managers whether they would be willing to work in the event of a labor action.

Overt Act No. 10: In or about the last week of September 2003, during a pre-strike meeting attended by Store Directors and other supervisors, the director of RALPHS' meat division discussed the formation and use of roving crews of locked-out or striking meat cutters in the event of a labor action.

Overt Act No. 11: In or about late September or early October 2003, the Group Vice-President for the Southern Division directed the Zone Manager for Zone 5 to instruct his Store Directors to determine whether their grocery workers would be willing to work in the event of a labor action.

Overt Act No. 12: In or about late September or early October 2003, the Group Vice-President for the Southern Division directed the Zone Manager for Zone 5 to instruct his Store Directors to network with store managers at Vons and Albertsons for the purpose of "swapping" employees in the event of a labor action.

Overt Act No. 13: In or about late September or early October 2003, the Group Vice-President for the Southern Division

told the Zone Manager for Zone 5 that union members recruited from Vons or Albertsons to work as temporary replacement workers at RALPHS stores should falsely state in their temporary employment applications that they had previously worked at "Radio Shack," instead of at Vons or Albertsons.

Overt Act No. 14: In or about September 2003, at a pre-strike meeting, the Zone Manager for Zone 5, when asked by his Store Directors whether they could employ locked-out RALPHS employees in the event of a labor action, responded by, among other things: (a) using hand gestures to emphasize the word "knowingly" in the "not knowingly hire" policy; and (b) stating that such hiring would be permissible "as long as I don't know," or words to that effect.

Overt Act No. 15: In or about late September or early October 2003, the Zone Manager for Zone 5 instructed the Store Director for Store No. 108 in La Jolla to ask his grocery workers, particularly his key persons, whether they would be willing to work on a roving crew that would assist at various RALPHS stores in that Zone in the event of a lockout.

Overt Act No. 16: In or about late September or early October 2003, the Zone Manager for Zone 5 instructed Store Directors in that Zone to identify and refer to the Store Director for Store No. 207 in San Diego any RALPHS grocery workers who might be willing to staff roving crews being assembled by the Store Director for Store No. 207.

Overt Act No. 17: In or about September or early October 2003, at a meeting for Store Directors in Zone 4, the Zone Manager for Zone 4, when asked whether RALPHS could hire

union members from Vons and Albertsons in the event of a lockout, responded by emphasizing the word "knowingly" in the "not knowingly hire" policy.

Overt Act No. 18: In or about early October 2003, just prior to the commencement of the lockout, the Store Director for Store No. 743 in Pasadena asked one of his grocery clerks whether she would be willing to return to work in the event of a strike or lockout.

Overt Act No. 19: At a meeting in or about early October 2003, the Zone Manager for Zone 8 told his Store Directors that even though they were not supposed to hire locked-out or striking employees, if they did not know whether an applicant was a bargaining unit member or not, they should just enter the information into HRIS without asking any questions.

Overt Act No. 20: In or about early October 2003, the Group Vice-President for the Southern Division had a conversation with the Store Director of Store No. 187 in Tustin Heights, during which the Group Vice-President said, in reference to RALPHS' policy regarding the hiring of locked-out and striking employees, "Now you've been through a strike and now you know what you really need to do to staff your store," or words to that effect, which the Store Director understood to mean that if, as in prior labor actions, he had the opportunity to hire a locked-out or striking employee, he should do so.

Overt Act No. 21: On or about October 12, 2003, the Store Director for Store No. 680 in Santa Barbara hired a locked-out employee from Store No. 683 in San Marcos as a temporary replacement worker, knowing that the employee was a union member

who was using a false name and the social security number of his wife.

Overt Act No. 22: On or about October 12, 2003, the Store Director of Store No. 163 in San Juan Capistrano hired a grocery clerk referred to him by the Manager of Operations at Store No. 15 in San Clemente Hills, after the grocery clerk called the Store Director and told him that the Manager of Operations had instructed her to use her daughter's social security number, to which the Store Director replied, "fine. We aren't checking [identification]," or words to that effect.

Overt Act No. 23: Between on or about October 12, 2003, and on or about October 31, 2003, the Group Vice-President for the Southern Division told the Zone Manager for Zone 7 that the Zone Manager should recruit "experienced" workers, which the Zone Manager understood to refer to locked-out and striking employees, to improve the conditions in Zone 7 stores.

Overt Act No. 24: Between on or about October 12, 2003, and in or about January 2004, the Zone Manager for Zone 1 instructed his Store Directors that locked-out employees hired as temporary replacement workers should use false names, stating, "[r]emember, Mary can't be Mary," or words to that effect.

Overt Act No. 25: On or about October 15, 2003, the President of Ralphs sent a letter to locked-out employees falsely stating, among other things, that in response to the strike of Vons, "you and many of your co-workers were 'locked-out' as a defensive move to protect our business. Unfortunately, you should expect to be off the job away from work for many weeks." In fact, by that time, RALPHS was already engaged in selectively

rehiring locked-out employees as temporary replacement workers.

Overt Act No. 26: In or about mid-October 2003, a few days after the commencement of the lockout, the Meat Merchandiser for Zone 6 directed a locked-out meat cutter to report for work at Store No. 192 in Brea, knowing that the meat cutter was a locked-out employee.

Overt Act No. 27: In or about mid-October 2003, after the commencement of the lockout, the Assistant Zone Manager for the Southern Division, at the direction of the Group Vice-President for the Southern Division, asked the Zone Manager for Zone 5 to explore the possibility of assembling a roving price integrity team consisting of locked-out employees to assist at RALPHS stores in the Southern Division.

Overt Act No. 28: Between in or about mid-October 2003 and in or about January 2004, the wife of the Store Director of Store No. 163, who was a locked-out employee, worked at Store No. 187 in Tustin Heights as a temporary replacement worker under a false name and social security number. At the direction of the Store Director of Store No. 187, she destroyed the pay stubs she received during this period.

Overt Act No. 29: On or about October 17, 2003, the Group Vice-President for the Southern Division instructed the Zone Manager for Zone 5 to have the Store Director for Store No. 168 in Encinitas terminate a locked-out employee who was discovered by a data comparison run comparing the identities of RALPHS temporary replacement workers and locked-out Albertsons and striking Vons employees. While directing the termination, the Group Vice-President for the Southern Division assured the

Zone Manager that the data comparison run was "a one-time purge, if you know what I mean," or words to that effect, which the Zone Manager understood to mean that his Store Directors could now hire locked-out and striking employees.

Overt Act No. 30: On or about October 19, 2003, the President of Ralphs sent a letter to locked-out employees falsely stating, among other things, that "your union leaders agreed that . . . if they carried through with their strike against any one of the companies it would be considered a strike against all three and the employees they represent would be locked out by the non-struck companies. Your job at Ralphs is available to return to now if your union leaders stop the strike against Ralphs." In fact, certain locked-out employees could return to work at RALPHS even during the lockout, as long as they agreed to work under false identities and conceal from their Unions the fact that they had returned to work.

Overt Act No. 31: On or about October 21, 2003, via a "Store Operations Daily Strike Update" e-mail, the Zone Manager for Zone 7 informed the Group Vice-President for the Southern Division and RALPHS' senior management that "[e]ach day, various [store] locations continue to receive members with 'experience,'" by which the Zone Manager meant locked-out and striking employees.

Overt Act No. 32: On or about October 22, 2003, via a "Store Operations Daily Strike Update" e-mail, the Zone Manager for Zone 7 informed the Group Vice-President for the Southern Division and RALPHS' senior management that "[m]ore and more 'skilled' applicants," by which the Zone Manager meant locked-out

or striking employees, were "approaching Store Directors looking for work."

Overt Act No. 33: On or about October 28, 2003, via a "Store Operations Daily Strike Update" e-mail, the Zone Manager for Zone 7 informed the Group Vice-President for the Southern Division and RALPHS' senior management that "[w]e continue to make every possible effort to exclusively recruit 'experienced help,'" by which the Zone Manager meant locked-out and striking employees, "especially in the area of meat cutters, produce clerks and anyone with food service background."

Overt Act No. 34: In or about late October 2003, the Store Director for Store No. 47 in Van Nuys asked a locked-out employee from Store No. 81 in Woodland Hills to return to work to help train temporary replacement workers at Store No. 47, telling the locked-out employee that he would have to use the name and social security number of a close friend or family member to be hired as a temporary replacement worker.

Overt Act No. 35: In or about late October 2003, the Zone Manager for Zone 6 asked the Zone Manager for Zone 5 for advice about how to hire locked-out employees as temporary replacement workers. In response, the Zone Manager for Zone 5 instructed that locked-out employees should work (a) under names and social security numbers of family members, and (b) at stores other than their home stores.

Overt Act No. 36: In or about late October 2003, the Store Director for Store No. 743 in Pasadena asked a locked-out employee from his store to return to work as a temporary replacement worker, indicating that the locked-out employee would

be "taken care of," or words to that effect, by RALPHS after the lockout if she agreed to do so.

Overt Act No. 37: In or about late October 2003, the Store Director for Store No. 743 in Pasadena instructed a locked-out employee from Store No. 743 to report to work at Store No. 210 in West Los Angeles using a false name and social security number.

Overt Act No. 38: On or about October 31, 2003, the President of Ralphs sent a letter to locked-out employees falsely stating, among other things, that "[a]s of Friday, October 31, 2003, [the] same UFCW locals that started the work stoppage against the multi-employer group announced that they were eliminating the picket lines at Ralphs. We hope the union hasn't confused and misled you again. Because of the multi-employer agreement with the union, all but Pharmacists are still locked-out." In fact, by that time, RALPHS had secretly rehired hundreds of locked-out employees as temporary replacement workers.

Overt Act No. 39: Between in or about late October 2003 and in or around mid-December 2003, the Store Director for Store No. 47 in Van Nuys cashed a weekly paycheck for a locked-out employee working as a temporary replacement worker at a different RALPHS store, telling the locked-out employee that, if the store where he was working could not protect his identity, the Store Director might arrange for the locked-out employee to be assigned to a different RALPHS store.

Overt Act No. 40: In or about early November 2003, the Group Vice-President for the Southern Division instructed the

Zone Manager for Zone 1 to contact the Zone Manager for Zone 5 about obtaining more "experienced" workers, which the Zone Manager understood to be a reference to locked-out and striking employees, to help at stores in Zone 1.

Overt Act No. 41: In or about early November 2003, while inspecting Store No. 187, the Zone Manager for Zone 8 mentioned to the Store Director that he (the Store Director) needed "experienced" workers. In response, the Store Director pointed out a locked-out employee, who was the wife of the Store Director of Store No. 163, and told the Zone Manager that she was an experienced worker. The Zone Manager replied that the Store Director needed more such employees.

Overt Act No. 42: In or about November 2003, the Group Vice-President for the Southern Division, while inspecting Store No. 163 in San Juan Capistrano, told the Store Director that he needed to "start networking with your friends in San Diego," or words to that effect, which the Store Director understood to be instructions that he should contact Store Directors in the San Diego area to see if they could refer any locked-out employees to assist at his store.

Overt Act No. 43: In or about November 2003, the Zone Manager for Zone 6 instructed a locked-out employee to use the name and social security number of another person when returning to work because the Unions were checking whether RALPHS was rehiring locked-out employees.

Overt Act No. 44: In or about November 2003, the Zone Manager for Zone 6 approved a locked-out employee from Store No. 650 in Huntington Beach, within Zone 8, returning to work at

Store No. 72 in Fullerton, within Zone 6, knowing this person to be a locked-out employee.

Overt Act No. 45: In or about November 2003, the Zone Manager for Zone 6 reassured a locked-out employee from Zone 8 that she would not lose her recent promotion if it was discovered that she had worked during the lockout because the Zone Manager for Zone 6 had exchanged locked-out employees with the Zone Manager for Zone 8.

Overt Act No. 46: In or about November 2003, the Group Vice-President for the Southern Division, in response to the Zone Manager for Zone 7's request for further clarification regarding the "not knowingly hire" policy, stated, in substance, that a temporary employment application suggesting that the applicant might be a locked-out or striking employee should be returned to the applicant as unacceptable, and that the applicant should then be offered another application to complete, in which the applicant would not reveal that he or she was a locked-out or striking employee.

Overt Act No. 47: In or about November 2003, the Store Director for Store No. 55 in La Canada contacted a locked-out employee from Store No. 705 in Pacific Palisades about working at Store No. 55 using a false name and social security number.

Overt Act No. 48: In or about November 2003, the Store Director for Store No. 55 instructed locked-out employees working at his store not to retain their pay stubs and other records that reflected their having worked under false names and social security numbers.

Overt Act No. 49: In or about November 2003, the Store Director for Store No. 55 told a locked-out employee that locked-out employees who worked during the lockout would be "taken care of," or words to that effect, by RALPHS after the lockout.

Overt Act No. 50: In or about November 2003, in a conversation with the Store Director for Store No. 759 in Westwood, the Group Vice-President for the Central Division endorsed the practice of encouraging recently hired RALPHS' employees to quit their employment at RALPHS and resign their Union memberships, so that they could be rehired as temporary replacement workers.

Overt Act No. 51: In or about November 2003, the Store Director for Store No. 630 in Altadena asked the Store Director for Store No. 759 in Westwood about the availability of experienced or locked-out employees. In response, the Store Director at Store No. 759 stated that he would ask locked-out employees from his store whether they were interested in working at Store No. 630.

Overt Act No. 52: In or about November 2003, the Store Director for Store No. 759 referred two locked-out employees from his store to work as temporary replacement workers at Store No. 630.

Overt Act No. 53: In or about November 2003, the Store Director for Store No. 759 asked the Store Director for Store No. 630 whether he had any locked-out employees whom he could refer for employment at Store No. 759. In response, the Store Director for Store No. 630 stated that he did not have any

locked-out employees whom he could refer, but suggested that the Store Director for Store No. 759 ask the Store Director for Store No. 193 in Burbank if he had any locked-out employees he could refer.

Overt Act No. 54: In or about November 2003, the Store Director for Store No. 193 referred a locked-out employee to work as a temporary replacement worker at Store No. 759.

Overt Act No. 55: In or about November 2003, the Store Director for Store No. 759 asked the Zone Manager for Zone 4 how he could be expected to reopen the seafood department at Store No. 759, as the Zone Manager had ordered, given the shortage of qualified employees. In response, the Zone Manager for Zone 4 stated, "Use your connections. Make some phone calls. I don't care. Just get it open," or words to that effect, which the Store Director understood to be an instruction to find locked-out or striking employees willing to work at his store.

Overt Act No. 56: In or about November 2003, the Group Vice-President for the Southern Division told the Store Director for Store No. 167 in San Diego that social security numbers of temporary replacement workers were not being checked at that time; instructed the Store Director to start looking for some "experienced help"; and recommended that the Store Director "check with competitors to see if there's any experienced help out there," or words to that effect, which the Store Director understood to be an instruction to recruit locked-out Albertsons and striking Vons employees.

Overt Act No. 57: On or about November 1, 2003, at the direction of the Store Director for Store No. 47 in Van Nuys, a

locked-out employee from Store No. 81 in Woodland Hills used his wife's name and social security number to complete a temporary employment application, INS Form I-9, and IRS Form W-4.

Overt Act No. 58: On or about November 1, 2003, the Store Director for Store No. 47 falsely certified under penalty of perjury in an INS Form I-9 that he had inspected and verified a driver's license and social security card presented by "Brenda Anderson," an applicant for a temporary replacement position. In fact, the applicant was Brenda Anderson's husband and the Store Director had not inspected or verified any such identification documents.

Overt Act No. 59: On or about November 7, 2003, the President of Ralphs sent a letter to locked-out employees falsely stating, among other things: "Since the union announced on October 31, 2003 that it was eliminating picket lines from Ralphs, many of you have asked about returning to your jobs . . . . Until the union calls off its strike against Vons, you will not be allowed to return to work." In fact, by that time, RALPHS had permitted and encouraged hundreds of locked-out employees to secretly return to work under false identities.

Overt Act No. 60: In or about late November 2003, during a visit to Store No. 732 in Silver Lake, the Zone Manager for Zone 15, upon encountering a locked-out employee whom he had known for several years and who was then working as a temporary replacement worker at Store No. 732, shook hands with the locked-out employee, winked at him, and greeted the locked-out employee by his brother's name.

Overt Act No. 61: In or around Thanksgiving of 2003, the Zone Manager of Zone 7 suggested to the Store Director of Store No. 4 in Laguna Beach, who was having difficulty operating her store with only temporary replacement workers, that she attempt to swap locked-out employees with a Store Director from outside of Zone 7. The Zone Manager further told the Store Director that hiring locked-out employees would not jeopardize her job because, "[w]hen this is all over, there's going to be . . . an immunity where this will all be kind of washed under [the bridge]," or words to that effect, which the Store Director understood to be permission to hire locked-out employees.

Overt Act No. 62: In or about late November or early December 2003, during a visit to Store No. 34 in Laguna Niguel, the Group Vice-President for the Southern Division thanked two temporary replacement workers, who the Group Vice-President knew to be locked-out employees. One of these employees was the daughter of the Store Director for Store No. 34, and the other's name and photograph had appeared on large banners in RALPHS stores as part of a company-wide advertising campaign.

Overt Act No. 63: In or about November or December 2003, the Group Vice-President for the Southern Division entered Store No. 187 in Tustin Heights while the Store Director was at lunch. When the Group Vice-President saw the wife of the Store Director for Store No. 163 (who he knew to be a locked-out employee) working as a temporary replacement worker in the front portion of the store, he immediately left the store. He then called the Zone Manager for Zone 8 and told him to tell the Store Director for Store No. 187 to be more careful about whom he left

in charge of the store while he was away from the store at lunch.

Overt Act No. 64: In or about November or December 2003, the Zone Manager for Zone 7 directed that a locked-out employee who had returned to work under a false name and social security number be moved from Store No. 34 in Laguna Niguel to Store No. 99 in Foothill Ranch because she had been recognized and her photograph taken by a union member.

Overt Act No. 65: In or about November 2003 or December 2003, the Store Director for Store No. 759 in Westwood informed the Zone Manager for Zone 4 that: (a) the Store Director had asked the Store Directors for Store Nos. 630 and 193 in Altadena and Burbank, respectively, about locked-out employees who were willing to work at Store No. 759; (b) the Store Director for Store No. 193 had referred a locked-out employee to work at Store No. 759; and (c) the locked-out employee had recruited a few other locked-out employees to work at Store No. 759. The Zone Manager then asked the Store Director, "Are [the locked-out employees] any good? Are they helping?" or words to that effect, to which the Store Director responded that the locked-out employees were helpful.

Overt Act No. 66: In or about November or December 2003, the Zone Manager for Zone 3 told a locked-out employee who had been working during the lockout under her true name and social security number at Store No. 609 in Riverside, to start using the name and social security number of a family member if she wanted to continue to work during the lockout.

Overt Act No. 67: On or about December 16, 2003, the Store Director for Store No. 76 in Mission Viejo informed the

Zone Manager for Zone 7, via e-mail, that the Meat Merchandiser for Zone 7 "is using my meat guys," which the Zone Manager and Store Director both understood referred to locked-out meat cutters, "for a couple of other stores. They will start at my store and go to two others."

Overt Act No. 68: On or about December 23, 2003, the Store Director for Store No. 748 in Irvine told the Zone Manager for Zone 7, via e-mail, that "Larsen trucking," which the Store Director and Zone Manager both understood referred to a locked-out employee who was assisting with deliveries at RALPHS stores during the lock-out, "came by and relieved my warehouse pains by 6 pallets," or words to that effect.

Overt Act No. 69: In or about late December 2003, a locked-out employee, while visiting his home store, told the Group Vice-President for the Northern Division that he (the locked-out employee) was working at Store No. 47 in Van Nuys to help RALPHS during the lockout.

Overt Act No. 70: In or about December 2003 or January 2004, the Store Director for Store No. 297 in Santa Clarita instructed a temporary replacement worker, whom the Store Director knew to be a locked-out employee working under a false name and social security number, to cash her weekly payroll checks at the store.

Overt Act No. 71: In or about January 2004, the Store Director for Store No. 680 in Santa Barbara transferred a locked-out employee, who had been working as a temporary replacement worker at Store No. 680 since October 2003 and who the Store Director knew to be a locked-out employee, to

Store No. 6 in Encino.

Overt Act No. 72: On or about January 8, 2004, the Store Director for Store No. 188 in Dana Point informed the Zone Manager for Zone 7, via e-mail, that "'skilled' help [was] disappearing," which the Zone Manager understood to mean that his instruction to terminate all known or suspected locked-out employees in the aftermath of the newspaper article described in paragraph 85 above was being followed.

Overt Act No. 73: On or about January 9, 2004, the Group Vice-President for the Southern Division told the Store Director for Store No. 163 in San Juan Capistrano, whose name had appeared in the newspaper article described in paragraph 85, above, that the Store Director was being suspended with pay, but that he absolutely was not to tell anybody, including his wife, what was happening or that he was on suspension.

Overt Act No. 74: On or about January 9, 2004, the Group Vice-President for the Southern Division told the Zone Manager for Zone 5 that: (a) RALPHS could not protect Store Directors who had hired locked-out employees under false names and social security numbers; (b) any resulting adverse consequences to Store Directors were "just part of the job," or words to that effect; and (c) the Zone Manager should "stay strong," or words to that effect.

Overt Act No. 75: On or about January 10, 2004, the Store Director or Manager of Operations for Store No. 161 in Irvine informed the Zone Manager for Zone 7, via e-mail, that there was "[n]o quality help," which the Zone Manager understood to be confirmation that all locked-out employees had been

terminated at Store No. 161 in the aftermath of the newspaper article described in paragraph 85 above.

Overt Act No. 76: In or about mid-January 2004, RALPHS issued an IRS Form W-2 falsely attributing to a fictitious person the earnings of a locked-out employee who had worked during the lockout at Store No. 680 in Santa Barbara, and sent the IRS Form W-2 to a rental property owned by the locked-out employee.

Overt Act No. 77: On or about February 5, 2004, the President of Ralphs sent an internal memorandum to RALPHS' management personnel, in which, while noting that "the United States Attorney's Office is looking into allegations that Ralphs Grocery Company and its store management members have hired locked-out UFCW members and allowed them to work under false identities, including false social security numbers," he falsely asserted that: ***"All company employees must abide by our hiring procedures which provide that the hiring of any employee of an employer involved in the current labor dispute is absolutely prohibited and will not be tolerated[.]"*** (bold and italics in original). In fact, RALPHS' written policy did not "absolutely" prohibit the hiring of locked-out and striking employees or provide that such conduct "will not be tolerated," and its policy, as applied, was to permit, encourage, condone, and/or deliberately ignore the hiring of such employees.

Overt Act No. 78: In or about March or April 2004, the Group Vice-President for the Southern Division falsely claimed in a conversation with the Zone Manager for Zone 5 that on October 18, 2003: (a) the Group Vice-President and the Zone Manager

together had seen a locked-out employee working at Store No. 108 in La Jolla; and (b) the Group Vice-President had instructed the Zone Manager to terminate the locked-out employee at that time.

Overt Act No. 79: In or about April or May 2004, RALPHS paid approximately $63 million to Albertsons in accordance with its obligations under the MSAA.

Overt Act No. 80: In or about April or May 2004, RALPHS paid approximately $84 million to Vons in accordance with its obligations under the MSAA.

Overt Act No. 81: On or about July 20, 2004, the Group Vice-President of Human Resources/Labor Relations falsely testified under oath before the California Unemployment Insurance Appeals Board that, other than from the results of an investigation by RALPHS' legal department, he knew of only one store where bargaining unit members had been rehired during the lockout under false identities. In fact, the Group Vice-President had been informed by the RALPHS Manager of Employee Relations in early February 2004, both verbally and in writing, that a Kroger subsidiary was reporting that locked-out employees had been hired under false names and social security numbers at forty or more RALPHS stores.

Overt Act No. 82: On or about July 27, 2004, the President of Ralphs sent a memorandum to "Ralphs Team Members" falsely reciting that "[w]e have now determined that some reports of misconduct are correct; some members of Ralphs management did violate Company policies and encouraged or permitted some locked-out employees to work during the strike." In fact, these "members of Ralphs management" were acting consistent with

RALPHS' policy, as applied, which permitted, encouraged, condoned, and/or deliberately ignored the hiring of locked-out employees by Store Directors.

Overt Act No. 83: Beginning in or about late July 2004, and continuing through the date of this Indictment, RALPHS concealed, withheld, and delayed producing documents that were responsive to federal grand jury subpoenas served upon RALPHS.

COUNTS TWO THROUGH FIFTEEN

[42 U.S.C. § 408(a)(7)(B) and 18 U.S.C. § 2]

[False Representation Of Social Security Numbers]

101. The Grand Jury hereby repeats and realleges paragraphs 1 through 51, 56, 57, and 61 through 100 of this Indictment.

102. During the lockout, RALPHS caused hundreds of locked-out employees to adopt and use false social security numbers for a number of purposes, including:

a. To enable RALPHS to rehire locked-out employees as temporary replacement workers;

b. To enable RALPHS to employ skilled and experienced employees at its stores during the lockout;

c. To enable RALPHS to conceal its employment of locked-out employees from their Unions and from fellow union members;

d. To enable RALPHS to conceal its illegal conduct from the NLRB, SSA, IRS, and other governmental agencies; and

e. To undermine the labor action as further described in paragraph 56 above.

103. During the approximate periods specified below, in the Central District of California and elsewhere, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, and aided and abetted by others known and unknown to the Grand Jury, knowingly, with intent to deceive, and for the purposes set forth in paragraph 102 above, caused each of the following locked-out employees to falsely represent the following number to be the social security number assigned to him or her by

the Commissioner of Social Security, when, in fact, as RALPHS well knew, that number was not the social security number assigned to that locked-out employee by the Commissioner of Social Security:

COUNT	TIME PERIOD	LOCKED-OUT EMPLOYEE	FALSE SSN
TWO	09/29/03 - 01/02/04	Wendy Horacek	606-05-XXXX
THREE	09/30/03 - 12/03/03	Kerrin Moote	608-23-XXXX
FOUR	10/05/03 - 02/19/04	Edward Wren	562-05-XXXX
FIVE	10/12/03 - 01/03/04	Donald Angier	523-30-XXXX
SIX	10/13/03 - 01/31/04	Frances Boroian, aka Frances Swanson	342-68-XXXX
SEVEN	10/20/03 - 12/18/03	Suzanne McGarvey	524-44-XXXX
EIGHT	10/20/03 - 12/25/03	Nicole Pytel	569-69-XXXX
NINE	11/01/03 - 01/22/04	George Cunningham	533-46-XXXX
TEN	11/03/03 - 02/19/04	Kathy Rodriguez	573-60-XXXX
ELEVEN	11/05/03 - 01/22/04	Cynthia Hicks	562-79-XXXX
TWELVE	11/18/03 - 01/31/04	Elizabeth Calabrese	602-48-XXXX
THIRTEEN	11/29/03 - 02/04/04	Marsha Montgomery	180-40-XXXX
FOURTEEN	12/26/03 - 02/19/04	Raul Bonwell	546-61-XXXX
FIFTEEN	12/28/03 - 02/19/04	Jason Wyer	555-65-XXXX

COUNTS SIXTEEN THROUGH TWENTY

[18 U.S.C. §§ 1028(a)(7) and 2]

[Identity Fraud]

104. The Grand Jury hereby repeats and realleges paragraphs 1 through 51 and 61 through 100 of this Indictment.

105. During the approximate periods specified below, in the Central District of California and elsewhere, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, and aided and abetted by others known and unknown to the Grand Jury, knowingly, and with intent to commit and to aid and abet unlawful activity constituting violations of Federal law (as described further in paragraphs 98 and 99 above), caused each of the following locked-out employees to transfer and use, without lawful authority, in and affecting interstate commerce, the means of identification of another person, as described below:

COUNT	TIME PERIOD	LOCKED-OUT EMPLOYEE	MEANS OF IDENTIFICATION
SIXTEEN	09/30/03 - 12/03/03	Kerrin Moote	1. Name of "Tyler Moote," which was the name of Kerrin Moote's son 2. Social security number 608-23-XXXX, a valid social security number issued to a person other than Kerrin Moote
SEVENTEEN	11/01/03 - 01/22/04	George Cunningham	1. Name of "Brenda Anderson," which was the name of George Cunningham's wife 2. Social security number 533-46-XXXX, a valid social security number issued to a person other than George Cunningham

COUNT	TIME PERIOD	LOCKED-OUT EMPLOYEE	MEANS OF IDENTIFICATION
EIGHTEEN	11/18/03 - 01/31/04	Elizabeth Calabrese	1. Name of "Ashley Franz," which was the name of Elizabeth Calabrese's daughter 2. Social security number 602-48-XXXX, a valid social security number issued to a person other than Elizabeth Calabrese
NINETEEN	12/26/03 - 02/19/04	Raul Bonwell	1. Name of "Cynthia Bonwell," which was the name of Raul Bonwell's wife 2. Social security number 546-61-XXXX, a valid social security number issued to a person other than Raul Bonwell
TWENTY	12/28/03 - 02/19/04	Jason Wyer	1. Name of "Debra Wyer," which was the name of Jason Wyer's wife 2. Social security number 555-65-XXXX, a valid social security number issued to a person other than Jason Wyer

COUNT TWENTY-ONE

[18 U.S.C. §§ 1001(a)(1) and 2]

[Falsification And Concealment Of Material Facts Within Federal Agency Jurisdiction]

106. The Grand Jury hereby repeats and realleges paragraphs 1 through 51 and 61 through 100 of this Indictment.

107. Beginning on or about October 12, 2003, and continuing until the date of this Indictment, in the Central District of California and elsewhere, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, and aided and abetted by others known and unknown to the Grand Jury, knowingly and willfully falsified, concealed, and covered up, and caused others to falsify, conceal, and cover up, by trick, scheme, and device, the following material facts in a matter within the jurisdiction of SSA and IRS, agencies of the executive branch of the United States government:

a. The true and correct identities and social security numbers of locked-out employees who worked for RALPHS during the lockout;

b. The true and correct amounts of income received in 2003 by locked-out employees who worked for RALPHS during the lockout under false names and social security numbers;

c. The true and correct amounts of social security contributions that should have been withheld from wages received in 2003 by locked-out employees who worked for RALPHS during the lockout;

d. The true names of locked-out workers under which federal income taxes should have been withheld from wages

received in 2003 by such employees who worked for RALPHS during the lockout under false names and social security numbers;

e. The true and correct amounts of income received in 2003 by people whose names and social security numbers were used by locked-out employees who worked for RALPHS during the lockout;

f. The true and correct amounts of withheld social security contributions to be applied in 2003 to social security accounts of people whose names and social security numbers were used by locked-out employees who worked for RALPHS during the lockout; and

g. The fact that no federal income taxes should have been withheld by RALPHS for people who did not work for RALPHS in 2003, but whose names and social security numbers were used by locked-out employees who worked for RALPHS during the lockout.

108. RALPHS falsified, concealed, and covered up, and caused others to falsify, conceal, and cover up, these facts by and through the following trick, scheme, and device:

a. RALPHS caused locked-out employees who agreed to work during the lockout to complete IRS Forms W-4 using false names and social security numbers, and to sign these false forms under penalty of perjury;

b. In or about mid-January 2004, RALPHS issued IRS Forms W-2 for 2003 to locked-out employees who worked during the lockout under false names and social security numbers, which: (i) falsely underreported the amounts of income received by these employees during 2003; and (ii) falsely understated the amounts of social security contributions that should have been withheld from these employees' earnings;

c. In or about mid-January 2004, RALPHS issued IRS Forms W-2 for 2003 to people who did not work for RALPHS during 2003, but whose names and social security numbers were used by locked-out employees who worked during the lockout, which: (i) falsely attributed income to these people that they did not receive during 2003; and (ii) falsely applied withheld social security contributions to their social security accounts;

d. In or about March 2004, RALPHS filed the false IRS Forms W-2 described in subparagraphs b and c above with SSA, which IRS Forms W-2 RALPHS knew or could have reasonably foreseen would later be furnished by SSA to IRS; and

e. RALPHS concealed and covered up its issuance of false IRS Forms W-2 by not issuing and filing, and not timely issuing and filing, IRS Forms W-2c correcting the false and inaccurate information in the false IRS Forms W-2 that RALPHS had previously issued for 2003.

COUNT TWENTY-TWO

[18 U.S.C. § 1956(h)]

[Money Laundering Conspiracy]

109. The Grand Jury hereby repeats and realleges paragraphs 1 through 108 of this Indictment.

I. "SPECIFIED UNLAWFUL ACTIVITY"

110. As used in this Count Twenty-Two, the term "Specified Unlawful Activity" refers to RALPHS, knowingly, and with intent to commit and to aid and abet unlawful activity constituting violations of Federal law (as further described in paragraphs 98 and 99 above), causing locked-out employees to transfer and use, without lawful authority, in and affecting interstate commerce, other individuals' names, social security numbers, and other means of identification, to enable RALPHS to hire these locked-out employees to work during the lockout (as further described in paragraphs 61 through 100 and 105 above), in violation of Title 18, United States Code, Section 1028(a)(7).

II. THE OBJECTS OF THE MONEY LAUNDERING CONSPIRACY

111. Beginning in or about mid-October 2003, and continuing until in or about early March 2004, in the Central District of California and elsewhere, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, together with others known and unknown to the Grand Jury, combined, conspired, and agreed to commit the following money laundering offenses against the United States:

a. To commit promotional money laundering by knowingly conducting, causing others to conduct, and aiding and abetting others in conducting financial transactions involving

the proceeds of Specified Unlawful Activity, which transactions affected interstate commerce, knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, and with the intent to promote the carrying on of Specified Unlawful Activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i); and

b. To commit concealment money laundering by knowingly conducting, causing others to conduct, and aiding and abetting others in conducting financial transactions involving the proceeds of Specified Unlawful Activity, which transactions affected interstate commerce, knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, and knowing that the financial transactions were designed, in whole and in part, to conceal and disguise the ownership and control of the proceeds of Specified Unlawful Activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

III. THE MANNER AND MEANS OF THE MONEY LAUNDERING CONSPIRACY

112. The objects of the money laundering conspiracy were achieved in the manner and by the means described below.

113. As described further in Count One of this Indictment:

a. During the lockout, hundreds of locked-out employees worked at RALPHS stores using other individuals' names, social security numbers, and other means of identification;

b. RALPHS paid these locked-out employees on a weekly basis, for work performed during the preceding week, with paychecks issued in the false names that they were using; and

c. Knowing that these paychecks could not be cashed at a bank or other reputable check-cashing institution because they had been issued in false names, RALPHS permitted the locked-out employees to cash them at RALPHS stores.

114. For purposes of this Count Twenty-Two, wages earned by locked-out employees who worked for RALPHS during the lockout became the proceeds of Specified Unlawful Activity, at the latest, when the Kroger subsidiary, Fred Meyer, electronically transmitted weekly payroll information from its headquarters in Portland, Oregon, to RALPHS' headquarters in Compton, California, thereby enabling RALPHS to print and distribute the weekly paychecks.

115. In issuing weekly paychecks in false and assumed names and delivering them to locked-out employees who were working using the names or social security numbers of other individuals, RALPHS promoted the carrying on of Specified Unlawful Activity by rewarding these locked-out employees for working for RALPHS during the lockout using the names, social security numbers, and other means of identification of other individuals, and by encouraging these locked-out employees to continue to do so.

116. In cashing the weekly paychecks issued to these locked-out employees in the false and assumed names they were using to work for RALPHS during the lockout, RALPHS concealed and disguised the ownership and control of the proceeds of Specified Unlawful Activity by concealing and disguising the true identities of the locked-out employees who received and cashed these checks.

COUNTS TWENTY-THREE THROUGH THIRTY-THREE

[18 U.S.C. §§ 1956(a)(1)(B)(i) and 2]

[Concealment Money Laundering]

117. The Grand Jury hereby repeats and realleges paragraphs 1 through 116 of this Indictment.

118. On or about the following dates, in the Central District of California and elsewhere, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, and aided and abetted by others known and unknown to the Grand Jury, conducted, caused others to conduct, and aided and abetted others in conducting the following financial transactions involving the proceeds of Specified Unlawful Activity (as defined in paragraph 110 above), which transactions affected interstate commerce, knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, and knowing that the financial transactions were designed, in whole and in part, to conceal and disguise the ownership and control of the proceeds of Specified Unlawful Activity:

COUNT	DATE	FINANCIAL TRANSACTION
TWENTY-THREE	10/31/03	Cashing of paycheck 71959336 at RALPHS Store No. 15 in San Clemente, California, in the amount of $347.39, made payable to "Tyler D. Moote," the identity used by locked-out employee Kerrin Moote
TWENTY-FOUR	11/10/03	Cashing of paycheck 72060172 at RALPHS Store No. 210 in Los Angeles, California, in the amount of $777.47, made payable to "Samantha Riley," the identity used by locked-out employee Suzanne McGarvey

COUNT	DATE	FINANCIAL TRANSACTION
TWENTY-FIVE	12/05/03	Cashing of paycheck 72378676 at RALPHS Store No. 680 in Santa Barbara, California, in the amount of $828.30, made payable to "Leroy Brin," the identity used by locked-out employee Donald Angier
TWENTY-SIX	12/05/03	Cashing of paycheck 72361514 at RALPHS Store No. 34 in Laguna Niguel, California, in the amount of $569.66, made payable to "Samantha Norman," the identity used by locked-out employee Nicole Pytel
TWENTY-SEVEN	12/06/03	Cashing of paycheck 72197855 at RALPHS Store No. 47 in Van Nuys, California, in the amount of $980.93, made payable to "Brenda J. Anderson," the identity used by locked-out employee George Cunningham
TWENTY-EIGHT	12/27/03	Cashing of paycheck 72637943 at RALPHS Store No. 297 in Santa Clarita, California, in the amount of $633.23, made payable to "Frances Guzzeta," the identity used by locked-out employee Marsha Montgomery
TWENTY-NINE	01/03/04	Cashing of paycheck 72717135 at RALPHS Store No. 55 in La Canada, California, in the amount of $610.11, made payable to "Carolyn Hatfield," the identity used by locked-out employee Kathy Rodriguez
THIRTY	01/09/04	Cashing of paycheck 72804783 at RALPHS Store No. 47 in Van Nuys, California, in the amount of $606.15, made payable to "Debra A. Wyer," the identity used by locked-out employee Jason Wyer
THIRTY-ONE	01/16/04	Cashing of paycheck 72745319 at RALPHS Store No. 34 in Laguna Niguel, California, in the amount of $239.67, made payable to "Wendy Zehnder," the identity used by locked-out employee Wendy Horacek
THIRTY-TWO	02/06/04	Cashing of paycheck 73067218 at RALPHS Store No. 748 in Irvine, California, in the amount of $451.02, made payable to "Tiffany A. Boroian," the identity used by locked-out employee Frances Boroian, also known as Frances Swanson

COUNT	DATE	FINANCIAL TRANSACTION
THIRTY-THREE	02/07/04	Cashing of paycheck 73066694 at RALPHS Store No. 192 in Brea, California, in the amount of $956.52, made payable to "Steve Rogers," the identity used by locked-out employee Edward Wren

COUNTS THIRTY-FOUR THROUGH FORTY-NINE

[18 U.S.C. §§ 1027 and 2]

[False Statements Relating To Employee Benefit Plans]

119. The Grand Jury hereby repeats and realleges paragraphs 1 through 51 and 60 through 100 of this Indictment.

I. BACKGROUND

A. The Labor Management Relations Act And The Employee Retirement Income Security Act

120. At all times relevant to this Indictment, the Benefit and Pension Funds were each subject to and governed by the Labor Management Relations Act of 1947 (the "LMRA") and the Employee Retirement Income Security Act of 1974 ("ERISA").

B. Fiduciary Duties Of The Funds' Trustees

121. Under the LMRA and ERISA, the Trustees of the Funds were deemed "fiduciaries" of the Funds, and owed certain legal duties, known as "fiduciary duties," to the Funds, the participants in the plans associated with the Funds, and the participants' beneficiaries.

122. During the time relevant to this Indictment, the fiduciary duties owed by the Trustees of the Funds included:

a. The duty to act solely in the interests of the Funds, plan participants, and their beneficiaries, for the exclusive purposes of providing benefits to plan participants and their beneficiaries and defraying the reasonable expenses of administering the Funds;

b. The duty not to act in any transaction involving the Funds on behalf of, or while representing, a party whose

interest was adverse to the Funds, plan participants, or their beneficiaries;

c. The duty to act with honesty and candor, and not mislead, the other Trustees and the Administrator of the Funds in matters relating to the administration of the Funds;

d. The duty to timely disclose to the other Trustees, the Administrator, and plan participants an employer's failure to make required contributions to the Funds; and

e. The duty to prevent the other Trustees from breaching their fiduciary duties.

C. <u>RALPHS' Status As A Fiduciary Of The Funds</u>

123. During the time relevant to this Indictment, RALPHS was itself a fiduciary of the Funds because it:

a. Knowingly underreported to the Funds the hours worked by locked-out and striking employees during the lockout; and

b. Had the authority to appoint, retain, and remove a trustee.

124. As a fiduciary of the Funds, RALPHS, as a corporation and organization, had a duty:

a. To use reasonable diligence to discover whether it had underreported to the Funds hours worked by locked-out and striking employees during the lockout, and/or withheld contributions due and owing the Funds;

b. Upon discovering such information, to fully and promptly disclose it to the Board and the Administrator; and

c. To monitor the performance of the RALPHS' Trustee and Alternate Trustee to ensure that they were administering the

Funds consistently with their duties under the plan documents, the LMRA, and ERISA.

D. RALPHS' Recordkeeping And Reporting Obligations

125. For the period of the lockout, RALPHS was required by ERISA:

a. To maintain accurate records of hours worked by bargaining unit members; and

b. To give the Administrator of the Funds, on a monthly basis, true and correct information concerning: (i) which bargaining unit members worked during the preceding month; and (ii) how many hours they worked, individually and in total.

126. In addition to the 57 Remittance Reports that RALPHS was required to submit to the Funds by the twentieth of each month (as described in paragraphs 34 through 38 above), it was also required to submit to the Funds at or about the same time:

a. A "Contributions Accounting Transmittal" form, which reported, among other things, the total number of hours used to calculate the amount of contributions RALPHS was obligated to make to the Funds on behalf of a particular category of grocery worker for a particular month based, in part, on the total number of hours worked by that category of grocery worker during that month; and

b. An adjustments form, which identified errors and omissions, of which RALPHS had become aware, in prior months' Remittance Reports and Contributions Accounting Transmittal forms.

E. **End Of Plan Year Reporting By The Funds**

127. The plan year for both the Benefit Fund and the Pension Fund ran from April 1 through March 31. Following the end of each plan year, ERISA required the Benefit and Pension Funds to each file with the United States Department of Labor ("DOL"), and publish to plan participants, separate annual reports on DOL Form 5500. Among other things, each Fund was required to report in the Form 5500 the employer contribution receivables as of the end of the plan year and the number of active participants as of the end of the plan year.

128. The Form 5500 was prepared for the trustees by the Funds' auditors. In preparing the Form 5500, the auditors examined Remittance Reports, Contributions Accounting Transmittal forms, adjustment forms, and other records of the Funds to verify, explain, clarify, and check for accuracy and completeness the information presented in the Form 5500.

II. RALPHS' FALSE STATEMENTS AND REPRESENTATIONS

129. During the lockout, RALPHS falsified and caused others to falsify records that ERISA required it to maintain for bargaining unit members who worked during the lockout, including records of their true names, social security numbers, dates of birth, dates of hire, addresses, status as union members, eligibility for employee benefits, and hours worked during the lockout.

130. For the reporting periods of October 2003, November 2003, December 2003, January 2004, and February 2004:

a. RALPHS caused its Benefits Administrator to submit false Remittance Reports to the Administrator of the Funds,

which, among other things: (i) concealed the identities of locked-out and striking employees who worked during the reporting period; (ii) omitted hours worked by individual locked-out and striking employees during the reporting period; and (iii) falsely understated the total hours worked by locked-out and striking employees during the reporting period;

b. RALPHS caused its Benefits Administrator to falsely certify, under penalty of perjury, that particular Remittance Reports included the names of all bargaining unit members who had worked during the reporting period, and all hours worked by those members during the reporting period;

c. RALPHS caused its Benefits Administrator to submit false Contributions Accounting Transmittal forms to the Funds, which, among other things, falsely understated the total hours worked by locked-out and striking employees during the reporting period; and

d. RALPHS caused its Benefits Administrator to submit false adjustment forms to the Funds, which, among other things, failed to list adjustments for hours worked by locked-out and striking employees during the lockout, of which RALPHS was aware.

131. On or about the following dates, in the Central District of California and elsewhere, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, and aided and abetted by others known and unknown to the Grand Jury, knowingly made and caused others to make false statements and representations of fact in the following documents, which documents RALPHS was required by Title I of ERISA to keep as part of the records of the Funds, and which

documents were false for the reasons described in paragraph 130 above:

COUNT	DATE	DOCUMENT
THIRTY-FOUR	12/15/03	Remittance Report submitted by RALPHS for November 2003 for Graduate Clerks who were members of Local 135
THIRTY-FIVE	12/15/03	Remittance Report submitted by RALPHS for November 2003 for Graduate Clerks who were members of Local 324
THIRTY-SIX	12/20/03	Contributions Accounting Transmittal form submitted by RALPHS for November 2003
THIRTY-SEVEN	12/20/03	Adjustment form submitted by RALPHS
THIRTY-EIGHT	01/13/04	Remittance Report submitted by RALPHS for December 2003 for Graduate Clerks who were members of Local 135
THIRTY-NINE	01/13/04	Remittance Report submitted by RALPHS for December 2003 for Graduate Clerks who were members of Local 324
FORTY	01/14/04	Remittance Report submitted by RALPHS for December 2003 for New Hire Meat Cutters who were members of Local 770
FORTY-ONE	01/20/04	Contributions Accounting Transmittal form submitted by RALPHS for December 2003
FORTY-TWO	01/20/04	Adjustment form submitted by RALPHS
FORTY-THREE	02/11/04	Remittance Report submitted by RALPHS for January 2004 for Graduate Clerks who were members of Local 135
FORTY-FOUR	02/11/04	Remittance Report submitted by RALPHS for January 2004 for Graduate Clerks who were members of Local 324
FORTY-FIVE	02/11/04	Remittance Report submitted by RALPHS for January 2004 for Graduate Clerks who were members of Local 770
FORTY-SIX	02/12/04	Remittance Report submitted by RALPHS for January 2004 for Graduate Clerks who were members of Local 1167

COUNT	DATE	DOCUMENT
FORTY-SEVEN	03/15/04	Remittance Report submitted by RALPHS for February 2004 for Graduate Clerks who were members of Local 324
FORTY-EIGHT	03/20/04	Contributions Accounting Transmittal form submitted by RALPHS for February 2004
FORTY-NINE	03/20/04	Adjustment form submitted by RALPHS

COUNT FIFTY

[18 U.S.C. §§ 1027 and 2]

[Concealment Of Facts Relating To Employee Benefit Plans]

132. The Grand Jury hereby repeats and realleges paragraphs 1 through 51, 60 through 100, and 120 through 130 of this Indictment.

133. For the reporting periods of October 2003, November 2003, December 2003, January 2004, and February 2004:

a. RALPHS concealed from the Funds, and caused others to conceal from the Funds, the true identities of locked-out and striking employees who worked during the lockout; and

b. RALPHS concealed from the Funds, and caused others to conceal from the Funds, the true and correct number of hours worked by locked-out and striking employees during the lockout.

134. Even after reports began appearing in the press that RALPHS was hiring locked-out employees under false names and social security numbers, neither RALPHS' senior management nor RALPHS' Trustee or Alternate Trustee undertook a reasonable investigation to determine: the identities of all locked-out and striking employees who had worked for RALPHS during the lockout; the number of hours they had worked during the lockout; and whether RALPHS had truthfully and correctly reported this information to the Funds.

135. Although RALPHS began a so-called "internal investigation" in or about late January 2004, the purpose of this investigation was not to correct false Remittance Reports and other documentation submitted to the Administrator, and neither

RALPHS nor its Trustee or Alternate Trustee disclosed the results of this so-called "internal investigation" to the other Trustees or to the Administrator.

136. At a Board meeting on or about February 10, 2004, RALPHS' Alternate Trustee:

a. Falsely represented to the other Food Employer-appointed trustees that RALPHS was not hiring, and had not hired, locked-out employees under false names and social security numbers, and that the Unions' allegations that RALPHS was engaging in such conduct were baseless;

b. Concealed and covered up from the other Trustees and from the Administrator that hundreds of locked-out and striking employees had worked for RALPHS during the lockout; and

c. Caused the Food Employer-appointed trustees to vote against a special audit of RALPHS to determine whether RALPHS had underreported the hours worked by locked-out and striking employees during the lockout.

137. On or about August 10, 2004, the Trustees (with the RALPHS Trustee abstaining) authorized a special audit to determine whether RALPHS had underreported hours worked by locked-out and striking employees during the lockout. During this special audit, RALPHS:

a. Concealed and covered up from the auditors documents, electronic records, and other information relevant and material to completion of the special audit; and

b. Refused to disclose to the auditors the results of its so-called "internal investigation."

138. Beginning in or about November 2003, and continuing until on or about the date of this Indictment, in the Central District of California and elsewhere, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, and aided and abetted by and others known and unknown to the Grand Jury, knowingly concealed, covered up, and failed to disclose, and caused others to conceal, cover up, and fail to disclose, the following facts relating to the administration of the Funds, the disclosure of which was: (a) required by Title I of ERISA; and (b) necessary to verify, explain, clarify, and check for accuracy and completeness reports required by Title I of ERISA to be published, namely, DOL Forms 5500:

a. The true and correct identities (including names, social security numbers, and dates of births) of all of the locked-out and striking employees who worked for RALPHS during the lockout; and

b. The true and correct number of hours worked by locked-out and striking employees who worked for RALPHS during the lockout.

COUNT FIFTY-ONE

[18 U.S.C. §§ 1001(a)(2) and 2]

[False Statement To Federal Agency]

139. The Grand Jury hereby repeats and realleges paragraphs 1 through 51 and 60 through 100 of this Indictment.

I. BACKGROUND

140. On or about November 18, 2003, one of the Unions filed an unfair labor practice charge against RALPHS with the NLRB's Region 31, alleging that RALPHS had "engaged in a selective lockout" by allowing "a locked out employee from one store to work in another store[.]"

141. In or about December 2003, Region 31 began an investigation of the Union's selective lockout charge by interviewing union members who claimed to have witnessed fellow union members working at RALPHS stores.

142. On or about December 1, 2003, Region 31 sent a letter to RALPHS' outside labor counsel, stating, among other things, that:

a. The Unions had "submitted additional evidence in support of the selective lockout allegations . . . which needs to be addressed";

b. The Unions had "provided evidence indicating that . . . Ralphs knowingly hired locked-out employees at different store locations from where they are normally assigned";

c. "The investigation shows that this hiring of locked-out employees may constitute an unlawful selective lockout"; and

d. The Unions had "submitted evidence that some of the locked-out employees who have worked during the strike or are now working have been doing so by using different names and social security numbers[.]"

143. Region 31's letter invited RALPHS to submit a "position paper," which Region 31 advised should, "in detail with documentary evidence in support, address the allegations set forth as well as set forth any defense the Employer may wish to assert[.]"

144. On or about December 15, 2003, the Union filed another unfair labor practice charge against RALPHS with Region 31, alleging that RALPHS had "engaged in a selective lockout" by, among other things, allowing "locked-out employees to work under different names."

II. RALPHS' DECEMBER 23, 2003 FALSE STATEMENTS TO THE NLRB

145. On or about December 23, 2003, in the Central District of California, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, and aided and abetted by others known and unknown to the Grand Jury, knowingly and willfully caused materially false, fictitious, and fraudulent statements to be made in a matter within the jurisdiction of the NLRB, an agency of the executive branch of the United States government.

146. Specifically, on or about December 23, 2003, RALPHS caused its labor counsel to send a letter to Region 31 containing the following materially false and fraudulent statements:

a. "[T]hroughout the period of the lockout, the Employer has discovered several employees who have changed their

social security numbers and worked in a different area for the Company. Immediately upon discovery, those employees have been denied employment and returned to locked-out status";

b. "[W]hen employees assume a different identity to work during the lockout and are discovered, they are terminated immediately";

c. "The Employer has made great efforts to ensure that locked-out employees do not return to work under assumed identities"; and

d. "To the best of the Employer's knowledge, there are no unit employees who were locked-out and that are now working with a different social security number and/or name at store no. 296 or any other store."

147. As RALPHS well knew, these statements were false and fraudulent because:

a. Locked-out employees who had been rehired were usually only terminated when a union member saw and reported them working at a RALPHS store, and, even then, in many such instances the locked-out employee was not terminated, but instead assigned to another store;

b. RALPHS had deliberately made minimal efforts to ensure that locked-out employees did not return to work under assumed identities, and in fact had encouraged and induced locked-out employees to return to work under false identities; and

c. RALPHS' senior management knew that there were locked-out employees working under false names and social security numbers at dozens of RALPHS stores.

COUNT FIFTY-TWO

[18 U.S.C. §§ 1001(a)(2) and 2]

[False Statement To Federal Agency]

148. The Grand Jury hereby repeats and realleges paragraphs 1 through 51 and 60 through 100 of this Indictment.

I. BACKGROUND

149. On or about January 12, 2004, all seven Unions jointly filed with Region 31 three unfair labor practice charges against RALPHS, alleging that RALPHS was "engaging in a discriminatory selective lockout" because it had permitted locked-out employees to continue to work or return to work, including at different store locations and under different names and social security numbers.

150. On or about January 15, 2004, Region 31 sent a letter to RALPHS' labor counsel, stating, among other things, that "[a]t this juncture, the factual investigation of the [Unions'] allegations continues to be on-going," but that the Unions have "presented a *prima facie* case[.]" The letter solicited RALPHS' "legal position with respect to the issues involved."

151. On or about January 27, 2004, RALPHS' labor counsel sent a letter to Region 31, stating, among other things, that RALPHS would respond to Region 31's January 15 letter by February 3, 2004, and that RALPHS intended "to set forth in some detail the extensive efforts made by the Employer to ensure the legitimacy of its lockout."

II. RALPHS' FEBRUARY 4, 2004 FALSE STATEMENTS TO THE NLRB

152. On or about February 4, 2004, in the Central District of California, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, and aided and abetted by and others known and unknown to the Grand Jury, knowingly and willfully caused materially false, fictitious, and fraudulent statements to be made in a matter within the jurisdiction of the NLRB, an agency of the executive branch of the United States government.

153. Specifically, on or about February 4, 2004, RALPHS caused its labor counsel to send a letter to Region 31 containing the following materially false and fraudulent representations:

a. "[I]t is important to note at this juncture that Ralphs' policy forbids the conduct alleged in the [Unions'] charges";

b. Any "breaches of Ralphs' own policy [have been] apparently isolated and sporadic";

c. Hiring of locked-out employees had "resulted not from an employer's policy but rather from the random and quixotic behavior of certain employees in violation of company policy";

d. "[T]he conduct at issue here . . . is not occurring across the board and is contrary to company policy";

e. Any such conduct "is occurring on a sporadic basis over a geographically dispersed unit."

f. "There is no Ralphs corporate policy that is at issue here [because] . . . its policy forbade [the hiring of locked employees]";

g. "Ralphs has made a concerted effort to prevent and remedy breaches of its policy since the beginning of the lockout";

h. Ralphs has "taken corrective measures against such conduct";

i. The alleged conduct has been "disavowed by the employer as contrary to its policy";

j. "[W]e are not dealing with an across the board practice or policy";

k. "No such effect [of undermining union strength] can be inferred from sporadic and geographically dispersed rehiring contrary to Ralphs' avowed corporate policy";

l. "Ralphs . . . has not done anything contrary to the legitimate interests of the employees and their unions that needs to be justified";

m. "All the locked out employees who allegedly were rehired at Ralphs were and remain union members"; and

n. "Employees were apparently selected for re-hire for reasons unrelated to their union membership, representational rights or concerted activities."

154. As RALPHS well knew, these representations were false and fraudulent because:

a. RALPHS' hiring of locked-out employees was pervasive and systematic, and not isolated or sporadic;

b. RALPHS' hiring of locked-out employees was a company-wide practice and policy;

c. RALPHS' written policy, as applied, permitted Store Directors to hire locked-out employees as long as the Store

Directors could plausibly deny knowing that the applicant was a locked-out employee;

d. RALPHS' actual policy was to permit, encourage, condone, and deliberately ignore the hiring of locked-out employees;

e. In hiring locked-out employees, Store Directors were acting consistently with RALPHS' actual policy of permitting, encouraging, condoning, and deliberately ignoring the hiring of locked-out employees;

f. RALPHS had made only minimal efforts to prevent the rehiring of locked-out employees;

g. RALPHS had made only minimal efforts to remedy breaches of its purported policy prohibiting the rehiring of locked-out employees, and generally ignored evidence of such breaches;

h. RALPHS' hiring of hundreds of locked-out employees under false names and social security numbers was contrary to the interests of the employees and their Unions as it: (i) exposed employees who worked under false names, social security numbers, and documentation to criminal prosecution; (ii) undermined Union solidarity and morale; (iii) deceived the Unions in matters crucial to their negotiating positions and strategy; and (iv) allowed RALPHS to mitigate the economic harm that the labor action was causing it;

i. Locked-out employees were selected for rehire because of their expressed, demonstrated, or perceived lack of strong allegiance to their Unions and their willingness to join with RALPHS in an illegal conspiracy whose objects included

defeating the labor action and deceiving their own Unions; and

j. In some instances, RALPHS caused locked-out employees to resign their union memberships, and then rehired them as temporary replacement workers with the understanding that they could return to their prior positions when the lockout ended.

COUNT FIFTY-THREE

[18 U.S.C. §§ 1503 and 2]

[Obstruction Of Justice]

155. The Grand Jury hereby repeats and realleges paragraphs 1 through 51 and 60 through 100 of this Indictment.

I. THE FEBRUARY 5 AND 6, 2004 NOTES AND THE FEBRUARY 5 AND 6, 2004 MEMORANDA

156. On or about February 5, 2004, the RALPHS Manager of Employee Relations (the "Employee Relations Manager") had a telephone conversation with the Fred Meyer Strike Coordinator. During this conversation, the Strike Coordinator raised concerns about reports by Fred Meyer employees who had been sent to Southern California to assist in RALPHS stores that RALPHS Store Directors were secretly hiring locked-out employees under false names and social security numbers and paying them with checks issued in false names.

157. During this telephone conversation, the Employee Relations Manager took handwritten notes ("the February 5 Notes"), which contained the following entries, among others:

> *T/C [Fred Meyer Strike Coordinator]*
> *→ Wk 3 called [the RALPHS Director of Personnel and Benefits (the "Personnel Director")]*
>
> * * *
>
> *[Fred Meyer employee sent to RALPHS] -- killing her --*
> *→ hiring people through back door*
> *Wave #1 -- union EE's --*
> *Using mother's name --*
> *She handed checks to male*
> *w/female's name --*
> *(His mother)*
> *[Strike Coordinator] reported 40 stores to [the Personnel Director] --*
> *[Strike Coordinator] told her people → keep telling her -- stop handing out checks -- so FM [Fred Meyer] EE's wont [sic] be a part of it.--*

* * *

FM [Fred Meyer] EE's have everything documented --

158. On or about February 5, 2004, the RALPHS Group Vice-President of Human Resources/Labor Relations (the "Group VP") directed the Employee Relations Manager to prepare a memorandum of her telephone conversation with the Fred Meyer Strike Coordinator.

159. On or about February 5, 2004, the Employee Relations Manager, in accordance with the directions of the Group VP, prepared a memorandum of her telephone conversation of earlier that day with the Fred Meyer Strike Coordinator (the "February 5 Memo"), which contained the following statements, among others:

- The Strike Coordinator explained that "[o]ne day, [a Fred Meyer employee who had been sent to help RALPHS] approached [her] and said that [the Fred Meyer employee] had told her, 'It's killing me. Ralphs is hiring people through the back door.'"
- The Strike Coordinator "explained that 'hiring through the back door' meant hiring locked out union employees under false names/SSN."
- The Fred Meyer employee "had reported to the [Strike Coordinator] that she . . . had been asked to hand out payroll checks at her store . . . . [The Fred Meyer employee] explicitly said that she handed a male replacement worker a check with a female name on it. She said that this male employee was hired as his mother and that the check was payable to his mother."
- The Strike Coordinator "said that during either [sic] the third week of the strike . . . , she had reported to [the Personnel Director] that about 40 stores were hiring 'through the back door.' From [the Personnel Director's] reaction, [the Strike Coordinator] felt that [the Personnel Director] may not have understood the gravity of the situation."

- The Strike Coordinator "then reported the issue to her boss, [the Fred Meyer] Group VP of Store Operations. [The Strike Coordinator] said that [the Group Vice-President] called [the Personnel Director] and talked to her about the issue later in the same week."

- "The Fred Meyer employees continued reporting issues to [the Strike Coordinator, who] told them to stop handing out payroll checks so they (FM employees) would not be 'a part of it.'"

- One Fred Meyer "employee told [the Strike Coordinator] that he 'stayed in the back of the store' and did not want to be involved."

- The Strike Coordinator "said that [the Personnel Director] acted on the information [of employee theft] . . . but that she had not acted on the report of 'hiring through the back door.'"

- The Strike Coordinator "sounded very sincere. She said that she was not able to sleep for some time."

160. On or about February 6, 2004, the RALPHS Group VP directed the Employee Relations Manager to prepare a cover memorandum to the February 5 Memo that would: (a) be addressed to RALPHS' in-house attorney, with copies to the Group VP and the Director of Labor Relations; and (b) bear the legend "Attorney/Client Privilege" - "Attorney Work Product."

161. On or about February 6, 2004, the Employee Relations Manager had another telephone conversation with the Fred Meyer Strike Coordinator regarding RALPHS' hiring of locked-out employees under false identities.

162. During the February 6 telephone conversation, the Employee Relations Manager took additional handwritten notes (the "February 6 Notes"), which contained the following entries, among others:

> *T/C [Fred Meyer Strike Coordinator] --*
> *She also told [a Kroger Human Resources Manager] --*

Ignored her --

⇨ [the Personnel Director] --
seemed like she was hurried --
rushed --
Maybe she didn't take [the Strike Coordinator] seriously. --

[Strike Coordinator] talked to [her boss, the Fred Meyer Group Vice-President of Store Operations] -- if hear more -- pls call [the Personnel Director]--

More people called [the Strike Coordinator].
[The Fred Meyer Group Vice-President] called [the Personnel Director] -- [the Strike Coordinator] in office --

male/female picking up check -- mothers/fathers/brothers/sisters --

* * *

Lots of her people -- "everyone knew"
they called her --
She told them that she had already reported it.--

Everybody @ FM knew -- p/r [Payroll] etc.

⇨ After a while

She felt like she was talking to a brick wall -- no one listening to her. --

→ [another Fred Meyer employee sent to RALPHS]-- ~ 3 wks ago --
[Strike Coordinator] called [the Personnel Director] →
[Personnel Director] -- just want to pass onto you -- my people still reporting to me -- hiring from backdoor →
Reported it to you wk 3
Still happening --

163. On or about February 6, 2004, the Employee Relations Manager, in accordance with the prior directions of the Group VP, prepared a memorandum of her February 6 telephone conversation with the Fred Meyer Strike Coordinator (the "February 6 Memo"), which contained the following statements, among others:

- The Strike Coordinator "said she thought about our conversation and [sic] yesterday and later remembered that she had also reported the hiring issues to [a Kroger Human Resources Manager] . . . [The Strike Coordinator] said she felt like [the Kroger Human Resources Manager] had ignored her."

- "Again, [the Strike Coordinator] sounded very concerned. She said she knew how big of an issue 'hiring through the back door' was and 'knew that we would get sued.'"

- The Strike Coordinator "reiterated that she had first reported the situation to [the Personnel Director] the third week of the strike . . . . [She] said she 'felt like she was talking to a wall' and that 'no-one was listening' to her."

- The Strike Coordinator "said that 'everyone knew' about the issue. I asked her exactly who, and she said 'lots of people. Payroll knew.'"

- "As the calls came into [the Strike Coordinator], she told the Fred Meyer employees that she had already reported the issue to Ralphs."

- The Strike Coordinator "said that after awhile, Fred Meyer took the attitude that they could not help Ralphs if Ralphs did not help themselves."

- The Strike Coordinator "said that she talked to [the Personnel Director] about the hiring issue a second time approximately three weeks ago. I don't have all of the details, but I understand that [a] Fred Meyer employee . . . , who works in Human Resources, had reported additional incidents to [the Strike Coordinator]."

- "It sounds like [the Fred Meyer employee] asked to return to Fred Meyer early because of the hiring as well as food safety and theft issues she saw here."

- The Strike Coordinator "told [the Personnel Director], 'My people are still reporting to me that you are hiring through the back door. [The Strike Coordinator] reminded [the Personnel Director] that she had initially reported the issue to her in week three of the strike. [The Strike Coordinator] told [the Personnel Director] that 'it was still happening.'"

164. On or about February 6, 2004, in accordance with the prior directions of the Group VP, the Employee Relations Manager prepared cover memoranda for the February 5 Memo and the February 6 Memo, which bore the legend "Attorney/Client Privilege" - "Attorney Work Product."

165. On or about February 6, 2004, the Employee Relations Manager sent the February 5 Memo, with its cover memorandum labeled "Attorney/Client Privilege" - "Attorney Work Product," and the February 6 Memo under a separate cover memorandum bearing the same legend, to RALPHS' in-house counsel with copies to the RALPHS Group VP and Director of Labor Relations.

II. THE GRAND JURY'S INVESTIGATION

166. Beginning on or about January 31, 2004, and continuing through the date of this Indictment, a grand jury sitting in the Central District of California has been investigating allegations that RALPHS hired locked-out and striking employees to work under false names, social security numbers, and documentation during the lockout, in violation of various federal criminal laws (the "grand jury proceedings").

167. On or about March 8, 2004, RALPHS was served with a grand jury subpoena (the "March 8 Subpoena") requiring it to produce to the grand jury, among other things: (a) any and all documents relating to the hiring, employment, compensation, and payment of any locked-out RALPHS employees during the period September 1, 2003 to the date of the subpoena (March 8, 2004); and (b) any and all documents relating to the hiring, employment, compensation, and payment of any person hired by RALPHS under a false, fictitious, or assumed name or identity during the period

September 1, 2003 to the date of the subpoena (March 8, 2004).

168. Both the February 5 and 6 Notes and the February 5 and 6 Memoranda were responsive to the requests for documents contained in the March 8, 2004 subpoena.

III. RALPHS' OBSTRUCTION OF THE GRAND JURY'S PROCEEDINGS

169. Beginning in or about February 2004, and continuing until at least in or about May 2, 2005, in the Central District of California, defendant RALPHS GROCERY COMPANY, by and through its officers, employees, and agents, and aided and abetted by others known and unknown to the Grand Jury, corruptly influenced, obstructed, and impeded, and corruptly endeavored to influence, obstruct, and impede, the due administration of justice in the grand jury proceedings by:

a. Causing the creation of cover memoranda to the February 5 Memo and the February 6 Memo that falsely and fraudulently asserted that the attached February 5 and 6 Memos constituted "Attorney Work Product" and represented protected attorney-client communications, when, in fact, neither the February 5 nor the February 6 Memo reflected communications with or involving an attorney or represented the work-product of an attorney or someone acting at the attorney's direction; and

b. Concealing, withholding, and delaying the production to the grand jury of documents and records that were required to be produced under the March 8 Subpoena, namely, the

February 5 and 6 Notes, the February 5 Memo, and the February 6 Memo.

A TRUE BILL

_____
Foreperson

DEBRA WONG YANG
United States Attorney

GEORGE S. CARDONA
Chief Assistant United States Attorney

JEFFREY B. ISAACS
Special Assistant United States Attorney
Major Frauds Section

ADAM H. BRAUN
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