

Negotiations Update #5

February 27, 2020



Kroger Houston Makes Initial Language Proposals

Attached is Kroger Houston's initial set of contract proposals that we shared with the union today.

To review our complete proposal, go to www.krogerhoustoncba.com. You can download a copy of our proposal with explanations behind each of our changes.

As you know, we continue to operate in a highly competitive, difficult market. Our new contract will need to include changes to help Kroger and our associates be successful now and in the future.

It's no secret, we have lost and continue to lose many good associates to competitors and other employers. One reason is likely the higher hourly pay rate that others may offer.

Kroger would like to offer pay rate increases as part of its financial package during our negotiations. However, many of our competitors and other employers hiring talented workers in the area simply do not have the same number of restrictions and inefficient practices that we currently have in place.

Addressing some of the restrictions and practices that other area employers do not have, will better position Kroger to offer pay rate increases to benefit our associates immediately. We think that our associates would prefer to see the company and union negotiate changes that will help them receive rate increases more in line with other employers. Our proposals are designed to make that happen.

Below are few of the tough changes we are proposing to meet our competitive challenges in this market.

Vacation for Part-Time Employees

- Kroger has provided a rich vacation benefit for part-time associates, giving them up to six weeks of vacation. We are aware of no other competitor in the area providing such a significant benefit for workers who, by being part-time, already have many opportunities for time off. Kroger believes that the costs of this benefit over time should be shifted toward our full-time associates.

- The company is proposing that part-time employees hired after June 28, 2020 will be eligible for 2 weeks of vacation under the same rules as regular employees. This still provides a good vacation benefit for part-time employees but includes a reasonable limitation of 2 weeks.
- This will not affect current part-time employees. Kroger is not proposing to take away their existing vacation benefits.

Changes to Scheduled Hours

- The current contract has an inefficient requirement that at least 50% of scheduled hours must be for 40-hour week schedules and 50% for part-time hours. This provision was agreed to in the 1980s. It doesn't reflect the current nature of our business or the need for operational flexibility. It also doesn't consider the reality that more and more talented and qualified associates may not want to work 40 hours a week.
- The company is proposing to modify this dated, inefficient requirement. Having more flexibility to schedule full-time and part-time associates helps us better meet today's business challenges and realities. Note: Qualified full-time employees will still be given the daily and weekly schedule with the most hours by seniority.

Daily Overtime

- Under Kroger's proposals, associates will continue to receive time and half pay for all hours worked in excess of the forty (40) hour workweek. However, the company is proposing to end the practice of paying overtime for hours worked in excess of a "workday." Such daily overtime is very uncommon, including among our competitors and other employers.
- Note: The company will keep the requirement to pay time and a half pay for worked performed on the 7th day worked in a single workweek. Anyone who works seven straight days in a workweek would receive overtime on the 7th day, regardless of the total hours previously worked.

We look forward to working with the union on securing a new contract that will allow us to meet many of the challenges we face and to quickly move forward with a competitive package for our associates.

Kroger – Houston, Texas L.P.
Initial Proposal
UFCW Local 455
Houston Clerks Agreement
February 27, 2020

The Company makes the following Initial Offer (“Offer”) to UFCW Local No. 455 (“Union”) for a new collective bargaining agreement for Houston Clerks. This Offer, and the current collective bargaining agreement to which it applies, represents the Company’s initial Offer. This Offer is conditioned on a peaceful settlement. The Company reserves the right to add to, delete from, amend, correct, modify, or withdraw this Offer for the bargaining unit prior to its acceptance by the Union, or in the event the union engages in a strike, picketing, boycott, anti-company publicity or other economic action against the employer.

Article 1 RECOGNITION OF THE UNION AND BARGAINING UNIT

Delete stricken language and add changes in bold.

- C1. Section 1.01** The Union shall be the sole and exclusive bargaining agent for all employees employed by Kroger ~~Houston, Texas L. P. in stores operating in the counties of Austin, Brazoria, Brazos, Chambers, Fort Bend, Galveston, Grimes, Harris, Jefferson, Liberty, Madison, Matagorda, Montgomery, Orange, Polk, San Jacinto, Walker, Waller, Washington, Wharton, and Store #990 and Store #566~~ **9, 10, 14, 17, 38, 108, 115, 117, 121, 122, 128, 130, 131, 136, 137, 138, 142, 144, 145, 146, 149, 150, 156, 161, 179, 190, 223, 241, 243, 256, 264, 275, 300, 302, 307, 308, 309, 310, 311, 312, 313, 314, 316, 318, 319, 320, 321, 322, 325, 327, 328, 331, 334, 336, 337, 342, 343, 346, 347, 349, 351, 352, 354, 355, 356, 357, 358, 359, 361, 362, 363, 364, 365, 366, 367, 371, 373, 374, 375, 376, 378, 383, 385, 389, 390, 392, 395, 396, 397, 398, 566*, 600, 607, 609, 732, 733, 734, 735, 737, 738, 739, 740, 743, 744, 746, 748, 936, 950, 974, 990***, and excluding all persons employed in the meat departments, store managers, assistant store managers, management trainees, professional employees, product demonstrators, guards and supervisors as defined in the L.M.R.A, as amended.

***Note: Stores #566 and #990 continue to have persons employed in the meat departments excluded.**

Texas is a Right-to-Work state. That means that employees can decide for themselves if they want to be union members. Employees also have federal rights to choose if they want a union to represent them. The listed stores are already represented and have a collective bargaining agreement in place, and we honor and follow that agreement. However, with any new store, Local 455 will have to organize the store under federal law. It is our associates’ choice and theirs alone to decide if they want to join a union or not. **As the company has explained to the union, this proposal does not affect your wages or benefits.**

Houston Clerks Agreement Initial Proposal 2-27-2020. The Company reserves the right at any time during the negotiations process and prior to ratification to amend, withdraw, modify, clarify or add to any proposals. 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 matter for bargaining and only after that full agreement is ratified by the parties.

Article 3 UNION SECURITY

Delete stricken language and add changes in bold.

Section 3.07 The Employer agrees to conduct an Orientation Program for new employees within a reasonable time frame after date of hire. The employee shall be paid for the hours in attendance. In order to conduct the Orientation Program and to be consistent with the needs of the business, the Orientation Program shall be exempt from call-in pay, split shifts and six-day premium pay, daily overtime, etc. ~~The Employer agrees to notify the appropriate Union Representative the date, time and location of the Orientation Program within a reasonable time frame.~~

C2. ~~Within the Orientation Program, the store management or a designee shall explain to the new employees the right to join the Union and shall introduce the store steward and/or Union Representative and allow a reasonable uninterrupted amount of time, (to be mutually agreed upon), to explain the labor agreement, to answer questions and to sign up the new employee for Union membership. Such time shall not be an undue burden on the Employer.~~

Nothing in this Article is intended to preclude the application of Article 15.

Texas is a Right to Work state, employees can decide for themselves if they want to be a member of the union. It is the sole responsibility of the union to introduce themselves to new associates and explain membership, the current labor agreement, answer any questions and solicit membership in the union. **This proposal does not affect your wages or benefits.**

ARTICLE 4 CLERKS WORK

Add changes in bold

Section 4.01 To prevent the erosion of bargaining unit work, driver salesmen, book salesmen, or sales representatives shall not perform work or services in the Employer's retail establishments in excess of the prevailing practice in the industry in the areas covered by this agreement at the time of this agreement as follows:

C3. It is agreed that the prevailing practice of work performed **in the industry** by driver salesman, book salesmen, or sales representatives in the area covered by this agreement can further be explained as follows:

1. Many outside sales personnel (as outlined above) perform the service of checking their merchandise, removing their outdated products from sale for credit, making out orders based on shelf inventory, etc., and this practice should not be construed to be a violation of the Agreement.
2. It is further understood that the practice of outside sales personnel working in preparation of and assistance during new store openings, remodels or resets, is a valuable contribution to the future success of a particular store and should not be construed to be a violation of the agreement.
3. In addition to the above, the established practice of stocking by certain vendors shall not be a violation of the agreement. Those products in Conventional Stores are as follows: beverages, ice, bakery products (cookies, bread, cakes, etc.), snacks, chips, etc., dairy

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products, ice cream, tobacco and tobacco products, magazines, books, greeting cards, etc., party supplies, candles, etc., records, hosiery, baby food, specialty and ethnic foods, spices, dressings, floor care rental and supplies, brooms, mops, etc., candy, nuts, gum, pasta products, rack jobber (sewing notions, toys, pet supplies, window shades, food care products, garden supplies, shoes, soft goods, patterns, hardware, cosmetics), fire wood, produce specialties (plants, flowers, etc.), bottled water, fishing supplies, sporting goods, paint, leather goods, appliances, auto supplies, and clothing.

Section 4.02 Product demonstrators shall be excluded from performing any work normally performed by Bargaining Unit employees. Their duties might include wrapping or slicing the demonstrated product to sell at the time of customer contact only.

Clarifying language regarding the company receiving the same level of vendor services as our competitors.

ARTICLE 6 DISCHARGE AND DISCRIMINATION

Add changes in bold

C4. Section 6.03 Warning notices shall be void after six (6) months from date of issue, **unless in the judgement of the company, the severity of the situation warrants otherwise.**

This addition allows the company to address behaviors or actions that are just so bad or obviously wrong; for example, sexual harassment.

ARTICLE 7 SENIORITY

Delete stricken language and add changes in bold

Section 7.02 Seniority Lists:

C5. (b) Full-time employees: Definition of a full-time employee will apply where full-time employee appears in this agreement, and will be defined as follows:

An employee (~~excluding General Clerks~~) will be classified as a full-time employee at the end of any twelve (12) consecutive workweeks during which his average hours worked per week equal or exceed ~~thirty-two (32)~~ **forty (40) hours** per week. An employee is promoted to full-time if there is a full-time opening per Section 7.03 (b)

This language limits our ability to meet the needs of the business. Modifying this language provides more operational flexibility and helps us be more efficient in scheduling to meet the needs of the business.

C6. (e) Once an individual has qualified as a full-time employee, he shall be removed from full-time status only:

5.) If the employee works less than ~~thirty-two (32) hours~~ **forty (40) hours** per week of the basic workweek each week for six (6) weeks.

This language limits our ability to meet the needs of the business. Modifying this language provides more operational flexibility and helps us be more efficient in scheduling to meet the needs of the business.

Section 7.03 Choice of Schedules and Hours:

C7. (b) Full-time employees by classification within a store and where the employee is qualified to do the work available will be given the daily and weekly schedule with the most hours by seniority. ~~At least fifty percent (50%) of the scheduled hours (excluding Sacker/Carryout hours) shall be forty (40) hour schedules and fifty percent (50%) of hours will be General Clerk schedule by store. This provision shall not apply during the first twenty-six (26) weeks of a new store opening or a major remodeling.~~

At least thirty percent (30%) of the scheduled hours (excluding Sacker/Carry out hours) shall be forty (40) hour schedules and up to 70% of hours will be scheduled for Part-time Clerks by store. This provision shall not apply during the first twenty-six (26) weeks of a new store opening or a major remodel. To determine the number of forty (40) hour schedules per store, fractions will be treated as follows:

One-half (½) or over - Equals a full schedule
Less than one-half (½) - Drop

Forty (40) hour shifts shall be scheduled in compliance with Section 8.01.

The Employer will maintain this ratio on a weekly basis notwithstanding any other provision of the agreement.

This language is outdated and has been restricting our operations since the early 1980s. Our business has changed and continues to change. We need to be more flexible in scheduling full- and part-time associates.

C8. (c) ~~Part-time employees by classification and~~ General Clerks with the most seniority within a store and where said employee is qualified to perform the work and is available will be given the remaining total weekly schedules with the most hours.

Clean-up language. For consistency, general clerks will now be clerks.

C9. (g) ~~Part-time employees and General Clerks~~ shall have first choice for regular full-time jobs based on seniority, provided they are capable of performing the work. Employees desiring such full-time jobs shall notify the District Manager in writing by either January 20th and July 20th of each year that they desire full-time work and are available. Such request will be for any full-time jobs that might occur during a six (6) month period from the first day of each month following such specified dates.

Clean-up language. For consistency, general clerks will now be clerks.

Section 7.05 Sunday and Holiday Rotation

C10. ~~Sunday and holiday work shall be rotated among qualified employees who sign a list (which will be posted in the store office and will be updated on a quarterly basis) that they are available to work on a continuing basis. Where additional employees are needed, the junior employees must work in inverse seniority order by store.~~

~~Full-time employees who request to work on Sundays or holidays will have those hours included in the basic workweek. Employees who are scheduled in inverse seniority order for Sunday or holiday work, those hours will also be included in the basic workweek. Only employees who work forty (40) hours in five (5) days, which include Sundays and holidays in their schedule, may be counted to comply with Section 7.03(b).~~

This process for Sunday and Holiday Rotation is outdated and hampers our ability to meet the needs of our customers on Sundays and holidays, which are our busiest days to operate throughout the entire year. We now have the least experienced associates on the busiest days of the week or year.

Section 7.06 Promotions or Transfers:

C11. (a) Employees who desire transfers from one type of work to another or a promotion to a higher classification shall make their wishes known in writing to their District Manager with a copy to the Human Resource Manager and the Union. When openings occur, employees will be considered by seniority **and/or qualifications** from those who have made their wishes known.

Promotions and transfers need to take into consideration seniority and/or qualifications. A person should be qualified for a job before they are promoted or transferred. The company wants to make sure someone is successful in a role – qualifications will also be viewed as a determining factor.

Article 8 WORKING CONDITIONS

Delete stricken language and add changes in bold and re-number and re-alphabetize where necessary

Section 8.01 Workweek:

C12. The workweek shall consist of not more than forty (40) hours to be worked in not more than five (5) days, ~~Monday through Saturday~~ **Sunday through Saturday**, (except as provided in Article 7, Section 7.05). The days are not necessarily consecutive.

The retail industry has evolved over the last few decades. One of our busiest days of the week are Sundays so it has become a part of our normal workweek. This wasn't the case many years ago. Our customers shopping habits have changed so we must change our ability to schedule to meet the needs of our customers and the business.

Section 8.02 Workday:

C13. 1. ~~The basic workday for all employees before overtime shall be eight (8) hours per day.~~ **(Open Discussion)**

We'd like to have some open discussion with the Union on this proposal. We need to address the costs of daily overtime. We are required by Federal law to pay overtime over 40 hours a week. As far as we are aware, our competitors do not offer daily overtime.

C14. 2. ~~There shall be no split shifts worked or scheduled for employees.~~ **(Open Discussion)**

We'd like to have some open discussion with the Union on this proposal. Employees may want the opportunity to pick-up more hours. We would like employees to have the opportunity to maximize hours.

Section 8.03 Overtime:

C15. Overtime at the rate of time and one-half (1½) will be paid for all hours worked in excess of the workweek ~~or work day.~~ **(Open Discussion)** Work performed on the seventh (7th) day worked in the workweek shall be compensated at the rate of time and one-half (1 ½). In no event shall the same hours be used twice in computing premium time and/or overtime.

We'd like to have some open discussion with the Union on this proposal. We need to address the costs of daily overtime. All employers are required by Federal law to pay overtime over 40 hours a week. As far as we are aware, our competitors do not offer daily overtime – this puts more costs into our business that they do not have. Unfortunately, daily overtime – in combination with time clock rounding – also creates an opportunity for an employee to earn overtime if they simply linger a few minutes past their shift. The potential to misuse daily overtime wastes labor dollars that could be put to productive use elsewhere. We'd like to have a discussion to balance these concerns – especially in light of our competitors' advantage in this regard.

Section 8.04 Daily, Weekly Guarantee:

C16. All employees (except Sacker/Carryout) who are scheduled to work and report for work as scheduled, shall be guaranteed a minimum schedule of four (4) hours of work per day and fifteen (15) hours work per week. **The fifteen (15) hour weekly minimum may be waived by mutual agreement on an individual basis between the employer and the employee.** Employees called in to work shall also be guaranteed a minimum of four (4) hours per day provided the employee is available to work the needed hours.

We are proposing to modify the language on Daily, Weekly Guarantee. We are asking for a waiver to the 15-hour weekly minimum on an individual basis – only if it is agreed upon by the employee and company. The proposed “mutually agreed” upon language helps us address potential new hires who may want less than 15 hours a week.

Section 8.05 Holiday Rate:

C17. (a) **All employees hired before June 28, 2020:** All work performed on a holiday shall be paid for at the premium rate of time and one and one-quarter (1¼) the employee's straight-time rate of pay except for ~~General~~ Clerks and Sacker/Carry outs who will be compensated in accordance with paragraphs 8.05(b) and 8.05(c) below.

C18. (b) **All employees hired before June 28, 2020:** ~~General~~ Clerks shall receive fifty cents (50¢) per hour holiday premium for the first twelve (12) months of employment. Upon completion of twelve (12) months of employment, they shall receive time and one-quarter (1¼) their appropriate hourly rate.

C19. (c) **All employees hired before June 28, 2020:** Sacker/Carry outs shall receive no holiday premium for the first six (6) months of employment. Thereafter, they shall receive a fifty cent (50¢) per hour holiday premium in addition to their hourly rate.

C20. (d) **Employees hired on or after June 28, 2020 shall receive a premium of fifty cents (50¢) per hour holiday premium after two or more years of service.**

Proposals C17-19 does not affect current employees. Proposal C20 only affects employees hired after June 28, 2020.

Section 8.09 Shift Interval:

C21. ~~The employee will be given ten (10) hours off duty between scheduled shifts.~~ **(Open Discussion)**

We'd like to have some open discussion with the Union on this language. Sometimes to meet the needs of the business we need to have some flexibility in scheduling shifts. This allows associates to maximize hours.

Article 11 VACATIONS

Add changes in bold

Section 11.06 Part-time:

C22. (a) A part-time employee shall be granted a vacation under the same general rules as provided for full-time employees. Part-time vacation will be figured on the number of hours in the vacation qualifying year divided the weeks in a calendar year. **Part-time employees hired after June 28, 2020 will be eligible for a maximum of 2 weeks of vacation under the same general rules as provided for full-time employees.**

This language change does NOT affect current employees. We are asking for this change for new hires only.

We believe PT employees have more opportunities to have time off at their convenience to meet their personal needs more so than full-time employees. That is the nature of being a PT employee. Several weeks of vacation for PT is unheard of in the retail industry and something our non-union competitors do not offer.

Limiting the maximum time for vacation to two weeks for new part-time employees puts us more in line with our competition and helps offset our costs so we can put more money toward hourly wages and health care benefits.

ARTICLE 13 LEAVES OF ABSENCE

Delete stricken language and add changes in bold

Section 13.03

C23. (a) Union Business: The Employer shall grant the necessary time off without discrimination or loss of seniority rights and without pay to any employee designated by the Union to attend a labor convention or serve in any capacity on other official Union business, provided the Employer is given at least seven (~~7~~) **(14)** days' notice in writing specifying the length of time off, but in no case shall the length of time off exceed one (1) year.

The adjustment on days in this language aligns with our current scheduling process.

C24. (b) Union Stewards (limited to two (2) per store) shall be granted a leave of absence ~~with~~ **without** pay up to 2 days per year (excluding Holiday weeks) for the purpose of attending Union Workshops, Leadership Conferences, etc. The Union will give the Company two weeks' notice of such request.

We are looking to put the cost savings from this proposal toward company training – for example, assistant department head training.

Section 13.04

C25. (c) An employee returning from a leave of absence must notify the Employer not later than 12:00 noon Thursday of a week and will be placed on the **next available schedule.**

This aligns with our current scheduling process and accommodates future scheduling process.

ARTICLE 14 GENERAL PROVISIONS

Delete Stricken language and add changes in bold

Section 14.01

Uniforms: Any uniform clothing deemed necessary by the Employer for its employees shall be furnished by the Employer and replaced when needed.

C26. The Employer shall provide and shall not charge for the ~~shirts~~ **uniforms** required by the company.

Eliminating shirts as our uniform policy has changed.

Section 14.02 Bulletin Boards: The Employer will provide a bulletin board in each store. Space will be provided to the Union for posting on such boards notices necessary for conducting Union business.

C27. The Union may post whatever notices it deems necessary to conduct Union business **however, such notices shall not compromise the Company’s Core Values of Respect, Integrity, Inclusion, Diversity, Honesty, and Safety or the Company’s reputation.**

It is in the company and union’s best interest to work together to find solutions to concerns and issues. This language further clarifies that interest.

ARTICLE 19 DISPUTE PROCEDURE

Delete stricken language and add changes in bold

Section 19.02 Should any differences, disputes, or complaints arise over the interpretation or application of the contents of this agreement, there shall be an earnest effort on the part of both parties to settle such promptly through the following steps:

- C28.** Step 1. By conference between the aggrieved employee and/or store steward, Union business representative, or either, and the ~~manager~~ **management designee** of the store. The Store Manager will issue their decision and/or position within five (5) days following the conference. It is understood that any agreement reached at Step 1 shall be on a non-precedent setting basis.
- C29.** Step 2. By conference between the Union business representative and/or store steward and the District Manager **or Division designee**. A meeting will be held within twenty (20) days of the first step decision, and a decision and/or position will be given within fifteen (15) days of the second step conference, unless mutually extended by the parties. It is understood that any agreement reached at Step 2 shall be on a non-precedent setting basis.
- Step 3. By conference between an official of the Union and the Division Human Resource Manager (or Marketing Area President) or person designated by him. A meeting will be held within thirty (30) days of the second step, and a written decision and/or position on the grievance within fifteen (15) days of the third step conference, unless mutually extended by the parties.
- Step 4. In the event Step 3 fails to settle the complaint, it may be referred to arbitration by either party within thirty (30) calendar days from receipt of the Employer's written decision and position on the complaint; otherwise, the grievance shall be considered null and void.

We take these dispute procedures seriously. As such we need to have flexibility on who can address them in a timely manner. Having a store management or Division designee allows the company the opportunity to address quickly and efficiently when an employee’s direct manager is not available.

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LETTERS OF AGREEMENT

- Renew LOA #1
- Delete LOA #2
- Renew LOA #3
- Renew LOA #4
- Delete LOA #5
- Add LOA College Leave of Absence:

**Side Letter
Regarding Educational Leave of Absence Policy**

An employee enrolled as a full-time student at an accredited college/university, technical/vocational training or a specialized training program as a full-time student during each academic cycle may request an educational leave of absence under the following conditions:

- Institution is beyond a reasonable commuting distance to a Kroger store.
- Leave must be requested on an Educational Leave of Absence Form in advance and must be accompanied by a written confirmation of attendance from the institution.
- Leave shall be granted for a period not to exceed the length of the institution’s designated sessions, i.e. semester, trimester or quarter.
- Student must report to management no later than fourteen (14) days from the end of the session.
- When school is not in session and the student lives beyond a reasonable commuting distance, the student may request a leave under the same terms and conditions as other educational leaves.
- Notification of educational leave shall be made to the Union for dues purposes.

FOR THE COMPANY:

FOR THE UNION:

Date: _____

Date: _____

Add LOA UFCW Consolidated Pension Fund:

**Side Letter
Regarding Consolidated Pension Fund**

Kroger and various UFCW locals are parties to a Memorandum of Understanding (“MOU”) governing pension benefits and Kroger’s funding obligations that expires on December 31, 2021. The parties acknowledge that Section 3.7 of the MOU provides, in relevant part, that if the parties to the MOU, including Local 455, do not reach agreement by December 31, 2021 regarding pension benefits and/or Kroger’s funding obligation, then the status quo shall remain in effect under then current CBA between Kroger and Local 455 until the expiration of the CBA.

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