

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

DUNKIN DONUTS NORTHEAST
DISTRIBUTION CENTER, Case No. 1-RC-22303

Employer,
and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL NO. 25,

Petitioner.

The above-entitled matter came on for hearing pursuant to notice, before KEVIN J. MURRAY, Hearing Officer, at the Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, 6th Floor, Boston, Massachusetts, 02222, in the Joseph L. Kane Hearing Room, on Wednesday, June 10, 2009, at 9:00 a.m.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

A P P E A R A N C E S

1 On Behalf of the Employer:

2

3 SHARI G. KLEINER, ESQUIRE

4 JULIE MURPHY CLINTON, ESQUIRE

5 Wilmer, Cutler, Pickering, Hale & Dorr, LLP

6 60 State Street

7 Boston, MA 02109

8 (617) 526-6212

9

10 On Behalf of the Petitioner:

11

12 JONATHAN M. CONTI, ESQUIRE

13 Feinberg, Campbell & Zack, PC

14 177 Milk Street

15 Boston, MA 02109

16 (617) 338-1976

17

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

3

1 INDEX

2

WITNESS	VOIR				
	DIRECT	CROSS	REDIRECT	RE-CROSS	DIRE
GERALD HOUDE	12	28	--	--	--
JOHN DITMARS	37	59	62	--	--
JOHN DITMARS	63	68	70	--	--
JOEPEH DePINA	73	79	--	--	--
KEVIN KENNEDY	83	--	--	--	--
KATHERINE NORTON- EDGE	88	92	--	--	--
JASON JACK	97	101	102	--	--

3

4

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

4

1 EXHIBITS

EXHIBIT NUMBER	IDENTIFIED	RECEIVED
BOARDIS		
B-1(a) to 1(e)	32	33
EMPLOYERIS		
E-1	29	36
PETITIONERIS		
P-1	16	28
P-2	20	28

2

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

5

1 PROCEEDINGS

2 (Time Noted: 9:05 a.m.)

3 HEARING OFFICER MURRAY: On the record.

4 This hearing will be in order. This is a hearing before
5 the National Labor Relations Board in the matter of Dunkin
6 Donuts Northeast Distribution Center, Case Number 1-RC-22303,
7 pursuant to the order of the regional director, the initial
8 order which was dated April 6, 2009. The hearing officer
9 conducting this hearing is Kevin J. Murray.

10 The official reporter makes the only official transcript
11 of these proceedings, and all citations, and briefs, and
12 arguments must refer to the official record. In the event that
13 any of the parties wishes to make off the record remarks,
14 request to make such remarks should be directed to the hearing
15 officer and not to the official reporter. Statements of reasons
16 in support of motions and objections should be specific and
17 concise. Exceptions automatically follow all adverse rulings.
18 Objections and exceptions may, on appropriate request, be
19 permitted to an entire line of questioning.

20 It appears from the regional director's order dated
21 April 6, 2009, that this hearing is being held for the purpose
22 of taking evidence concerning two objections filed by the
23 Petitioner. In due course, the hearing officer will prepare and
24 file with the Board my report and recommendations in this
25 proceeding, and will cause a copy thereof to be served on each

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

6

1 of the parties. The procedures to be followed from that point
2 forward are set forth in Sections 102.69 of the Board's rules
3 and regulations.

4 Will the counsel and other representatives for the parties
5 please state their appearances for the record? For the
6 Petitioner?

7 MR. CONTI: Jonathan Conti, Feinberg, Campbell & Zack.

8 HEARING OFFICER MURRAY: And for the Employer?

9 MS. KLEINER: Shari Kleiner, Wilmer, Cutler, Pickering,
10 hale, and Dorr, together with Julie Murphy Clinton.

11 HEARING OFFICER MURRAY: Okay. Are there any matters to

12 be discussed before we begin to take testimony? Ms. Kleiner?
13 MS. KLEINER: One matter I just want to state for the
14 record an objection regarding the service of subpoenas for
15 witnesses between 2:30 and 3:00 p.m. on the day before hearing,
16 giving no opportunity to either prepare or to object to those
17 subpoenas.
18 HEARING OFFICER MURRAY: Okay. The witness -- the
19 subpoenas are being complied with?
20 MS. KLEINER: As far as I know.
21 HEARING OFFICER MURRAY: Okay. I have no control over
22 that, as you know. Mr. Conti, I understand from our off the
23 record discussion that you would submit a motion?
24 MR. CONTI: Yes. I would move to sequester the witnesses.
25 HEARING OFFICER MURRAY: Okay. I will grant that motion.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

7

1 And I have an instruction for the parties and the witnesses. I
2 have granted a request to sequester witnesses. This means that
3 all persons who are going to testify in this proceeding with
4 specific exceptions may only be present in the hearing room when
5 they are giving testimony. Each party may select one person to
6 remain in the room and assist it in the presentation of its
7 case. They may remain in the hearing room even if they are
8 going to testify or have testified. This order also means that
9 from this point on until the hearing is finally closed, no
10 witness may discuss with other potential witnesses either the
11 testimony that they have given or that they intend to give. The
12 best way to avoid any problems is simply not to discuss the case
13 with any other potential witness until after the hearing is
14 completed. Under the rule as applied by the Board with one
15 exception, counsel for a party may not, in any manner, including
16 by showing of transcripts of testimony, inform a witness about
17 the content of the testimony given by a preceding witness
18 without expressed permission of the hearing officer. However,
19 counsel for a party may inform counsel's own witness of the
20 content of testimony and may show to a witness, transcripts of
21 testimony given by a witness for the opposing side in order to
22 prepare for rebuttal of such testimony. I expect counsel to
23 police the sequestration order and to bring any violation of it
24 to my attention immediately. Also, it is the obligation of
25 counsel to inform potential witnesses of their obligations under

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

8

1 the order. It is also recommended that as witnesses leave the
2 witness stand upon completion of their testimony, they be
3 reminded that they are not to discuss their testimony with any
4 other witness until the hearing is completed.
5 So, at this point in time, I'll ask each of the parties to
6 designate a representative who will remain in the hearing room

7 during the course of testimony. Mr. Conti?
8 MR. CONTI: Steve Sullivan. In addition, Pat Palmisano is
9 not going to be a witness.
10 HEARING OFFICER MURRAY: Okay. Yeah, individuals who are
11 not going to be witnesses, of course, are not bound by the
12 sequestration order. Mr. Kleiner?
13 MS. KLEINER: John Ditmars.
14 HEARING OFFICER MURRAY: Okay. Mr. Ditmars, could you
15 raise your hand? Okay, just so I know who you are.
16 All right, at this point in time, all of the potential
17 witnesses will have to leave the hearing room and you'll be
18 subject to re-entry when it's your turn to testify -- to
19 testify.
20 Let's go off the record.
21 (Discussion off the record.)
22 HEARING OFFICER MURRAY: Back on the record.
23 Everybody in the hearing room now with the exception of
24 the representatives is not going to be a witness is my
25 understanding and I leave it to the parties to police the

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

9

1 sequestration order.
2 Do either of the parties wish to make an opening statement
3 before we begin with testimony?
4 MR. CONTI: No.
5 HEARING OFFICER MURRAY: No.
6 MR. CONTI: Well --
7 HEARING OFFICER MURRAY: Yes?
8 MR. CONTI: I didn't anticipate, but we're here for two
9 particular objections to this election. The first is that the
10 Employer -- just give me a minute here -- being on March, on or
11 about March 23rd and continuing through March 29th, shortly
12 before the election date, told its employees and threatened its
13 employees that if the union were voted in, then their 401(k)
14 benefits would change to be they would no longer be able to make
15 contributions to their 401(k) plan and would not, and the
16 Employer would not make any matching contributions to that plan.
17 They also would not be able to remove any money from that plan.
18 They handed out documentation stating this and confirmed it
19 orally at two meetings, and basically gave the impression that
20 during the time, if the union were to be voted in, seven days
21 after that election they would no longer have these 401(k)
22 benefits for up to a year or until the union were able to
23 negotiate a collective bargaining agreement that provided for
24 those 401(k) benefits. But during that time period, contrary to
25 the law which requires that benefits remain the same throughout

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

10

1 that period, the 401(k) benefits would, indeed, be changed.
2 That's the first objection. And the second objection is that
3 the Employer, specifically supervisors Kevin Kennedy and Jason
4 Jack threatened employees, in this case employee Joe DePina,
5 that its driver training program, which is a year long program,
6 would be eliminated if the union were elected and were voted in.

7 HEARING OFFICER MURRAY: Okay.
8 MR. CONTI: And we believe these two issues unlawfully
9 influenced the election through threats and harassment of the
10 employees.

11 HEARING OFFICER MURRAY: All right. Ms. Kleiner, do you
12 want to make a statement?
13 MS. KLEINER: Sure. Also unanticipated but --
14 HEARING OFFICER MURRAY: You don't have to.
15 MS. KLEINER: Well, in response to the objections that
16 were filed by the Union, the record on the 401(k) objection has
17 already been made complete. In fact, the company did present
18 information that it received from a 401(k) administrator,
19 Prudential, it gave that information because it was in the
20 summary plan description, also provided by Prudential. In the
21 first meeting, essentially they just said this is a summary plan
22 description, we don't know what it means, but we will find out
23 for you. So they didn't, neither threatened nor provided any
24 information other than the SPD, which was a matter of record.
25 In the second meeting, they provided the information stating

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

11

1 very clearly we told you we would get this information for you,
2 this is what Prudential tells us is going to happen, and that is
3 the record in terms of the 401(k) plan. In fact, there was a
4 slight misstatement during the opening. It's not, it's not
5 legally significant, but the information given was that they
6 could repay outstanding loans or take out further loans during
7 that period as well. So that was in the statement.

8 With regard to the second objection, it simply is
9 fabricated and didn't happen. And we believe that the Union
10 will not be able to show that there was any threat of any kind
11 with regard to the driver training program.

12 HEARING OFFICER MURRAY: Okay, thank you. So, Mr. Conti,
13 the ball is in your court. Do you want to call a witness?

14 MR. CONTI: Yes. We call Gerry Houde, who I think is out
15 in the hall.

16 HEARING OFFICER MURRAY: Off the record.
17 (Discussion off the record.)

18 HEARING OFFICER MURRAY: Back on the record.
19 Sir, you want to raise your right hand, please?

20 (Whereupon,

21 GERALD HOUDE,
22 was called as a witness by and on behalf of the Petitioner and,
23 after having been duly sworn, was examined and testified as
24 follows:)

25 HEARING OFFICER MURRAY: We're on the record. State and

1 spell your name for the record, please, sir.

2 THE WITNESS: Gerald Houde, G-E-R-A-L-D, H-O-U-D-E.

3 HEARING OFFICER MURRAY: Go ahead, Mr. Conti.

4 DIRECT EXAMINATION

5 BY MR. CONTI:

6 Q Hi, Mr. Houde. I'm Jonathan Conti. I represent Teamsters

7 Local 25. Can you tell me who your employer is?

8 A Dunkin Donuts Distribution Center.

9 Q And how long have you been employed by Dunkin Donuts?

10 A A little over six years.

11 Q What position do you currently hold?

12 A Driver.

13 Q And when you were hired six years ago, were you hired as a

14 driver?

15 A I was.

16 Q As an employee of Dunkin Donuts, are you provided with a

17 retirement plan of any sort?

18 A We are.

19 Q And what is that, what kind of plan?

20 A A 401(k).

21 Q Okay. And do you make contributions to that plan?

22 A Yes.

23 Q What is the basic process for you as an employee making

24 contributions?

25 A We're, we're allowed to put I think up to fifteen percent

1 and the company does up to six percent, they match. The first

2 one percent I think is dollar for dollar. And then I think it's

3 fifty cents on a dollar for up to six percent.

4 Q Are you aware that there was an organizing campaign by the

5 Teamsters at Dunkin Donuts --

6 A Yes, I am.

7 Q -- in the spring of '09.

8 COURT REPORTER: Okay. The witness needs to wait until

9 the attorneys are done asking their questions, even though you

10 may know what he's saying.

11 THE WITNESS: Okay.

12 COURT REPORTER: And he'll do the same for you. But just

13 try not talking over each other for the record.

14 THE WITNESS: Okay.

15 BY MR. CONTI:

16 Q During this organizing campaign, did the company schedule

17 any meetings of the employees to discuss anything having to do

18 with the organizing campaign that was going on?

19 A Yes, they did.

20 Q Okay. Do you recall were those meetings voluntary or

21 mandatory?
22 A Mandatory.
23 Q Do you recall how many mandatory meetings the company
24 scheduled?
25 A I believe it was two on a Sunday and then two meetings

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

14

1 during the week.
2 Q And did you attend all four of those meetings?
3 A I did.
4 Q Who attended that meeting? Which types of employees?
5 MS. KLEINER: Objection. Can you refer to a particular
6 meeting?
7 HEARING OFFICER MURRAY: Yeah, that would be a good idea.
8 MR. CONTI: Okay.
9 BY MR. CONTI:
10 Q Well, you cited four mandatory meetings. For whom were
11 they mandatory?
12 A For the drivers and helpers.
13 Q Do you recall at any of these mandatory meetings that you
14 attended, the issue of the drivers, your 401(k) plan coming up?
15 A Yes.
16 Q And how many meetings was that issue addressed?
17 A I believe two.
18 Q And do you recall the first meeting, when that was that
19 the 401(k) first came up?
20 A It was during one of the weekly meetings. I believe I
21 attended the meeting on the 24th of March.
22 Q Okay. And that was a meeting with all the drivers and all
23 the helpers?
24 A Not all at the same time, no.
25 Q Okay. Do you recall how many, roughly how many drivers

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

15

1 were there that day?
2 A I would approximate maybe thirty guys were in the room, at
3 the time.
4 Q Okay. Thirty total, including helpers and drivers?
5 A Yes.
6 Q Okay. And was there anyone at this -- who was at this
7 meeting from, who represented the management?
8 A Mr. Ditmars ran the meeting.
9 Q Okay. And what is Mr. Ditmars position?
10 A He is I believe president of, he is in control of everything
11 at DCP.
12 Q Okay. Were there any other management or supervisors at
13 this meeting other than Mr. Ditmars?
14 A I don't recall. I think Mr. Kennedy was there in one.
15 Q Who is Mr. Kennedy?

16 A Heis in charge of operations.
17 HEARING OFFICER MURRAY: Do you know the first names of
18 these individuals?
19 THE WITNESS: Kevin Kennedy and John Ditmars.
20 HEARING OFFICER MURRAY: Thank you.
21 BY MR. CONTI:
22 Q Okay. And who ran the meeting?
23 A John Ditmars.
24 Q Okay. And at that meeting, did the company hand out any
25 documents to the drivers and helpers?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

16

1 A Yes.
2 MR. CONTI: I guess weird mark this Union 1 or
3 Petitioner 1.
4 HEARING OFFICER MURRAY: Did you give a copy to the
5 reporter?
6 (Petitioner Exhibit 1 marked for identification.)
7 COURT REPORTER: Just one, one paper?
8 MR. CONTI: Yes.
9 MS. KLEINER: Has this been entered as an exhibit or are
10 you asking that it be entered?
11 MR. CONTI: I'm asking that it be entered.
12 COURT REPORTER: Petitioner 1.
13 HEARING OFFICER MURRAY: It's going to be identified and
14 go through the process.
15 MS. KLEINER: Right, no, I need to know.
16 HEARING OFFICER MURRAY: I'm showing the witness what's
17 been marked as Petitioner's Exhibit 1.
18 BY MR. CONTI:
19 Q If you could take a look at that document, and tell me if
20 you can identify it, and whether you've ever seen it before
21 today?
22 A Yes. This was handed out at that meeting.
23 Q Okay. And who handed that document out?
24 A Mr. Ditmars, John Ditmars.
25 Q And when you received this document, did you read it on

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

17

1 that day?
2 A Yes.
3 Q Okay. And did you read the section about who was eligible
4 to participate in this 401(k)?
5 A Yes, I did.
6 Q Okay. Did anyone, once this document was handed out, did
7 anyone have any questions for Mr. Ditmars as to what this
8 actually meant, what the information was that he was handing
9 out?

10 A I guess the question would be if the union was voted in,
11 what would happen to the 401(k).
12 Q Did somebody ask that question?
13 A Yes.
14 Q Do you recall who asked that?
15 A No, I don't.
16 Q And do you recall what Mr. Ditmars' response was to this
17 question?
18 A At that time, he said he wasn't sure, that he would, that
19 the attorneys were checking into it and that he would get back
20 to us with an answer.
21 Q And when, when the document was handed out, did Mr.
22 Ditmars go through it and explain his interpretation of this
23 document?
24 A No.
25 Q Was there anything in this document that you were unclear

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

18

1 about?
2 A No. They just had it outlined. They had highlighted the
3 last line there about the union employee, it was highlighted in
4 yellow, and that was pretty much what was talked about. He
5 didn't go through the whole, the whole document.
6 Q Okay. And when you received this document and read that
7 line, what was your interpretation of that statement?
8 A That if we were union employees, we wouldn't be able to
9 participate in the 401(k).
10 Q So after Mr. Ditmars said that he was not sure and he
11 would check with the company's attorneys, was there any other
12 discussion about the 401(k) at that meeting?
13 A No, there wasn't.
14 Q Did you attend any other meetings at which this 401(k)
15 issue again came up?
16 A Yes.
17 Q Okay. And when was that meeting?
18 A On March 29th.
19 Q Do you recall what day of the week that was?
20 A On a Sunday.
21 Q And was that another mandatory meeting?
22 A Yes, it was.
23 Q Do you know whether this was -- was this the last
24 mandatory meeting or were there any others after this?
25 A No, this was the last meeting.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

19

1 Q And who do you recall being present at this meeting,
2 management personnel?
3 A I believe all management personnel was there. Mr. Ditmars
4 was running the meeting. Kevin Kennedy, Jason Jack, and his

5 field supervisors were all present.
6 Q And how many drivers and helpers would you approximate
7 attended this meeting?
8 A Oh, excuse me, I would say at least 100, 120 of them were
9 there.
10 Q And you said that Mr. Ditmars, again, ran this meeting?
11 A Yes, he did.
12 Q And at this meeting, was there any discussion about the
13 401(k)?
14 A There was.
15 Q Okay. How did the issue arise at this meeting?
16 A John Ditmars put it up on the big screen. He was, he was
17 doing like a slide type thing for the meeting.
18 Q Okay. When you say a slide, is that like a PowerPoint?
19 A I guess. I don't know. He just, it came up on the big
20 screen in front of us, that's all I know.
21 Q Okay.
22 A How it got there, I don't know.
23 Q Okay.
24 MR. CONTI: Can I get this marked as Union Exhibit 2,
25 Petitioner 2?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

20

1 COURT REPORTER: Petitioner.
2 (Petitioner Exhibit 2 marked for identification.)
3 HEARING OFFICER MURRAY: I'm showing the witness what's
4 been marked as Petitioner's Exhibit 2.
5 BY MR. CONTI:
6 Q Can you identify that document?
7 A This is what was on the screen, yes.
8 Q Okay. When Mr. Ditmars put the slide up on the, on the
9 big screen, did he talk about the slides at all?
10 A At that point, no.
11 Q Okay. Were there any questions at that time?
12 A No.
13 Q And after, did you read what was up on that slide?
14 A Yes.
15 Q Okay. And after reading that slide, what was your
16 understanding as to the information they were trying to convey
17 to you?
18 A That if, if we voted the union in, that the, we would not
19 be allowed to make contributions. They wouldn't make any
20 contributions to the 401(k).
21 Q At any point during this meeting, did anyone ask questions
22 about the 401(k)?
23 A Yes.
24 Q Okay. When was that?
25 A The next slide he put up stated that there would be no

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

1 changes in the policies during the collective bargaining
2 agreement, if the union was voted in.
3 Q He put up a slide that said that?
4 A Yes.
5 Q Okay. Were there any questions about that slide?
6 A Yes. Well, the question I asked was if there were no
7 changes during the collective bargaining, why would the 401(k)
8 change?
9 Q Okay. And did Mr. Ditmars respond to your question?
10 A He did.
11 Q And what was his answer?
12 A He said that the, it was different, that it was controlled
13 by the government.
14 Q Okay. Did he explain how it was different?
15 A He did not.
16 Q Did anyone ask any other questions?
17 A No.
18 Q Did he make any other statements about the 401(k) at that
19 meeting?
20 A No, he did not.
21 Q Did Mr. Ditmars at any point say that the attorneys were
22 continuing to look at the issue of the 401(k)?
23 A He did not.
24 Q Based upon Mr. Ditmars response to your question and the
25 slide that you read, what was your understanding as to what

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

1 would happen to the 401(k) benefits, if you were to, if the
2 drivers and helpers were to vote the union in?
3 A That we wouldnt be able to, he said if, even if it took
4 up to a year for the contract, to negotiate a contract, we
5 wouldnt be able to, the only thing we could do with a 401(k)
6 would either be pay on our loans or make a loan. We couldnt
7 contribute or they wouldnt contribute any money to it.
8 HEARING OFFICER MURRAY: Sir, is that your understanding
9 or are you saying that is what Mr. Ditmars said?
10 THE WITNESS: That is what Mr. Ditmars said.
11 BY MR. CONTI:
12 Q When did he say that? When did he say that?
13 A When he put up the slide.
14 Q Okay. You previously said when you, are you talking about
15 the slide in front of you?
16 A This one here.
17 Q Okay. So he put this up on the wall.
18 HEARING OFFICER MURRAY: Petitioneris 2?
19 THE WITNESS: Yes.
20 BY MR. CONTI:
21 Q Petitioner Exhibit 2?
22 A Yes.
23 Q So he puts that up on the wall and he actually made a
24 statement about it?

25 A He did.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

23

1 Q Okay. What did he say when he put it up on the wall?

2 A He said that the 401 would basically cease. We wouldn't
3 be able to contribute. They wouldn't contribute. The only
4 thing that we could do would pay on a loan, if we had one, or
5 make a loan, if we wanted to, to withdraw the money.

6 Q Okay. And then, okay, there were no questions after he
7 made that statement?

8 A No, I don't believe so.

9 Q And then what happened?

10 A The question didn't arise until the second slide came up
11 about the no, nothing, no policy changes during the collective
12 bargaining agreement.

13 Q And that's when you asked your question?

14 A Yes.

15 Q And that's when Mr. Ditmars responded about --

16 A Yes.

17 Q -- it being controlled by the government?

18 A Just said it was a different, it was different, that it
19 was controlled by the government or it was a government thing.

20 Q How long did this meeting last?

21 A Approximately, an hour.

22 Q Was that the only topic at the meeting discussed?

23 A No. I'm sure there was, I don't, I don't recall

24 everything that was discussed at the meeting?

25 Q Okay. Following this meeting, after you got out of the

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

24

1 meeting, did you speak with any of the other drivers or helpers
2 about any of the information --

3 A There were some concerns, yes.

4 Q Just let me finish my question.

5 A Oh, I'm sorry.

6 Q After the meeting was over, did you have any conversations
7 with any of the drivers or helpers about what, about any of the
8 information that the company has provided at this meeting?

9 A Yes.

10 Q Okay. Who did you speak with?

11 A A lot of the drivers and helpers congregated in the
12 parking lot. There were some concerns about that. I was
13 concerned about that.

14 Q And what were people's concerns?

15 A That we could go for a year with no, not being able to put
16 money into our retirement fund.

17 Q Are you familiar with something called the driver training
18 program?

19 A I am.

20 Q And what is that?

21 A Helpers that receive their license, they're allowed to get
22 into this program. They train for a year as a driver and then
23 become a driver after a year.

24 Q If you know, are drivers and helpers paid the same wage
25 rate?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

25

1 A No, they're not.

2 Q What is a driver, driver paid at when he starts with the
3 company?

4 A I'm not sure what he gets when he starts. I know it's a
5 lesser rate than a full-time driver.

6 Q Okay. How do the wages of the drivers and the helpers
7 compare? You said they're not the same. How are they
8 different?

9 A A driver makes probably about \$10 more an hour than a
10 helper.

11 Q Okay. And do you know how an individual is paid, a helper
12 who is in the driver training program, is he paid as a helper or
13 as a driver, if you know?

14 A I'm not sure how they pay them.

15 Q Do you know how many employees are currently participating
16 in this driver training program?

17 A I believe there's three right now.

18 Q Okay. And how about during the course of the organizing
19 campaign, was it still three drivers?

20 A At that time, it was two.

21 Q Two. Do you know who those two individuals were during
22 the course of the organizing campaign?

23 A Yes. Albert Faria and Joseph DePina.

24 Q At any of the meetings that you attended, you testified
25 that you attended four mandatory meetings, did the issue of the

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

26

1 driver training program, do you recall it being raised or
2 discussed at any of those meetings?

3 A Yes.

4 Q Okay. Which meetings?

5 A I believe it was on March 15th.

6 Q And do you recall who ran that meeting?

7 A John Ditmars.

8 Q Okay. And roughly how many employees do you recall being
9 there?

10 A About the same, 120, somewhere in that area.

11 Q And were there any other supervisors besides Mr. Ditmars
12 there?

13 A No. They were all asked to leave.

14 Q Who asked them to leave?
15 A Mr. Ditmars.
16 Q Mr. Ditmars state --
17 A Yes, he did.
18 Q Okay. Okay, what do you recall, how did the issue of the
19 driver training program come up?
20 A Joseph DePina stood up and it was kind of like, for lack
21 of a better word, a complaint session. And at one point, Mr.
22 DePina stood up and said his name --
23 MS. KLEINER: Objection, Your Honor. Your Honor, sorry,
24 objection, hearsay. I believe he is about to testify using
25 hearsay and Mr. DePina will be testifying later.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

27

1 MR. CONTI: It is not being put in for the truth of the
2 matter asserted. It is the fact that he is testifying as to what
3 he witnessed while he was at this meeting and what was said.
4 HEARING OFFICER MURRAY: Overruled.
5 THE WITNESS: At one point, Mr. DePina stood up and said
6 his name and who he was, that he was part of the driver training
7 program. He stated that he wasn't for the union and, and
8 proceeded to tell us a story of Kevin Kennedy and Jason Jack
9 approaching him and telling him that if the union was voted in,
10 that that driver training program would be eliminated.
11 BY MR. CONTI:
12 Q Did Mr. Ditmars say anything in response to Mr. DePina's
13 statement?
14 A The only thing I heard Mr. Ditmars say was he wasn't aware
15 of that.
16 Q Did he make any other statement saying to the effect
17 that is not true, or the driver training program will not be
18 eliminated?
19 A I don't believe so, no.
20 Q Did you make any statements about the driver training
21 program at that point?
22 A I did not.
23 Q I'm sorry?
24 A I did not.
25 Q Did not.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

28

1 MR. CONTI: Nothing further.
2 HEARING OFFICER MURRAY: Are you planning to offer
3 Petitioner's 1 and 2?
4 MR. CONTI: Yes, I am.
5 HEARING OFFICER MURRAY: Any objection?
6 MS. KLEINER: I have no objection.
7 HEARING OFFICER MURRAY: If you don't mind, I'd just like

8 to ask the witness a question about Petitioner 1. Do you have
9 that in front of you, sir? Two thirds of the way down the page,
10 there is a checkmark that appears next to the words you are not
11 a union employee, etc., etc.
12 THE WITNESS: Yes.
13 HEARING OFFICER MURRAY: Was that checkmark on the
14 document when it was distributed to you?
15 THE WITNESS: No, it was, at the time it was distributed,
16 it was highlighted in yellow highlight.
17 HEARING OFFICER MURRAY: Okay. So the checkmark was not
18 there?
19 THE WITNESS: I don't believe so, no.
20 HEARING OFFICER MURRAY: Okay. Okay, I'll receive
21 Petitioner 1 and 2.
22 (Petitioner Exhibits 1 and 2 received into evidence.)
23 HEARING OFFICER MURRAY: You may cross-examine.
24 CROSS-EXAMINATION
25 BY MS. KLEINER:

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

29

1 Q You testified earlier about a presentation given on slides
2 during a meeting, do you recall that?
3 A Yes.
4 Q Okay. I'm going to put something in front of you. If you
5 can identify it?
6 HEARING OFFICER MURRAY: Why don't you have it marked,
7 please.
8 MS. KLEINER: Would it be --
9 COURT REPORTER: Employer 1.
10 MS. KLEINER: Employer 1.
11 (Employer Exhibit 1 marked for identification.)
12 BY MS. KLEINER:
13 Q And if you could just take a moment to look through it,
14 and then I'm going to --
15 HEARING OFFICER MURRAY: Why don't we have him use the
16 official copy?
17 (Whereupon, the witness reviews the document.)
18 BY MS. KLEINER:
19 Q Okay. Have you looked through it?
20 A Yes. This is the presentation that he gave that day at
21 the meeting.
22 Q Okay. I'm going to represent to you that this is, I'm
23 going to refer to this as the PowerPoint presentation.
24 A Okay.
25 Q And that's the slides that you saw. That's just the name

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

30

1 of the program that, that was used. So you just identified
2 what's been marked as Employer 1 as the PowerPoint presentation,

3 or the group of slides that you saw during that presentation.
4 Correct?
5 A Yes.
6 Q How well would you say you remember that meeting?
7 A I don't know if I remember everything at the meeting, but
8 I remember most of it.
9 Q Okay. If you look at the third page of what is in front of
10 you, you'll see what is been entered as Petitioner Exhibit 2. Do
11 you see that? Is it your memory -- first, you testified that it
12 was just put up on, on the screen and no one said anything. And
13 then afterwards you testified that Mr. Ditmars spoke. In fact,
14 did Mr. Ditmars read this slide through? Is it possible that he
15 actually read this slide in its entirety?
16 A I don't know about, I don't recall whether he read the
17 whole thing or not.
18 Q Okay. Do you recall that he read some of it?
19 A Well, there was a conversation about it, so I'm sure he
20 must have read some of it.
21 Q Okay. So you don't remember one way or the other?
22 A No.
23 Q And if you turn to the next slide, is that the slide you
24 described as being the next slide in the presentation?
25 A No, it is not.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

31

1 Q Okay. I'd ask you now to turn to the end of the slide
2 presentation and go, bear with me, two, three, four, five slides
3 from the end. Do you see a slide that is labeled collective
4 bargaining?
5 A Yes.
6 Q Okay. Is this the slide that you were referring to
7 earlier as the slide on collective bargaining in which he said,
8 and I'm just reading the first point there, "During CB," meaning
9 collective bargaining, "all," in caps, "pay, benefits, rules and
10 policies have to remain unchanged?"
11 A Yes.
12 Q Okay. So, in fact, based on this slide presentation at
13 least it doesn't seem that that slide was next but rather quite
14 a bit later, is that right?
15 A It is possible. I remember it coming up right after the,
16 the one, this one here, the one that, that said we weren't going
17 to get anything.
18 Q Okay. So you, you remember very clearly that the very
19 next slide was this slide over here?
20 A Yeah, I believe so. It was, it was, yeah.
21 Q Okay. And on this collective bargaining slide, do you
22 recall whether Mr. Ditmars read it, spoke about it, or just put
23 it up on the screen?
24 A I believe he read it.
25 Q You believe he did read it, okay. And how about the slide

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316

1 after it?

2 HEARING OFFICER MURRAY: Can I just ask a question? Is
3 there going to be substantial discussion about different pieces
4 of this document?

5 MS. KLEINER: No.

6 HEARING OFFICER MURRAY: It occurs to me we might want to
7 number the pages for ease of reference.

8 MS. KLEINER: Yeah. Unfortunately, they didn't come
9 numbered. Should we just refer the ones that we --

10 HEARING OFFICER MURRAY: Off the record.

11 (Discussion off the record.)

12 HEARING OFFICER MURRAY: Back on the record.

13 We've had the document marked as Employer's 1. The pages
14 have now been numbered. The cover page is 1 and the final page,
15 which starts off saying information is number 24, and they are
16 consecutively numbered in between. It has been reminded to me
17 that I neglected to enter the formal papers into evidence at the
18 start of the hearing. I intend to do so now. The formal papers
19 have been marked as Board Exhibits 1(a) through 1(e), (e) being
20 an index.

21 (Board Exhibit 1(a) to 1(e) marked for identification.)

22 HEARING OFFICER MURRAY: Are there any objections to the
23 receipt of Board Exhibits 1(a) through (e) into the record? Mr.
24 Conti? Mr. Conti?

25 MR. CONTI: No objection.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

1 MS. KLEINER: No objection.

2 HEARING OFFICER MURRAY: Thank you. They are received.

3 (Board Exhibit 1(a) to 1(e) received into evidence.)

4 HEARING OFFICER MURRAY: Go ahead, Ms. Kleiner.

5 MS. KLEINER: Okay. Would you mind reading back the last
6 question we asked just to -- or you don't do that, okay.

7 BY MS. KLEINER:

8 Q I asked you to look at what is now numbered as Slides 20
9 and 21. Do you recollect each of these slides going up on the
10 screen during the presentation?

11 A I do.

12 Q You do. And do you recollect that Mr. Ditmars read each
13 slide, each of these two slides?

14 A I don't recall whether he read them both or not.

15 Q Do you recall whether he either read them or spoke about
16 them?

17 A I believe he spoke about every page in this, in this
18 thing.

19 Q Okay. You testified earlier that at an earlier meeting,
20 Mr. Ditmars handed out what is Petitioner's Exhibit 1, and
21 that's the 401(k) document, and I believe you testified that Mr.

22 Ditmars said that he, he didn't know what it meant and he was

23 asking others to look into it. You testified that he said he
24 was asking attorneys to look into it, is that correct?
25 A He said that there was attorneys looking into it, yes.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

34

1 Q Okay. Do you recollect whether he also said or actually
2 said the plan administrator or Prudential?
3 A No, I believe attorneys was one of the words he used.
4 Q Was one of the words. Was there anybody else he said was
5 looking into it?
6 A I don't believe so. I heard, I thought he said two sets
7 of attorney, that he had two attorneys looking. Whether it was
8 the plan's attorneys and their attorneys, I'm not sure.
9 Q Okay. You also testified about a meeting at which the
10 issue of the driver training program was brought up, is that
11 correct?
12 A Yes.
13 Q Okay. And you testified that somebody by the name of Joe
14 DePina, who is a trainee in that program, asked a question, is
15 that correct?
16 A He didn't ask a question. He stood up and made a
17 statement.
18 Q Okay. And am I correct that you said the statement said
19 that two individuals approached him and threatened that
20 something might happen, if the union was elected?
21 A Yes.
22 Q Okay. And you're very clear that that's your memory of
23 what happened?
24 A Yes.
25 Q Okay. And can you tell me again who those two individuals

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

35

1 who you recollect he said approached him?
2 A Kevin Kennedy and Jason Jack.
3 Q Okay. And following his statement, did you say or do
4 anything?
5 A I did not.
6 Q You don't recall standing up and saying anything about --
7 A I, I didn't stand up and I didn't say a word.
8 Q Okay.
9 MS. KLEINER: I have nothing further.
10 HEARING OFFICER MURRAY: Let me just ask you, sir, who is
11 Jason Jack?
12 THE WITNESS: I believe he is the assistant operations
13 manager.
14 HEARING OFFICER MURRAY: Okay. Mr. Conti?
15 MR. CONTI: No further questions.
16 HEARING OFFICER MURRAY: I just have one further question,

17 sir. These four meetings that the company held during the union
18 campaign, do you recall where they were held?
19 THE WITNESS: At the DCP.
20 HEARING OFFICER MURRAY: All four of them?
21 THE WITNESS: Yes.
22 HEARING OFFICER MURRAY: In the same location, in the
23 facility?
24 THE WITNESS: Yes.
25 HEARING OFFICER MURRAY: Okay. And what location was

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

36

1 that?
2 THE WITNESS: Itis like a meeting room up on the second
3 floor.
4 HEARING OFFICER MURRAY: Okay. Did that raise anything
5 for anybody? Anything further, Mr. Conti?
6 MR. CONTI: Nothing.
7 HEARING OFFICER MURRAY: Ms. Kleiner?
8 MS. KLEINER: One thing I believe I forgot to do. I
9 wanted, I'm not sure if I already did it, but I wanted to enter
10 what was marked as Employer 1 as an exhibit.
11 HEARING OFFICER MURRAY: Any objection?
12 MR. CONTI: No objection.
13 HEARING OFFICER MURRAY: Itis received.
14 (Employer Exhibit 1 received into evidence.)
15 HEARING OFFICER MURRAY: All right, Mr. Houde, youire
16 excused. I remind you not to talk about your testimony with
17 anyone until after the conclusion of this hearing.
18 (Witness excused.)
19 THE WITNESS: Do I need to stay or can I leave or --
20 HEARING OFFICER MURRAY: Thatis between you and the
21 parties, sir.
22 Off the record.
23 (Discussion off the record.)
24 HEARING OFFICER MURRAY: Back on the record.
25 Mr. Conti, will you call your next witness, please?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

37

1 MR. CONTI: Call John Ditmars.
2 HEARING OFFICER MURRAY: Mr. Ditmars, if you would raise
3 your right hand?
4 (Whereupon,
5 JOHN DITMARS,
6 was called as a witness by and on behalf of the Petitioner and,
7 after having been duly sworn, was examined and testified as
8 follows.)
9 HEARING OFFICER MURRAY: Please state and spell your name
10 for the record, please, sir.
11 THE WITNESS: John Ditmars, D-I-T-M-A-R-S.

12 HEARING OFFICER MURRAY: Go ahead, Mr. Conti.
13 DIRECT EXAMINATION
14 BY MR. CONTI:
15 Q Mr. Ditmars, what is your position?
16 A I'm vice president of operations.
17 Q Okay. And how long have you been vice president of
18 operations?
19 A Approximately, four years.
20 Q And prior to becoming VP of operations, what position did
21 you hold?
22 A Director of operations.
23 Q And that was also at Dunkin Donuts?
24 A Yes.
25 Q How long have you been with Dunkin Donuts?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

38

1 A Seventeen years.
2 Q Real briefly, what were the other positions you held for
3 Dunkin Donuts?
4 A Fleet manager, field supervisor, and driver.
5 Q As vice president of operations, what are your basic job
6 duties?
7 A Overall responsibility for the distribution of warehousing
8 throughout the New England states and upstate New York.
9 Q Is there anybody higher than you at this particular
10 facility in the corporate chain?
11 A Not with Dunkin Donuts Northeast Distribution Center, Inc.
12 HEARING OFFICER MURRAY: If I might ask just to aid me,
13 could I ask the witness to describe the Employer's operation
14 briefly?
15 MR. CONTI: I'm sorry?
16 HEARING OFFICER MURRAY: Could I, would you mind if I
17 asked the witness to describe the Employer's operation?
18 MR. CONTI: No, sure.
19 THE WITNESS: We supply goods and materials to all the
20 Dunkin Donuts outlets throughout New England and upstate New
21 York, so anything they need to run their store.
22 HEARING OFFICER MURRAY: So it's a warehousing and
23 distribution operation?
24 THE WITNESS: Yes. Yes.
25 MS. KLEINER: Can I just, can you speak a little louder?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

39

1 For some reason, I'm having trouble hearing.
2 THE WITNESS: Sure.
3 BY MR. CONTI:
4 Q And you obviously became aware at some point that the
5 Teamsters were attempting to organize Dunkin Donuts drivers and

6 helpers, is that correct?

7 A Yes.

8 Q When did you first become aware of the union's campaign?

9 A Sometime November/December.

10 Q How is it that you came to learn of the campaign, did they

11 approach, did somebody from the union approach you?

12 A I was told by supervisors that the union representatives

13 were at the end of the driveway one morning.

14 Q So after you learned in November or December there was a

15 potential organizing campaign beginning, did you hold any

16 meetings with any of your management personnel to discuss

17 strategies for dealing with the organizing campaign?

18 A No.

19 Q Okay. Did you have any meetings with any of your

20 supervisory personnel where you discussed your strategy for

21 dealing with the, with the union election?

22 A No.

23 Q Did you have any meetings in which you discussed issues

24 such as what benefits employees would have between the time of

25 the organizing campaign and if the union was voted in, and the

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

40

1 reaching of the collective bargaining agreement -- let me

2 rephrase that. Were there any discussions about benefits for

3 employees during the organizing campaign or after the union

4 election?

5 A Yes.

6 Q Okay. When were those meetings held?

7 A I thought you said discussions?

8 Q Okay. With whom did you have a discussion?

9 A HR department.

10 Q Okay. And did you have any particular discussions with HR

11 about the 401(k) benefits of the drivers and helpers?

12 A The time frame?

13 Q Between November and the date of the election?

14 A Yes.

15 Q Okay. When did you have, when were those conversations.

16 A Probably starting in the middle of, middle to later March.

17 Q Okay. And who from HR were you speaking with?

18 A Renee St Germain who is the vice president of HR and Kate

19 Norton-Edge, who is a supervisor.

20 Q Kate Norton?

21 A Edge.

22 Q Edge. And she is what?

23 A A supervisor or, excuse me, manager.

24 Q She is another HR manager?

25 A Yes.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

41

1 Q And did you have any discussions with either Ms. St
2 Germain or Ms. Norton-Edge regarding the issue of what would
3 happen to the 401(k) if the vote, union was voted in and before
4 the parties reached a collective bargaining agreement or reached
5 impasse?
6 A Yes.
7 Q Okay. When did you have those discussions?
8 A Latter part of March.
9 Q Late March?
10 A Yes.
11 Q Okay. And did you initiate those discussions in response
12 to anything that had come up, well, strike that. Did the
13 company hold any mandatory meetings with the drivers and helpers
14 to discuss the organizing campaign?
15 A Yes.
16 Q Okay. How many meetings were there?
17 A I believe five in total.
18 Q Okay. Were those mandatory meetings?
19 A Yes.
20 Q Do you recall the dates they were held?
21 A I don't specifically recall the dates.
22 Q And when you say -- at any of those meetings, were any of
23 those meetings split up into three different sessions, for
24 example, some drivers attended one, some other drivers attended
25 the second meeting, and another set of drivers attended a third,

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

42

1 but the same, it was basically the same meeting in three parts?
2 A Yes.
3 Q Okay. When did those happen?
4 A Each week in March.
5 Q And those, those three would count as one, when you say
6 five?
7 A No.
8 Q No. So if each week you had a meeting that was, for
9 example, a Tuesday, a Wednesday, and a Thursday, you're counting
10 those as each, as three separate meetings?
11 A No.
12 Q No. Okay. So you're counting those three meetings as one
13 of the five meetings you've testified to previously?
14 A Right.
15 Q Okay. And did you run each of those meetings?
16 A Yes -- no, sorry.
17 Q Which meetings did you run?
18 A I ran four of the five.
19 Q Do you know the date of the meeting you didn't run?
20 A It was in the, I believe it was the third week of March.
21 Q Do you recall who ran these mandatory meetings on
22 March 23rd, 24th, and 25th?
23 A Yes.
24 Q And that would be one of the -- you would have run those
25 meetings?

- 1 A Yes.
- 2 Q Okay. You heard testimony from Mr. Houde concerning a
- 3 March 24th meeting, correct?
- 4 A Yes.
- 5 Q And you were at that meeting?
- 6 A I was.
- 7 Q Were there any other supervisory personnel or management
- 8 personnel besides yourself at that March 24th meeting?
- 9 A I believe there was.
- 10 Q Do you recall who else was there?
- 11 A Kevin Kennedy and Jason Jack.
- 12 Q Did they make any presentations as part of that meeting?
- 13 A No.
- 14 Q And during that meeting, did the issue of the drivers and
- 15 helpers 401(k) benefits arise?
- 16 A Yes.
- 17 Q Okay. And how did that issue come up?
- 18 A To the SPD.
- 19 Q Okay. And by the SPD, are you referring to Petitioner
- 20 Exhibit 1?
- 21 MR. CONTI: Can we show him?
- 22 HEARING OFFICER MURRAY: Petitioner's Exhibit 1.
- 23 THE WITNESS: Yes.
- 24 BY MR. CONTI:
- 25 Q Okay. And did you hand this document out to the drivers

- 1 and helpers?
- 2 A Yes.
- 3 Q Where did you, did you create this document?
- 4 A No.
- 5 Q Okay. Who created this document?
- 6 A To the best of my knowledge, Prudential, who is our plan
- 7 administrator --
- 8 Q All right.
- 9 A -- prepared the document.
- 10 Q Whose idea was it to distribute this to the drivers and
- 11 helpers?
- 12 A It was mine and HRIs.
- 13 Q And when you handed this out to the employees, did you
- 14 make any statements about what it was you were giving them?
- 15 A I handed it out and told them that there was a bullet
- 16 point in there that I was looking to clarify for them.
- 17 Q Okay. And would that be the bullet point which now has a
- 18 checkmark on that document in front of you?
- 19 A Yes.
- 20 Q Was there a checkmark on that document when it was handed

21 out?

22 A Not that I recall.

23 Q The bullet point that you wanted to clarify, was that

24 highlighted in any way?

25 A Yes.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

45

1 Q Who highlighted it?

2 A HR, I believe.

3 Q Okay. So after you handed this out to all the drivers

4 with the highlight on it, what did you say about it?

5 A I just told them that this was brought to my attention and

6 I'm looking to clarify what that statement meant.

7 Q Okay. And what was your clarification?

8 A That it meant that if they were not covered under a

9 collective bargaining agreement, they were not eligible to

10 participate in the program in certain ways.

11 Q So when you say if they were not covered by a collective

12 bargaining agreement, they were not eligible to participate,

13 were you referring to if the employees voted the union in but

14 had not yet negotiated a collective bargaining agreement, they

15 would be ineligible for certain 401(k) benefits?

16 A At the point that this was handed out, that was not clear

17 to me.

18 Q Okay. Well, you stated that you were clarifying it for

19 the employees. So what did you think it meant, when you handed

20 this out?

21 A At that point, when it was handed out, I was looking to

22 get it clarified before I made a statement as to what it meant.

23 Q So you handed this out before you had gotten clarification

24 as to what it was you were handing out?

25 A Yes.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

46

1 Q And it was your idea to hand this out?

2 A With HR.

3 Q Why would you hand out something, if you didn't know what

4 it meant?

5 A We felt it was important that they knew that there might

6 be an issue.

7 Q Okay. And that might be an issue is what?

8 A That they might not be able to be part of the 401(k)

9 program.

10 COURT REPORTER: You need to keep your voice up. You're

11 trailing off, again.

12 THE WITNESS: Oh, sorry.

13 BY MR. CONTI:

14 Q If they became, if they voted the union in?

15 A If they were not covered under a collective bargaining
16 agreement.
17 Q Well, you wouldn't be covered by a collective bargaining
18 agreement if you're not a union employee anyway, correct?
19 A Correct.
20 Q So you would have to be a union employee for the issue of
21 whether you're covered by a collective bargaining agreement to
22 even matter, isn't that correct?
23 A Correct.
24 Q So after you gave your interpretation that if you're not
25 covered by a CBA, then you're not eligible to participate, you

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

47

1 said what to them, to the drivers, about clarification? Did you
2 say anything to the drivers about clarifying?
3 A Yes, that I need to check with the plan administrator in
4 order to get clarification as to what this statement meant.
5 Q You didn't mention checking with the company's attorneys
6 to see what they believed it meant?
7 A I, I don't recall that.
8 Q Is it possible you said that?
9 A Not our company.
10 Q I'm sorry?
11 A Not our company attorneys.
12 Q Okay. Is it possible you said you're going to check with
13 the plan's attorneys?
14 A I believe they were checking with the plan's attorneys.
15 Q The plan administrator was checking with the plan's
16 attorneys?
17 A The ERISA attorneys.
18 Q Did you ever raise this issue with company counsel? Did
19 you ever ask for clarification from the company's attorneys?
20 MS. KLEINER: Objection. Calls for attorney/client
21 privilege information.
22 MR. CONTI: Not yet. I'm just asking whether he consulted
23 with the company's attorneys.
24 MS. KLEINER: About a particular issue.
25 MR. CONTI: So what? I'm not asking what you, what advice

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

48

1 you gave to him. It's not --
2 HEARING OFFICER MURRAY: I think he's correct. He's not
3 been asked to disclose a privileged communication. I think he
4 can discuss the fact that he consulted. So your objection is
5 overruled. You may answer the question, sir.
6 THE WITNESS: I believe I might have.
7 BY MR. CONTI:
8 Q Were there any questions after you handed this out and
9 made your statement, said you had to clarify it, were there any

10 other questions about it?
11 A Not that I recall.
12 Q Did you hold a mandatory meeting on Sunday, March 29th?
13 A Yes.
14 Q And was that the last meeting, company meeting of the
15 employees to discuss the organizing campaign prior to the
16 election?
17 A Yes.
18 Q And the election was scheduled for the following Tuesday
19 and Wednesday, is that correct?
20 A Yes.
21 Q Two or three days later?
22 A Yeah.
23 Q And did you run the March 29th meeting?
24 A Yes.
25 Q Were there any other individuals from management present

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

49

1 at those meetings?
2 A I believe all of the operations managers and supervisors
3 were in attendance.
4 Q Okay. Who would those people be?
5 A Kevin Kennedy, Jason Jack, you want me to go down the
6 whole list?
7 Q How many guys are we talking about?
8 A Probably twelve.
9 Q Twelve? Sure, if you can do it.
10 A Okay. Yeah.
11 HEARING OFFICER MURRAY: If you'd give me the titles as
12 well, sir.
13 THE WITNESS: Okay. Charlie Degnim, who is facilities
14 manger; Peter Balkus, who is ops manager; all the field
15 supervisors, Ron Zisk, Jeff Wells, Don Carte, Norm Collamati,
16 Paul Hetu -- I'm forgetting one, Russ Stearns. I think that
17 might be it.
18 BY MR. CONTI:
19 Q Jeff Fague?
20 A Jeff Fague and Neil Mahoney, who are ops supervisors.
21 Q And at that March 29th meeting, did the issue of the
22 401(k) benefits come up again?
23 A Yes.
24 Q Okay. And did you bring that issue up?
25 A It was in a PowerPoint presentation that I gave.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

50

1 Q Okay. And that would be the PowerPoint presentation
2 that's been marked as Employer Exhibit 1?
3 HEARING OFFICER MURRAY: This is Employer Exhibit 1, sir.

4 THE WITNESS: Yes.
5 BY MR. CONTI:
6 Q And did you, you ran the PowerPoint presentation?
7 A Yes.
8 Q And the second slide then, which is on Page 3 of this
9 document, was this 401(k) slide, correct?
10 A Correct.
11 Q And you put that up on the screen and did you make any
12 statements after it was up on the screen?
13 A I read the, I read the slide.
14 Q Okay. And that would be that the employees, well, did you
15 give any lead-in or did you just read the slide?
16 A I believe the lead-in was that I told them that I would
17 get clarification as to what the SPD was and this was the
18 clarification that our plan administrator had forwarded to me or
19 forwarded to HR.
20 Q Now on it, it says cannot make contributions into the
21 plan, cannot receive the company match or profit share award,
22 cannot remove balance of funds unless it is a loan or a hardship
23 withdrawal. When you presented this, did you phrase this as
24 this is, this applies to union employees?
25 A I read the document just as it is set.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

51

1 Q You just read it?
2 A Yes.
3 Q Okay. So you prefaced it here is the clarification, you
4 put it up on the screen, and you didn't say anything else other
5 than read the document?
6 A Correct.
7 MS. KLEINER: Excuse me. Could we close the door?
8 HEARING OFFICER MURRAY: Sure. It'll just make it colder.
9 MS. KLEINER: You've got to pick your poison.
10 HEARING OFFICER MURRAY: Absolutely.
11 BY MR. CONTI:
12 Q Who created Employer Exhibit 1?
13 A I, I received it through HR. I believe it was created by
14 Prudential, plan administrator.
15 Q The entire document was created by Prudential?
16 A Oh, sorry. Could you say that again?
17 Q The document, itself, who put this document together?
18 A I did.
19 Q You did. But what you're telling me is that you, did you
20 create Page 3 based upon information provided to you from
21 Prudential, is that your testimony?
22 A I copy and pasted it from the email that was forwarded to
23 me through HR.
24 Q And prior to creating this document but after you told the
25 employees at the previous meeting you were going to get

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

- 1 clarification, did you speak with anybody at Prudential?
- 2 A I did not.
- 3 Q Okay. Did you speak with any attorneys about the question
- 4 you needed clarified?
- 5 A No.
- 6 Q Did you email anybody a question about it?
- 7 A Not that I recall.
- 8 Q Okay. How is it then that you told the employees you were
- 9 going to get clarification and Prudential sends this to you, but
- 10 you didn't actually ask Prudential for the information?
- 11 A HR sent it to me.
- 12 Q HR sent it to you.
- 13 A Correct.
- 14 Q And did you discuss what is in this 401(k) slide with
- 15 anybody from HR prior to putting it up at that meeting?
- 16 A Yes.
- 17 Q Who did you discuss with?
- 18 A Renee St Germain and Kate Norton-Edge.
- 19 Q And what was, what did you discuss with them about the
- 20 401(k) benefits?
- 21 A Just that they had clarified it through our plan
- 22 administrator, who was Prudential.
- 23 Q So after you spoke with these two women and drafted this
- 24 document, what was your understanding as to what would happen if
- 25 the union was voted in with respect to their 401(k) benefits?

BURKE COURT REPORTING, LLC
 1044 Route 23 North, Suite 316
 Wayne, New Jersey 07470
 (973) 692-0660

- 1 A Exactly what it says on this slide.
- 2 Q That during the time until an agreement was reached, they
- 3 would not be able to make contributions into the plan, the
- 4 Employer wouldn't make any contributions, and they couldn't
- 5 remove the funds unless it was a loan?
- 6 A Or hardship.
- 7 Q Or a hardship.
- 8 A Correct.
- 9 Q Is that correct?
- 10 HEARING OFFICER MURRAY: You have to say yes or no, sir.
- 11 THE WITNESS: Yes.
- 12 BY MR. CONTI:
- 13 Q After you finished reading the slide, did anyone ask any
- 14 questions about the slide?
- 15 A Yes.
- 16 Q Okay. Who asked questions?
- 17 A Gerry Houde.
- 18 Q Did he ask it when this slide was still up?
- 19 A I believe it was this slide.
- 20 Q What do you recall Mr. Houde asking?
- 21 A Asking in his estimation that there were no change in
- 22 benefits. He, his, his question was in previous meetings we had
- 23 talked about there were no changes to any benefits during the

24 collective bargaining agreement phase.

25 Q No changes to benefits while the parties were negotiating

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

54

1 a collective bargaining agreement?

2 A Yes.

3 Q You had presented that information at previous meetings?

4 A Yes.

5 Q And you later, at least some point later according to

6 Page 20 of this document, made that statement again, is that

7 correct, if you look at Page 20 of the document?

8 A I, I qualified that page saying that with the exception of

9 the 401(k).

10 Q Okay. Was that, so Gerry, tell me what Gerry asked,

11 again?

12 A Gerry stated that he didn't believe that there were any

13 changes to benefits after the election and before the collective

14 bargaining agreement was in place.

15 Q Okay. And did you respond to that statement?

16 A Yes.

17 Q Okay. And what was your response?

18 A That the 401(k), to the best of my knowledge, the 401(k)

19 was the only thing that changed.

20 Q Did you claim that it was some exception based upon some

21 kind of government rule or regulation?

22 A No.

23 Q No?

24 A No.

25 Q So you just said take my word for it, it's not covered by

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

55

1 that normal law?

2 A No.

3 Q But, so it's your testimony that you told the employees,

4 the information you conveyed was benefits would not be changed

5 between the time of the union winning the election and a

6 collective bargaining agreement being reached other than the

7 401(k) benefit?

8 A Yes.

9 Q And those would unequivocally change?

10 A According to what I had been forwarded through Prudential,

11 yes, or through HR.

12 Q And you never made a statement about having to seek

13 further clarification, did you?

14 A No.

15 Q So you were confident in your answer during that meeting?

16 A Yes.

17 Q Are you familiar with the driver training program?

18 A Yes.

19 Q And what is that? Give me a basic synopsis of what that
20 program is?

21 A Basically, we take people that have worked for us, whether
22 they're warehousemen and/or helpers, and give them the
23 opportunity, if they have a CDL Class A license, to move into a
24 driver training program to become a driver.

25 Q And how long does the training program last, typically?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

56

1 A It, it, it's a new position for us, so we pretty much say
2 that it's at least a year period, but until you're qualified to
3 drive the truck, so no less than a year.

4 Q Okay. And is there a difference in the wages between a
5 helper and driver?

6 A Yes.

7 Q What, what's the difference?

8 A I believe the driver is at \$23.78 and the helper is at
9 \$13.8.

10 Q So it's a \$10 difference between those two?

11 A I believe so.

12 Q Okay. And while an individual is in the driver training
13 program, at what rate of pay is he paid?

14 A I'm not 100 percent sure. It's somewhere in between.

15 Q A rate in between, higher than the helper but less than a
16 full-time driver?

17 A Yes.

18 Q Did you attend the March 15th, a company meeting on March
19 15th regarding the union election?

20 A Yes.

21 Q Okay. Did you run that meeting?

22 A Yes.

23 Q And how many employees were at that meeting?

24 A Approximately 120.

25 Q If I may go back for one second while we're talking about

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

57

1 numbers. At the March 29th meeting that we just, you just
2 testified about, how many drivers were at that meeting?

3 A Probably 120.

4 HEARING OFFICER MURRAY: You mean drivers and helpers, Mr.
5 Conti, employees total?

6 BY MR. CONTI:

7 Q Yes, drivers and helpers, yes.

8 A One hundred twenty.

9 Q One hundred twenty. And was there any discussion about
10 the driver training program at that meeting?

11 A There was a question asked.

12 Q Okay. And what was the question?

13 A I believe the question was what would happen to the driver
14 training program if the union was, there was, it was something
15 to the effect of what would happen to the driver training
16 program if the union was put in place. It was asked of a
17 supervisor.
18 Q Who asked the question?
19 A Joe DePina.
20 Q And he asked it of you? He asked you the question?
21 A In the March 15th meeting, yes.
22 Q Okay. And what was your response?
23 A I had told him what the supervisor said was correct.
24 Q What did he -- did Mr. DePina say anything other than what
25 would happen if the union was put in place, what would happen to

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

58

1 the driver training program? Did he make any statements in
2 addition to his question?
3 A I believe it was, I believe it was a question.
4 Q Okay. But you mentioned that you said what the supervisor
5 told you is correct, so he must have mentioned the supervisor in
6 his statement?
7 A Yes.
8 Q Okay. So what did he say?
9 A I can't recall the exact question, but it was that Jason
10 Jack stated that he didn't know if, if anything would happen to
11 the driver training program if the union was voted in, something
12 to that effect.
13 Q Jason Jack said he didn't know what would happen to the
14 program?
15 A He said he didn't think anything would happen to the
16 driver training program if the union was voted in, something to
17 that effect.
18 Q Okay. So it's your testimony Mr. DePina then asked you
19 the same question and you said what Mr. Jack said is correct,
20 you don't know?
21 A I believe the, the question Mr. DePina was asking was
22 clarification as to what Mr. Jack had stated to him.
23 Q So you confirmed the statement that you didn't think
24 anything would happen to the driver training program?
25 A Correct.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

59

1 Q Did you say anything else?
2 A Not that I recall.
3 Q Did you, at any later mandatory meetings, did you raise
4 the issue of what would happen to the driver training program?
5 A No.
6 Q Did you make any further clarifications as with any
7 definity (sic) as to what would happen or not happen to the

8 statement, to the program?
9 A Not that I recall.
10 MR. CONTI: Nothing further.
11 HEARING OFFICER MURRAY: Okay. Ms. Kleiner?
12 MS. KLEINER: Can we go off the record for one minute?
13 HEARING OFFICER MURRAY: Sure. Off the record.
14 (Discussion off the record.)
15 HEARING OFFICER MURRAY: Back on the record.
16 Ms. Kleiner, you may cross-examine.
17 MS. KLEINER: Okay.
18 CROSS-EXAMINATION
19 BY MS. KLEINER:
20 Q You testified earlier about meeting in which Joe DePina
21 asked a question. Earlier, actually, while you were here, you
22 heard it characterized as a statement. Can you just tell us
23 what Mr. DePina said to the best of your recollection?
24 A I believe it was, it was phrased as a question. It was,
25 it was an elongated question. He said that he talked to Jason

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

60

1 Jack, who was a supervisor or the ops manager for us, and asked
2 him about the driver training program and what if anything would
3 happen to it if the union was to be voted in.
4 Q To the best of your recollection, he didn't say that he
5 was approached by Kevin Kennedy?
6 A He did not say that.
7 Q Did he mention Kevin Kennedy at all?
8 A No.
9 Q Did he say that he was approached by Jason Jack?
10 A No.
11 Q But he did mention Jason Jack?
12 A Yes.
13 Q Did he say that he asked Jason Jack a question?
14 A Yes.
15 Q You testified earlier about a presentation you gave
16 regarding the 401(k) plan and Employer Exhibit 1 was put in
17 front of you. Is it still in front of you?
18 A Yes.
19 Q Okay. Did you go through every slide in order in the
20 presentation?
21 A Yes.
22 Q Did you skip any slides?
23 A No.
24 Q And you were asked some questions and gave some answers
25 regarding the 401(k) slide, and what you said, and what you put

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

61

1 in it. And, frankly, I couldn't follow the questions or some of

2 the answers. So could you clarify for me when this Slide
3 Number 3, you want to turn to that?
4 A Um-hum.
5 Q When that was in front of you, can you tell me what it is
6 you said and whether or not you read the material on the slide?
7 A I basically read line for line each statement on the
8 slide.
9 Q Did you say anything beforehand?
10 A I qualified the slide by saying this is the answer, I was
11 just clarifying the initial SPD that I had handed out in the
12 prior meetings.
13 Q Okay. If you could, rather than, rather than
14 characterizing to me what you said, if you could just try to
15 repeat what you said?
16 A I believe I said I promised I would give you an answer to
17 the SPD that was handed out on Tuesday and this is basically the
18 answer to that.
19 Q Did you say anything about where you got the answer from?
20 A I believe I said Prudential had provided that information.
21 Q Okay.
22 MS. KLEINER: And if it is okay, I'm going to switch to my
23 direct examination now?
24 HEARING OFFICER MURRAY: Sure. Unless Mr. Conti wants to
25 redirect from his?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

62

1 MR. CONTI: Yeah, I have one quick question.
2 HEARING OFFICER MURRAY: Go ahead.
3 REDIRECT EXAMINATION
4 BY MR. CONTI:
5 Q Mr. Ditmars, this document is not numbered, correct?
6 A Correct.
7 HEARING OFFICER MURRAY: You're referring to Employer 1?
8 BY MR. CONTI:
9 Q Employer Exhibit 1 is not numbered, correct, other than
10 what we just numbered?
11 A Correct.
12 Q There is no printed number on the document, correct?
13 A Correct.
14 Q So this is, is it possible that this document is not in
15 the exact order that you put it up on the slide at the March
16 29th meeting?
17 A I went though it and it looks to be in order.
18 Q Okay. So according to this document, if you turn to
19 Page 2, the agenda lists state of the business as the first
20 topic, correct?
21 A Correct.
22 Q And then you immediately when to the 401(k) slide?
23 A Correct.
24 Q Prior to the state of the business?
25 A Correct.

BURKE COURT REPORTING, LLC

- 1 Q And out of order with the second topic on the agenda which
2 is benefits?
3 A Correct.
4 Q Okay. Why did you do that?
5 A Because that was the presentation was built prior to
6 getting the clarification from our plan administrator.
7 Q So you just inserted it at the front?
8 A Yes.
9 MR. CONTI: Nothing further.
10 HEARING OFFICER MURRAY: Now you may switch hats and do
11 your direct.
12 MS. KLEINER: Yes, okay.
13 DIRECT EXAMINATION
14 BY MS. KLEINER:
15 Q How many employees are currently in the driver training
16 program?
17 A Two.
18 Q And who supervises the driver trainees?
19 A Jason Jack.
20 Q Who are the two employees in the program?
21 A Al Faria and Joseph DePina.
22 Q Other than the interaction that you described earlier in
23 your testimony involving Joe DePina and his comment or question,
24 have you ever spoken or during the period leading up to the
25 election which occurred March 30th and April 1, did you have any

- 1 conversations or did you take any questions from anyone
2 regarding the driver training program?
3 A No, with the exception of Joe DePina.
4 Q Right, I stated in my question with the exception of the
5 testimony you've just given, was there any other conversations
6 with Joe DePina that you're referencing now?
7 A No.
8 Q Okay. At some point, I understand that you became aware
9 of Petitioner's Exhibit 1, the summary plan description. Do you
10 still have that in front of you? Okay. And who brought that,
11 the SPD to your attention or that issue within the SPD to your
12 attention?
13 A The HR department.
14 Q And when did they bring it to your attention? I think you
15 already said.
16 A It was the latter part of March. The exact day, I'm not
17 sure.
18 Q Was it in a meeting? How was it brought to your
19 attention?
20 A It was not in a structured meeting. During the campaign,
21 I would go to HR to give them updates on what we were working

22 on, and during one of those drop-by meetings, they brought this
23 to my attention.

24 Q And did you instruct them to do anything? Did you -- I'm
25 sorry, what if anything was said during that meeting?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

65

1 A They just brought to my attention that this clause and the
2 eligibility to participate said, made this statement.

3 Q And when they brought that to your attention, what if
4 anything did you say?

5 A I instructed them to clarify what that statement meant
6 through the plan administrator, which is Prudential.

7 Q And why did you ask them for clarification of the
8 statement?

9 A Because I didn't feel comfortable bringing it forward to
10 the employees without clarification.

11 Q Okay. But, in the end, when you handed this out, you did
12 bring it forward to them. So why did you give it to them
13 without first seeking the clarification?

14 A Because I felt it was important for them to know that
15 there might be an issue.

16 Q And how did you subsequently learn of the clarification
17 that you referenced earlier in your testimony?

18 A Through the HR department.

19 Q And particularly who is that from?

20 A Kate Norton-Edge.

21 Q And what did Kate say or do to give you that
22 clarification?

23 A She had said that she had talked to Prudential, the plan
24 administrator, our representative there, and I believe their
25 ERISA attorney.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

66

1 Q And what did she tell you she had learned?

2 A That basically what I put in that slide was what they had
3 come up with.

4 Q And did you already have the slide at the time or, and she
5 said the slide is correct, or --

6 A No, I did not have the slide at that time.

7 Q Okay. So what did she tell you?

8 A She said that if they were not covered under a collective
9 bargaining agreement, they would not be able to contribute, to
10 contribute to the 401(k), they would not be eligible for
11 matches, but they could still potentially take out money for a
12 hardship or loans.

13 Q And when she gave you this information, what did you say
14 or do?

15 A I asked her to, if she could get it in writing.

16 Q Okay. And did she get it in writing?

17 A Yes.
18 Q And what form did that writing take?
19 A The email. She forwarded it to me.
20 Q And what did you do with the information she forwarded to
21 you by email?
22 A I copied and pasted it, and put it in my presentation.
23 Q And during the presentation that we talked about earlier,
24 you said that you had the stuff up on, on the slide and you
25 prefaced it with I promised you I'd get you something. Did you

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

67

1 specifically say that the information was from Prudential or
2 what did you say by way of where the information came from?
3 A I told them that Prudential had provided us the
4 information and they had talked to their ERISA attorneys, and
5 this was the information that they had given to HR.
6 Q And now turning back to your conversations with Kate
7 Norton-Edge, did she tell you or do you know who at Prudential
8 she spoke with?
9 A I'm not sure.
10 Q I think this was covered already but if you look at Pages
11 20, Slides 20 and 21, which are both labeled collective
12 bargaining, did you cover the material on Slide 20 during your
13 presentation?
14 A Yes.
15 Q And did you cover the material on Slide 21 during your
16 presentation?
17 A And by, when I say covered, did you read or otherwise
18 cover the material that is in those slides?
19 A Yes.
20 Q Is this the first, this union campaign that we're here
21 about today, is this the first union campaign that you've ever
22 dealt with as a Dunkin Donuts Northeast Distribution Center
23 employee?
24 A No.
25 Q Okay. In any of the prior elections, has there ever been

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

68

1 an issue related to the 401(k) that is come up?
2 A No.
3 Q Is it your, was it your understanding prior to this issue
4 from the SPD coming to your attention that no benefits could
5 change during the period after which a union is elected and a
6 CBA is fully negotiated?
7 A Yes.
8 Q Okay. And why did you believe in this case that it was
9 different with regard to the 401(k)?
10 A Basically, that is what the plan administrator told us,

11 that it was different.
12 Q Okay.
13 MS. KLEINER: I have nothing further.
14 HEARING OFFICER MURRAY: Mr. Conti?
15 CROSS-EXAMINATION
16 BY MR. CONTI:
17 Q Did the plan administrator say why it was different?
18 A I wasn't in that conversation.
19 Q Did anybody from HR convey to you why it was different or
20 why Prudential said it was different?
21 A I didn't really have that conversation with them.
22 Q What do you mean you didn't really have that conversation?
23 A I, I, they talked to Prudential, they provided me with the
24 information, so I relied on them to give me that information.
25 Q I still want to, I'm still not clear. You stated when you

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

69

1 got this, when HR brought this to your attention, the potential
2 issue with the 401(k), you told them, well, go find out more
3 about it, correct?
4 A Correct.
5 Q Some clarification. Yet you still went into a meeting and
6 handed this out to all your employees?
7 A Correct.
8 Q Why?
9 A I didn't think it was fair to get clarification and then
10 the last meeting hit them with something that might affect them
11 like that.
12 Q But isn't that exactly what you ended up doing?
13 A No.
14 Q No? Didn't you tell them at the March 24th meeting, I've
15 got to go get clarification, the attorneys are working on it, or
16 the plan, the plan is looking at it, and then on that Sunday put
17 up a slide that said, no, you can't contribute, we're not making
18 contributions between the time the union is elected in and
19 whenever it is, if ever, they get a collective bargaining
20 agreement?
21 A Yes.
22 Q Isn't it true you handed this out just as propaganda for
23 further reason, to give the employees another reason not to vote
24 for the union?
25 MS. KLEINER: Objection.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

70

1 HEARING OFFICER MURRAY: Sustained.
2 MR. CONTI: Nothing further.
3 HEARING OFFICER MURRAY: Anything further?
4 MS. KLEINER: One quick question.
5 REDIRECT EXAMINATION

6 BY MS. KLEINER:

7 Q How much time lapsed between the time you found out,
8 between the time this SPD provision was brought to your
9 attention and the time that you handed it out to employees?

10 A A day or two.

11 MS. KLEINER: Nothing further.

12 HEARING OFFICER MURRAY: Mr. Ditmars, I just want to get
13 clarification on this discussion with Mr. DePina at the meeting.

14 You testified that Mr. DePina said he had asked a question of
15 Mr. Jason Jack concerning what might happen to the driver
16 training program.

17 THE WITNESS: Yes.

18 HEARING OFFICER MURRAY: And that that was one of the
19 things he said to you in this meeting.

20 THE WITNESS: Yes.

21 HEARING OFFICER MURRAY: Did he then go on to explain what
22 Mr. Jack's response was to his question when he was talking to
23 you in the meeting?

24 THE WITNESS: I believe that's why it seems like a
25 statement. It wasn't necessarily a statement, it was a long

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

71

1 question.

2 HEARING OFFICER MURRAY: Okay. Well, as best you can,
3 would you explain, state what you recall him asking as a
4 question or making as a statement, start to end?

5 THE WITNESS: I believe, I believe it went something to
6 the effect that -- there was more that happened during the
7 question. That's why it seemed so, the question seemed so long.
8 I don't know if I can elaborate.

9 HEARING OFFICER MURRAY: Well, the just explain, could you
10 just explain what happened?

11 THE WITNESS: Okay. So basically Joe DePina started to
12 ask a question. He said that he had a conversation with Mr.
13 Jack and asked him about what would happen to the driver
14 training program if the union was voted in. Mr. Jack's response
15 to him was that he didn't think, he didn't see, he didn't
16 foresee any changes, but during the collective bargaining
17 agreement, during the collective bargaining negotiation phase,
18 he didn't know what would potentially happen.

19 HEARING OFFICER MURRAY: That's what Mr. DePina said?

20 THE WITNESS: This is his question.

21 HEARING OFFICER MURRAY: Okay.

22 THE WITNESS: At that point, two of the employees jumped
23 up and started shouting that he can't say that, that's
24 harassment, that's coercion. My attention was distracted trying
25 to, to calm the other two employees down so Mr. DePina could

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

72

1 finish his question. And he finished his question saying that,
2 you know, he was asking me to clarify what Mr. Jack had said.
3 HEARING OFFICER MURRAY: And then what did you say?
4 THE WITNESS: I said that Mr. Jack's answer was correct.
5 I believe that was the --
6 HEARING OFFICER MURRAY: Okay, thank you. Did that raise
7 anything for anybody? Go ahead.
8 BY MS. KLEINER:
9 Q Can you tell me who the employees who stood up following
10 Joe DePinais question/statement were?
11 A One was Gerry Houde and the other was Darren Horton.
12 Q Was that the same Gerry Houde that testified earlier
13 today?
14 A Yes.
15 COURT REPORTER: I didn't catch the second name?
16 THE WITNESS: Darren Horton.
17 MS. KLEINER: Nothing further.
18 HEARING OFFICER MURRAY: Okay. Mr. Conti?
19 MR. CONTI: Nothing further.
20 HEARING OFFICER MURRAY: Okay. Thank you, Mr. Ditmars,
21 you're excused.
22 (Witness excused.)
23 HEARING OFFICER MURRAY: Mr. Conti, do you have another
24 witness?
25 MR. CONTI: No, I do not, subject to rebuttal.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

73

1 HEARING OFFICER MURRAY: Okay.
2 MS. KLEINER: Can we take a minute?
3 HEARING OFFICER MURRAY: Sure. Off the record.
4 (Whereupon, a brief recess was taken.)
5 HEARING OFFICER MURRAY: Back on the record.
6 Ms. Kleiner, do you want to call your first witness?
7 MS. KLEINER: Joe DePina.
8 HEARING OFFICER MURRAY: Mr. DePina, would you raise your
9 right hand, please, sir?
10 (Whereupon,
11 JOSEPH DePINA,
12 was called as a witness by and on behalf of the Employer and,
13 after having been duly sworn, was examined and testified as
14 follows:)
15 HEARING OFFICER MURRAY: Sit down right there. And if
16 you'd state and spell your name for the record, please?
17 THE WITNESS: Joseph DePina.
18 HEARING OFFICER MURRAY: And spell your last name, please?
19 THE WITNESS: D-E-P-I-N-A.
20 HEARING OFFICER MURRAY: Go ahead, Ms. Kleiner.
21 DIRECT EXAMINATION
22 BY MS. KLEINER:
23 Q Where do you currently work?
24 A NEDCP, Northeast Distribution Center.
25 Q And what is your position at the NEDCP?

- 1 A I'm a driver trainee.
- 2 Q Are you a supervisor?
- 3 A No.
- 4 Q And are you a member of the group of employees who was
- 5 eligible to vote in the union election that occurred at the end
- 6 of March --
- 7 A Yes.
- 8 Q -- of this year? Okay. Were you subpoenaed to be here
- 9 today?
- 10 A Yes.
- 11 Q And who issued that subpoena?
- 12 A I have no idea. I just got it from, from my job.
- 13 Q Do you have it with you?
- 14 A Yeah, I have it right here.
- 15 COURT REPORTER: I'm sorry, you need to move forward a
- 16 little bit and you need to keep your voice up.
- 17 HEARING OFFICER MURRAY: Speak right in the microphone,
- 18 please.
- 19 THE WITNESS: By Teamsters Local 25.
- 20 BY MS. KLEINER:
- 21 Q You said you're, you're part of the driver training
- 22 program. What is the driver training program?
- 23 A Consists of a training program to become a driver at the
- 24 DCP.
- 25 Q And what does it involve?

- 1 A It involves driving with the supervisor once a week. The
- 2 program is for a year. And upon your performance and your
- 3 evaluation, you progress through the training to become a
- 4 driver.
- 5 Q Okay. And was there an application process for this
- 6 program?
- 7 A Yes, there was a process, application, a driver's test,
- 8 and urine screening, and that was pretty much it.
- 9 Q Okay. Do you have to have a particular kind of license to
- 10 be in the program?
- 11 A Yes, Class A.
- 12 Q And how many people are in the program currently?
- 13 A Currently, two.
- 14 Q Okay. So you're one of them. Who is the other person?
- 15 A Al Faria.
- 16 Q Okay. Did Kevin Kennedy ever speak to you or approach you
- 17 during the period prior to the election and say anything about
- 18 the driver training program?
- 19 A No.

20 Q Did you ever speak with Kevin Kennedy at all regarding
21 what would happen to the driver training program, if the union
22 were voted in?
23 A No, I didn't.
24 Q Did anyone ever threaten you that the driver training
25 program would be eliminated if the union were voted in?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

76

1 A No.
2 Q Did you speak to any supervisors at all about what would
3 happen to the driver training program if the union were voted
4 in?
5 A To supervisors, no.
6 Q Did you ever speak to Jason Jack?
7 A Yes, I did.
8 Q Okay. Do you know Jason Jack's position?
9 A Technically, no. I mean I, I really don't know
10 technically his position. I mean he is above the supervisors,
11 but I don't know his specific title.
12 Q Did you ever ask Jason Jack any question regarding the
13 driver training program?
14 A Yeah. Yes, I did.
15 Q Okay. What did, can you tell me what you asked him?
16 A I asked him basically if the union was voted in, what
17 would happen to the program.
18 Q And what did he answer?
19 A He said he didn't know.
20 Q Okay.
21 HEARING OFFICER MURRAY: When is this, sir?
22 THE WITNESS: What is that?
23 HEARING OFFICER MURRAY: When did this happen?
24 THE WITNESS: This was, the exact date I do not know.
25 This was after one of the first meetings we had on a workday, so

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

77

1 there was a couple of meetings that, that was prior to the
2 Sunday meeting, so it was a week before the Sunday meeting. The
3 exact day, I think it was a Wednesday, the exact date I don't
4 recall.
5 Q And when he said he didn't know what would happen to the
6 program, is that all he said, just I don't know, I have no idea?
7 A Yeah, that's all he said. I mean I asked him is it
8 basically negotiable and he said, yeah, everything is
9 negotiable.
10 Q Okay. Subsequent to this conversation with Jason Jack,
11 did you ever bring up this conversation you had with Jason Jack
12 in a group setting, at a group meeting?
13 A Prior to it?
14 Q Prior to the election.

15 A Prior to the election, yes.
16 Q Okay. Can you tell us, tell me about that, what did, what
17 did you say?
18 A Yeah. It was a Sunday meeting. I basically stood up, you
19 know, stated my name, I'm in the driver program, and I, I asked
20 Ditmars, you know, I didn't ask, I actually stated that I did
21 have a conversation with Jason regarding my position or the
22 training position, and I said that Jason said that he didn't
23 know, you know, and I was basically concerned, you know.
24 Q And what did Mr. Ditmars respond?
25 A I really don't recall his response. I mean a lot of guys

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

78

1 started yelling and screaming, so I mean his direct response to
2 it, I mean I would know. I really can't recall.
3 Q You said a lot of guys started?
4 A Started yelling, saying that that was wrong, I guess that,
5 you know, they felt my job was threatened.
6 Q So did you ever feel your job was threatened?
7 A Personally, no, you know, just concerned.
8 Q Okay. And did you understand that if a union is voted in,
9 that during the collective bargaining process, all terms and
10 conditions of employment are negotiated?
11 A From what I've been told, yes.
12 Q Okay. Can you tell me, if you recall, who were those
13 employees who stood up after you asked you question?
14 A I really can't recall. I mean there was a lot of guys in
15 the room. I really can't recall exactly who it was.
16 Q Okay. And other than, well, can you tell me what, what
17 you recollect them saying or shouting?
18 A There was shouting just that it was wrong, you know, that
19 that's not right, that, you know, you guys are threatening
20 people's jobs or whatever, you know.
21 Q Okay. Anything else you recall about Mr. Ditmars'
22 response to your question?
23 A No. I mean I looked at him and I really, I think he did
24 say something but I basically looked back as far as the guys
25 were yelling. So I mean he might have said some, but I couldn't

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

79

1 hear it.
2 Q Okay.
3 MS. KLEINER: I have nothing further.
4 HEARING OFFICER MURRAY: Mr. Conti?
5 CROSS-EXAMINATION
6 BY MR. CONTI:
7 Q As a driver, well, you were a helper before you entered
8 the driver program, right?

- 9 A Correct.
- 10 Q What was your wage as a helper?
- 11 A As a helper, \$13.75, 25, something like that.
- 12 Q And as a driver/trainer did your wage go up at all?
- 13 A Yes.
- 14 Q What is it now?
- 15 A \$18.25.
- 16 Q If you become a driver, will you get another raise?
- 17 A Correct.
- 18 Q Now after you -- when was this conversation with Jason
- 19 Jack, when you asked him about what would happen to the program?
- 20 A It was, from my recollection, a week prior to the first
- 21 Sunday meeting. The exact date, I can't recall.
- 22 Q And there were two Sunday meetings, is that correct?
- 23 A Yes.
- 24 Q And his answer to your question was he didn't know?
- 25 A Yes, directly.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

80

- 1 Q Did he offer to get some kind of a more definitive answer
- 2 for you?
- 3 A No, no. He just said it's negotiable. I asked him if it
- 4 was negotiable and that's all he said.
- 5 Q Now when you stood up at the meeting, when you made your
- 6 statement, did you, before you got into the issue of the driver
- 7 training program, did you make the statement that you were
- 8 against the union or you were voting no for the union?
- 9 A Yes, I did.
- 10 Q Which, what did you say?
- 11 A I said I, that I'm not for it, basically, exact words.
- 12 Q So you make your statement and you ask this question to
- 13 Mr. Ditmars again, correct?
- 14 A Right.
- 15 Q Safe to say that you had, you had some concern that the
- 16 program might be eliminated, is that correct?
- 17 A Concerned, yeah, not, not a feeling that it was, but
- 18 concerned.
- 19 Q Did you ever ask anyone from the union what they thought
- 20 might happen to that driver training program --
- 21 A No, I didn't.
- 22 Q -- if the union was voted in?
- 23 A No, I didn't.
- 24 Q So you asked your question. According to your testimony,
- 25 there was a lot of yelling, people stand up. You never heard

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

81

- 1 Mr. Ditmars response, correct?
- 2 A Correct.
- 3 Q And you never actually asked him a follow up question to

4 hear what his response was?
5 A No, I didn't.
6 Q If you were asking a question or asking --
7 A It was a statement.
8 Q You were making a statement. But you were asking for
9 what, Mr. Ditmars opinion?
10 A Basically.
11 Q Okay. If you were asking what Mr. Ditmars opinion was,
12 why would employees claim that that was a threat?
13 A I don't know. That's what they said.
14 Q Who said that?
15 A As I stated before, I don't know exactly the names. A lot
16 of guys were yelling.
17 Q You didn't, you didn't get up and after saying you were
18 against the union, that managers told you if the Teamsters were
19 voted in, the program would be eliminated and your job would be
20 in jeopardy?
21 A No.
22 Q Prior to receiving the subpoena, well, who served that,
23 who gave you the subpoena?
24 A I just got it, just today actually.
25 Q From whom?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

82

1 A From, from my employer.
2 Q From the Employer?
3 A Yeah.
4 Q Prior to receiving that, had you heard that there was a
5 possibility that you might be subpoenaed here today?
6 A I heard, yeah, possibly.
7 Q Who did you hear that from?
8 A I heard that from Mr. Ditmars.
9 Q Okay. Did you ever make the statement after hearing that
10 you might be subpoenaed that if the Teamsters subpoenaed you,
11 you would like on the stand?
12 A No.
13 Q Never told any of your fellow drivers that?
14 A No.
15 Q You sure?
16 A Positive.
17 MR. CONTI: I don't have anything else.
18 HEARING OFFICER MURRAY: Ms. Kleiner?
19 MS. KLEINER: Nothing further.
20 HEARING OFFICER MURRAY: Thank you, Mr. DePina, you're
21 excused. I remind you not to discuss your testimony with anyone
22 until after this hearing is over. Okay?
23 THE WITNESS: No problem.
24 (Witness excused.)
25 MS. KLEINER: We're going to call Kevin Kennedy.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

1 HEARING OFFICER MURRAY: Okay, off the record while we do
2 that.

3 (Discussion off the record.)

4 HEARING OFFICER MURRAY: Back on the record.

5 Would you raise your right hand, sir?

6 (Whereupon,

7 KEVIN KENNEDY,

8 was called as a witness by and on behalf of the Employer and,

9 after having been duly sworn, was examined and testified as

10 follows:)

11 HEARING OFFICER MURRAY: All right, back on the record.

12 Would you state and spell your name for the record, please, sir?

13 THE WITNESS: First name Kevin, K-E-V-I-N, last name

14 Kennedy, K-E-N-N-E-D-Y.

15 HEARING OFFICER MURRAY: Go ahead, Ms. Kleiner.

16 MS. KLEINER: Okay.

17 DIRECT EXAMINATION

18 BY MS. KLEINER:

19 Q What is your position at the Northeast DCP?

20 A I'm the senior operations manager.

21 Q And what does a senior operations manager at the Northeast

22 DCP do?

23 A I oversee the warehouse employees and the transportation

24 employees.

25 Q And when you say the transportation employees, what are

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

1 the titles of those employees?

2 A Drivers, helpers.

3 Q Are you familiar with the driver training program?

4 A Yes, I am.

5 Q As of March of this year, how many trainees are in the

6 program?

7 A There are two.

8 Q And who are they?

9 A Al Faria and Joe DePina.

10 Q And you're aware of the fact that there was a union

11 election on March 31st and April 1 of this year?

12 A Yes.

13 Q At any time prior to that election, did you have any

14 conversations at all with either of those two individuals you

15 just named regarding the driver training program or whether they

16 would lose their positions as drivers if the union were voted

17 in?

18 A No, I did not.

19 Q In fact, did you have any conversations at all during that

20 pre-election period with either of the two individuals?

21 A Just one.

22 Q Okay. And who did you have that conversation with?

23 A With Joe DePina.

24 Q Okay. And can you tell me the substance of that
25 conversation?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

85

1 A It was a casual conversation. We were between meetings.

2 It lasted probably about a minute or so. We just talked about
3 things of a personal nature.

4 Q What types of things of a personal nature?

5 A I was aware that he had purchased a flat screen TV through
6 the company program. I had heard that he was going to be
7 getting engaged. Things to that.

8 Q So just chitchat?

9 A Just chitchat and then the meeting started.

10 Q Okay. Did you have any conversations at all with Mr.

11 Ferrera (sic)?

12 A Faria. No, I did not.

13 Q Faria, okay. Did you ever threaten any employee at the

14 Northeast DCP that they might lose their job if the union were
15 voted in?

16 A Absolutely not.

17 Q The objection filed by the Union in this matter states

18 that within the critical period, supervisor Kevin Kennedy

19 threatened employees in the Employer's driver training program

20 that if the union was voted in, they would lose their position

21 as drivers. Do you have any idea what they're talking about?

22 A No, I don't.

23 Q At some point immediately prior to the election, were you

24 present at a meeting during which John Ditmars gave a PowerPoint

25 presentation?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

86

1 A Yes.

2 Q Okay. I'm going to ask you to look at Employer Exhibit 1.

3 I don't know if it's in front of you.

4 HEARING OFFICER MURRAY: I'm showing the witness

5 Employer's Exhibit 1.

6 BY MS. KLEINER:

7 Q And if you can turn to Page 3?

8 A Um-hum.

9 Q Titled 401(k) information. Do you recall when Mr. Ditmars

10 had the slide, presented this slide at the presentation?

11 A Yes, it was presented.

12 Q Okay. Do you recall what Mr. Ditmars said prior to

13 presenting this slide?

14 A Not specifically.

15 Q Do you recall if Mr. Ditmars read this slide during the

16 presentation?

17 A That's what I generally remember.

18 Q Okay. And if you can now turn to Slide Number 20 and if
19 you can also look at Slide 21, do you recall whether Mr. Ditmars
20 read through those slides at the presentation?
21 A That I can't recall. I do recall that being presented.
22 Q Do you recall if Mr. Ditmars, when he presented the 401(k)
23 information, do you recall if he said where he got the
24 information or from where he got the information he was
25 presented in the 401(k) slides?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

87

1 A No, I don't recall.
2 MS. KLEINER: I have nothing further.
3 HEARING OFFICER MURRAY: Okay. Mr. Conti?
4 MR. CONTI: Nothing.
5 HEARING OFFICER MURRAY: Thank you, Mr. Kennedy, you're
6 excused. I'd remind you not to discuss your testimony with
7 anyone until after the close of the hearing.
8 THE WITNESS: Very good.
9 (Witness excused.)
10 MS. KLEINER: We're going to call Ms. Kate Norton-Edge as
11 our next witness.
12 HEARING OFFICER MURRAY: Off the record.
13 (Discussion off the record.)
14 HEARING OFFICER MURRAY: Back on the record.
15 Ma'am, would you raise your right hand, please?
16 (Whereupon,
17 KATHERINE NORTON-EDGE,
18 was called as a witness by and on behalf of the Employer and,
19 after having been duly sworn, was examined and testified as
20 follows:)
21 HEARING OFFICER MURRAY: All right. Would you state and
22 spell your name for the record, please?
23 THE WITNESS: Katherine Norton-Edge, K-A-T-H-E-R-I-N-E,
24 N-O-R-T-O-N, hyphen, E-D-G-E.
25 HEARING OFFICER MURRAY: All right, Ms. Kleiner, you may

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

88

1 proceed.
2 DIRECT EXAMINATION
3 BY MS. KLEINER:
4 Q Where do you currently work, Ms. Norton-Edge?
5 A At the Northeast Dunkin Donuts Distribution Center.
6 Q Okay. And what is your position there?
7 A Human resources manager.
8 Q And what are your areas of responsibility as a human
9 resources manager?
10 A Benefits and payroll.
11 Q Are you familiar with the 401(k) plan offered to employees
12 at the Northeast Distribution Center?

13 A Yes.
14 Q Okay. And who administers the 401(k) plan?
15 A Prudential Retirement.
16 Q And where are they located?
17 A They're all over the country. Our contact person is in
18 Iowa.
19 Q And are you familiar with the summary plan description, or
20 SPD, associated with the 401(k) plan?
21 A Yes.
22 Q And when you say you're familiar with it, what does that
23 mean?
24 A Well, I have a copy available to refer to. I haven't read
25 it cover to cover, but whenever I need to refer to it.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

89

1 Q Are you aware that in, that on March 30th and April 1 of
2 this year, there was a union election?
3 A Yes.
4 Q Okay. Prior to that election, did you have an
5 understanding regarding whether the 401(k) plan covered union
6 employees once the election took place through the negotiation
7 of the collective bargaining agreement?
8 A No.
9 Q Okay. What is your understanding regarding those
10 employees?
11 A I hadn't actually thought about that, if there was the
12 interim prior to that. I hadn't thought about it.
13 Q At some point prior to the election, did you become aware
14 of any provision in the SPD relating to this matter?
15 A Yes.
16 Q And when was that?
17 A That was at the end of March.
18 Q And who, who drafted the summary plan description related
19 to the 401(k) plan?
20 A Prudential Retirement.
21 Q And how did you come to receive the summary plan
22 description?
23 A They sent it to me.
24 Q At the end of March, you said you became aware of an issue
25 in the summary plan description relating to union employees.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

90

1 What was the issue that you became aware of?
2 A Well, there was a question on that interim period between
3 if the union was elected and a collective bargaining unit, it
4 was a question would the employees be covered, the union
5 employees.
6 Q And who asked you this question?

7 A I believe it was John Ditmars.
8 Q And what did you answer him, when he asked that question?
9 A I said that I would have to find out.
10 Q And what did you do to find out?
11 A I looked at the summary plan description and from there
12 called Prudential to ask for clarification.
13 Q And who at Prudential, when you say you called Prudential,
14 is there a person with whom you spoke?
15 A Tammy Wells.
16 Q And what did Tammy Wells from Prudential tell you?
17 A She needed to contact another department. I read to her
18 from the SPD, and she said that she would check it out and get
19 back to me, that she would double check with her pension area.
20 Q Okay. And did she ever get back to you on that issue?
21 A She did.
22 Q And what did, in what form did she get back to you, was it
23 a conversation, an email?
24 A It was both.
25 Q Okay. Can you tell us the first interaction you had with

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

91

1 her?
2 A Sure. She called. She called me to let me know that,
3 yes, in fact, from what she saw, that union employees would not
4 be able to contribute to the plan in the interim between the
5 election and when a collective bargaining agreement was
6 negotiated.
7 Q Did she give you any further details regarding what that
8 meant, was there anything else?
9 A I, I actually sent her an email asking her for more
10 specific information about what would happen to loans and what
11 would happen with hardship withdrawals. And she returned an
12 email to me stating that contributions, union employees would
13 not be able to contribute and not be able to get a company
14 match, but that they could continue to pay off their loans, they
15 could continue to request loans, and they could continue to
16 request withdrawals within the limits of the plan.
17 Q And what did you do with this information that Ms. Wells
18 provided to you?
19 A I sent an email to John Ditmars stating all of those
20 facts.
21 Q Was it your understanding that when Ms. Wells was giving
22 you information regarding the 401(k) plan administered by
23 Prudential that she was actually looking at the plan documents
24 and any other materials they had associated with the plan, and
25 not just the SPD?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

92

1 A Yes.

2 Q And did you have any reason to believe that the
3 information she gave you may not be correct?

4 A No.

5 MS. KLEINER: I have nothing further.

6 HEARING OFFICER MURRAY: Mr. Conti?

7 CROSS-EXAMINATION

8 BY MR. CONTI:

9 Q Ms. Norton-Edge, when was the first conversation you had
10 with Mr. Ditmars regarding the 401(k) issue?

11 A I don't remember the exact date. I know it was the end of
12 March.

13 Q And he came to you?

14 A Yes.

15 Q And he said, and he asked you the question about what
16 would happen in the interim between the union getting voted in
17 and before they reached a collective bargaining agreement, what
18 would happen to the 401(k) during that period?

19 A I'm not sure if he specifically said it that way. But he
20 said what will happen to -- are union employees covered under
21 the plan. I think it was more a general question like that.

22 Q Okay. And you didn't have an answer for him, at that
23 time, is that correct?

24 A Right.

25 Q Did you provide him with the SPD at that time?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

93

1 A No, I don't think I provided him with the full SPD at that
2 time. I think I provided him with the page that indicated the
3 eligibility.

4 Q Would that be Petitioner's Exhibit 1?

5 A I'm not sure.

6 HEARING OFFICER MURRAY: Well, I'll show it to you.

7 MR. CONTI: If Mr. Murray could be so kind.

8 HEARING OFFICER MURRAY: This is Petitioner Exhibit 1.

9 THE WITNESS: Yes.

10 BY MR. CONTI:

11 Q During that conversation or that meeting with Mr. Ditmars,
12 you provided him with this document?

13 A No, I don't think it was at that meeting. I think it was
14 after that.

15 Q It was after that?

16 A Um-hum.

17 Q Okay. So you had a subsequent meeting with Mr. Ditmars.

18 Was this subsequent meeting before or after you had heard back
19 from Tammy Wells?

20 A I don't remember whether it was before or after.

21 Q How many meetings did you have with Mr. Ditmars regarding
22 the 401(k)?

23 A I don't recall. It was phone calls and emails.

24 Q Okay. Did Mr. Ditmars tell you that he was going to pass
25 this out to the employees before he, before you spoke with Ms.

- 1 Wells?
- 2 HEARING OFFICER MURRAY: You're referring to
- 3 Petitioner's 1?
- 4 BY MR. CONTI:
- 5 Q I'm sorry, Petitioner Exhibit 1.
- 6 A I don't remember if he told me that he was going to pass
- 7 it out or not. I don't recall that.
- 8 Q Okay. Other than contacting Ms. Wells at Prudential, did
- 9 you speak with any of the company's labor attorneys about this
- 10 question?
- 11 A We don't have a specific labor attorney.
- 12 Q So is the answer no?
- 13 A Right, no.
- 14 Q Did you speak with any attorney at all directly?
- 15 A We did, yes. We were referred from our broker to an
- 16 attorney.
- 17 Q Was that an ERISA attorney?
- 18 A Yes.
- 19 Q Did you ever speak with a labor attorney, to your
- 20 knowledge?
- 21 A No.
- 22 Q And then Ms. Wells then, in your opinion, clarified the
- 23 question about the interim period, correct?
- 24 A Yes.
- 25 Q And you then forwarded her email on to Mr. Ditmars?

- 1 A No.
- 2 Q No?
- 3 A Not her full email, no. I created another email to say
- 4 this is what I found out.
- 5 Q Okay. And if you could take a look at Employer Exhibit 1?
- 6 A This one?
- 7 HEARING OFFICER MURRAY: This is Employer Exhibit 1.
- 8 THE WITNESS: Oh, okay.
- 9 BY MR. CONTI:
- 10 Q The third page. If you read that through, is this similar
- 11 to the information you provided to Mr. Ditmars in your email?
- 12 A Yes.
- 13 Q And when you brought in this information to Mr. Ditmars,
- 14 you were providing it in response to the question of what would
- 15 happen in the interim period between the union winning the
- 16 election and a collective bargaining agreement being negotiated,
- 17 is that correct?
- 18 A That's right.
- 19 MR. CONTI: Nothing further.
- 20 MS. KLEINER: If we could take a minute?
- 21 HEARING OFFICER MURRAY: Yeah, let me just ask one

22 question.

23 MS. KLEINER: Oh, I'm sorry.

24 HEARING OFFICER MURRAY: Because that might prompt

25 something from you. Ms. Norton-Edge, in your discussions with

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

96

1 Tammy Wells, when she explained to you her understanding of what

2 would happen to the 401(k) plan following the union election,

3 did she explain to you why she took the position she did?

4 THE WITNESS: No. She said that she had researched it

5 with our pension department and this was the information she was

6 given.

7 HEARING OFFICER MURRAY: Okay, thank you.

8 Off the record.

9 (Discussion off the record.)

10 HEARING OFFICER MURRAY: Back on the record.

11 MS. KLEINER: Nothing further.

12 THE WITNESS: Okay.

13 HEARING OFFICER MURRAY: Mr. Conti, anything further?

14 MR. CONTI: No.

15 HEARING OFFICER MURRAY: All right, you're excused, Ms.

16 Norton-Edge.

17 THE WITNESS: Thank you.

18 HEARING OFFICER MURRAY: I'd just remind you not to

19 discuss your testimony with anyone until after this hearing is

20 over. Okay?

21 THE WITNESS: Yes.

22 HEARING OFFICER MURRAY: Thank you.

23 (Witness excused.)

24 MS. KLEINER: We're going to call Jason Jack.

25 HEARING OFFICER MURRAY: Off the record while you do that.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

97

1 (Discussion off the record.)

2 HEARING OFFICER MURRAY: Back on the record.

3 (Whereupon,

4 JASON JACK,

5 was called as a witness by and on behalf of the Employer and,

6 after having been duly sworn, was examined and testified as

7 follows.)

8 HEARING OFFICER MURRAY: Back on the record. Mr. Jack has

9 taken the stand. If you would state and spell your name for the

10 record, please, sir?

11 THE WITNESS: My name is Jason Jack, J-A-S-O-N, J-A-C-K.

12 HEARING OFFICER MURRAY: Go ahead, Mr. Kleiner.

13 DIRECT EXAMINATION

14 BY MS. KLEINER:

15 Q Where do you work, Mr. Jack?

- 16 A I work for the Dunkin Donuts Northeast Distribution
17 Center.
- 18 Q And what is your position?
- 19 A I am an operations manager.
- 20 Q And what do you do as an operations manager?
- 21 A My focus is the fleet, fleet operations.
- 22 Q And by fleet operations, what type of, what type of
23 employees are you referring to?
- 24 A Drivers, full-time helpers.
- 25 Q Are you familiar with the driver training program?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

98

- 1 A Yes, I am.
- 2 Q And who supervises the employees in the driver training
3 program?
- 4 A I oversee the training program.
- 5 Q Okay. And what is required for an employee to pass
6 through the driver training program?
- 7 A They have to be CDL qualified. It's a year long program
8 where they have practical experience on the road with our field
9 supervisor group. At the end of that year, they are, we
10 evaluate them and hopefully everybody goes through and becomes a
11 Class A driver for our company.
- 12 Q Okay. How many employees are currently in the program?
- 13 A Currently, there are two.
- 14 Q And who are they?
- 15 A Joseph DePina and Al Faria.
- 16 Q Okay. And did either of the two employees you just
17 mention ever speak with you or ask you a question about what
18 effects, if any, the union election might have on the program?
- 19 A Yes.
- 20 Q Okay. And can you tell me?
- 21 A Joe DePina.
- 22 Q And when did he ask you that question?
- 23 A I can't remember the date, but it was in between a meeting
24 that John was holding prior to the election. And Joe pulled me
25 aside and asked me, Jason, what's going to happen if the union

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

99

- 1 is voted in. And I told him I have no idea.
- 2 Q And why did you tell him you had no idea?
- 3 A Because I didn't have any idea what would happen.
- 4 Q Have you ever participated in, have you ever worked for an
5 employer during a union organizing campaign before?
- 6 A I've worked for this Employer when they had a union
7 campaign in the warehouse.
- 8 Q Okay. And did you ever follow up with Mr. DePina or have
9 any further, further conversations with him --
- 10 A No.

11 Q -- about the driver training program?
12 A About the driver training program? No.
13 Q Okay. Did you have any conversations with the other
14 individual in the driver training program --
15 A No.
16 Q -- regarding what would happen?
17 A No.
18 Q Okay. During that conversation that we were just talking
19 about between Mr. DePina and you, did he ask you any other
20 question?
21 A I can't recall. I mean I know that he was concerned and
22 that was a question that was weighing on his mind. I can't
23 recall any other, anything else about that conversation.
24 Q Okay. At some point immediately prior to the election,
25 which took place at the end of March and the first of April,

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

100

1 were you present at a meeting during which John Ditmars gave a
2 PowerPoint presentation to employees?
3 A Yes.
4 Q Okay. Can you tell me just with regard to the 401(k)
5 plan, what if anything did Mr. Ditmars say at that meeting?
6 A He said that he had reviewed the summary plan description
7 for that program with the human resource department and he was
8 getting back to us or the group on what that meant. And he just
9 listed what was forwarded to him, I believe. He just referred
10 to the screen.
11 Q And did he say specifically that it came from the HR
12 department or from elsewhere, or do you have any recollection
13 one way or the other?
14 A I can't recall where he said it came from specifically.
15 Q Okay. And if you can look at Employer Exhibit 1, which
16 will be handed to you in a moment.
17 HEARING OFFICER MURRAY: This is Employer's Exhibit 1,
18 sir.
19 BY MS. KLEINER:
20 Q Okay. And if you can turn to Pages 20 and 21, and just
21 look at them, and can you tell me if Mr. Ditmars also presented
22 those two slides at the, at that presentation, at that meeting?
23 A Yes, he did.
24 Q Okay.
25 MS. KLEINER: I have nothing further.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

101

1 HEARING OFFICER MURRAY: Mr. Conti?
2 CROSS-EXAMINATION
3 BY MR. CONTI:
4 Q Do you recall there being any questions asked at that

5 meeting about the 401(k) slides?
6 A I do. I recall one question.
7 Q And do you recall who asked that?
8 A I believe it was Gerry Houde.
9 Q And do you recall what his question was?
10 A I think is question was I thought nothing was going to
11 change.
12 Q And did Mr. Ditmars respond to that?
13 A He did, but I can't remember what his actual response was.
14 Q Do you remember what the gist of his response was?
15 A I believe, I'm really guessing at this point, but I
16 believe it was this is what I reviewed with the human resources
17 department, what that clause meant in the summary plan
18 description, and again everything is up for negotiations once,
19 if, or if the union was to be voted in.
20 Q And is it fair to say that his answer was the only thing
21 that would change was the 401(k)?
22 A I can't say that. I just think that the, the big
23 highlight of everything that was said in those meetings was
24 everything is up for negotiations at that point. So --
25 Q Did you understand that the 401(k) would be changing?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

102

1 A I understood that there was a possibility that things
2 could change.
3 Q Possibility. Is there any, if you'll look at Employer
4 Exhibit 1, on the third page, is there any wording in this slide
5 that says that there is a possibility that the 401(k) could
6 change?
7 A Not that I see.
8 Q It is a pretty definitive statement as to what would
9 happen?
10 A I would say so.
11 Q Thank you.
12 MR. CONTI: Nothing else.
13 HEARING OFFICER MURRAY: I just want to clarify, sir, that
14 Page 3 that you're looking at, is that a page that was discussed
15 by Mr. Ditmars through the course of his presentation at that
16 meeting?
17 THE WITNESS: Yes, it was.
18 HEARING OFFICER MURRAY: Okay.
19 MS. KLEINER: Can I redirect?
20 HEARING OFFICER MURRAY: Yes, you may.
21 REDIRECT EXAMINATION
22 BY MS. KLEINER:
23 Q You were just asked questions about Slide 3 in that
24 presentation. Was it your understanding, you just answered a
25 question saying everything was up for negotiation. Was it you

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

103

1 understanding that this slide referred to what would happen
2 during the interim period, during from the time a union won an
3 election and a CBA was negotiated?
4 A I think it was, my impression of this entire 401(k) thing
5 was that it was language inside of a contract that was however
6 many pages long. And I do recall, not in this meeting but a
7 prior meeting, that John had said I can't imagine that this
8 would be, that we would actually follow through, this could be
9 followed through. I can't imagine there is not any court cases
10 that would have challenged this particular verbiage. But it was
11 still in there and he wanted the employees to know that it was
12 there.

13 Q Okay. So your recollection Mr. Ditmars said something
14 about court cases that challenged?

15 A He said, I mean I guess in his opinion. I'm not sure if
16 he had any data, or court history, or anything that he could say
17 that that verbiage in that contract was ever challenged by
18 another company. It seemed to me like that was standard
19 verbiage in that 401(k). And, again, I'm not a -- I don't know
20 that much about summary plan descriptions.

21 Q I'm not asking for your opinion. What I'm asking you is
22 what did Mr. Ditmars say. And so is it your recollection that
23 he said this is in a contract and I don't know what it means, or
24 is it your recollection he said something about law cases and
25 something else?

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

104

1 A At this Sunday meeting, he said this is what I'm being
2 told this means.

3 Q Okay.

4 A And then he presented this slide.

5 Q Okay. And that previously --

6 A This Page 3.

7 Q I'm sorry. And that previously you said he handed out?

8 A He handed out a portion of the summary plan description in
9 smaller meetings prior to this Sunday meeting. I can't remember
10 the dates. And explained to them that he had gotten this
11 information, he wasn't sure what it meant. He wasn't sure how
12 strong it was, if you could actually follow through on it. And
13 he did mention, at that time, that he can't imagine that it's
14 never been challenged before in any other situation.

15 Q And is it your recollection that he said what he was going
16 to do to find out that information?

17 A He said that human resources was working with the 401(k)
18 provider to get the actual, what that meant.

19 Q Okay.

20 MS. KLEINER: I have nothing further.

21 HEARING OFFICER MURRAY: Is that it?

22 MS. KLEINER: Yeah, I'm sorry. I just said I had nothing
23 further.

24 HEARING OFFICER MURRAY: Mr. Conti?

25 MR. CONTI: Nothing.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

105

1 HEARING OFFICER MURRAY: All right, Mr. Jack, you're
2 excused. I'd just remind you not to discuss your testimony with
3 anyone until this hearing is closed.
4 (Witness excused.)
5 MS. KLEINER: We have nothing further.
6 HEARING OFFICER MURRAY: Okay. Mr. Conti, do you have
7 anything further?
8 MR. CONTI: Give us one minute?
9 HEARING OFFICER MURRAY: Sure. Off the record.
10 (Discussion off the record.)
11 HEARING OFFICER MURRAY: Back on the record.
12 Anything further, Mr. Conti?
13 MR. CONTI: Nothing further.
14 HEARING OFFICER MURRAY: Ms. Kleiner, nothing for you?
15 MS. KLEINER: Nothing.
16 HEARING OFFICER MURRAY: Okay. Do the parties wish to
17 file briefs?
18 MR. CONTI: Yes.
19 HEARING OFFICER MURRAY: I'm sorry. What was the answer?
20 MR. CONTI: Yes.
21 MS. KLEINER: It was our understanding that briefs were
22 discouraged. We're happy to file one, if we're asked to. And
23 certainly if they do, we will. But we don't particularly need
24 to brief any issue.
25 HEARING OFFICER MURRAY: I'll give you the option of

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

106

1 filing if you want to. I can give you, I'm supposed to give you
2 a week.
3 MR. CONTI: How long does it take to get the transcript?
4 HEARING OFFICER MURRAY: Off the record.
5 (Discussion off the record.)
6 HEARING OFFICER MURRAY: Back on the record.
7 We've had an off the record discussion about filing
8 briefs. I'm going to set the time for filing briefs for Monday,
9 June 22nd, close of business. And hearing nothing further, I
10 thank the parties for their cooperation and the hearing is
11 closed.
12 (Whereupon, at 11:46 a.m., the hearing in the above-entitled
13 matter was closed.)
14

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

107

1

C E R T I F I C A T E

This is to certify that the attached proceedings done before the
NATIONAL LABOR RELATIONS BOARD REGION ONE

In the Matter of:

DUNKIN DONUTS NORTHEAST DISTRIBUTION CENTER,

Employer,
and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 25,

Petitioner.

Case No. 1-RC-22303

Date: June 10, 2009

Place: Boston, Massachusetts

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470
(973) 692-0660