

Kroger And Albertsons Win Dismissal In Antitrust Labor Case

By **Zach Dupont**

Law360 (February 6, 2026, 8:32 PM EST) -- A Colorado federal judge on Friday dismissed a grocery store employee's proposed class action against Kroger and Albertsons alleging the pair violated antitrust law through a no-poach agreement to not hire competitor employees during a strike.



A Colorado federal judge determined that a worker's suit against Kroger and Albertsons is a labor dispute that is exempt from antitrust scrutiny. (Photo by Jakub Porzycki/NurPhoto via AP)

U.S. District Judge Gordon P. Gallagher **said** the **agreement** between Kroger and Albertsons was exempt from antitrust scrutiny because it was a reaction to the collective bargaining strategy of United Food and Commercial Workers Local 7 telling members to apply for jobs or transfer prescriptions to the Albertsons-owned Safeway.

"The events here must be understood as inexorably linked to the thrust and parry of collective bargaining negotiations, particularly in the context of potential whipsaw tactics," Judge Gallagher said.

The proposed class action from UFCW Local 7 employee Valarie Morgan was a single state antitrust violation claim against Kroger and Albertsons, where Judge Gallagher described the "key issue" of the dismissal briefings as whether "this is bona fide antitrust case that belongs in federal court or a dressed up labor dispute."

"The court concludes that this is a labor dispute that is not cognizable under antitrust law and, therefore, dismisses the claim and denies amendment as futile," Judge Gallagher said.

Judge Gallagher relied heavily on the 1996 ruling from the U.S. Supreme Court in **Brown v. Pro Football Inc.** in justifying why the Kroger and Albertsons agreement was exempt from antitrust scrutiny. The justices in Brown held that even if an agreement between several groups of employers or employees restricts competition, "some restraints on competition imposed through the bargaining process must be shielded from antitrust sanctions" to protect the collective bargaining process.

In her briefings, Morgan relied heavily on the Ninth Circuit's 2011 ruling in **California ex rel. Harris v. Safeway Inc.**, where an appellate panel found an agreement between four grocery store chains in California during an employee strike violated antitrust law.

Judge Gallagher said there were key differences between the two cases, noting the Ninth Circuit found that a revenue sharing provision — where the grocery

chains agreed to share revenue to maintain pre-strike levels of revenue — was not protected by antitrust exemptions, especially because one grocery chain within the agreement was a nonmember to the collective bargaining unit.

"In particular, [the Ninth Circuit] noted that the 'the inclusion of non-bargaining employers in an agreement suggests that the conduct is not anchored in the collective-bargaining process,'" Judge Gallagher wrote. "By contrast with Safeway, in this case the alleged agreement was inextricably tied to the ongoing bilateral collective bargaining processes of both Kroger and Albertsons."

Judge Gallagher also denied a motion from Morgan to amend the complaint to a federal antitrust claim under the Sherman Act, finding that, even as a federal claim, the antitrust exemption still applies to the claim.

"The court concludes that the non-statutory labor exemption applies to bar plaintiff's antitrust claim, whether brought under state or federal law," Judge Gallagher wrote. "Accordingly, the court grants the motion to dismiss and denies the motion to amend as futile."

Counsel for the grocery store chains and Morgan did not immediately respond to requests for comment Friday.

Morgan is represented by Yaman Salahi and Nicole Cabañez of Salahi PC and David H. Seligman, Alexander Hood and Juno Turner of Towards Justice.

Kroger and King Soopers are represented by Matthew Wolf, Sonia Pfaffenroth, Randall H. Miller and Lucas Westerman of Arnold & Porter Kaye Scholer LLP and Luna Ngan Barrington and Luke Sullivan of Weil Gotshal & Manges LLP.

Albertsons is represented by Maureen Witt, Alexander D. White and Adrienne K. Rosenbluth of Holland & Hart LLP.

The case is Valarie Morgan v. The Kroger Co. et al., case number 1:25-cv-00837, in the U.S. District Court for the District of Colorado.

--Editing by Dave Trumbore.

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