

Rejoinder from UFCW Local 400 to [Albertsons' response](#)

The public statement issued by Albertsons on January 30, 2020 is inconsistent with the prior statements issued by Albertsons in recent weeks, as it now acknowledges at least some of its pension promises, which it previously denied. But its description of its obligation to fund those pension promises is inconsistent with federal law.

The terms of Safeway's 2012, 2013 and 2016 collective bargaining agreements with UFCW Locals 400 and 27 provide that when the FELRA & UFCW Pension Fund becomes insolvent, the Mid-Atlantic Pension Fund will pay any benefit not paid by the FELRA & UFCW Pension Fund. This benefit protection provision applies to Fund participants who are or were employed by (1) Giant Landover and Safeway; (2) any employer that withdrew from the FELRA & UFCW Pension Fund without owing withdrawal liability; and (3) any employer that withdrew from the Fund and paid, or is timely paying, its withdrawal liability.

This contractual promise, which also appears in the Plan document of the Mid-Atlantic Fund and can only be eliminated by the unanimous consent of the Pension Fund Trustees, is straight-forward and is quoted in the Attachment to this Statement. It provides that if participants' benefits under the FELRA & UFCW Pension Fund are reduced, the Mid-Atlantic Pension Fund will make up the difference – the entire difference. And not just for employees of Albertsons, but for all current and former employees of Giant Food and any other former participating company who met its financial obligations to the FELRA Fund.

In its January 10, 2020 and January 22, 2020 statements to the Business & Human Rights Resource Center and the New York Post, respectively, Albertsons denied this contractual promise existed, stating that (as quoted to the NY Post in its January 22 statement), it had made an “extremely innovative offer in negotiations to create a supplemental pension plan which would make up any loss which any Albertsons Companies' employee suffers because their benefit level exceeds the amount covered by law in the event the pension plan becomes insolvent” (emphasis added). The company even went on to call this “a groundbreaking offer” and to claim that Albertsons is “not aware of any other employer who has implemented a proposal of this type.”

But its January 30, 2020 statement drops this subterfuge of a purported offer for Safeway employees only and acknowledges that the benefit protection is already in place. Albertsons stated on January 30th that “it was agreed that upon insolvency of FELRA, the benefits not paid by FELRA, including the ‘gap’ between what would have been paid under FELRA and the reduced benefits paid by the PBGC up to the applicable legal limits, would become the responsibility of MAP” (emphasis added).

In addition to providing inaccurate information regarding the nature and extent of its existing pension commitments in its January 10, 2020 and January 22, 2020 statements, Albertsons now misleadingly states that its only financial obligation in the event of the FELRA Pension Fund's insolvency would be to continue contributing at its current contribution rates, subject to annual six cent per hour increases. This is not true. The Internal Revenue Code requires that the contributions of companies to multiemployer pension funds, such as the Mid-Atlantic Fund, must meet statutory “minimum funding” obligations or the employers are liable for crushing excise taxes. As a contributing employer to the Mid-Atlantic Fund, the only way Albertsons will be able to meet the federal “minimum funding” requirements under federal law will be to significantly increase its contributions to the Mid-Atlantic Fund upon the insolvency of the FELRA & UFCW Pension Fund, in order to fund the benefit promise made through the Mid-Atlantic Fund.

Attachment:

“[I]f and when the FELRA & UFCW Pension Fund becomes insolvent and benefits are reduced in

accordance with rules established by the Pension Benefit Guaranty Corporation . . . a benefit will be effective in the Mid-Atlantic Fund for participants of the FELRA & UFCW Pension Fund described below that is equal to the amount of the benefit that would have been provided by the FELRA & UFCW Pension Fund absent any reduction, less the benefit actually provided by the FELRA & UFCW Pension Fund ("benefit protection provision"). When the benefit protection provision is effective the cost of this new benefit will be incorporated into the Mid-Atlantic Fund hourly contribution rate." This benefit protection provision applies to Fund participants who are or were employed by "(1) Giant Landover and Safeway; (2) any employer that withdrew from the FELRA & UFCW Pension Fund without owing withdrawal liability; and (3) any employer that withdrew from the Fund and paid, or is timely paying, its withdrawal liability."