

**Rite Aid has filed for Chapter 11 bankruptcy.**

Chapter 11 bankruptcy, frequently referred to as a “reorganization bankruptcy” (in contrast to “liquidation bankruptcy” under Chapter 7), allows businesses with substantial debt to reorganize their debts and assets and continue operations so they can return to financial solvency.

**The Company cannot unilaterally modify or reject the CBA, even in the event that it files for bankruptcy.**

Rite Aid is still bound by the CBA and must follow its terms for the foreseeable future. Rite Aid cannot unilaterally modify or reject the CBA. Instead, consistent with the Company’s duty under the NLRA to notify and bargain with the Union over any changes to working conditions, the Bankruptcy Code requires the Company to negotiate with the Union over any changes to working conditions that it seeks to implement as part of its reorganization under Chapter 11. In addition, in order to modify or reject a CBA, the Company must request permission from a court, which a court will only approve if Rite Aid has shown that it has negotiated with the Union in good faith by meeting specific procedural and substantive requirements.

**Rite Aid must negotiate in good faith with the Union regarding any proposed changes to the CBA that the Company claims are necessary to reorganize itself under Chapter 11.**

11 U.S.C. § 1113 (“Section 1113) of the Bankruptcy Code outlines the requirements that Rite Aid will be obligated to meet before a court approves a request to modify or reject the CBA. Section 1113 requires an employer to make proposals to the union that describe the proposed modifications to the current CBA that will enable the company to reorganize under Chapter 11. (11 U.S.C. § 1113(b)(1)(A).) Such proposals may include changes to wages for employees and contributions to healthcare coverage or retirement accounts. The proposal should be limited to “necessary modifications” that are necessary for the company to reorganize and must be based on the most complete and reliable information available at the time the proposal is made. (*Id.*) It should also treat all affected parties, including the Union and bargaining unit members, fairly and equitably. (*Id.*) The employer must also provide relevant information that shows why the company cannot afford to meet its current obligations under the CBA and must reorganize. (11 U.S.C. § 1113(b)(1)(B).) This information may include monthly operating reports, profit and loss statements, and other financial disclosures the company may have. Employers are also required to meet with the union at reasonable times and negotiate in good faith and attempt to reach a mutually satisfactory agreement to modify the CBA. (11 U.S.C. § 1113(b)(2).)

**A court will not grant a request by Rite Aid to modify or reject the CBA unless the Company can show that the Union refused to reach agreement without good cause.**

If Rite Aid and the Union are unable to reach an agreement regarding necessary modifications to the CBA, the Company could file an application or request asking a court for permission to modify or reject the CBA. However, a court will not grant this type of request unless a company can show that it made a proposal that meets the requirements described above, the union refused to accept the proposal without good cause, and, overall, other factors weigh in favor of modifying or rejecting the CBA. (11 U.S.C. § 1113(c).)

**Rite Aid would have to go through a similar process to modify or reject its obligations to maintain retirement and health benefits under the CBA.**

Under Bankruptcy Code 11 U.S.C. § 1114 (“Section 1114), an employer who declares bankruptcy must go through similar steps as under Section 1113 to modify or reject the retirement and health benefits. The employer must make a proposal to the union or retirement or health benefits fund, the union or fund must reject that proposal without good cause, and the employer must show that the proposal is necessary for its reorganization.

**Rite Aid will obtain Bankruptcy Court permission to pay workers all the wages and benefits they are owed as of the day it files.**

This is a routine motion which employers almost always file in order to avoid creating even more chaos when they file for reorganization under Chapter 11. It usually does not cover disputed claims, such as the backpay that might be owed unjustly fired workers whose grievances are still in the pipeline.

Those individual claims are entitled to fourth priority (after secured claims held by mortgage holders and the like and several other priority claims) for unpaid wages earned within 180 days before the filing of the petition up to a maximum of \$15,150. Unpaid wages in excess of that maximum or earned more than 180 days before the filing of the petition are "general unsecured claims," payable from whatever is left over after all the secured claims and unsecured claims with higher priority have been paid.

Unpaid pension and benefit fund contributions are entitled to fifth priority.

Wage claims that arise after the filing of the petition should be treated as "administrative claims" if they are owed for work actually performed after the filing date. Those claims are entitled to "superpriority." Ideally they should be paid in the ordinary course of business without needing to file a bankruptcy claim; if Rite Aid fails to do so then it will be necessary to file a claim.

Unpaid wages that accrued after the filing of the petition, but are not based on work performed after the filing—such as the post-petition back pay owed to a worker fired or laid off improperly before the filing date—are treated as "general unsecured claims."

Unpaid fringe benefits, such as vacation pay, sick leave and the like, are generally lumped in with unpaid wages, although different rules sometimes apply when necessary to divide them up between "administrative," "third priority," and "general unsecured" claims.

**The grievance procedure under the CBA remains in effect along with the CBA itself.**

The Union will continue to enforce the contract through the grievance procedure for as long as the CBA remains in effect. This includes claims for unpaid wages, scheduling grievances and grievances challenging unjust discipline.