

Union to Co.

**Smith's Employee
Response to Smith's December 7, 2021
Meat Proposals
Union Counter-Proposal, December 29, 2021**

Union's response to Company Proposals:

1. Reject
2. Reject
3. Reject
4. Reject
5. Reject
6. Hold
7. Reject
8. Reject
9. Reject
10. Reject
11. Reject
12. Hold.

17-30-21
UNION TO CO.
11:30 AM,

Union Proposal 12/30/21

Section 25 Safety And Health

Remove current language and replace with the following:

20. 25.1 Armed Police- The Employer agrees that Employee and Customer Safety and well-being is urgent and important in todays times. Smiths agrees to provide a certified and active armed police officer at the front of each store, so customers, employees and assailants will see the protection as they enter the store. This should take place from 7 am till the close of business on all days open for business.
21. 25.2 Smart Safe- The Employer agrees to remove the Smart Safe or provide an armed guard to protect employees depositing and obtaining cash, from the Smart Safe machine.
22. 25.3 Master Safety Committee- The Employer agrees to meet quarterly, upon request, but no less than twice each year, with the Master Safety Committee to discuss and recommend implementation of issues employees find to be of concern to the safety of the employees and customers who are coming or going. The Master Safety Committee shall consist of at least two (2) Employer officials and at least two (2) Union officials as well as up to five (5) employee participants, who will be evenly appointed by both parties, with the sides alternation of the 5th pick.
- The Employer shall pay employee participants their regular hourly rate of pay for all time so spent and mileage for Company authorized joint meetings.
23. 25.4 Safety Equipment- The Company agrees that, when required by its safety program or applicable law, it is obligated to provide the following safety items:
- a. Appropriate Personal Protective Equipment (PPE), as outlined in SDS sheets, including but not limited to, any cleaning of restrooms;
 - b. Floor mats, if needed, where they do not compromise safety and or the ability to clean and sanitize;
 - c. Fall protection equipment and other appropriate health and safety devices when required by OSHA rules.
- Employer agrees to maintain one power jack and keep it in working condition in each store. The Employer agrees to train employees responsible for the operation of such equipment.
24. 25.4 Dangerous Emergencies-. This provision will control in case of a shooting, other violent attack or other similar emergency that could or does result in either mass injuries or casualties to customers or injuries or casualties to bargaining unit workers. These and similar situations are called "dangerous emergencies" in this Agreement.
- (a) Preparing for Dangerous Emergencies. In cooperation with the Union, the Employer will develop, within six (6) months of ratification, mutually agreeable

procedures that workers should follow to protect themselves and co-workers during dangerous emergencies. These procedures will include: (i) where workers should go to protect themselves, (ii) evacuation plans, (iii) what workers should do, and (iv) how prompt first aid and emergency medical treatment will be administered to injured workers. The procedures will also discuss signs that may indicate that a dangerous emergency may occur (such as threats, social media posts or assaults), and encourage workers, customers and others to report these matters to a manager or security guard. The Employer will update the training as new procedures to protect workers against dangerous emergencies develop.

In cooperation with the Union, the Employer will, at least semiannually, train all workers on the dangerous emergency procedures, including how to recognize a potentially dangerous emergency and, where appropriate, how to deescalate dangerous emergencies that are reasonably capable of de-escalation. Expert professional trainers will conduct or facilitate all trainings. New-hires will undergo this training within the first 30 days of employment. Interpreters will translate the training into the languages in which workers are fluent. When appropriate, trainings will use sign language and closed captioning. Translators will translate all written and electronic training materials into languages workers read. The Employer will pay all workers for all time they are in training.

As part and parcel of Preparing for Dangerous Emergencies, the Employer agrees that it will take the following steps to ensure the general safety of the stores:

(i) Ensure that at all hours employees are working, there are at least two (2) bargaining unit employees on duty within the store.

(ii) Ensure that at all hours employees are working, an armed guard is present within the store. The Employer agrees to secure the services of off-duty law enforcement to serve as such guards when possible.

(iii) The Employer shall ensure that for all hours employees are working, there is a Supervisor outside the bargaining unit assigned and responsible for safety in the workplace, and that employees are able to contact said supervisor in an emergency.

(iv) The Employer will ensure that nothing, including equipment and merchandise, blocks or obstructs any part of entrances, exits, emergency doors, or exit routes. All doors will be capable of being readily and immediately opened from the inside of the stores.

(v) The Employer agrees that where feasible, it shall ensure the design of new stores and remodeled stores have at least two (2) public entrances and exits, in addition to entrances and exits normally accessible only to employees and vendors, in order to permit safe egress in an emergency.

(vi) The Employer will install panic or emergency alert buttons that directly notify emergency and law enforcement services throughout the

stores and in all departments. When employees are required to shag carts while it is dark outside, such employees shall work in pairs to ensure safety.

(vii) For fuel centers and convenience stores, the Employer agrees to provide a secured restroom at the fuel center or convenience store, or, alternatively, to locate a portable restroom near the fuel center or convenience store so that employees do not need to cross streets or large parking lots to use the restroom.

(viii) The Employer agrees that customers who harass or otherwise threaten bargaining unit members will be removed and barred from the stores.

(b) During a Dangerous Emergency. The Employer agrees that workers do not bear any responsibility to protect the store, any merchandise or other people during a dangerous emergency. Rather, workers should protect themselves and, to the extent safely and reasonably possible, co-workers. The Employer agrees to notify the President of the Union, or his or her designee, immediately upon learning of a dangerous emergency.

(c) Following a Dangerous Emergency. If a dangerous emergency occurs at a store resulting in the death of or serious injury to a worker, or any mass casualty event, the Employer will take the following steps:

(i) The Employer will close the store for a reasonable period of time depending on the nature of the event, but not for less than the remainder of the day. The store will not reopen until such time as any physical damage to the store has been repaired. The Employer may not require, but may permit, bargaining unit members to complete any work associated with such repairs. The Employer will give workers 14 days' advance notice of the target reopening date.

(ii) All workers assigned to the store will be on paid special administrative leave until the latter of: (1) the employee's voluntary return to work following the event, (2) (for employees who suffer mental or physical injuries resulting from the dangerous emergency) the certification from a medical professional that the employee is fully able and fit to return to work, or (3) the date which is eighteen (18) months following the occurrence of the dangerous emergency.

(iii) The Employer will pay workers for the special administrative leave at a rate equal to the average weekly amounts workers earned during the preceding three (3) month period. For partial weeks, the Employer will pay a daily rate equal to the average daily amount workers earned on the days they worked during the preceding three (3) month period.

(iv) While on special administrative leave, all workers (and their dependents) will continue to receive the same health and welfare coverage they received prior to the dangerous emergency. The Employer will continue to make all applicable health and welfare, and pension contributions on behalf of all workers on special administrative leave for the entire time they are on leave.

(v) While on special administrative leave, the Employer will not charge any worker with any other leave, including vacation, sick, FMLA, or personal leave, and will credit workers with any previously approved leave, including vacation.

(vi) Special administrative leave shall count as hours worked for all purposes under: (A) this Agreement, including seniority, step increases, vacation accrual and all benefits, including health and welfare, and (B) all federal, state and local employment laws, including the Family and Medical and Leave Act and similar sick and other leave laws.

(vii) The Employer will not oppose any unemployment or workers' compensation claim of any worker assigned to the store concerning injuries sustained as a result of the dangerous emergency.

(viii) The Employer will pay for all counseling, therapy, and similar trauma or crisis service workers receive related to the dangerous emergency. If such services are provided through an employee assistance program, the Company must ensure any providers are qualified and licensed to provide the needed service.

(ix) The Employer shall apply for all available victim assistance services, including those provided by local and state agencies, and non-governmental organizations, and assist workers to apply for such services

25. **25.5 Pandemic Safety Measures.** In the event of a novel pandemic or epidemic affecting one or more of the store, the Employer agrees to meet and bargain with the Union concerning the effects thereof within fourteen (14) days following a written request by the Union. The Employer further agrees to follow applicable, CDC, NIOSHA or OSHA guidelines and any state or federal mandates concerning the pandemic or epidemic, including, if applicable, enforcement of such guidelines with respect to customers.

(a) The Employer agrees that it shall train managers, supervisors and workers on applicable safety measures, such as social distancing, cleaning, and other requirements, in a language and at a literacy level that they understand.

(b) The Employer shall not administer an attendance program that in any way penalizes workers for missing work due to the pandemic/epidemic - including vaccination, symptoms of illness, testing for the disease, or due to a worker or worker's family member's infection with the disease, when the worker is that family member's caregiver.

(c) The Employer shall support workers who have to isolate from the workplace, or quarantine with paid sick leave that covers at their customary rate of pay all time that a worker is required to isolate or quarantine, care for symptomatic family members, or suffers from symptoms or infection as a result of the disease and other infectious disease.

26. 25.6 COVID-19 Specific Safety Matters. The foregoing provisions shall remain in effect while any of (a) the CDC classifies COVID-19 as being a global pandemic, (b) the New Mexico Department of Public Health & Environment classifies COVID-19 as being either a global pandemic or an epidemic in the State of New Mexico, or (c) any workplace safety standards concerning COVID-19 issued by the United States Occupational Safety and Health Administration are in force.

The Company shall ensure that the workplace is safe from the COVID-19 pandemic by taking all of the following measures:

1. Provide proper personal protection equipment as determined by applicable public health authorities (masks, gloves, face shields, etc.) at no cost to employees.
2. Sanitize all areas of the store, in particular "touch points" throughout the workday, utilizing best practices recommended by applicable public health authorities.
3. Where possible, ensure adequate social distancing to minimize employee exposure to COVID-19 (including, where applicable, utilizing plexiglass and other barriers to airflow).
4. Ensure sufficient airflow and filtering of pathogens within the facilities, utilizing best practices recommended by applicable public health authorities.
5. Allow employees frequent paid breaks to wash their hands and sanitize.
6. Provide real-time reporting of confirmed COVID-19 cases among employees and customers which are reported to the Employer. Provide notification as recommended by applicable public health authorities to potentially exposed employees.
7. Over and above all other leave and paid time off set forth in this Agreement, provide eighty (80) hours of pay per calendar year, at an employee's regular rate, for time spent testing, in quarantine or isolation at the direction of a treating physician, employer representative or public health authority, or for time spent caring

for a dependent or family or household member undergoing the same.

8. Provide all bargaining unit employees with four (\$4.00) dollar per hour of hazard pay, over and above all other rates set forth in this agreement.

In the event an Emergency Temporary Standard or other Order of the Occupational Safety and Health Administration concerning vaccinations and testing requirement for COVID-19 (the "ETS") comes into effect, the Employer further agrees to the following:

1. Provide good-faith exemptions for legitimate medical and/or religious objectors to any vaccine mandate concerning COVID-19. Within three (3) business days of receipt, notify the Union with respect to any employee who has raised a medical and/or religious exemption, and further provide real-time notification to the Union with respect to whether said employee's exemption was granted or denied.
2. For employees who choose not to get vaccinated, and who are not exempted from the mandate as provided above, said employees will be offered the following options:
 - a. Provide a negative COVID-19 test result once per week to the Company. The Company agrees for employees who elect this option it shall provide a test to the employee at no charge to the employee or, at the employee's election, the employee shall be paid one (1) hour of pay at the employee's regular rate to secure a COVID test result at the employee's expense; or
 - b. The employee shall be offered a medical leave of absence as otherwise provided for under this Agreement. During such absence, the employee shall be entitled to utilize any and all paid time off, and the Company shall make applicable health and welfare contributions as if the employee were fully employed and working the requisite hours each month.

The Union reserves the right to add additional proposals, change, delete, withdraw, or modify and all proposals at any time during negotiations.

The offer, modification, or withdrawal of any proposal during these negotiations shall not be used as evidence in any arbitration or other proceeding involving the parties.

Employer Proposal #15 (Meat) – Safety & Health
12.30.21

#15A. Section 25 – Safety & Health

**Retitle “Health and Safety Committee” in current Section to “Master Safety Committee”
Modify current Section as follows:**

Master Safety Committee. The Employer agrees to meet quarterly, upon request, but no less than once twice each year, with a Health and Safety Committee appointed by the Union to discuss and to recommend implementation of issues employees find to be of concern to their safety and health. This includes, but is not limited to, safety measures to protect employees who periodically work outside the store and includes employees coming to and leaving from work. This Master Safety Committee shall be made up of an equal number of members from the Union and the Company, with each party appointing up to three committee members. If necessary to address certain issues at a workplace, either party may invite guests, with prior approval of the Committee.

The Company and Union agree that the Employer is responsible for maintaining a sound safety program and its employees are responsible for adhering to the safety program. In addition, the Company and the Union agree that they will continue to discuss and jointly address safety related issues and/or questions about the Company’s safety program in good faith.

#15B. Add Letter of Understanding regarding Emergency Provisions:

LETTER OF UNDERSTANDING

EMERGENCY PROVISIONS

This LOU will address emergent issues that may arise in the workplace.

If a federal, state, or local government declares a state of emergency, this emergency provision shall apply.

a. Changes in policy, process, or working conditions. The Company will communicate to the Union changes in policy, procedures, and working conditions taken in response to the emergency. The parties recognize that emergencies are dynamic in nature and often decisions are fluid and fast changing. The Company will make its best effort to keep the Union advised of these changes. If any change in working conditions is contrary to any express provisions of the labor agreement, the Company will not make such change without mutual agreement with the Union.

b. Employee Leave. If an employee is unable to perform work due to the nature of the emergency, the Company and the Union will meet and discuss in good faith the proper application of the leave of absence provisions provided by Section 17 of this Agreement and/or any additional leave that the parties may mutually agree to provide.

Employer Proposal #15 (Meat) – Safety & Health
12.30.21

c. Layoffs. Any layoffs (or recall of employees) as a direct result of the emergency shall be in accordance with the seniority provisions of Section 17 of the Agreement. The Company and the Union may mutually agree to modify or extend various terms (e.g., the parties may agree to extend the period of time an employee may be on layoff without losing seniority), except that layoffs due to the emergency, recall rights are extended to no less than ninety (90) days.

December 30, 2021

SMITH to U2, 22

**Smith's Food & Drug Centers, Inc. Counter Proposal to UFCW Local 1564
Meat Agreements**

Smith's Food & Drug Centers, Inc. makes the following counter proposal to UFCW Local 1564 for its retail meat bargaining units in the State of New Mexico. Smith's reserves the right to add to, delete from, amend, correct, modify, or withdraw any of the proposals contained herein for all bargaining units or for one or more specific bargaining units, at any time throughout the course of these negotiations, including in the event of changed facts or circumstances. There shall be no final agreement on any issues, regardless of procedural tentative agreements, until a full and complete agreement is reached on all issues which are the subject of matters for bargaining and only after that full agreement is ratified by the parties. The withdrawal of any proposal in these negotiations shall not be used as evidence against the proponent in any arbitration or other proceeding. The Company's offer is conditioned on a timely and peaceful settlement. Smith's reserves the right to correct any drafting errors or omissions.

Contingent on the Union's acceptance of the part of Smith's numbered proposal 16 related to Holiday work (delete second and third paragraph of subsection 8.8), Smith's proposes the following counter proposal to the Union's proposal on Section 10.3 contained in numbered proposal 8 (regarding vacation scheduling):



Section 10. Vacations

Make the following changes to subsection 10.3:

The Company retains the right to schedule vacations. Such vacations, once scheduled, may be changed only by agreement between the Company and employee except where required by legitimate business necessity. The Employer retains the right to determine the number and classification of employees who may be on vacation at any given time. Subject to such considerations, Employees may select their vacation schedule by seniority, provided the Employer is given no less than thirty (30) ~~forty-five (45)~~ days advance notice in writing from the beginning date of such vacation. Employees shall be personally notified in writing of the Employer's decision regarding their vacation request no less than twenty-one (21) ~~thirty (30)~~ days prior to the beginning date of such vacation. If a conflict arises between employees as to vacation preference, and the employees in question have complied with the above notice provision, seniority shall govern within the department, the classification and store. If a conflict arises between employees as to vacation preference, and one or more employees have not complied with the above notice provision, vacation shall be on a first come, first serve basis as to those employees. Employees shall receive their vacation pay not earlier than the week prior to taking the scheduled time off. Vacation shall be used in the year for which it is earned or it shall be forfeit.

December 30, 2021

SMITH'S TO UNIO

**Smith's Food & Drug Centers, Inc. Proposal Modification to UFCW Local 1564
Meat Agreements**

Smith's Food & Drug Centers, Inc. makes the following modification to a previously made proposal to UFCW Local 1564 for its retail meat bargaining units in the State of New Mexico. Smith's reserves the right to add to, delete from, amend, correct, modify, or withdraw any of the proposals contained herein for all bargaining units or for one or more specific bargaining units, at any time throughout the course of these negotiations, including in the event of changed facts or circumstances. There shall be no final agreement on any issues, regardless of procedural tentative agreements, until a full and complete agreement is reached on all issues which are the subject of matters for bargaining and only after that full agreement is ratified by the parties. The withdrawal of any proposal in these negotiations shall not be used as evidence against the proponent in any arbitration or other proceeding. The Company's offer is conditioned on a timely and peaceful settlement. Smith's reserves the right to correct any drafting errors or omissions.

Smith's makes the following modification to its previously made proposal regarding Section 8.1 – Work Schedule:

Section 8. Working Hours and Overtime – Section 8.1 – Work Schedule

Add the following language to this section at the end of the second sentence of the first paragraph: "or in the case of emergency (emergency shall be defined as fire, strike, flood, illness, funeral leave, pandemic or other public health emergency, or act of God). In case of emergency as defined, the Employer shall notify affected employees of schedule changes immediately."

Bargaining Note: In the case of pandemic or other public health emergency, this scheduling exception shall be operative for a period of 45 days from the week effective date of the Employer's first schedule modifications on account of such pandemic or public health emergency.

December 30, 2021

**Smith's Food & Drug Centers, Inc. Counter Proposal to UFCW Local 1564
Meat Agreements**

Smith's Food & Drug Centers, Inc. makes the following counter proposal to UFCW Local 1564 for its retail meat bargaining units in the State of New Mexico. Smith's reserves the right to add to, delete from, amend, correct, modify, or withdraw any of the proposals contained herein for all bargaining units or for one or more specific bargaining units, at any time throughout the course of these negotiations, including in the event of changed facts or circumstances. There shall be no final agreement on any issues, regardless of procedural tentative agreements, until a full and complete agreement is reached on all issues which are the subject of matters for bargaining and only after that full agreement is ratified by the parties. The withdrawal of any proposal in these negotiations shall not be used as evidence against the proponent in any arbitration or other proceeding. The Company's offer is conditioned on a timely and peaceful settlement. Smith's reserves the right to correct any drafting errors or omissions.

Smith's proposes the following new language to Section 5 – General Provisions as a counter proposal to the union's proposal for a new subsection 4.6 regarding drug and alcohol testing:

Section 2. Employment Procedures

"2.X (new) DRUG & ALCOHOL TESTING: The Employer may require the employee to submit to a legally recognized drug or alcohol test at the Employer's expense at the following times: any time prior to the expiration of the employee's probationary period, upon promotion, post-accident, as part of a security investigation, and if the Employer has reasonable suspicion that an employee is under the effects of alcohol or drugs. Time spent in such testing shall be on company time; however, any employee refusing to submit to a drug or alcohol test shall be taken off the clock effective with the time of the Employer's request. An employee who refuses to take a drug or alcohol test upon request shall be subject to discipline which may include termination. The Employer shall have full discretion to determine the methods, the locations and any other details or procedure relating to the testing process."

