UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMAR, INC.,	)	
Respondent,	)	Cases 4-CA-28570 4-CA-33903
and	)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION,	)	
Charging Party.	)	

CHARGING PARTY'S REQUEST FOR REVIEW OF ACTING GENERAL COUNSEL'S DENIAL OF APPEAL FROM REGIONAL DIRECTOR'S AMENDED COMPLIANCE DETERMINATION

BLITMAN & KING LLP
Attorneys for the Charging Party
United Steel, Paper and Forestry,
Rubber, Manufacturing, Energy,
Allied Industrial and Service
Workers International Union
Office and Post Office Address
Franklin Center
443 North Franklin Street, Suite 300
Syracuse, New York 13204
Telephone: (315) 422-7111
Facsimile: (315) 471-2623

Of Counsel:

James R. LaVaute, Esq.

TABLE OF CONTENTS

BACKGROUND 2

ARGUMENT 4

POINT I 4

AT ALL TIMES MATERIAL, THE BOARD ORDERED UNIT WAS COMPRISED OF THE RELOCATED VINELAND UNIT WORKERS 4

POINT II 15

COMAR FAILED TO MEET ITS OBLIGATION TO BARGAIN A CONTRACT FOR THE UNIT. 15

POINT III 17

THE PENDING UNIT CLARIFICATION PETITION DOES NOT RELIEVE COMAR OF ITS OBLIGATIONS UNDER THE ORDER. 17

POINT IV 18

THE UNION HAS NOT ACQUIESCED IN OR CONSENTED TO A LARGER UNIT BY CONDUCT AWAY FROM BARGAINING. 18

CONCLUSION 21

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "Union"), pursuant to Section 102.53(a) of the Board's Rules and Regulations, requests review of the Acting General Counsel's November 26, 2010 denial of the Union's appeal from the May 12, 2010 Amended Compliance Determination of the Regional Director.

BACKGROUND

These matters involve Board decisions in Comar I, 339 NLRB 903 (2003), and Comar II, 349 NLRB 342 (2007). The Board's order in Comar I requires Comar to bargain for a new collective bargaining agreement covering the existing bargaining unit of employees relocated from Vineland to Buena in 1999. In Comar II, 349 NLRB at 360, the Board rejected Comar's contention that operational changes made by it had eviscerated the unit and reiterated that Comar was to bargain for a contract covering the relocated workers, wherever they were assigned in Buena.

With Comar's delaying tactics, negotiations for the collective bargaining agreement did not commence until 2007. But Comar demanded the Union agree to change the unit description and expand (tripling) the bargaining unit to cover the entire non-union finishing department. The Union considered this proposal and discussed it, but the parties never reached a complete collective bargaining agreement. When Comar started an anti-union campaign during bargaining,[1] the Union realized that it would not be able to obtain majority status in a finishing department unit. The Union advised Comar in July 2008 that it was no longer willing to consider an expanded unit. Rather, the Union expressly insisted that a contract be negotiated for the

[1] This confirmed what the Union had suspected – that the Comar bargaining tactic was aimed at defeating the Union, not at obtaining a contract.

Board-ordered relocated unit. Comar in February 2009 refused to engage in further negotiations under these circumstances, and it was only after that refusal that Comar filed a unit clarification petition seeking its finishing department unit (Case 4-UC-440), now pending before the Board.

The Union on May 7, 2009 requested that the Region reopen the above compliance cases because of Comar's refusal to negotiate a contract for the relocated unit, as required by the Order in Comar I. The Regional Director declined to reopen the cases. On appeal of that compliance determination, the Union argued to the General Counsel that the Employer's failure to comply with the Board's order in Comar I by conditioning future meetings and negotiations for a new contract on the Union's willingness to agree to a different bargaining unit, was a violation of the Order in Comar I. By letter dated August 31, 2009, the General Counsel refused, on procedural grounds, to entertain the Union's appeal.

On January 25, 2010 the Board issued its Order reversing the General Counsel and remanding this matter to the Regional Director. Order at 1. The Regional Director was ordered to issue an amended compliance determination containing a detailed explanation of the evidence she relied on to support her decision not to reopen compliance proceedings. Order at 7. The Board noted the Union will be entitled to appeal such determination to the General Counsel, and to subsequently file with the Board a request for review of the General Counsel's Decision on Appeal. Order at 7. On May 12, 2010 the Regional Director issued her amended Compliance Determination, in which she again refused to reopen compliance. On June 18, 2010, the Union filed its appeal to the General Counsel. The appeal was denied on November 26, 2010, "for the reasons set forth" by the Regional Director.

The Region's October 31, 2008 letter conditionally closing the compliance cases, the Union's May 7, 2009 request to the Region to reopen the cases, the Region's June 16, 2009 letter

refusing to do so, the Board's January 25, 2010 Order, the Regional Director's May 12, 2010 Amended Compliance Determination, and the Acting General Counsel's November 26, 2010 denial of the appeal, are attached as Exhibit "A".[2] Additionally, inasmuch as the Regional Director extensively relies on her unit clarification decision in Case 4-UC-440, and the testimony in that proceeding bears on the issues here, that decision and the underlying transcript record are submitted as Exhibit "B".

ARGUMENT[3]

POINT I

AT ALL TIMES MATERIAL, THE BOARD ORDERED UNIT WAS COMPRISED OF THE RELOCATED VINELAND UNIT WORKERS.

The Board in 2003 found the relocated employees who had worked at the Applicator Division in Vineland, 339 NLRB 903, 912 (2003), to continue to constitute a separate appropriate unit at the new location in Buena. In the 2007 decision, the Board expressly rejected Comar's claim that the unit no longer was viable because of operational changes, even to the extent that "operational changes result in the unit employees doing the same type of work on the same

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[2] Also included in Exhibit "A" is the Union's motion filed with the Acting General Counsel on August 11, 2010, requesting that he remand this matter to the Board so that it may consider reaffirming its two-member Order issued January 25, 2010. The motion was not acted on. The Union requests that the Board now reaffirm its January 25, 2010 Order.

[3] The within points of argument track those submitted to the General Counsel in the Union's June 18, 2010 Appeal. The November 26, 2010 denial of the appeal did not specifically address the Union's points of argument; the denial recited it was "substantially for the reasons set forth in the Regional Director's letter of May 12, 2010."

In response to the Union's first request for review, the Region argued that the Board's consideration of the request would amount to interference with the General Counsel's previous decision not to issue complaint. Order at 7 n.12. The Acting General Counsel did not make that contention in his denial of the Appeal here. There is no such interference here. It is well settled that dismissal of a prior charge has no res judicata effect and does not bar the Board from adjudicating the same conduct when the issue is properly before it. See Kelly's Private Car Service, 289 NLRB 30, 39 (1988), enf'd, 917 F.2d 839 (2d Cir. 1990); O'Dovero v. NLRB, 193 F.3d 532, 536 (D.C. Cir. 1999) (dismissal of prior charge has no bearing on future actions of the Board). The fact that the Board's regulations provide for an appeal to the Board in this situation indicates there is no interference with the General Counsel's prosecutorial authority. See NLRB v. United Food and Commercial Workers Union, 484 U.S. 112, 126 LRRM 3281, 3283-85 (1987) (in resolving a prosecutorial interference issue, the Court looked to whether the Board's regulations provided for an appeal to the Board).

equipment as non-unit employees within a broader facility or group". 349 NLRB 342, 360 (2007). The judge first pointed out, id. at 357 and 358 n. 32, that Comar could arguably have challenged the reasonableness of the unit if it "had first met its obligation under the Board's order to rescind its unilateral changes, recognize the Union [and] bargain for a new contract" – something Comar is not complying with because it will not negotiate a contract for the ordered unit. Moreover, the judge went on to state, id. at 360:

> Even if I were to consider the current state of the unit, including all of the changes – whether lawful or unlawful – that the Respondent has made to the former Vineland Employees' working conditions from the time of the relocation until the compliance hearing, I would not invalidate the unit. . . .. As found in the underlying unfair labor practices decision, the unit has a "deeply absorbed" bargaining history of well over 40 years. Comar, 339 NLRB at 910. Where there is such a lengthy history of collective bargaining for a unit, the Board has required continued recognition even when operational changes result in the unit employees doing the same type of work on the same equipment as non unit employees within a broader facility or group. [Citations omitted]. Absent "compelling circumstances" the history of meaningful bargaining in this case is sufficient to establish the continued appropriateness of a separate unit, even if other factors support a contrary result. [Citation omitted]. . . ..[4]

The unit in both Board decisions is described as "all hourly paid production workers who are performing the work that was formerly done as part of the Applicator Division of Comar, Inc. at its facility then located in Vineland, New Jersey . . .." The unit workers in 2003 were the relocated Vineland employees. In the 2007 decision, the unit workers remained the employees who had been relocated from Vineland, even though they had been reassigned, dispersed amongst and/or were outnumbered by, the larger non-union Buena finishing department workforce.

[4] This discussion makes it plain that the unit is comprised of the relocated workers.

Thus, during the bargaining in question now, the unit that the Board ordered Comar to bargain a contract for was the relocated employee group.[5]

Moreover, the 2009 unit clarification hearing established there are no recent substantial changes that have taken place in the Finishing Department or in the current unit. Comar II, 349 NLRB at 360-361, found the changes in operations through 2005 relied on by Comar for the proposition that the unit has ceased to exist were "'the assorted incremental improvements' that the respondent made to its manufacturing process over a period of approximately five years". Id. at 361. At the UC hearing, Comar's counsel (Exh. B, TR 10) and its witnesses confirmed that there have been no meaningful changes between 2005 and now or even since as early as 2002 (Exh. B, TR 24-27, 48-49, 109, 198). This was confirmed by Union witness testimony (Exh. B, TR 173-76).

Comar essentially relies on the same facts and circumstances now for the proposition that a Finishing Department unit is appropriate, that it relied on in the two prior Board proceedings for the proposition that the relocated workers unit had been subsumed into the Finishing Department so that the current unit was not appropriate.[6] That contention was raised as early as 2001, with Comar's motion to reopen the hearing in Comar I, and the same arguments were relied on in the later proceeding in Comar II. See Comar I, 339 NLRB at 903 n.1; and Comar II, 349 NLRB at 360-361. Comar's argument that technological changes in the finishing department have rendered the "bargaining order moot", Comar II, 349 NLRB at 363, was characterized by the judge as

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[5] Freeman Decorating Co., 335 NLRB 103 (2001), cited by the Regional Director for the proposition that "unit coverage survives despite turnover", ACD at 9 n.11, is not apposite. That case did not involve an employer's failure to comply with a Board remedial order requiring, as here, bargaining for a contract covering an identified, distinct group of employees.

[6] See e.g., Comar I, 339 NLRB at 910: "Respondent argues that the unit employees were merged . . . into the existing finishing department at Buena and therefore no longer constituted a separate unit." In Comar II, 349 NLRB at 356 n. 30, the judge rejected Comar's "concern that the General Counsel is somehow attempting to bring the entire Finishing Department at the Buena facility within the bargaining unit."

audacious. Id. at 362. Measured against this backdrop, Comar's more recent flipped position and its concomitant anti-union campaign must be recognized as a tactical maneuver to avoid ever complying with the requirement that it negotiate for an agreement covering the relocated unit. As the Second Circuit has pointed out, this kind of tactical delay "should not be countenanced". NLRB v. W.A.D. Rentals Ltd., 919 F.2d 839, ___, 135 LRRM 3135, 3137 (2d Cir. 1990).

In Comar I, the Board modified the unit description to reflect that it was no longer tied to Vineland. See Comar II, 349 NLRB at 347. In Comar II, the description was maintained, id. at 356 n.30, and so was the identity of the employees comprising the unit, regardless of what jobs they did and where they worked at the Buena campus. Id. at 360. The discussion of this issue in Comar II also makes it clear that the unit was a function of both the description and the relocated group of workers. This is a current example of the long-recognized "need for flexibility in shaping the unit to the particular case", NLRB v. Hearst Publications, 322 U.S. 111, 134 (1944). The Board's handling of the unit issue is a reflection of the unique history and setting of this case, as opposed to the Regional Director's recent formulaic pronouncement (ignoring that history) that it is a unit described by function as opposed to job descriptions and therefore it is appropriate to alter its coverage dramatically.

Further, the unit continues to meet the standards of appropriateness that are applied by the Board. It is well established that an appropriate unit is all that is required; and just because it is arguable that a finishing department unit would also be appropriate, that does not mean the Board-ordered unit is not still appropriate. NLRB v. Zayre Corp., 424 F.2d 1159, 74 LRRM 2084, 2089 (5th Cir. 1970). As the court in Zayre emphasized, these unit employees have "statutory bargaining rights" that may not be overridden by the employer's invocation of an "appropriate unit" strawman. Id. at ___, 74 LRRM at 2089. The Board "shap[ed] the unit to the

particular case", Hearst, supra at 134, and its orders should not be evaded by this recalcitrant employer.

Moreover, the unit employees do have common interests different from the other hourly employees: they pay a considerably lower premium than all other finishing department employees for unique health insurance coverage (benefits and employee costs at the 1999 benefit plan level); and they are governed by numerous different terms and conditions of employment, as shown by Comar's rescission [see letters in April and May, 2007, included in Exhibit "C"] of its unilaterally changed terms and conditions for these employees that it had implemented to bring them into line with its other hourly employees. And as found by ALJ Bogas, there is no uniform set of wage rates in the finishing department, 349 NLRB at 352.[7]

Most importantly, this unit of relocated workers has a long-standing history of bargaining as a separate group. As already decided by the Board, the 40-year historical unit factor is controlling. 339 NLRB at 910; 349 NLRB at 360 ("even if other factors support a contrary result."). See P.J. Dick Contracting, 290 NLRB 150, 151 (1988) ("units with extensive bargaining history remain intact unless repugnant to Board policy or interfere with rights guaranteed by the Act"), cited with approval in ADT Security Systems, Inc., 355 NLRB No. 223 (2010). As pointed out by the Board in Canal Carting, Inc. Inc., 339 NLRB 969, 970 (2003), "the Board usually applie[s] the community-of-interest and plant-wide unit tests only when delineating units of previously unrepresented employees, not, as here, when it is assessing historical units that have had long periods of successful collective bargaining." [citation omitted]. As the Board also noted in Canal Carting, "a history of meaningful bargaining . . . alone suggests the appropriateness of a separate bargaining unit and . . . compelling circumstances are required to

[7] The wage rate listing provided by Comar to the Union for the finishing department in August, 2007 [see Exhibit "D")], continues to bear this out.

overcome the significance of bargaining history." Id. at 970 (citation omitted). Apropos here, this principle recognizes that "differences in degree among the employees' community of interest [do not] constitute 'compelling circumstances' that would warrant disturbing the parties' historical . . . unit." These principles apply to a variety of Board proceedings, Met Electrical Testing Co., Inc., 331 NLRB 872 (2000), and they should apply here. Against the above facts and principles, there is no basis to ignore the Board-ordered unit and the employees already found by the Board as comprising it, and Comar's obligation to bargain for a contract covering it.

In her amended Compliance Determination, the Regional Director contends that Comar has not tried to change the unit, just who is in the unit, and has therefore acted properly. See Decision at 9. That conclusion fails on several counts.

First, it is factually erroneous. Comar was insisting on a change in the unit description. Comar's Director of Human Resources testified that it was Comar's proposal "to find [sic; should be "define"], under the new contract, the finishing department and the jobs that made up the finishing department as the new bargaining unit . . .." (TR 88). This was a change in the unit description, a permissive subject that Comar could not lawfully insist on over the Union's objection. Batavia Newspapers Corp. 311 NLRB 477, 480 (1993). The Regional Director failed to take this factor into account.

Second, her conclusion ignores the now eleven year history of the case and the evolution of the unit description. Until current events, all parties - including the Board, the Region, the Division of Enforcement Litigation, the Union and Comar – considered the unit as described to be comprised of the relocated Vineland workers, wherever assigned. In its November 21, 2007 settlement agreement in Comar II (proffered by Enforcement), containing remedy provisions limited per the Board's orders to the relocated workers, Comar agreed (paragraph 7) to "bargain

with the Union as required by the remedial bargaining provisions set forth in the Board's Orders in Comar I, as enforced, and Comar II." See attached conformed copy in Exhibit "E". This included the requirement to bargain for a new contract in the Board ordered unit. Under Board law, Comar is estopped from challenging the status of remaining finishing department employees following its settlement agreement in the prior proceedings to a unit that did not include them. Grancare, Inc., 331 NLRB 123, 128 n.8 (2000). See also Keeler Die Cast v. NLRB, 185 F.3d 535, 162 LRRM 2028, 2032 (6th Cir. 1999), where the court rejected the employer's claim that the unit "should be re-certified as a larger, and presumably more pro-management, electoral body", refusing to "subvert [the] voluntary agreement" previously made by the employer, union and the Board.[8]

Third, Comar's attempt in bargaining to dramatically alter the employees encompassed within the stated unit, is an attempt to effect a "fundamental change in the scope of the bargaining unit" even if the description remains unchanged; such is a non-mandatory subject of bargaining. Raymond F. Kravis Center for the Performing Arts, 351 NLRB 143, 163 (2007).

The Regional Director's insistence that the unit is described by "function" and therefore can now be magically transformed by tripling its size, ignores this history and well-settled Board law. This description has been crafted by the Board over an eleven-year period, at each instance along the way finding the unit to be comprised of the relocated workers. Board law does not allow the transformation declared by the Regional Director. Comar's seeking to add the approximately 29 hourly Finishing Department employees who are presently non-union [see

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[8] In addition to Comar's position during the prior proceedings, see attached Comar letter dated March 22, 2007 to employees (acknowledging the unit was the "unionized Applicator Division . . . employees") [See Exhibit "H"] and Comar's counsel's letter dated May 24, 2007 with its attachment referencing that it was required by the Board to rescind changes made to "terms and conditions of employment for the former Applicator Division bargaining unit employees presently employed at Buena" [See Exhibit "C"]. Given those substantial changes unique to the relocated Vineland employees, it can hardly be said that the non-unit finishing department employees have an "overwhelming community of interest" with the unit employees. Dennison Mfg. Co., 296 NLRB 1034, 1036 (1989).

Exhibit "H"], to the 10 employees of the relocated unit that is represented by the Union, results in non-represented employees subsuming the represented employees, a circumstance not recognized in accretion cases. Safety Carrier, 306 NLRB 960, 969 (1992) (accretion is "the addition of a relatively small group of employees to an existing unit"); Ryder Logistics, Inc., 329 NLRB 1493 n.1 (1999) (adding a majority of non-represented employees to a unit would result in an unlawful union recognition).

Even if the wording of the existing unit description might be interpreted in a vacuum as covering the entire finishing building workforce, it is improper to add the heretofore unrepresented workers to the unit. In her Amended Compliance Determination, the Regional Director (Decision at 9-12) has relied on her unit clarification decision, where she relied on cases involving units described by function (as opposed to units described by classification) as authority for adding heretofore unrepresented workers to the unit. See, e.g. The Sun, 329 NLRB 854 (1999); Bremerton Sun Publishing Co., 311 NLRB 467 (1993); Unit Clarification decision at 11. In doing so, however, she ignored fundamental requirements applicable to all unit clarification cases, that (1) no change is being sought in the unit description, (2) there must be recent substantial changes in employees or in operations, and (3) the group sought to be added must not have been excluded historically. Nothing in The Sun or Bremerton Sun changed those requirements. Nor does merely declaring the unit to be "defined by function" (Decision at 10) do so.

Bremerton Sun was an unfair labor practice proceeding involving the employer's demand for a change in the language describing the unit. Under that case, insisting on a change in unit description is unlawful "even if the unit is described in terms of work performed." See Batavia Newspapers Corp., 311 NLRB 477, 480 (1993). In this case, the employer at the bargaining table

was demanding that the unit be described as the finishing department (TR 87-88).[9] As Batavia and Bremerton Sun make clear, notwithstanding The Sun, Comar's efforts to change the description of the unit render unit clarification unavailable.

Unit clarification is also not available because there is no issue regarding an existing classification that has undergone recent substantial changes in duties, or a new classification whose unit placement is in doubt. Bethlehem Steel Corp., 329 NLRB 243 (1999); Goddard Riverside Community Center, 351 NLRB 1234, 1235 (2007). In The Sun, the Board simply held that where the units are described by work performed, the traditional community of interest analysis in accretion cases is inapplicable. The decision did not alter the requirement that in any unit clarification case, there has to be substantial recent changes in order for that type of proceeding to be available. Indeed, in The Sun, the Board discussed precedent involving functionally described units and noted that in each instance, "the employers created new job classifications which involved the performance of unit work." In The Sun itself, the employer "removed work by creating new job classifications that clearly involved the performance of unit work . . .." Id. at 859.

In applying The Sun in subsequent unit clarification cases, the Regions have recognized that that case does not dispense with the "recent substantial changes" element of all unit clarification proceedings. In the Beacon Journal Publishing Co., Case 8-UC-339 2001, the Regional Director specifically noted that The Sun "developed a new legal standard regarding unit classification situations for new employees where the scope of the unit is based not on classifications but on work performed," id. at 14, but he nevertheless distinguished The Sun on

[9] Thus, the employer was not merely trying to identify new classifications in the Finishing Department that belong in the Board-ordered unit because they perform functions historically performed by unit members, àla Developmental Disabilities Interstate, Inc., 334 NLRB 1166 (2001). Here, it is not newly created classifications that are in issue.

the basis that there, "the creative services department was newly established". Id. at 13. Similarly, in American Medical Response, Inc., Case 31-UC-296 (2000), the Regional Director distinguished The Sun on the basis that "that case involved a determination with respect to a bargaining unit defined by the work performed and the unit placement of a group of employees in newly created job classifications." Id. at 6 (emphasis original).[10]

The Regional Director also incorrectly relied in the UC case (Decision at 14) on Armco Steel Co., 312 NLRB 257 (1993), where the Board discussed the applicability of UC Petitions in a number of prior cases. Id. at 259. The Board found that in those cases, it had clarified "unit scope" issues. This is a true statement, but it does not warrant application of unit clarification proceedings to this case. As the Board noted in U.S. Tsubaki, Inc., 331 NLRB 327 (2000), cited by the Regional Director (Decision at 14 n. 12), the case involved a situation where "an employer has transferred some portion of unit employees to a new facility." Id. at 328. The transfer there occurred in November 1996, with the unit clarification petition being filed February 19, 1997. Id. at 329. Thus, in Tsubaki the "substantial recent changes" requirement of unit clarification proceedings was met. None of the following decisions discussed by the Board in Armco Steel, 312 NLRB at 259, can stand for the proposition that this requirement in unit clarification proceedings is no longer applicable. Thus, Green-Wood Cemetery, 280 NLRB 1359 (1986) was a decertification case where the issue was whether the petition had been filed in the existing unit. The unit was not clarified; unit clarification was not even discussed. Id. at 1360. In Lennox Industries, 308 NLRB 1237 (1992), the Board found "recent, substantial changes that occurred as a result of the corporate-wide reorganization . . . created essentially independent entities, functioning separately and autonomously." Id. at 1238. In Ameron, Inc., 288 NLRB 747 (1988),

[10] Accordingly, Paper Mfrs. Co., 274 NLRB 491, 497 (1985), relied on by the Regional Director (Decision at 12), is not apposite because the employees at issue there were newly hired.

the parties had agreed between themselves to submit the unit clarification to the Board. In Rock-Tenn Co., 274 NLRB 772 (1985), the substantial change was the sale of the two plants in 1983, with the result that the two plants then became owned by separate corporations. The unit clarification petition was filed the following year. Id. at 773. In Renaissance Center Partnership, 239 NLRB 1247 (1979) there was a consolidation; and in South Coast Terminals, 221 NLRB 197 (1975), a new plant was opened to which unit employees were moved.

Conversely, in Batesville Casket Co., 283 NLRB 795 (1987), the Board distinguished Rock-Tenn, on the basis that it there had "specifically noted that the Rock-Tenn corporations had acquired the plants 'only recently'." Id. at 797. And the Board in Batesville expressly stated that its decisions did not "indicate[] that the Board should or would interfere with the composition of long established bargaining units in the absence of recent, substantial changes." Id. (first emphasis added; second emphasis original).[11] As explained supra, there are no recent substantial changes that have taken place in the Finishing Department or in the current unit.

Finally, the historically excluded finishing department employees may not be added now, even if the Board were to conclude they fit within the current unit description. In United Parcel Service, 303 NLRB 326, 327 (1991) the Board stated that historically excluded employees, even if "not distinguishable by classification, job function, or geographic location from employees [in the unit]," could not be added to the unit. This principle was reaffirmed in United Parcel Service, 346 NLRB 484 (2006), stating that "a group of employees . . . historically excluded from a unit" cannot lawfully be included in a unit "without an expression of a desire by a majority of these employees to be represented." In that case the Board refused to allow the addition to a

[11] It is worth repeating in this respect that while Comar purported to recognize the Union in the Board-ordered unit in March 2007 even as it acknowledged the unit was comprised of the relocated workers, it was demanding bargaining over the "composition of the bargaining unit." [See Exhibit "F"].

nationwide unit, of previously unrepresented employees in the "disputed classification . . . consist[ing] if a combination of represented and unrepresented employees who performed the same job functions at different UPS facilities." Id. at 489. It is the fact of exclusion that is important, not whether "such employees were excluded . . . due to agreement of the parties, oversight, mistake, or some other reason." Robert Wood Johnson University Hospital, 328 NLRB 912, 913 (1999). The principles were recently reaffirmed in CHS, Inc., 355 NLRB 164 (2010), slip opinion at 3.

POINT II

COMAR FAILED TO MEET ITS OBLIGATION TO BARGAIN A CONTRACT FOR THE UNIT.

As acknowledged by the Regional Director, Amended Compliance Determination at 4, Comar II found that the unit remained intact and Comar was obligated under the Board's Order to bargain for a contract covering it. This is the unit that existed when the parties were bargaining.[12] Yet Comar plainly did not bargain for a contract covering it. This violated the Board's Order, and should have resulted in a reopening of compliance. As the Board has now indicated, Comar had a continuing obligation to comply with the Board's Order after compliance was conditionally closed. See Order at 5-6.

The parties' discussion in negotiations, insisted on by Comar, about a finishing department unit did not bind the Union to a finishing department unit.[13] Even tentative agreement on changing the unit would not be final and binding on the Union, because no new complete

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[12] The unit was clarified by the Regional Director in 2009, long after these events.

[13] Contrary to the Regional Director, Decision at 8, it was not the Union, but rather Comar, that requested bargaining to determine which employees were in the unit. Moreover, Comar was insisting on a change in the unit description (TR 88). The Union's contract proposal tracked the Board-ordered unit [Exhibit "G"].

contract was ever reached. Taylor Warehouse Corp., 314 NLRB 516, 517 (1994). Comar was therefore not entitled to insist on its unit proposal. Id.

It is "well settled that the scope of the employees' bargaining unit is not a mandatory subject of bargaining." Boise Cascade Corp. v. NLRB, 860 F.2d 471, 129 LRRM 2744, 2746 (D.C. Cir. 1988). Although parties are free to bargain about permissive subjects, insistence upon same to impasse over the objection of the other party is a violation of the bargaining obligation. NLRB v. Borg-Warner Corp., 356 US 342, 349, 42 LRRM 2084 (1958).

Consequently, it has long been held that the mere fact that a party has consented to bargain over a permissive subject does not convert that subject to a mandatory subject, and does not make unlawful that party's subsequent refusal to bargain further over the permissive subject. In Kit Manufacturing Co., Inc., 150 NLRB 662 (1964), the parties had bargained over the non-mandatory subject of the employer's use of the union label. Negotiations had progressed to the point that the union had offered the use of the union label as part of a proposal that included a union security clause, which proposal was rejected by the employer. Subsequently, the union withdrew its demand for union security and withdrew its offer of the use of the union label which it had tied to the employer's acceptance of some form of union security. The Union's conduct was held to be entirely lawful. The Trial Examiner found that the Employer's claim that the Union had relinquished its right to object to the Union label by bargaining about it and including it in a package proposal, was "specious". Id. at 671. He concluded that to hold that by bargaining over the permissive subject, the Union was bound to that subject even though no collective bargaining agreement was reached, "would penalize the party to negotiations for endeavoring to reach agreement by consenting to bargaining upon issues as to which the Act does not require him to bargain." Id. at 671. The Board found that the employer's insistence on this permissive

subject after the union was no longer willing to include it in the contract, was a refusal to bargain. Id. at 673.

This principle was applied more recently by the Board in KFMB Stations, 343 NLRB 748 (2004). Dealing with a contract proposal authorizing the employer to deal directly with the unit employees and negotiate individual agreements providing for above-scale wages, a permissive subject of bargaining, id. at 752, the Board noted that although both parties had the right to make proposals relating to the subject of direct dealing, "these proposals remained permissive subjects of bargaining, and no party could lawfully insist to impasse on their inclusion in the final agreement." Id. The Board's decision in Cantebury Gardens, 238 NLRB 864, 865 (1978) points out that the principle also applies to an employer's conditioning negotiations on changing the unit, as Comar has done here.

On February 10, 2009, in the final meeting between the parties, Comar stated there would be no further meetings unless the Union agreed to the finishing department unit (TR 129). This is an unlawful insistence on a nonmandatory subject of bargaining, and it is a violation of the Order in Comar I. The "Union was free to reject" this "precondition[] attendant to the Employer's offer [to bargain]." Chicago Health and Tennis Clubs, 251 NLRB 140, 140-41 (1980).

POINT III

THE PENDING UNIT CLARIFICATION PETITION DOES NOT RELIEVE COMAR OF ITS OBLIGATIONS UNDER THE ORDER.

Comar's unit clarification petition does not relieve Comar of its bargaining obligations. Concourse Nursing Home, 328 NLRB 692, 694 n.10 (1999); Niagara University, 226 NLRB 918, 919 (1976); New York Times Co., 270 NLRB 1267, 1272 (1984).

POINT IV

THE UNION HAS NOT ACQUIESCED IN OR CONSENTED TO A LARGER UNIT BY CONDUCT AWAY FROM BARGAINING.

In her Amended Compliance Determination, the Regional Director has suggested that the Union's actions taken in consequence of the Board's order in Comar I in only requesting changes in matters found there to constitute violations of the Act (Decision at 5; 9 n.10; 10), and the Union's entering into a back pay stipulation that resulted from the Region's Compliance Specification that itself limited the remedy for the "bargaining unit" to the relocated Vineland employees (November 21, 2007 Stipulation, Exhibit "E", see Amended Compliance Determination at 6, 10), somehow constituted an acquiescence by the Union in the finishing department unit. The Regional Director's reliance on these factors is incongruous at best, and is without merit.

The complaint in Comar I alleged in paragraph 10(a):

> "on or about September 27, 1999, respondent established new wages, hours and other terms and conditions of employment for the Unit." [Exhibit "I"].

The judge found in Comar I that, "effective that same day [9/27/99, id. at 908] Respondent made a number of changes to the terms and conditions of employment of the unit employees" id. At 909. The judge found that the Comar handbook was applied to the unit employees for the first time; seniority list, holiday, personal days, pension plan, 401(k) plan, sick pay, bereavement time, vacation, and bonus eligibility were changed. Id. The judge found that these changes in the wage and benefits package did not affect the appropriateness of the unit. He went on to state that "[f]alling into this same classification of changes that were unlawfully implemented is the merger of seniority lists . . .", and that, "other changes occurred, id. at 911 (emphasis supplied) which he did not find as violations. He concluded that effective September 27, unlawful changes in wages,

benefits and "other terms and conditions of employment of the unit employees at Buena" were made in violation of Section 8(a)(5). Id. at 912. The Board's order in Comar I, paragraph 2(b), accordingly provides:

> Upon request rescind the unlawful changes made in the terms and conditions of employment of the unit employees. Id. at 914.

These quoted sections of the decision and order make it clear that the unlawful changes found to have been made were those that occurred on September 27, 1999, and those were the unlawful changes that the Board order required be rescinded by Comar upon the Union's request.

Changes made by Comar in terms and conditions of employment of the unit employees after September 1999, including their work locations and jobs, were never alleged or found to be violations of Section 8(a)(5). The only 8(a)(5) allegation contained in the 2005 Board pleading in Comar II was a refusal to provide requested information in violation of Section 8(a)(5). Comar II, 349 NLRB at 345. To accord with the Board's order in Comar I that Comar rescind its unlawful changes, the Union's request for rescission was properly limited to items found to be violations of the Act. See, e.g. McClatchy Newspapers, Inc. d/b/a/ The Fresno Bee, 339 NLRB 1214, 1216 n.6 (2003). And, it is plain that in Comar's March 20, 2007 communication [See Exhibit "F"], the changes Comar was offering to rescind in accordance with the Board order in Comar I were limited to the wages, hours and terms and conditions of employment it had changed in September, 1999, not any changes in work assignments that were made after that case and which were never the subject of a Board complaint and unfair labor practice findings. Comar did not offer to rescind work assignments, equipment changes or job content. For the Union to have sought rescission of changes made by Comar that had never been alleged or found to be violations of the Act, would have been unwarranted and indeed foolhardy. To demand rescission of such changes would have put the Union in a position of trying to require actions be taken that it was not entitled

to demand under the Board's order.[14] Moreover, the proposition that changes in work assignments, equipment and job content for unit employees could practically have been rescinded at the Union's demand is not supportable. The rotary machines had virtually been eliminated by 2003. It would have been unwise at best, and futile, for the Union to pursue such demands as part of its bargaining for a contract for unit employees.

Moreover, Comar in its 2007 letter (Exh. "F") did not offer to rescind "the effects of changes in working conditions that have taken place since September 1999 to date, which affect the Bargaining Unit." It only offered to bargain the effects of such changes, which was not an offer to restore the status quo. Comar's failure to "offer to restore the status quo" regarding those changes renders its "offer" a legally meaningless offer. McKlain E-Z Pack, Inc., 342 NLRB 337, 343 (2003). As the Administrative Law Judge aptly noted in that case, rejecting the employer's reliance on its offer to bargain made without an offer to restore the status quo:

> An offer to bargain over [changes that] have occurred is no substitute for . . . prior notice. Once [changes] have taken place . . ., the union's position has been seriously undermined and it cannot engage in the meaningful bargaining that could have occurred if the Respondent had offered to bargain at the time the Act required it to do so . . .[I]n cases involving unlawful unilateral changes, the Board's normal remedy is to order restoration of the status quo ante as a means to ensure meaningful bargain . . . [Citations omitted.] [Quoting from Porta-King Building Systems, 310 NLRB 539 (1993).

The operational changes made by Comar since 1999 were years old by 2007. Even from an effects bargaining standpoint, which is all that Comar proposed, offering to discuss them in 2007 does not meet the requirement that the Union be given timely notice to allow "for

---

[14] The Regional Director's December 4, 2006 letter [Exhibit "J"] to Comar is ambiguous as to unspecified changes made after the close of the hearing before Judge Kocol. Neither the letter nor the appendix to it reference reconstituting work locations, equipment and duties as they existed in 1999.

The Region's letter stated that the bargaining unit is still viable, and "bargaining to modify the unit description would involve a permissive subject," a proposition it now appears the Region has abandoned. Comar demanded in bargaining that the unit description be changed.

meaningful bargaining at a meaningful time." Willamette Tug & Barge Co., 300 NLRB 282, 283 (1990).

The compliance specification in Comar II sought Transmarine back pay for the unit employees, see 349 NLRB at 356, and relief was limited to the relocated workers. The back pay settlement naturally (Exhibit "E") was limited to those workers too, and was executed by Comar. These facts do not show union "acquiescence". Rather, they show that the unit remained the relocated workers, long after Comar had made its changes in operations.

CONCLUSION

For all the reasons stated above, the Board should grant review, reverse the Regional Director's May 12, 2010 Amended Compliance Determination, and direct that the Region reopen compliance, together with further relief consistent with that direction.

Dated: December 9, 2010

Respectfully submitted,

BLITMAN & KING LLP

By: _____

James R. LaVaute, Esq.
Blitman & King LLP
Attorneys for the Charging Party
Office and Post Office Address
443 North Franklin Street, Suite 300
Syracuse, New York 13204
Telephone: (315) 422-7111
Facsimile: (315) 471-2623

ldm/jrl/comar/request for review 12-9-2010

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ORDER SECTION

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMAR, INC.,	)	
Respondent,	)	Cases 4-CA-28570
	)	4-CA-33903
and	)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION,	)	
Charging Party.	)	

CHARGING PARTY'S REQUEST FOR REVIEW OF ACTING GENERAL COUNSEL'S DENIAL OF APPEAL FROM REGIONAL DIRECTOR'S AMENDED COMPLIANCE DETERMINATION

EXHIBITS A - J

BLITMAN & KING LLP
Attorneys for the Charging Party
United Steel, Paper and Forestry,
Rubber, Manufacturing, Energy,
Allied Industrial and Service
Workers International Union
Office and Post Office Address
Franklin Center
443 North Franklin Street, Suite 300
Syracuse, New York 13204
Telephone: (315) 422-7111
Facsimile: (315) 471-2623

Of Counsel:

James R. LaVaute, Esq.

EXHIBIT A

United States Government

NATIONAL LABOR RELATIONS BOARD
Region Four
615 Chestnut Street - Seventh Floor
Philadelphia, PA 19106-4404

Telephone: (215) 597-7601
Fax: (215) 597-7658
Email: Region4@NLRB.GOV

October 31, 2008

Joel Cohen, Esquire,
McDermott Will & Emery
340 Madison Avenue
New York, NY 10017

Re: Comar, Inc.
Cases 4-CA-28570 and 4-CA-33903

Dear Mr. Cohen:

The Respondent having satisfactorily complied with the affirmative requirements of the respective Judgments issued by the United States Court of Appeals for the District of Columbia Circuit on May 19, 2004, and issued by the United States Court of Appeals for the Third Circuit on January 30, 2008, in the subject cases, and the undersigned having determined that Respondent is also in compliance with the negative provisions of those Judgments, the cases are hereby closed. Please note that the closing is conditioned upon continued observance of the Judgments and does not preclude further proceedings should subsequent violations occur.

Very truly yours,

Dorothy L. Moore-Duncan

DOROTHY L. MOORE-DUNCAN
Regional Director

cc:
Alan W. Dean, Director Human Resources, Comar, Inc., One Comar Place, Buena, NJ 08310
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, 1440 South Byrne Road, Toledo, OH 43614
James R. LaVaute, Esquire, Blitman & King, LLP, Franklin Center, Suite 300, 443 North Franklin Street, Syracuse, NY 13204

DMD/tsl

tsl://H:\R04COM\GROUPS\COMPLIANCE\OPENING COMPLIANCE LETTERS\CLTR.04-CA-28570-33903.COMAR-CLOSED ON COMPLIANCE.DOC

Bernard T. King
Charles E. Blitman*
Jules L. Smith
James R. LaVaute
Donald D. Oliver
Jennifer A. Clark
Melvin H. Pizer°
Monica R. Heath
Kenneth L. Wagner
Timothy R. Bauman
Nathaniel G. Lambright
Daniel E. Kornfeld°°

Daniel R. Brice
Jonathan M. Cerrito^Δ
Ginger B. LaChapelle^◊
Christopher P. Gétaz^Δ◊

Kelly L. Cook CEBS
Leslie A. DiGenova CEBS

Nathan H. Blitman (1909-1990)

* Also admitted in MA
° Also admitted in FL
°° Also admitted in MD and DC
Δ Also admitted in CT
◊ Also admitted in DC

Blitman & King LLP
Attorneys and Counselors at Law

Syracuse
Rochester
Albany

Franklin Center Suite 300
443 North Franklin Street
Syracuse New York 13204-5412

Phone: 315.422.7111
Fax: 315.471.2623

Franklin Center Suite 300
443 North Franklin Street
Syracuse NY 13204-5412
Phone: 315.422.7111
Fax: 315.471.2623

The Powers Building Suite 207
16 West Main Street
Rochester NY 14614-1601
Phone: 585.232.5600
Fax: 585.232.7738

800 Troy-Schenectady Road
Latham NY 12110-2424
Phone: 518.785.4387
Fax: 518.785.9264

www.bklawyers.com

May 7, 2009

VIA FACSIMILE AND
US REGULAR MAIL

Dorothy L. Moore-Duncan
Regional Director
National Labor Relations Board, Region Four
615 Chestnut Street – Seventh Floor
Philadelphia, PA 19106-4404

COPY

Re: Comar Inc.

Dear Madam Regional Director:

I am in receipt of the Office of Appeals' May 1, 2009 letter denying the appeal in Case 4-CA-36275. I will be filing tomorrow a motion for reconsideration of this denial of the appeal.

Regarding the Petition in 4-UC-440, by letter dated February 18, 2009, I requested that you allow me an opportunity to submit a position statement. The case was then held in abeyance, so a position statement was not filed. We raised the objection that a unit clarification proceeding is not appropriate in this case, and we wish to support that with argument before a notice of hearing issues. (The Petition itself included a misrepresentation that there was a "union proposed clarification". There was no union-proposed clarification.)

Finally, as you know, there is another open bargaining charge against Comar in 4-CA-36714, filed by the Union and alleging Comar's continuing to refusal to bargain by its insistence as a condition to a new agreement upon a different unit than the one ordered by the Board. Comar's bad faith bargaining as supported in Case 4-CA-36714, violates the extant court orders in Comar I and II. Accordingly, we request that the Region's action on October 31, 2008 closing the cases in 4-CA-28570 and 4-CA-33903, be rescinded. As your October 31 letter noted,

"closing is conditioned upon continued observance of the judgments and does not preclude further proceedings should subsequent violations occur."

We submit the UC Petition should not be further processed until all these matters are resolved.

Very truly yours

BLITMAN & KING LLP

James R. LaVaute

JRL:im
Enclosure

cc: Yvonne Dixon, Director
Office of Appeals
National Labor Relations Board
Franklin Court Building, Suite 8820
1099 Fourteenth Street, N.W.
Washington, D.C. 20570

Richard J. Brean, General Counsel
United Steelworkers
(Via e-mail)

Timothy J. Tuttle, Chairman
USW Flint Glass Industry Conference
(Via e-mail)

John Shinn, Staff Representative
United Steelworkers
(Via e-mail)

Idm/jrl/let/moore-duncan comar 5-7-09

United States Government

NATIONAL LABOR RELATIONS BOARD
Region Four
615 Chestnut Street - Seventh Floor
Philadelphia, PA 19106-4404

Telephone: (215) 597-7601
Fax: (215) 597-7658
Email: Region4@NLRB.GOV

June 16, 2009

CORRECTED LETTER

James R. LaVaute, Esquire
Blitman & King LLP
Franklin Center, Suite 300
443 North Franklin Street
Syracuse, NY 13204

Re: Comar, Inc.
Cases 4-CA-28570 and 4-CA-33903

Dear Mr. LaVaute:

On October 31, 2008, I issued a letter closing Cases 4-CA-28570 and 4-CA-33903 on compliance. This closing was based on my determination that Respondent had complied with its existing obligations under the Judgments issued by the United States Court of Appeals for the District of Columbia Circuit on May 19, 2004 and the United States Court of Appeals for the Third Circuit on January 30, 2008. I also noted that if subsequent violations occurred, further proceedings on these two cases would not be precluded.

By letter dated May 7, 2009, you requested that I rescind my decision to close the cases on compliance. Your request was based on allegations of bad faith bargaining which the Union set forth in Case 4-CA-36714. By letter dated June 12, 2009, I dismissed the charge in Case 4-CA-36714 as lacking merit. Accordingly, your request to rescind my action in closing Cases 4-CA-28570 and 4-CA-33903 is denied.

Very truly yours,

Dorothy L. Moore-Duncan

DOROTHY L. MOORE-DUNCAN
Regional Director

DMD/tsl

H:\R04COM\REGION 04 C CASES\04-CA-36714\LTR.04-CA-36714.LETTER TO LAVAUTE IN RESPONSE TO DENIAL IN APPEALS.DOC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMAR, INC.

and **Cases 4-CA-28570**
4-CA-33903

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION

ORDER[1]

The Charging Party's Request for Review of the General Counsel's decision sustaining the Regional Director's compliance determination is granted, and the case is remanded to the Regional Director for further appropriate action, as described below.

On July 31, 2003, the Board issued a Decision and Order in this case, finding, inter alia, that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to recognize Charging Party United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International

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[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Teamsters Local 523 v. NLRB*, ___F.3d___, 2009 WL 4912300 (10th Cir. Dec. 22, 2009); *Narricot Industries, L.P. v. NLRB*, 587 F.3d 654 (4th Cir. 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

Union (the Union) as the representative of unit employees who were relocated from a facility in Vineland, New Jersey to another facility in Buena, New Jersey, and refusing to bargain for a successor collective-bargaining agreement covering those employees.[2] As part of the remedy, the Board ordered the Respondent to recognize and bargain with the Union in the following unit ("the Vineland unit"):

> All hourly paid production workers who are performing the work that was formerly done as part of the Applicator Division of Comar, Inc. at its facility then located in Vineland, New Jersey, except plant executives, salesmen, office employees, janitors, watchmen and foremen, as excluded by the provisions of the Labor Management Relations Act of 1947 as amended.

In addition, the Board found that the Vineland unit, which formerly consisted of employees in the Respondent's applicator division, remained an appropriate unit after the relocation and did not constitute an accretion to the finishing department at the Buena facility.[3] The United States Court of Appeals for the D.C. Circuit enforced the Board's Order in full, by unpublished opinion dated May 19, 2004.[4]

During the compliance proceeding, the Respondent argued that, after the original hearing, changes in its operations eliminated the Vineland unit and that these changes excused it from many elements of the court-enforced Board Order.[5] The Board rejected these arguments and refused to limit the remedy, leaving the court-enforced

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[2] 339 NLRB 903.
[3] Id. at 910-911.
[4] 111 Fed.Appx. 1.
[5] 349 NLRB 342, 348 (2007).

Board Order, including the Respondent's obligation to recognize and bargain with the Union about the Vineland unit, intact.[6]

In July 2007, the parties commenced negotiations, and for a period of time, the Union considered the Respondent's proposal to enlarge the unit to include all of its finishing department employees at the Buena facility, in addition to the smaller Vineland unit. In July 2008, the Union decided not to negotiate over the larger unit and submitted a proposal covering only the unit employees formerly employed at the Vineland facility, which the Union contends is the unit described in the Board's Orders. Over the next several months, the parties exchanged a series of letters on the unit issue.

On October 31, 2008, while these negotiations continued, the Regional Director for Region 4 issued a compliance determination letter, finding that the Respondent had fully complied with the Board's Orders and closing the cases, conditioned on the Respondent's continued compliance with the Board's Orders. In this letter, the Regional Director stated that the compliance determination "does not preclude further proceedings should subsequent violations occur."

On February 10, 2009, the parties met to discuss the Union's proposal. At this meeting, according to the Union's assertions, the Respondent stated that it refused to engage in further negotiations with the Union "unless the Union agreed to negotiate for the different unit, that there 'was no reason to continue meeting if you won't negotiate the unit,' and that 'the Union should contact Comar if it changes its position.'"[7]

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[6] Id. at 342, 356-60.

[7] Request for review, pp. 9-10 (quoting the Respondent's alleged statements at the February 10 meeting). It is unclear whether the Union is arguing that the Respondent conditioned further meetings on the Union's agreement to *accept the larger unit* and negotiate for a contract covering the larger unit or that the Respondent conditioned

On May 7, 2009, the Union requested that the Regional Director rescind the compliance determination and reopen the compliance proceedings. The Regional Director sent a letter to the Union on June 16, 2009, declining to reopen the compliance proceedings. In declining to rescind the original compliance determination, the Regional Director cited her decision to dismiss a charge in Case 4-CA-36714, in which the Union alleged that the Respondent unlawfully refused to bargain by its actions on February 10, 2009. The Regional Director stated that the Union's request to reopen compliance was based on the same allegation of bad-faith bargaining that the Union asserted in the charge.

By letter dated June 25, 2009, the Union filed with the General Counsel an appeal of the Regional Director's June 16, 2009 determination. By letter dated August 31, 2009, the General Counsel denied the Union's appeal. The General Counsel determined that the Union's appeal was "untimely and without procedural support" and that it was unable to process the request as a compliance appeal. The General Counsel stated that the Union's May 7, 2009 request to reopen compliance was made more than 6 months after the Region closed the cases on compliance on October 31, 2008. In addition, the General Counsel stated that "prior to these belated filings, the Union filed no action appealing the Region's October 2008 decision that compliance had been met, nor otherwise disputed the Region's determination that the Employer met its obligations under the Comar I and II Board Orders."

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further meetings on the Union's agreement to *negotiate the composition of the unit*—i.e., whether the Vineland unit or the larger unit was appropriate. In either event, the Union contends that the Respondent placed a condition on its continued compliance with the court-enforced Board Order.

Thereafter, on September 14, 2009, the Union filed the instant request for review of the General Counsel's decision pursuant to Section 102.53 of the Board's Rules and Regulations. See also *Ace Beverage Co.*, 250 NLRB 646 (1980). In requesting review of the General Counsel's decision, the Union contends, inter alia, that the General Counsel erred by refusing to consider the Regional Director's decision not to reopen compliance proceedings as a compliance determination ("a decision made by the Region after a charging party disputes 'what constitutes compliance,'" as described in the Board's Casehandling Manual (Compliance) Section 10602).

Specifically, the Union argues that the Vineland unit still exists and the Board Order requires the Respondent to bargain for a contract covering the employees formerly employed at the Vineland facility. In addition, the Union contends that its consideration of a permissive subject of bargaining (regarding the possible expansion of the bargaining unit) during contract negotiations does not relieve the Respondent of its obligation to bargain for a contract covering the unit. In this regard, the Union maintains that the Respondent's insistence on its unit proposal for the larger finishing department was an unlawful insistence on a permissive subject of bargaining and a violation of the Board's Order. The Region filed a response to the Union's request for review.[8]

Having duly considered the matter, we grant the Union's request for review. Procedurally, we find that the General Counsel erred in finding that the Union's appeal was untimely. The Board's Rules do not impose a deadline for requests to reopen compliance, and the General Counsel cited no authority for his finding of untimeliness. The Union's May 7, 2009 request that the Regional Director reopen compliance

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[8] The Respondent has not filed a response to the Union's request for review.

proceedings was made less than 3 months after the Union learned of the Respondent's alleged non-compliance. [9] In addition, there is no contention that the Union failed to comply with the 14-day deadline for filing an appeal of the Regional Director's decision not to reopen compliance or with the 14-day deadline for requesting the Board's review of that disposition, as stated in Section 102.53 of the Board's Rules; indeed, the record before us demonstrates that the Union satisfied those requirements.

Substantively, we find that the Regional Director's June 16, 2009 determination that the Respondent continued to comply with the Board's Orders, notwithstanding its alleged conduct on February 10, 2009, was a compliance determination. Under the Board's Rules and Regulations, the Union was entitled to a written statement of the basis for that determination.[10] The Regional Director's compliance determination declining to reopen compliance proceedings does not indicate what evidence she relied on in concluding that the Respondent fulfilled its bargaining obligations as ordered by the Board. These issues should have been discussed in the June 16, 2009 compliance determination to afford the Charging Party a meaningful opportunity to appeal. Absent such information, we cannot determine whether the Regional Director appropriately declined to reopen compliance proceedings.

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[9] Moreover, the Union's request was consistent with the Regional Director's statement that the original compliance determination did not preclude further proceedings in the event of subsequent violations of the court-enforced Board Orders. See Section 101.13(b) of the Board's Statements of Procedure ("Despite compliance, however, the Board's order is a continuing one; therefore, the closing of a case on compliance is necessarily conditioned upon the continued observance of that order. . . .").

[10] Section 102.52 of the Board's Rules and Regulations provides that "[a] charging party adversely affected by a monetary, make-whole, reinstatement, or other compliance determination will be provided, on request, with a written statement of the basis for that determination."

Accordingly, we remand this case to the Regional Director for Region 4 for further action consistent with this Order. On remand, the Regional Director shall issue an amended compliance determination containing a more detailed explanation[11] of the evidence she relied on to support her decision not to reopen compliance proceedings. The Union will be entitled to appeal such determination to the General Counsel pursuant to Section 102.53(a) of the Board's Rules and Regulations, and subsequently to file with the Board a request for review of the General Counsel's decision on appeal, pursuant to Section 102.53(c) of the Board's Rules and Regulations.[12]

Dated, Washington, D.C., January 25, 2010

WILMA B. LIEBMAN, CHAIRMAN

PETER C. SCHAUMBER, MEMBER

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[11] This explanation should include, but should not be limited to, an analysis of whether the Union requested bargaining in the Board-ordered unit, and if not, why the unit in which the Union requested bargaining was not the Board-ordered unit, and whether the Respondent refused to engage in further negotiations unless the Union agreed to bargain over a unit different from the one certified by the Board.

[12] The Region argues, inter alia, that the Board's consideration of the Union's request for review would essentially constitute review of the General Counsel's decisions not to issue complaint, in violation of Section 3(d) of the Act. This argument does not preclude the Board from requiring the Region to present its position for review, and we will fully consider the merits of this argument, as well as the Region's other contentions, in the event that the full articulation of the rationale underlying the Region's decision not to reopen compliance proceedings is before the Board on a further request for review, as described above.

United States Government
NATIONAL LABOR RELATIONS BOARD
Region Four
615 Chestnut Street - Seventh Floor
Philadelphia, PA 19106-4404

Telephone: (215) 597-7601
Fax: (215) 597-7658

May 12, 2010

James R. LaVaute, Esquire
Blitman & King LLP
443 North Franklin Street
Suite 300
Syracuse, NY 13204

Re: COMAR, Inc.
Cases 4-CA-28570 and 4-CA-33903

Dear Mr. LaVaute:

The following amended Compliance Determination is issued pursuant to Section 102.52 of the Board's Rules and Regulations. As summarized below, I have decided that further compliance proceedings are unwarranted.

I. Introduction

On September 14, 2009, you filed a Request for Review of the General Counsel's decision sustaining my June 16, 2009 denial of your request that I rescind my decision to close the above-captioned cases. On January 25, 2010, the Board granted your Request for Review and remanded the matter to me for, inter alia, issuance of an amended compliance determination detailing the evidence I relied upon supporting my June 16 determination. The Board further directed me to: (1) analyze whether the Union requested bargaining in the Board-ordered unit; (2) if not, why the Union's requested unit was not the Board-ordered unit; and (3) whether Respondent refused to engage in further negotiations unless the Union agreed to bargain over a unit different than the Board-ordered unit.

This Amended Compliance Determination first presents the relevant background and facts, and then explains the basis for my refusal to reopen the compliance proceedings. In this connection, I have concluded that Respondent had not refused to bargain in the Board-ordered unit. I have also concluded that the Union did not request bargaining in the Board-ordered unit

and that the Respondent did not refuse to engage in further negotiations unless the Union agreed to bargain over a unit different than the Board-ordered unit.

If you disagree with the Amended Compliance Determination, you have the right, pursuant to Section 102.53 of the Board's Rules and Regulations, to appeal my Determination initially to the General Counsel and then to the Board. The appeal procedure is further detailed at the end of this Determination.

II. Procedural History and Background Information:

On October 31, 2008, I issued a letter closing Cases 4-CA-28570 and 4-CA-33903. This closing was based on my determination that Respondent had complied with its obligations under the Judgments issued by the United States Courts of Appeals for the District of Columbia Circuit and for the United States Court of Appeals for the Third Circuit on January 30, 2008 and May 19, 2004, respectively. I also noted that further proceedings on these two cases would not be precluded if subsequent violations occurred.

By letter dated May 7, 2009, you requested that I rescind my decision to close the cases on compliance. Your request was based on the charge you filed in Case 4-CA-36714 alleging that Respondent bargained in bad faith by refusing to engage in bargaining to reach a collective bargaining agreement covering the Board-ordered unit and refusing to meet for future bargaining because the Union would not agree to negotiate over a different unit. On June 12, 2009, I dismissed the charge as lacking merit. You appealed this decision to the General Counsel and your appeal was denied by letter dated August 31, 2009. Consistent with my dismissal of the charge in Case 4-CA-36714, I denied your request that I rescind my closing of Cases 4-CA-28570 and 4-CA-33903 by letter dated June 16, 2009. By Order of January 25, 2010, the Board granted your Request for Review and remanded this matter for issuance of an amended compliance determination containing a more detailed explanation of the evidence that I relied upon to support my decision not to reopen compliance proceedings.

III. The Board's First Decision (Comar I)

In September and October 1999, the Union filed unfair labor practice charges in Cases 4-CA-28570 and 4-CA-33903 against Respondent (or Comar) relating to the relocation of its Applicator Division and the Division's employees formerly working at the Vineland, New Jersey facility to the Buena, New Jersey facility. A hearing was held before Administrative Law Judge William Kocol in May 2001. Judge Kocol issued his Decision in August 2001, finding that Respondent had violated the Act: (1) by failing to bargain with the Union concerning the effects of the relocation; (2) withdrawing recognition from the Union; (3) changing employees' working conditions following the relocation; and (4) discharging the Applicator Division employees who refused to accept employment in Buena under the changed conditions of employment. Among other remedial provisions in his recommended Order, Judge Kocol required Respondent to rescind the unlawful changes, make whole the affected employees for any loss of compensation they suffered as a result of these changes, provide a *Transmarine* limited backpay remedy,[1] offer

[1] See *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

reinstatement to the unlawfully discharged employees, and bargain with the Union in the appropriate unit, as discussed below.

In finding a continued duty to bargain following the relocation, Judge Kocol noted that the transferred Vineland employees remained a distinct group working in an area separate from the remainder of the Buena work force where they continued to produce the same products they had produced in Vineland, using the same machines and reporting to the same supervisors. The segregation of the Vineland employees coupled with their long history of bargaining caused Judge Kocol to conclude that the transferred Vineland employees remained a separate appropriate unit. However, Judge Kocol recognized that the relocation had altered the circumstances in which the transferred employees worked and made it impossible to define the unit in which Respondent was obliged to bargain as it had been defined in the past. Because Applicator Division employees no longer worked in a separate facility, the unit could no longer be described on the basis of their location. Instead, pending an agreement by the parties to alter the unit description, Judge Kocol ordered bargaining in a unit described by the functions the employees performed. Respondent was required to bargain in a unit consisting of "all hourly paid production workers who are performing the work that was formerly done as part of the Applicator Division of Comar, Inc. at its facility then located in Vineland, New Jersey . . . ." *Comar I* at pp. 910-911.

The Board adopted Judge Kocol's recommended Order in its July 2003 Decision, although it noted that Respondent would be able in compliance proceedings to introduce evidence of changes in operations postdating the hearing to the extent that such changes might affect the remedy. *Comar I* at fn. 1. The United States Court of Appeals for the District of Columbia Circuit enforced the Board's Order in May 2004. *Comar, Inc. v. NLRB,* 111 Fed Appx. 1 (D.C. Cir. 2004).

IV. The Board's Second Decision (Comar II)

Following the Board's initial Decision, Respondent agreed to bargain over the effects of the relocation of Vineland employees to Buena, but insisted that changes in its operations subsequent to the May 2001 hearing had eliminated the unit represented by the Union and extinguished any duty to bargain for a contract. A dispute arose at this time over the amount of compensation due employees to remedy the unfair labor practices found by the Board, and the Union filed new charges over Respondent's responses to its requests for information. A second hearing before Administrative Law Judge Paul Bogas was held on these issues in November 2005.

Judge Bogas issued his Decision in April 2006, and the Board adopted his findings and conclusions in February 2007. Respondent did not seek Circuit Court review of *Comar II*, but instead executed a settlement agreement in November 2007 in which, inter alia, it agreed to comply with its obligations under *Comar I* and *Comar II.*

Judge Bogas' Decision in this second proceeding described a number of changes in operations at Buena after May 2001. For one, Respondent decreased its reliance on rotary machines previously used to produce medicine droppers at Vineland, and only two rotary

machines remained in operation at Buena by 2005. Respondent increased its use of higher speed droppers assembly machines (ADAMs), adding three machines to the original three previously used at Vineland. The rotary machines continued to be located in the room to which unit employees were assigned upon their transfer from Vineland in 1999. However, the ADAMs and a number of the other machines that had been shifted from Vineland to Buena were moved into Buena's Finishing Department where they were interspersed among the machines Buena employees had always utilized in making droppers. *Comar II* at pp. 348-349.

Respondent also made changes to the Finishing Department workforce and the employees' job duties. The number of Finishing Department employees was reduced from 90 to 65, and these employees were no longer assigned to operate particular machines, but were moved between machines based on Respondent's needs. Ibid. Four of the 23 Vineland employees who transferred in 1999, no longer worked at Buena by 2005.[2] Vineland employees Anthony Wiessner and Jacqueline Auberzinsky, who did not accept transfers in 1999, transferred to Buena in 2002 and 2003. Almost all of the employees transferred from Vineland were still working in Respondent's Finishing Department in Buena as of 2005, and they continued to perform functions related to the assembly of droppers, the same work they did in Vineland prior to 1999.

Despite Respondent's operational changes, Judge Bogas in *Comar II* did not find that the unit established in the Board's initial Decision had lost its identity. As Respondent had never remedied the unfair labor practices found in *Comar I* by rescinding the unlawful changes in employee working conditions and bargaining with the Union for a contract covering the unit, Respondent was precluded from contesting the Union's status as the employees' representative. In Judge Bogas' view, Respondent had to remedy its earlier unfair labor practices before it could argue that operational changes extinguished its duty to bargain. Further, many of the changes upon which Respondent based its arguments involved mandatory subjects of bargaining and had been implemented without negotiations. Therefore, Respondent could not rely on these changes to contest the Union's status until it had offered the Union an opportunity to negotiate them. *Comar II* at pp. 356-360.

Judge Bogas also noted that Respondent's Answer to the Compliance Specification claimed that changes made prior to September 30, 2001, had effectively obliterated the unit, but Respondent had failed to show that the changes on which it relied had occurred by that date. Judge Bogas decided that Respondent, having selected the September 30 date, was obliged to show that the unit had been destroyed by that time. Because it failed to make that showing, Judge Bogas barred Respondent from relying on subsequent changes to support its claim that it had no continuing duty to bargain. *Comar II* at pp. 358-359.

Finally, Judge Bogas indicated that, even if the changes Respondent implemented between 2001 and 2005 were taken into account, a separate unit of employees performing Vineland's work remained in existence. Noting that employees who formerly worked in Vineland continued to manufacture the same products using the same types of machines, Judge Bogas concluded that the incremental changes to production made by Respondent were not sufficient to warrant a withdrawal of recognition given the long history of bargaining. The fact

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[2] Two of these employees died, and two others resigned.

that unit employees might be doing the same type of work as non-unit employees, on the same equipment, and "within a broader facility or group" was deemed insufficient to justify a finding that the unit ceased to exist and to relieve Respondent of its obligation to honor the portion of the original Board Order which required bargaining. *Comar II* at p. 360.[3]

V. Events Postdating Comar II in 2007 and 2008

By letter dated March 20, 2007, soon after the Board adopted Judge Bogas' Decision in *Comar II,* Respondent formally recognized the Union as the representative for the unit described by the Board in *Comar I* and requested that the Union bargain over the effects of the 1999 relocation and for a new contract. The letter noted that the parties would need to bargain over the composition of the bargaining unit. The letter also expressed Respondent's willingness to rescind unilateral changes as required by the Board's Order, and requested that the Union identify the changes which the Union desired that Respondent rescind. Two days later, on March 22, Respondent informed employees in Buena that it intended to comply with the Board's Order requiring it to recognize the Union as the representative for "former Applicator employees."

By letter dated April 25, 2007, the Union identified the changes to be rescinded. In early June 2007, Respondent restored the benefits that Vineland employees had enjoyed before the relocation, as requested by the Union. The enhanced benefits were made available only to employees who had originally worked in the Applicator Division in Vineland, and all of the transferred employees received these benefits regardless of what positions they held at Buena at the time benefits were restored. The Union did not request, and Respondent did not rescind, modifications to the Vineland employees' assignments or work stations which were part of the operational changes caused by the integration of the Vineland employees into the Buena facility.

The Union proposed a settlement in late June 2007, in which it would agree to accept reduced amounts of compensation for employees in return for a contract covering the Applicator Division employees who had transferred from Vineland, with the understanding that Respondent would recognize the Union as the representative for the remaining employees at the Buena plant if the Union could secure an authorization card majority. Respondent rejected this offer.

When formal bargaining began in July 2007, Respondent took the position that the Board-defined unit encompassed all employees currently working in the Finishing Department at Buena because all Finishing Department employees were involved in assembling droppers, the work that had been performed by the Applicator Division in Vineland. Respondent proposed that the parties negotiate for a contract covering Finishing Department employees and offered to transfer back to the Finishing Department six former Applicator Division employees who worked elsewhere in Buena.

The Union agreed to define the unit as including all Finishing Department employees. The Union rejected Respondent's proposal that the six former Vineland employees who no

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[3] In addition to concluding that Respondent had a continuing duty to bargain, the Judge found that it had unlawfully delayed in providing the Union with certain requested information.

longer worked in the Finishing Department be returned to that Department but insisted that these employees be included in the unit. Respondent agreed to "grandfather" the six employees, but not to include their positions in the unit. The Union acquiesced in this arrangement, and the parties bargained in a unit thus defined for nearly a year.

On November 29, 2007, I approved a Stipulation of Payment and Settlement Agreement in Cases 4-CA-28570 and 4-CA-33903 (the Stipulation) wherein Respondent agreed, inter alia, to pay $2,465,780 which included interest,[4] to enter into a Stipulation for Entry of a Consent Judgment in *Comar II*, and to acknowledge its continuing obligation to bargain with the Union as required by *Comar I* and *Comar II*. The Stipulation also provided that I would continue to monitor bargaining.

By June 2008, the parties were nearing agreement on a contract. However, on June 11, 2008, Buena plant employee Daniel Snyder filed a petition in Case 4–RD–2141 seeking to have the Union decertified as the exclusive collective bargaining representative of a unit described in his petition as "all fulltime operators, inspectors, set-up mech. [sic] and floor operators" in Buena's Finishing Department. When the parties met again for bargaining on July 8, the Union announced that it was no longer willing to bargain in a unit of all Finishing Department employees and would only negotiate on behalf of Buena employees who had previously worked in Vineland's Applicator Division. Respondent objected that this was not the unit in which the Board had ordered bargaining, and each party filed an unfair labor practice charge (Cases 4–CA–36275 and 4–CB–10188) contending that the other party was unlawfully insisting on a modification of the unit.[5] Bargaining was suspended while the charges were investigated. The Union's charge alleged that Respondent had been violating Section 8(a)(5) of the Act by insisting that the Union agree to Respondent's proposed unit, which the Union asserted was not the one that was the subject of the Board's Order.

VI. Regional Director's October 31, 2008 Decisions Dismissing Decertification Petition, Dismissing Charges, and Closing Cases on Compliance

On October 31, 2008, the same day I issued my letter closing Cases 4-CA-28570 and 4-CA-33903 on compliance with the Orders of the Board and the Circuit Courts in *Comar I* and *II*,[6] the Union's charge in Case 4–CA–36275 and the decertification petition in Case 4–RD–2141 were dismissed.

I dismissed the decertification petition in Case 4-RD-2141 finding that a reasonable period of time for good faith bargaining had not elapsed at the time the petition was filed. *MGM Grand Hotel*, 329 NLRB 464 (1999). I found that Respondent did not commence good faith bargaining until November 29, 2007, the date that I approved the Stipulation, although the

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[4] By the Spring of 2007, Respondent had already paid an additional amount of $1,885,000 to affected employees.

[5] The Union filed the charge in Case 4–CA–36275 on August 4, 2008, and Respondent filed the charge in Case 4–CB–10188 on August 14, 2008.

[6] Thus, in compliance with the Board Orders, Respondent: (1) fulfilled its monetary obligations by payment of $4,350,780 to affected employees; (2) properly offered reinstatement to the unlawfully discharged employees; (3) rescinded unilateral changes as requested by the Union in its April 25, 2007 letter; (4) properly recognized the Union; (5) provided all relevant information to the Union; and (6) bargained in good faith with the Union as required by the Board Orders.

parties met on 10 occasions from June 2007 through June 11, 2008, and that they addressed complex issues including the merging of the Vineland and Buena operations, the effects of this relocation on Vineland employees represented by the Union, and proposals concerning the composition of the Board-ordered unit. I weighed the factors identified by the Board in *Lee Lumber*, 334 NLRB 399 (2001) enfd. 301 F.3d 209 (D.C.Cir. 2002) (the complexity of the unit composition and other issues being negotiated, the parties' progress in negotiations and the absence of impasse) in reaching the conclusion that the Union's majority status could not be challenged as of the date the petition was filed June 11, 2008.

In Case 4-CA-36275 I concluded, inter alia, that during the course of the 2007-2008 bargaining, the parties had been discussing a unit consisting of all current employees in the Buena Finishing Department as well as six other employees who had worked at Vineland but were not presently employed in the Finishing Department.[7] On July 8, 2008, the Union substantially modified its position on the unit, proposing that the unit should consist solely of the 17 individuals who had transferred from Vineland, without regard to their current job assignment or work location. Following a series of exchanges on this topic, by letter dated August 4, 2008, Respondent advised the Union that the Union's proposed modified unit was inappropriate and did not comport with the Board's Orders. Respondent also requested that the Union identify which employees performed the work once performed at the former Vineland facility and supply case authority that supported the appropriateness of such a unit. Nonetheless, Respondent offered to have another negotiation session to explain the basis for its belief that the Union's proposed unit was unworkable and inappropriate. In these circumstances, I concluded that Respondent was not preconditioning its willingness to enter into any collective bargaining agreement on the Union's acceptance of Respondent's proposed bargaining unit description and, accordingly, I dismissed the charge. Respondent 's unfair labor practice charge in Case 4–CB–10188 was dismissed on November 12, 2008, based on my conclusion that although the Union substantially modified its position on the composition of the unit on July 8, 2008, there was insufficient evidence that the parties had previously reached final agreement on the composition of the unit. The General Counsel denied the Union's appeal of my dismissal of the charge in Case 4-CA-36275 on May 1, 2009.

VII. Events of 2009 – Bargaining, Filing of Unit Clarification Petition, Regional Director Decisions Dismissing Employer Charge and Refusing to Reopen Compliance Proceedings

There were no meetings between the parties from October 31, 2008, the date of the dismissal of the charge in Case 4-CA-36275, until February 10, 2009.[8] On February 10, 2009, the Union, represented by Chief Negotiator John Shinn, requested a response to its July 8, 2008 proposal. The Union's proposal asserted that the unit should consist solely of the 17 employees who had transferred from Vineland and remained employed at Buena. According to Shinn, Joel

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[7] At the time of the Unit Clarification hearing, seven employees were working in the following areas: one worked in quality control/Glass Department; one worked in the warehouse; one worked as a maintenance employee; one worked in quality control in an unidentified department; two employees worked in the Cup Department; and one worked in "set-up" operator.

[8] The Decision Order and Clarification of Bargainig Unit, Case 4-UC-440 incorrectly refers to this date as February 20, 2009.

Cohen, acting as Respondent's Counsel at this session, told the Union that he considered the Union's proposed unit to be "not lawful" and "not appropriate." Shinn stated that you, as Union Counsel, asked if the company was willing to negotiate a contract for the 17 person bargaining unit the Union proposed, and Cohen stated that it was the company's position that the unit was the production employees in the finishing department, and that the company would agree to a unit clarification proceeding and was willing to bargain with the Union while the Board figures out who is in the unit. According to Shinn, you then rejected Comar's offer to continue bargaining, stating that the unit had to be the relocated Vineland employees. According to Shinn, Cohen then said that there was no point in meeting if the union would not negotiate the unit.[9]

On February 12, 2009, Comar filed the promised UC petition, Case 4-UC-440, and the Union filed the charge in Case 4-CA-36714, alleging that Comar's conduct at the February 10 session showed that Comar was engaging in bad faith bargaining and was refusing to meet for future bargaining because the Union would not agree to negotiate over a different unit. I dismissed the Union's charge in Case 4-CA-36714 on June 12, 2009, based on the foregoing evidence, and found that Comar was not refusing to engage in bargaining covering the Board ordered unit, nor was it refusing to meet for future bargaining. I also found that Comar was willing to negotiate over the composition of the unit, but it was the Union that was refusing to engage in such negotiations, maintaining that its unit was the Board-ordered unit.

These findings formed the basis of my June 16, 2009 decision to deny the Union's May 7, 2009 request that I rescind my letter of October 31, 2008 closing Cases 4-CA-28570 and 4-CA-33903. As acknowledged in my June 16, 2009 letter, the sole reason for the Union's May 7, 2009 request was based on its allegations in Case 4-CA-36714, but those allegations were found to be lacking in merit and the charge was dismissed.

VIII. Response to the Board's Unit Questions

In remanding this matter to me, the Board instructed that I analyze whether the Union requested bargaining in the Board-ordered unit and, if not, why the Union's proposed unit was not the Board ordered unit. In *Comar I* and *Comar II*, the Board ordered bargaining in a unit of employees "who are performing the work that was formerly done as part of the Applicator Division of Comar, Inc., at its facility then located in Vineland, New Jersey." Although during the period from the summer of 2007 until July 8, 2008, the Union requested and the parties bargained in an attempt to determine which employees were included in the Board-ordered unit, on July 8, 2008, with the Union's changed position, it was no longer requesting bargaining in the Board-ordered unit. Rather, at that point, the Union was seeking to bargain for a contract covering a unit defined by point of employee origination and not by job function, as ordered by the Board. Since the original hearing in *Comar I*, which formed the basis for the Board's unit findings, a number of Vineland employees have changed jobs and are performing work not

[9] The Union represented to the Board in its Request for Review that in February 2009 Respondent stated that it refused to engage in further negotiations with the Union unless the Union agreed to negotiate for the different unit, that there was no reason to continue meeting if the Union would not negotiate the unit, and that the Union should contact Comar if it changes its position. See, Board Order, January 25, 2010 at 3.

formerly performed by the Vineland Applicator Division.[10] Others have left Comar's workforce and been replaced by new hires. Vineland equipment has been moved to Comar's Finishing Department and all employees in that Department have been assigned to operate it. Nevertheless, since July 2008, the Union consistently has taken the position that even employees who replaced the Vineland employees are not in the unit; only those remaining employees who transferred from Vineland, according to the Union, are in the unit. This is not the unit in which the Board ordered bargaining.[11]

The parties disagreed as to the composition of the Board-ordered unit. To resolve this disagreement, I decided to proceed with Comar's unit clarification petition. After taking record evidence and considering the legal arguments of the parties, I issued a Decision and Order on October 16, 2009 (the UC Decision), in which I clarified the unit to include all employees in the Finishing Department. In short, I found that a unit solely limited to those employees who transferred from Vineland to Buena regardless of their current position and work location was not the Board-ordered unit. My rationale for reaching this conclusion is set forth in the following portions of the UC Decision:

> The unit in this case is a functionally-defined unit. Specifically, the Board in *Comar I* ordered bargaining in a unit of hourly-paid production employees at the Employer's Buena facility who perform work formerly done at the Applicator Division facility in Vineland. Nothing in *Comar II* altered this unit description.
>
> The *Comar I* decision was based on Buena plant operations as of May 2001, the date of the first unfair labor practice hearing. As of that date, all of the employees performing Applicator Division work in Buena had transferred from Vineland and worked in a separate area exclusively on machines which had also been moved from Vineland. That arrangement no longer exists. Subsequent to May 2001, Vineland machines were moved to the Buena Finishing Department where they were interspersed among machines that had always been in Buena and machines acquired later. Some of the former Vineland employees now work next to employees who worked in Buena as of 2001 and employees hired since that date. The former Vineland employees currently assigned to the Finishing Department spend part of their time working on machines that had always been in Buena, and Buena employees sometimes operate former Vineland machines. Additionally, some of the former Vineland employees have departed the Finishing Department and work in other areas of the Buena facility where they may or may not continue to perform former Applicator Division work. In short, the period since 2001 has produced changes in Buena plant operations and work assignments which raised questions as to which employees are presently doing the work of the unit defined by the Board.
>
> These questions were not resolved by the Board in *Comar II*. The relevant issue in that case was whether a separate Applicator Division unit continued to exist; the

[10] The Union never sought rescission of the changes made to the Vineland employees' work assignments, or work stations.

[11] The Board has held that bargaining unit coverage survives despite turnover among specific employees. See *Freeman Decorating Co.*, 335 NLRB 103, 104 (2001).

Board was not asked to define precisely which employees were in the unit. Nor has this question of unit placement been resolved by the parties since *Comar II*, as negotiations are deadlocked over this precise issue - the identity of the unit employees. Indeed, the parties both filed unfair labor practice charges alleging that their counterparts' bargaining concerning the unit was unlawful, but those charges were dismissed and did not resolve the unit composition question. Thus, the parties have failed to resolve the matter themselves, by negotiations or litigation.

.....According to the Union, the Decisions in *Comar I* and *Comar II* established a unit limited to those individuals who transferred from Vineland, and the parties agreed to continue this unit following the *Comar II* Decision. The Union notes that in *Comar I*, the Board required the Employer to restore to unit employees the working conditions which prevailed in Vineland prior to the relocation. Following *Comar II*, the Employer complied with this portion of the Board Order but limited the restoration remedy to Vineland transferees. The Union did not object to this limited restoration remedy.

There are several flaws in the Union's claim. First, and perhaps most significant, the Board in *Comar I* did not order bargaining in a unit limited to Vineland transfers -- it required the Employer to negotiate in a unit consisting of employees who performed work previously performed in Vineland. The unit was thus defined by function, not by point of employee origination. It may be that as of the first hearing in May 2001, all of the employees in the unit were Vineland transfers, but nothing in *Comar I* suggests that the unit was to be forever limited to employees who moved from Vineland. By describing the unit in functional terms, the Board clearly left open the possibility that non-transfers would eventually be included.

The Union's contention as to *Comar II* is also incorrect. The Board in *Comar II* was asked to decide whether a unit of employees doing former Vineland work continued to exist, not to decide which employees were in this unit, and nothing in *Comar II* altered the unit description from *Comar I*.[11] The unit in which bargaining was required continued to consist of employees performing former Vineland work; it had not been transformed into a unit limited to employees who originated in Vineland.

> 11 In *Comar II*, a critical issue was whether the Employer needed to comply with the Board's Order in *Comar I* in view of subsequent events, and Judge Bogas found that the Employer's operational changes did not excuse its non-compliance. As the Employer has now fully complied with the Board's Orders in *Comar I* and *II*, these considerations are no longer present.

Moreover, since the Board in *Comar II* was not asked to decide unit placement issues, it is not accurate to say there have been no changes in the Employer's operations which might impact questions of unit placement. Eight years have passed

since the original May 2001 hearing in *Comar I* which formed the basis for the Board's unit findings. During that time, a number of Vineland transfers had departed the Employer's workforce and been replaced by new hires, while other former Vineland employees have switched to jobs within the Buena plant which involve performance of non-Vineland work. The Vineland equipment had been moved to the Employer's Finishing Department, and all employees in that Department have been assigned to operate it. In short, the Employer has significantly altered its operations since May 2001 in ways which created questions of unit placement ....

The Union further contends that including all Finishing Department employees in the unit is inconsistent with the Board's traditional reluctance to disturb historic units absent compelling circumstances. According to the Union, there has been a more than 40-year bargaining history in a Vineland-only unit, and this history compels exclusion from the unit of any employee who did not begin his or her employment in Vineland. This argument, however, ignores the relocation of employees from Vineland to Buena. As Judge Bogas and the Board recognized in *Comar I*, a unit defined by location "no longer conforms to the reality stemming from the relocation" and accordingly redefined the unit so that it was based on function rather than location. 339 NLRB at 911. In light of this redefinition, there is no basis on which to claim the continued existence of a historic unit limited to Vineland transfers.[14]

> 14 The cases cited by the Union to support its historic unit argument all involved attempts to alter unit scope and are easily distinguishable from the situation presented here. In *P. J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988), the Board rejected a petition by a union which represented employees in an 11-county unit for a unit which would encompass 33 counties. *Met Electrical Testing Co., Inc.*, 331 NLRB 872 (2000), involved an effort to carve one facility out of a multi-location unit, while in *Canal Carting, Inc.*, 339 NLRB 969 (2003), a union sought to combine two historically separate units. None of the attempts to alter unit scope in these cases was accompanied by any significant change in employer operations. The petition in this case, in contrast, was filed after a significant modification in operations and does not involve an effort to alter unit scope. The Employer is instead seeking to clarify the identity of unit employees in light of the changes to its operations that have occurred since the Board first ordered bargaining.

In sum, I find it is appropriate to clarify the unit to include all hourly-paid production employees employed in the Finishing Department at the Employer's Buena facility. *Paper Mfrs. Co.*, 274 NLRB 491, 497-498 (1985), enfd. 786 F.2d 163 (3d Cir. 1986).[15]

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15 In *Paper Mfrs. Co.,* the Board found that a unit remained intact following relocation to an existing facility, but that employees newly hired to perform unit work following the relocation had to be included. The newly-hired employees were presumed to support the Union to the same extent as employees who had been relocated, and the increase in the size of the unit from 40 to 70 employees as a result of their employment was held not to defeat the obligation to bargain. Applying the same analysis here, employees assigned to perform unit work since the 1999 relocation from Vineland to Buena can appropriately be included in the bargaining unit even if their inclusion significantly increases the size of the unit.

In response to the Board's final question, I have concluded that Respondent did not condition bargaining on the Union's acceptance of a unit other than the one ordered by the Board. It was the Union which placed this condition on bargaining by insisting that the unit be defined by point of employee origination and not by job functions as ordered by the Board. Because Respondent has not violated the enforced Board Orders, I have determined again that compliance proceedings should not be reopened.

In summary, I have found that Respondent did not engage in bad faith bargaining in February 2009. The Respondent remained willing to bargain with the Union over the composition of the unit. However, the Union demanded bargaining in a unit consisting solely of employees who had once worked at the Vineland facility, and indicated it would accept no other unit. This unit set forth by the Union was not the unit ordered by the Board, which had defined the unit by the work performed, not the employee's former work location. Because Respondent has not violated the enforced Board Orders, I find that further compliance proceedings are not warranted.

If you disagree with this Amended Compliance Determination set forth in this letter, you have the right, pursuant to Section 102.53 of the Board's Rules and Regulations, to appeal my Determination initially to the General Counsel and subsequently to the Board. The appeal procedure is set forth below.

Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this compliance determination by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. This appeal must contain a complete statement setting forth the facts and reasons why you believe that the compliance determination is incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by a delivery service. The appeal **MAY NOT** be filed by fax. Filing an appeal electronically is preferred but not required. To file an appeal electronically, go to the Agency's website at **www.nlrb.gov,** click on **E-GOV,** select **E-Filing,** and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to the Regional Director.

Appeal Due Date and Time: The appeal is due on May 26, 2010. If you file the appeal electronically it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service it must be received by the General Counsel in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than **May 25, 2010.**

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. You may file a request for an extension of time to file electronically or by facsimile transmission or by mail. To file electronically, go to **www.nlrb.gov,** click on **E-Gov,** select **E-Filing,** and follow the detailed directions. The fax number is (202) 273-4283. A request for an extension of time to file an appeal **must be received on or before the original appeal due date**. A request that is mailed and is postmarked prior to the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to the Regional Director.

Confidentiality/Privilege: Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Because we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(d), 5 U.S.C. § 552(b)(4), (6), (7)(C), and (7)(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

Notice to Other Parties of the Appeal: You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel, please complete the enclosed Appeal Form (NLRB-5434) and send one copy of the form to all parties whose names and addresses are listed.

Very truly yours,

Dorothy L. Moore-Duncan

DOROTHY L. MOORE-DUNCAN
Regional Director

cc:

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, 1440 South Byrne Road, Toledo, OH 43614

Mr. Alan W. Dean, Director of Human Resources, COMAR, Inc., One Comar Place, Buena, NJ 08310

Brian West Easley, Esquire, Mariette Farag, Esquire, JONES DAY, 77 West Wacker Drive, Suite 3500, Chicago, IL 60601

DLMD/tsl

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

November 26, 2010

Re: COMAR, Inc.
Case Nos. 4-CA-28570
4-CA-33903

James R. LaVaute, Esq.
Blitman & King, LLP
443 North Franklin Street, Suite 300
Syracuse, NY 13204

Dear Mr. LaVaute:

Your appeal from the Regional Director's amended compliance determination has been carefully considered. The appeal is denied substantially for the reasons set forth in the Regional Director's letter of May 12, 2010.

Pursuant to Section 102.53 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may file a request for review of the above-decision with the National Labor Relations Board at:

Executive Secretary
National Labor Relations Board
1099 14th Street, N.W., Room 11602
Washington D.C. 20570

This request for review must be received by the National Labor Relations Board no later than the close of business 14 days after the date appearing on this letter. The request for review must contain a complete statement of facts and reasons upon which it is based and must identify with particularity the error claimed in this decision. A copy of the request for review shall be served on the undersigned General Counsel and on the Regional Director.

Sincerely,

Lafe E. Solomon
Acting General Counsel

By Yvonne T. Dixon
Yvonne T. Dixon, Director
Office of Appeals

cc: Dorothy L. Moore-Duncan, Regional Director
National Labor Relations Board
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106

Alan W. Dean, Director of Human Resources
COMAR, Inc.
One Comar Place
Buena, NJ 08310

United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial
and Service Workers International Union
1440 South Byrne Road
Toledo, OH 43614

Brian West Easley, Esq.
Jones Day
77 West Wacker Drive, Suite 3500
Chicago, IL 60601

Mariette Farag, Esq.
Jones Day
77 West Wacker Drive, Suite 3500
Chicago, IL 60601

crk

UNITED STATES OF AMERICA
BEFORE THE ACTING GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD

COMAR, INC.,	)	
Respondent,	)	Cases 4-CA-28570 4-CA-33903
and	)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION,	)	
Charging Party.	)	

CHARGING PARTY'S MOTION TO THE ACTING GENERAL COUNSEL FOR ORDER REMANDING COMPLIANCE APPEAL CASES TO THE BOARD

BLITMAN & KING LLP
Attorneys for the Charging Party
United Steel, Paper and Forestry,
Rubber, Manufacturing, Energy,
Allied Industrial and Service
Workers International Union
Office and Post Office Address
Franklin Center
443 North Franklin Street, Suite 300
Syracuse, New York 13204
Telephone: (315) 422-7111
Facsimile: (315) 471-2623

Of Counsel:

James R. LaVaute, Esq.

Blitman & King LLP, attorneys for Charging Party United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "Union"), moves the Acting General Counsel for an Order Remanding the within Compliance Appeal Cases to the Board, so that the Board may consider reaffirmation by a three-member panel of the Board's January 25, 2010 two-member Order remanding these cases to the Regional Director. In support of this Motion, the Union further states:

1. The Board's January 25, 2010 Order (copy attached) was issued by the then two sitting Members of the Board.

2. On June 17, 2010, the United States Supreme Court issued its decision in New Process Steel, L.P. v. NLRB, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained.

3. The within cases are now before the General Counsel on appeal from the Regional Director's amended compliance determination issued pursuant to the Board's January, 2010 Order.

4. In order to grant the Board an opportunity to consider reaffirmation of its January 2010 Order, the cases should be remanded to the Board. See, e.g., Environmental Maintenance Solutions, Inc., 355 NLRB No. 58 (July 30, 2010), in which the Board considered its earlier two-member decision and reaffirmed the earlier order that remanded the case to the Regional Director. Id. at n. 1.

5. Section 102.53 of the Board's Rules grants the General Counsel in this compliance determination appeal proceeding the options of affirming or modifying the Regional Director's amended compliance determination, "or [he] may take other action deemed appropriate, stating

the grounds for the decision." Such other appropriate action in this case is to remand the cases to the Board for it to consider reaffirmation of the two-member order issued in January, 2010.

6. I certify that a copy of this Motion is being served upon the Regional Director and upon Comar, Inc. and its attorneys.

Dated: August 10, 2010

Respectfully submitted,

BLITMAN & KING LLP

By:_____

James R. LaVaute, Esq.
Blitman & King LLP
Attorneys for the Charging Party
Office and Post Office Address
443 North Franklin Street, Suite 300
Syracuse, New York 13204
Telephone: (315) 422-7111
Facsimile: (315) 471-2623

To: Dorothy L. Moore-Duncan
Regional Director, Region Four
National Labor Relations Board
615 Chestnut Street – Seventh Floor
Philadelphia, PA 19106-4404
(Via UPS Next Day Air)

Comar, Inc.
One Comar Place
Buena, New Jersey 08310
(Via UPS Next Day Air)

Brian West Easley, Esq.
Mariette Farag, Esq.
Jones Day
77 West Wacker Drive, Suite 2500
Chicago, Illinois 60601
(Via UPS Next Day Air)

Idm/jrl/comar/comar motion remand 8-10-2010

EXHIBIT B

Hutchinson 14,
Dean 51
Shinn 118

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of: **Case No.** 4-UC-440

COMAR, INC,

Employer/Petitioner

and

UNITED STEEL, PAPER AND FORESTRY
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION,

Union Involved.

Place: Philadelphia, PA
Dates: July 20, 2009
Pages: 1 Through 159
Volume: 1

OFFICIAL REPORTERS

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BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of: COMAR, INC., Employer/Petitioner, and UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, Union Involved.	Case No. 4-UC-440

The above entitled matter came on for hearing pursuant to notice, before HENRY R. PROTAS, Hearing Officer, at One Independence Mall, 615 Chestnut Street, Room No. 3, Philadelphia, Pennsylvania on Monday, July 20, 2009 at 10:00 a.m.

Official Reporters

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1044 Route 23, Suite 316
Wayne, New Jersey 07470
(973) 692-0660

1 A P P E A R A N C E S
2
3 On behalf of the Employer/Petitioner:
4
5 JOEL E. COHEN, Esquire
6 McDermott, Will & Emery LLP
7 340 Madison Avenue
8 New York, New York 10173-1922
9
10 On behalf of the Union Involved:
11
12 JAMES R. LAVAUTE, Esquire
13 Blitman & King, LLP
14 Franklin Court Center Suite 300
15 443 North Franklin Street
16 Syracuse, New York 13204-1415
17
18
19
20
21
22

1
2
3 **I N D E X**

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
Donald Hutchinson	14	47	---	---	---
Alan Dean	51	69	110	116	---
	---	---	116	---	---
John Shinn	118	130	145	147	---

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2
3

E X H I B I T S

EXHIBIT	IDENTIFIED	IN EVIDENCE
Board		
B-1	8	8
B-2	8	8
Employer/Petitioner's		
P-1	16	23
P-2	27	35
P-3	43	43
P-4	46	46
P-5	62	66
P-6	143	149

14

1 **E X H I B I T S**

2 EXHIBIT	IDENTIFIED	IN EVIDENCE
3 Union's		
4 U-1	69	78
5 U-2	71	78
6 U-3	78	79
7 U-4	84	86
8 U-5	86	87
9 U-6	87	--
10 U-7	89	REJ /151
11 U-8	100	101
12 U-9	101	WD/104
13 U-10	128	128
14 U-11	152	152
15 U-12	154	154
16 U-13	155	155
17 U-14	156	156
18 U-15	156	REJ/156
19 U-16	157	REJ/157
20 U-17	157	157

1 **P R O C E E D I N G S**

2 (10:00 a.m.)

3 HEARING OFFICER PROTAS: The hearing will come to order.
4 This is a formal hearing in the matter of Comar, Inc., 4-UC-440
5 before the National Labor Relations Board. The Hearing Officer
6 appearing for the National Labor Relations Board is Henry R.
7 Protas.

8 All parties have been informed of the procedures before
9 the Board by service of a Statement of Standard Procedures with
10 the notice of Hearing. I have additional copies for
11 distribution if the parties wish more.

12 Will counsel or representatives for the parties please
13 state their appearances for the record? For the Employer?

14 MR. COHEN: For the Employer, Joel Cohen of McDermott,
15 Well & Emery.

16 HEARING OFFICER PROTAS: And for the Union involved?

17 MR. LaVAUTE: For the Union, United Steelworkers, James
18 R. LaVaute of Blitman & King, 443 North Franklin Street,
19 Syracuse, New York.

20 HEARING OFFICER PROTAS: Are there any other
21 appearances?

22 (No response)

23 HEARING OFFICER PROTAS: Let the record show no
24 response. Are there any other persons, parties or labor
25 organizations in the hearing room at this time who claim an

1 interest in this proceeding?

2 (No response)

3 HEARING OFFICER PROTAS: Let the record show no

4 response. Are there any motions to intervene to be submitted to

5 the Hearing Officer here at this time?

6 (No response)

7 HEARING OFFICER PROTAS: Let the record show no

8 response. Are there any other motions to be made at this time?

9 (No response.)

10 HEARING OFFICER PROTAS: Let the record show no

11 response. At this point I'd like to offer into evidence the

12 formal documents that were shown to the parties prior to the

13 opening of the hearing. The documents have been gathered

14 together into a single exhibit and it's been marked as Board

15 Exhibit B-1. Any objection to the entry into evidence of Board

16 Exhibit B-1?

17 MR. COHEN: No objection.

18 MR. LaVAUTE: Board Exhibit B-1 is the petition?

19 HEARING OFFICER PROTAS: Yes, and affidavit of service

20 and related documents.

21 MR. LaVAUTE: The petition contains a mis-statement in

22 that it refers to a proposed clarification sought by the union

23 in the attachment.

24 HEARING OFFICER PROTAS: Okay.

25 MR. LaVAUTE: The union is not seeking a clarification

1 of the unit. Our position is the unit is the same unit as
2 existed as of the 2007 Board Decision.
3 HEARING OFFICER PROTAS: Okay. I understand. On its
4 face its clear that this petition filed by the
5 Employer/Petitioner and they're not in a position to speak for
6 the union, so that's understood, but for the purposes of
7 agreement that this is the petition that the Petitioner filed.
8 would you agree to the admission of Board Exhibit B-1?
9 MR. LaVAUTE: I do.
10 HEARING OFFICER PROTAS: Okay, thank you, Board Exhibit
11 B-1 is received.
12 (Board Exhibit B-1 identified and received)
13 HEARING OFFICER PROTAS: I'd also like to offer into
14 evidence another document that was shown to the parties before
15 the opening of the hearing and that's Board Exhibit B-2 which is
16 a series of stipulations. Does the Employer have any objection
17 to the entry of Board Exhibit B-2?
18 MR. COHEN: No objection.
19 HEARING OFFICER PROTAS: And the union?
20 MR. LaVAUTE: No objection.
21 HEARING OFFICER PROTAS: Board Exhibit B-2 is entered
22 into evidence.
23 (Board Exhibit B-2 identified and received)
24 HEARING OFFICER PROTAS: To provide the Reader of the
25 Record with the context to view this transcript, I'd like to

1 note that there's been some prior proceedings; first an unfair
2 labor practice proceeding which led to a Board Decision in Comar
3 INC., 339NLRB No.110 and then a back pay specification and
4 unfair labor practice proceeding for which there is a Board
5 Decision Comar, INC. 349NLRB NO.33. In the chance that
6 administrative notice needs to be taken of those cases I thought
7 the citation should be in the record.
8 Before taking testimony, does anybody wish to make an
9 opening statement or proceed right to evidence? I guess Mr.
10 Cohen, you're the moving party; which do you prefer?
11 MR. COHEN: I'll just make a very brief opening
12 statement. The problem that has existed in this case is that the
13 description in the prior Board proceedings did not describe job
14 classifications, they described the unit being described by work
15 that used to be performed. It's the employer's position that at
16 this point in time there is no way to separate, but even if
17 there was a way of separating we believe there's been a dispute
18 with the union as to what is encompassed by even the old Board
19 unit.
20 As we understand it from collective bargaining with the
21 union what precipitated this unit clarification petition, the
22 union's position is that what the Board unit represents is the
23 employees who now work at Comar Facility who used to be
24 represented by -- who used to work, I should say, in the
25 Vineland facility before it closed over a decade ago.

1 That is our understanding of what their position is. It
2 is our belief and absolute bottom line that is not the unit and
3 our belief is that there could be either a plant-wide unit or
4 the unit should be the finishing department and if somebody who
5 had distinguished positions that are performing work that used
6 to be performed in Vineland to the exclusion of anything else,
7 we would be glad to abide by that unit as well.
8 The one unit though that we believe is not an appropriate
9 unit is simply people who used to work in Vineland no matter
10 what position they have now.
11 HEARING OFFICER PROTAS: I do have a question. In
12 presenting evidence today the concept that you're going to try
13 to show is simply how things are done today or is there going to
14 be any focus on when these changes took place?
15 MR. COHEN: It's going to be focused on what is done
16 today. This is not an unfair labor practice proceeding, it's
17 going to be on how things are being done today in the most
18 recent past. There hasn't been any significant change in a
19 number of years, so certainly the forum hasn't seen any change
20 since they've bargained the union.
21 HEARING OFFICER PROTAS: And when was that?
22 MR. COHEN: 2006.
23 MR. LaVAUTE: Maybe 2007.
24 MR. COHEN: In the summer of, I think it was June 5th,
25 2007 and there have been no changes since that period of time so

1 our position is going to be what people do now. I mean what we
2 are going to do is we have prepared a chart, a summary that
3 lists all the employees in each of the departments in the
4 facility and also designates which are those people that the
5 union is claiming that is the unit.
6 Our position is since there are a number of people who
7 aren't even in the finishing department anymore which was the
8 focus of everything in the prior proceeding, we simply cannot --
9 if you want to include those people in a unit, you would have to
10 include everybody in that group, we certainly have more in those
11 classifications in those other departments, you cannot have a
12 gerrymandered unit that is simply people who used to be -- who
13 used to work no matter what position.
14 What we would like is a determination of what positions
15 are in the unit.
16 HEARING OFFICER PROTAS: As you know, I'm not going to
17 be involved in deciding this, I'm just here to get a record, but
18 I just wanted to throw out an idea to see what you think.
19 Typically in an UC if you have a contract that the parties have
20 entered into that provides a baseline. It doesn't matter
21 whether that unit was appropriate, inappropriate, that's the
22 starting point and any unit clarification would have to point to
23 changes that occurred after the entry into a contract.
24 The idea that is troubling me a little bit is that here
25 we have a compliance decision in the 349NLRB No. 33. At that

1 point you have a Board saying this is the unit that's
2 appropriate, so sort of to me provides a baseline and by way of
3 analogy you might -- it could be argued that any changes that
4 would justify unit clarification should have occurred either
5 after issuance of the Board Decision or maybe the date of the
6 hearing in that case.
7 That's why I'm a little concerned about when these things
8 took place, not just that they take place at some point.
9 MR. COHEN: We believe this is the unit clarification
10 literally because we cannot -- we have been bargaining with the
11 union for a period of a year-and-a-half and we have not been
12 able to come to a conclusion as to what job classifications are
13 included even under the Board's existing -- in that decision in
14 that case. What we would like is a directive from the Board as
15 to what positions, instead of just saying people who perform the
16 work, is exactly what positions does that encompass because the
17 parties have been bargaining for a year-and-a-half and have been
18 unable to agree on what positions are encompassed by the Board's
19 definition which does not include any job descriptions.
20 That is the purpose of it is, our argument is that based
21 on practicalities and changes in the business even though there
22 have been no operational changes in the last two years the
23 nature of the business has changed and the products that are
24 being produced have changed. Regardless, even assuming the unit
25 remains the same, what we need to know is what positions are in

1 that unit.

2 HEARING OFFICER PROTAS: All right, do you want to make

3 a statement now, wait, it's up to you?

4

5 MR. LaVAUTE: Maybe, we could get some further

6 clarification. It's not clear to me what configuration of the

7 unit is being sought by the Employer now. I thought it was the

8 finishing department, but after Mr. Cohen's statement I'm not

9 sure if it's that or something else, so I think we should know

10 before we start what it is that they're seeking.

11 MR. COHEN: We believe that the best unit is the

12 finishing department. We are willing to accept any unit with a

13 clarification that that's a unit that the union is seeking,

14 which is despite the fact that they say it's their language of

15 the prior Board Order, that the unit that they are seeking in

16 practicality -- in practical terms is the employees who used to

17 work in Vineland.

18 We believe that that unit which the union has told us is

19 the only unit in which they wish to represent employees is an

20 inappropriate unit. Frankly what we want is a clarification

21 from the Board as to even assuming arguendo that the unit

22 remains the Board Unit, what positions are included in the Board

23 unit and a determination that a unit that's simply made up of

24 employees who used to be employed in Vineland is not an

25 appropriate unit.

1 HEARING OFFICER PROTAS: I think I understand him.
2 MR. LaVAUTE: I understand him and I'll defer an opening
3 statement by the union at this point.
4 HEARING OFFICER PROTAS: Fine. Mr. Cohen, do you have a
5 witness?
6 MR. COHEN: Yes.
7 HEARING OFFICER PROTAS: Would you raise your right
8 hand, please?
9 Whereupon,
10 DONALD HUTCHINSON
11 Having been duly sworn or affirmed, testified as follows:
12 HEARING OFFICER PROTAS: Please be seated.
13 DIRECT EXAMINATION
14 BY MR. COHEN:
15 Q Could you give your full name for the record, please?
16 A Donald Hutchinson.
17 Q Mr. Hutchinson, what's your current position at Comar?
18 A Director of Operations.
19 Q How long have you been with Comar?
20 A To explain, I started with Comar in September of 1997 at
21 the Plastics Division and I was at the Plastics Division until
22 January of 1999 and I transferred to Comar's Glass Division. I
23 was at Comar's Glass Division until March of 2007 at which time
24 they sold the facility to Kerasheimer Glass (ph).
25 I stayed at the Kerasheimer Glass until January of 2008

1 at which time I moved back to Comar as Director of Operations.
2 Q And you've held that position since?
3 A Yes.
4 Q Are you familiar with the workings of the company?
5 A Yes.
6 Q Just in general terms, what is it that the company
7 manufactures at the present time?
8 A For the most part we manufacture oral dosing devices; oral
9 syringes, dropper assemblies, dosage cups. We also manufacture
10 bottles, hand closures and various other custom items for
11 various customers mostly around the consumer area.
12 Q Does Comar at the present time have any facilities other
13 than the facility in Buena, New Jersey?
14 A No.
15 Q Okay. Now, are there a number of buildings that are
16 located at the Buena Facility?
17 A Yes, there are.
18 Q Can you just describe what those buildings consist of?
19 A Its part of operations, there are three buildings. There
20 is a building that houses the finishing department where for the
21 most part they're making dropper assemblies. There is a main
22 building which is molding for the most part. We also print --
23 mold and print dosage cups as well as oral syringes and then
24 there is at third building which houses a very small glass
25 department where they fabricate glass droppers.

1 MR. COHEN: I would like to have something marked. Can
2 we possible have this marked as Petitioner's Exhibit P-1. is
3 this a blueprint of the operations at Comar?
4 A Yes, it is.
5 (Employer/Petitioner's Exhibit E-1 identified)
6 Q So let's start on the left-hand side is the Corporate
7 Departments and then what is next?
8 A The corporate houses the general administration which is
9 Human Resources, XXX covers accounting, company management.
10 Q And then next is Secondary Operations, what takes place
11 in -- these are all separate buildings, I take it?
12 A Yes.
13 Q What takes place in Secondary Operations?
14 A In Secondary Operations in this particular building is
15 also to the right there is an area that houses customer service
16 which, you know, is part of corporate management.
17 Q Where is that, if you could just --
18 A That would be to the right, you're looking at the
19 Secondary Operations, it's the first room to the right of that.
20 MR. COHEN: Could we mark that?
21 HEARING OFFICER PROTAS: Sure. Is this one that has the
22 markings on it?
23 MR. COHEN: Yes, that's correct.
24 HEARING OFFICER PROTAS: The one that has like bold
25 marks on the bottom right-hand side, Secondary Operations?

1 MR. COHEN: Yes, the lower right-hand side.
2 BY MR. COHEN:
3 Q Why don't we start at the top of Secondary Operations, if
4 you can describe in a little more detail what is going on in
5 various parts?
6 A Okay, so we're at the top, the first area is what we call
7 branding operation and there is a machine that also re-nobs; the
8 branding, it is putting calibration lines on plastic pipe ends.
9 Q By the way, is this the finishing -- where the finishing
10 department is?
11 A This is the finishing department.
12 Q Okay. Is this where the finishing operation are in this
13 building?
14 A That's correct.
15 Q Okay, please go ahead.
16 A And then there is one that's a re-nob which takes an
17 existing pipe by length and reduces the size. The next series
18 of large machines are automatic assembly machines. They're in
19 two parts. To the left is an assembly machine and to the right
20 of that would be a wrapping machine so we could do either/or, we
21 can just do assembly to package for distribution or based on
22 customer requirements wrap -- individually wrap their product
23 for assembly.
24 Q VWR stands for wrapping machine?
25 A Yes.

1 Q Could you just go through, starting up again, what is --
2 if you know what these various acronyms stand for; ARK, ARS?
3 A No, I can't.
4 Q Okay, but you know the types of machines?
5 A Yes.
6 Q Okay, please go ahead, I'm sorry?
7 A That's okey. To the right, 1012, I believe is another
8 assembly machine. I believe that's the cap stopper assembly
9 machine. The next one down is a child resistant closure
10 assembly machine, you take an outer and an inner. It's pressed
11 together.
12 I think 900 is a small assemble machine. 1015 is a
13 shrinkwrap machine for dropper assemblies or it's wrapped in
14 plastic and then run through a shrink-tunnel. Next to that 1022
15 is a blister-pak machine. They will take a dropper assembly and
16 put it in a blister-pak sealing. 712 is a rotary machine.
17 Q How many rotary machines are in there?
18 A That's the only rotary machine in there.
19 Q One?
20 A One.
21 HEARING OFFICER PROTAS: Do you know when they dropped
22 them, there was a reference in the prior hearing to having two
23 machines. Do you know when you dropped to the one?
24 MR. COHEN: Prior to my arrival. I started January OF
25 '08, so some time prior to that.

1 HEARING OFFICER PROTAS: And you just haves the one
2 there, so you don't know. I have another question too, you
3 referred to these automatic machines; is that the same as auto-
4 dropper assembly machine, or ADAM?
5 MR. COHEN: No.
6 HEARING OFFICER PROTAS: No?
7 MR. COHEN: No. The ADAM machines are farther down to
8 the end of the building.
9 HEARING OFFICER PROTAS: The automatic machines you've
10 been referring to, are they referred to as high-speed?
11 MR. COHEN: Correct.
12 HEARING OFFICER PROTAS: Thank you.
13 THE WITNESS: Moving down, the four machines are the
14 ADAM machines. For the most part they are used to assemble
15 glass dropper assemblies, glass pipe at cap and bowl and then
16 the next one down is just a hand assembly area where some hand-
17 assembly would be performed.
18 BY MR. COHEN:
19 Q All right, let's move on just generally talk about the
20 other areas. Let's move to the top part that has a cafeteria in
21 it; what's up there?
22 A Okay, the first large room to the left is engineering,
23 technical operations which is not part of my responsibility.
24 They do, for the most part, design work for customers. Then to
25 the right of that is the mold repair shop and that is part of

1 operations and they just take existing molds and make repairs to
2 them.
3 Then at the top of that is glass department where we
4 fabricated glass pipe ends. That department was moved from the
5 glass division when they sold it to Kerasheimer.
6 Q Now moving down to the area that is below, if you can just
7 describe what goes on in the building below it?
8 A Okay, for the most part, you know that's the main molding
9 building. Injection, where we're molding components for dropper
10 assemblies, oral dosage syringes, dosage cup as well as, you
11 know, closures and other custom items for our customers. The
12 hot line number two was added about two years ago, There is a
13 oral dosage syringe where we print on a barrel and then assemble
14 a barrel and plunger and then back if required.
15 To the right, let's see looking up to the left -- far
16 left is a maintenance shop. We have a couple maintenance shops
17 in the main building. They will service the equipment and
18 systems, compressors. So we have additional injection machines
19 along the long room, injection blow mold is a department that
20 molds bottles.
21 Then we have north injections which are large machines,
22 again most of the custom items, closures and that's where we
23 mold dosage cups. The cup room has two printers where we print
24 graduation lines on dosage cups. Then you have cod-line 1, the
25 original cod line. Then for printing and assembling for our

1 dosage syringes and then a cap line machine where we'll insert a
2 liner inside a closure that we've molded.
3 Then warehouse.
4 Q If you can just briefly state what is obvious for the
5 record, what is in the warehouse?
6 A The warehouse is stores all finished goods, work in
7 process items. They receive materials in from our vendors and
8 ship out finished products to our customers and they service the
9 rest of the facility, the finishing building and the components.
10 Q In terms of the maintenance shop, does the maintenance
11 shop -- do the maintenance people perform work throughout the
12 entire facility or do you limit it to any one area?
13 A No, they perform work throughout the entire facility.
14 There is people with, you know, stronger skills on particular
15 machines, but for instance, you know, it might be two people
16 that are very versatile in injection drill mold machine, but
17 they still are capable to do work in other areas and the same is
18 true all throughout the maintenance department.
19 MR. COHEN: I'd like to offer this.
20 HEARING OFFICER PROTAS: Any objections?
21 MR. LaVAUTE: Just a couple of Voir Dire questions,
22 please?
23 HEARING OFFICER PROTAS: Certainly.
24 VOIR DIRE
25 BY MR. LAVAUTE:

1 Q Mr. Hutchinson, when was this document produced?
2 A I am not sure, but this looks like the current layout, so
3 this could have been printed out recently.
4 Q Are you familiar with the layout prior to January '08, I
5 think you said you came back?
6 A Prior to -- not since 1997.
7 Q Are you able to say this is the layout since you came back
8 in January of 2008?
9 A The only thing that I'm sure that we've done differently
10 is when we did move some machines around during the holiday
11 shutdown in December/January of the branding machines in the
12 finishing. They were up in the front room and we put all the
13 branding machines together in one room and moved the high-speed
14 assembly down into that open area. I think we, also on Cod 2,
15 we moved in a couple injection machines to that assembly machine
16 and we purchased some injection machines for replacement during
17 that period, but the general layout is still the same.
18 Q Is the general layout -- strike that. For the finishing
19 department is the equipment -- you say that some things were
20 moved around, is it all the same equipment, however during that
21 period of time you're referring to?
22 A The only thing I can recall is that we obsoleted one old
23 branding machine that was made into -- or in disrepair, or
24 beyond the -- what would be a reasonable cost to being it back
25 to a fully functioning machine and we had other equipment that

1 would do the same type of work.

2 Q So, is it your testimony that you're familiar with the

3 layout and that this is an accurate reflection of the layout?

4 A That's my recollection, yes.

5 Q It sounds like less than a compete endorsement.

6 A No, this represents exactly what we have currently.

7 MR. LaVAUTE: I don't object to that then.

8 HEARING OFFICER PROTAS: Petitioner's Exhibit P-1 is

9 received in evidence.

10 (Employer/Petitioner's Exhibit E-1 received in evidence.)

11 DIRECT EXAMINATION (Continued)

12 BY MR. COHEN:

13 Q Just so we are clear while this is out, in terms of -- are

14 you familiar with what was manufactured in Vineland before that

15 facility closed?

16 A Not real well. I think I may have visited the facility

17 once.

18 Q Was there any -- in terms of work -- things that were

19 manufactured in Vineland, to your knowledge were any of the

20 things other than what's in the finishing building things that

21 were manufactured in Vineland?

22 A To my knowledge, that's the -- just in the finishing

23 building is what was manufactured in Vineland.

24 Q So there was no cup or cod operations in Vineland as far

25 as you know?

1 A No, they're fairly new product lines that have been added
2 over the last three, four years.
3 Q Injection molding was not in Vineland?
4 A Not to my knowledge.
5 MR. LaVAUTE: I think the witness is indicating he is
6 not certain about what he has testified to.
7 MR. COHEN: Actually, there's been -- there's already
8 been prior decisions about what was in Vineland and what was
9 not, so --
10 HEARING OFFICER PROTAS: Actually, I'd like -- using the
11 prior decisions, page 348, Vineland equipment transferred to
12 Buena, the 1214 machine, you've already said only one rotary
13 machine is there currently?
14 THE WITNESS: Yes.
15 HEARING OFFICER PROTAS: Three Adams; hoe many ADAMs are
16 currently there?
17 THE WITNESS: We have four Adams.
18 HEARING OFFICER PROTAS: They're in the finishing
19 department for the secondary operations?
20 THE WITNESS: Yes.
21 HEARING OFFICER PROTAS: The fourth one is that a new
22 addition or was that already in --
23 MR. COHEN: It was prior to me arriving there in January
24 of '08.
25 HEARING OFFICER PROTAS: You don't know whether it was

1 there before the Vineland operation was moved over to Buena?
2 MR. COHEN: No.
3 HEARING OFFICER PROTAS: How about cap-punching
4 machines?
5 THE WITNESS: I think we have one cap-punching machine,
6 I believe. It's located in the finishing building. That's a
7 machine that takes an existing closure with a solid top and
8 we'll punches a hole in it to accept a bowl.
9 HEARING OFFICER PROTAS: I did hear you mention this,
10 but I'm going down this checklist I have from this prior
11 decision. The re-nobbing machine, it's described as a re-
12 nobbing machine or shortener, I guess? You did mention that?
13 THE WITNESS: Yes, that's in the top room, it's ARK-A-
14 31.
15 HEARING OFFICER PROTAS: There's just one of them still?
16 THE WITNESS: Yes.
17 HEARING OFFICER PROTAS: A machine that assembles
18 bellows folds; is there still one of them?
19 THE WITNESS: Yes. I don't think it's pictured on here,
20 because it's a very small machine and they just kind of move it
21 in and out when it's required.
22 HEARING OFFICER PROTAS: When it's moved in where is it
23 moved to in the building?
24 THE WITNESS: Finishing.
25 HEARING OFFICER PROTAS: Okay, I did hear you say shrink

1 wrapper?

2 THE WITNESS: Yes, the shrink wrapper is 1015 which is

3 about midway upon the right-hand side.

4 HEARING OFFICER PROTAS: There's a machine that

5 assembles combo-stoppers; does that mean anything to you?

6 THE WITNESS: That's a name for the rubber substance

7 that's put in there.

8 HEARING OFFICER PROTAS: Do you still have that machine?

9 THE WITNESS: Yes, we do.

10 HEARING OFFICER PROTAS: And that's where?

11 THE WITNESS: The finishing room.

12 HEARING OFFICER PROTAS: Where do they keep that?

13 THE WITNESS: I believe that's 1012.

14 HEARING OFFICER PROTAS: The employee said something

15 about hand assembly and I guess you need benches for that?

16 THE WITNESS: There is a seat there, yeah. That's down

17 at the beginning of the finishing 901 hand assembly. I don't

18 know any of those.

19 HEARING OFFICER PROTAS: The stamping machines that

20 decorate various components; where are they?

21 THE WITNESS: The stamping machines are all at the top.

22 HEARING OFFICER PROTAS: Of the secondary operations?

23 THE WITNESS: Yes.

24 HEARING OFFICER PROTAS: Okay. Is that something you --

25 that would be difficult since I understand you weren't there at

1 the time of the original move of the Vineland work.
2 THE WITNESS: Correct.
3 HEARING OFFICER PROTAS: Do you know where the
4 origination of for instance the stamping machines came from?
5 THE WITNESS: No, I don't.
6 HEARING OFFICER PROTAS: All right.
7 BY MR. COHEN:
8 Q Now, if we could continue -- let me ask you if you could
9 just generally, in terms of job identification, are there
10 employees assigned to any particular machine or just that one
11 machine all the time?
12 A No.
13 Q Okay, how does it work in terms of working on the
14 machines?
15 A Not all of the machines run all the time, depending on
16 what the particular work load is, whatever machines are running
17 the supervisor that's on duty at the time will assign the
18 employees based on their job descriptions and skill level to the
19 machines that are required to be running.
20 MR. COHEN: I would like to mark this Petitioner's
21 Exhibit P-2.
22 (Employer/Petitioner's Exhibit P-2 identified)
23 BY MR. COHEN:
24 Q Mr. Hutchinson, did -- in preparation for this hearing did
25 the company print that list of all of the employees?

1 A Yes.
2 Q Non-executive employees?
3 A Yes.
4 Q Let's just go over this list. The first page, the first
5 name there is Chris Stretch; is that the injection molding
6 department?
7 A That is the molding department.
8 Q The molding department?
9 A Yes.
10 Q Just so this is clear, represented means people who were
11 represented by the union in Vineland?
12 A Yes.
13 Q So none of these people are represented by the union in
14 Vineland; is that right?
15 A That's correct.
16 Q And the department shows what department they're in?
17 A That's correct.
18 Q It shows who their supervisor is?
19 A That's correct.
20 Q And what their job title is?
21 A Yes.
22 Q What their positional role is; can you explain what's the
23 difference between job title and positional role?
24 A It's just a -- it looks like just a summary of what their
25 job is, yes.

1 Q And rate is their hourly rate of pay?
2 A Yes.
3 Q Shifts, it has different shifts; can you tell us what they
4 denote?
5 A We have 12-hour operations, 24/7, so the A,B, C and D
6 would represent the four 12-hour shifts and then we also have
7 eight-hour operations so 1, 2 and 3 would be first shift, second
8 shift, third shift on an eight-hour operation.
9 Q Okay, and if we could turn to the next page?
10 A This is the blow mold department, the second page
11 starting with the first name is Jose Amaro?
12 A Yes.
13 Q Again, the same explanation for everything?
14 A Yes.
15 Q So there was nobody in blow mold who was represented by
16 the union in the department; is that correct?
17 A That's correct.
18 Q And again, the same explanation of title, positional role
19 with the rate of pay and the shift, are these the same shifts
20 throughout the plant?
21 A Yes.
22 Q Now, we can move to the third page. Is that the employees
23 in the finishing department?
24 A Yes, it is.
25 Q The X on represented, what does that denote; are those the

1 people who were represented by the union in Vineland?
2 A Correct, they're the ones that I believe transferred from
3 Vineland to Buena.
4 Q Are there other positions other than those people who have
5 the exact same job titles?
6 A I'm not sure I understand the question.
7 Q What I'm saying is other than the nine people who are
8 represented by the union in Vineland, do those nine people have
9 job categories that are distinct from everyone else in the
10 finishing department?
11 A No, they don't.
12 Q Do they have supervisors that are distinct from anyone
13 else in the department?
14 A No, they don't.
15 Q In terms of their rate of pay, are there any material
16 distinctions between them --
17 MR. LaVAUTE: Objection, calls for a conclusion.
18 MR. COHEN: I'll withdraw it.
19 BY MR. COHEN:
20 Q In terms of shifts, do they work any different shifts than
21 other people?
22 A No, they don't.
23 Q Now, if you can just explain -- we'll go over and we'll
24 put in the job descriptions, in terms of the work, let's say
25 Barbara Bryant would be a B-operator, would she be doing any

1 work that is different from Shirley Blackwell, if you could look
2 further down?
3 MR. LaVAUTE: Would you repeat the names, please?
4 BY MR. COHEN:
5 Q Sure, Barbara Bryant is a finishing department employee
6 who is a B-operator in plastics. Is she doing work that is any
7 different from let's say going down the list, Shirley Blackwell
8 who is a B-operator in plastics?
9 A No, it would be the same work.
10 Q Would that be true in terms of let's say A-operators as
11 opposed to other A-operators; is there any difference in the
12 work that they're performing?
13 A No, there is not.
14 Q And in terms of supervisors, is there any difference of
15 the different supervisors based on what shift you're on?
16 A That's the only difference.
17 Q And again the shifts are first shift, second shift, and
18 third shift?
19 A That's correct.
20 Q Is there any physical separation between the nine people
21 who are represented by the union in Vineland and anyone else?
22 A No, there is none.
23 Q Do they work on any machines specific to them as opposed
24 to machines everyone else works on?
25 A No, there is not.

1 Q Now, if you would just move to the next page? Is this the
2 cod cup department?
3 A Yes. it is.
4 Q As far as you're aware was cod cup ever done in Vineland?
5 A Not to my knowledge.
6 Q Now here there are two people who were part of the
7 represented by the union in Vineland, Ruth Benowitz and Doris
8 McGaha; is that correct?
9 A That's correct.
10 Q Do these two people work in the finishing building at all?
11 A No, they don't.
12 Q Is there any difference in the work that they do as set-up
13 trainees -- basically as a set-up operator as opposed to
14 everyone else who is a set-up operator, set-up trainee in the
15 cod cup operation?
16 A No, the same duties.
17 Q Let's go on to the next page; is that the glass
18 operations?
19 A Yes, it is.
20 Q It says that Florence Simioni was union in Vineland; is
21 that correct?
22 A That's correct.
23 Q She's now currently a QC packer?
24 A That's correct.
25 Q I believe everything else basically speaks for itself. We

1 can go to the next page. Is that Quality Contort?
2 A Yes, it is.
3 Q Quality Control Department there is one person who used to
4 be in Vineland; is that right?
5 A That's correct.
6 Q Kristie Armstrong?
7 A Yes.
8 Q Did she do anything different from any other QC inspector?
9 A No, she doesn't.
10 Q Doe she work on the same shift as other people?
11 A Yes, she does.
12 Q The same supervisor?
13 A Correct.
14 Q The next page is Operation support; is that correct?
15 A Yes.
16 Q There are no people here who used to be represented by the
17 union?
18 A No, sir.
19 Q All right, we can go on to the next page. That is
20 warehouse?
21 A Yes.
22 Q Mr. Weissner used to be -- was represented by the union in
23 Vineland; is that correct?
24 A Yes.
25 Q He is a warehouse attendant?

1 A Yes.
2 Q Does he do anything to your knowledge different from any
3 other warehouse attendant?
4 A No.
5 Q Okay, and the same supervisor?
6 A Yes.
7 Q We can go down to the next page. Again James Massey was
8 represented by the union?
9 A Yes.
10 Q He is in -- he's a maintenance person?
11 A Yes.
12 Q Is there any difference in his job duties as opposed to
13 the other maintenance people?
14 A No, there's not.
15 Q The same supervisors?
16 A Yes.
17 Q The last page is the mold?
18 A Yes.
19 Q And there are no people in this group who were represented
20 by the union in Vineland; is that correct?
21 A That's correct.
22 HEARING OFFICER PROTAS: You're offering Petitioner's 2?
23 MR. COHEN: Yes, I am.
24 HEARING OFFICER PROTAS: Any objection?
25 MR. LaVAUTE: No objection.

1 HEARING OFFICER PROTAS: Petitioner's P-2 is admitted.
2 (Employer/Petitioner's Exhibit P-2 received)
3 BY MR. COHEN:
4 Q Mr. Hutchinson, let me show you what's been marked as
5 Petitioner's Exhibit P-3; are these the job descriptions for the
6 jobs in the finishing department?
7 A Yes.
8 Q You can use this not to read them, but to just summarize
9 what each of these positions entails?
10 A Well, I'm looking at the one job title ABC operator,
11 assembly department and their primary responsibility is to
12 operate any one of the machines that are in the finishing
13 department.
14 Q Do people operate any and all of these machines or do
15 people work on any one machine?
16 A They are assigned any and all machines that are currently
17 scheduled to run.
18 Q Did we supply the union with copies of scheduling reports,
19 people who are scheduled on machines? Are you aware of that?
20 A I'm not aware of that.
21 Q Okay, and again is there anyone who works only on ADAMs?
22 A No.
23 Q Is there anybody who works only on the nabbing machine?
24 A No.
25 Q Is there anyone in the entire finishing department who

1 works -- who is dedicated to one particular machine?
2 A No.
3 Q How long has that been the case?
4 A Since I've bee there, January of 2008.
5 Q Other than difference based on shift is there any
6 difference in terms of supervisors?
7 A No.
8 Q Let's move on to the other job descriptions. I'm sorry.
9 The first one was the ABC. What does the floor person do?
10 MR. LaVAUTE: Are you going to mark these separately?
11 MR. COHEN: I was going to mark them all the same --
12 have them marked as Petitioner's P-3 together.
13 HEARING OFFICER PROTAS: As long aa he's accounting for
14 all the parts, I think we're all right.
15 BY MR. COHEN:
16 Q Can we just go on, what does the floor person do?
17 A The floor person services the machines, they bring
18 components to the various machines as well as move the finished
19 product away staging it for movement back to the warehouse.
20 Q How does the floor person interact with the operator of
21 the ABC?
22 A I'm not sure I understand the question.
23 Q What does the floor person -- is there any interaction
24 between floor persons and operators?
25 A Just, you know, normal communications here during the day,

1 you know, what's needed? An operator may tell the floor person
2 that they're running low on a particular component, to move some
3 in.
4 Q Do floor persons become operators at some point?
5 A Anybody can, you know, bid a job anywhere in the facility.
6 Q By the way, is that how people who used to be in finishing
7 moves to the other departments that we went through?
8 MR. LaVAUTE: Objection, no foundation.
9 BY MR. COHEN:
10 Q Are you aware of how people got to other departments from
11 finishing?
12 A They were all in place, I believe, when I arrived.
13 Q Okay. Now, in terms of going back to the operators, the
14 classifications of ABC, what is the distinction, is there a
15 distinction in the work that they do in terms of A, B or C?
16 A The level of skill, you know, it's a progression program
17 so an entry position would be a C operator and after they go --
18 as they go through a training process and develop more skill
19 then they move up in the progression to an A. An A is more
20 capable of doing various things than a B operator would be able
21 to do.
22 Q So, it has to do with skill level?
23 A Yes.
24 Q A, B and C?
25 A Yes.

1 Q It doesn't have anything to do with that machine they work
2 on?
3 A No.
4 Q Now, next is set-up mechanic?
5 A Yes.
6 Q And just briefly, what does a set-up mechanic do?
7 A A set-up mechanic will -- when a job finishes they will
8 prepare the machine for the next job, they'll make all the
9 adjustments to the machine, some minor repairs where maintenance
10 isn't required.
11 Q I was going to ask you, what is the difference between the
12 set-up mechanic and a maintenance mechanic; is there a
13 difference?
14 A Yes, there is a difference.
15 Q Okay, can you just explain which one does what?
16 A A maintenance mechanic will really change out the
17 mechanical parts on the machines, you know. If a motor went
18 bad, you know a maintenance mechanic would come in and change
19 out a motor. A set-up mechanic, for the most part would just
20 make adjustments to the existing equipment.
21 Q And again, the set-up mechanics work just in the finishing
22 department, is that correct?
23 A Yes.
24 Q And the maintenance mechanics, do the work just in the
25 finishing department?

1 A No.
2 Q They go wherever a repair needs to be made?
3 A Yes.
4 Q The last job description in finishing is set-up operators;
5 is that correct?
6 A Yes.
7 Q What does the set-up operator do?
8 A The set-up -- I apologize, the set-up mechanics, I
9 believe, is a different job classification. The set-up operator
10 was the one I was describing before, yes.
11 Q So since you know, you've already explained what the set-
12 up operator does, what does the set-up mechanic do?
13 A The set-up mechanic, I believe is more -- this one is more
14 geared towards the molding operation where they would change-out
15 dies on the --
16 Q No, I believe the position of set-up mechanic is in the
17 finishing department?
18 A To be honest with you, I don't know the difference between
19 what the set-up mechanic or a set-up operators would do.
20 Q Okay. Now in terms of the products that are being
21 manufactured at the finishing, can you describe what those
22 products are?
23 A Out of finishing?
24 Q Yes.
25 A The majority of the products are dropper assemblies, a

1 bowl. a cap and pipette that is used as a delivery device for
2 various products. That's for the most part what is done there .
3 Q Now, is there -- do you know which operators operate the -
4 - strike that, let me ask you, the rotary machine, isn't there
5 one rotary machine?
6 A Yes.
7 Q Is that fully operational at all times?
8 A No, but I would say probably 75 percent of the time.
9 Q Are you aware of which employee --
10 MR. LaVAUTE: I'm sorry, his voice trailed off, he said
11 I see it -- running, did you say?
12 THE WITNESS: Yes, I would say 75 percent of the time
13 I'll see that machine running, yes.
14 MR. LaVAUTE: Thank you.
15 BY MR. COHEN:
16 Q Is there any one, two, or three who work in the rotary
17 machine?
18 A Various people work on the rotary machine, you know, I do
19 see some of the same people there more frequently than other
20 times.
21 Q Can you identify those people, do you have a list? Let me
22 ask you this way, in terms of the people who are -- who were
23 represented by the union in Vineland, do any of those people, to
24 your knowledge work regularly on the rotary machine?
25 A I believe Sarah Hannah on second shift is there quite

1 frequently and then -- Sarah works on second shift. On first
2 shift Shirley Blackwell is there quite frequently.
3 Q On the rotary machine?
4 A Yes.
5 Q Do these people also work on the other machine, the ADMs?
6 A Yes.
7 HEARING OFFICER PROTAS: Are you finished, is there
8 anybody else in this inquiry?
9 THE WITNESS: Not to my -- they're the ones that I see
10 most frequently. I do see other people there, but just not
11 quite as frequently.
12 BY MR. COHEN:
13 Q Off the top of your head can you say which people you see
14 working on the machines -- I don't want you to guess, if you
15 don't remember?
16 A No.
17 Q Are you aware of -- are you familiar generally with what
18 products were manufactured in Vineland when the Vineland
19 facility was open?
20 A Not -- you know, the only thing I can recall -- because
21 that was quite a few years ago, I visited. I do know they
22 assembled a lot of dropper assemblies over there. Other than
23 that, I couldn't tell you specifically what products.
24 Q Are dropper assemblies in the finishing department now?
25 A That's correct.

1 Q Are there any employees in the finishing department who
2 are not involved in dropper assembly?
3 A No, everybody is, you know, fully involved with dropper
4 assemblies because they're moved around as repaired.
5 Q Now are you familiar, and if you're not -- are you
6 familiar with the fact that a number of people transferred from
7 Vineland and worked in the finishing department at one time?
8 A Not firsthand, but based on what I've heard, yes.
9 Q When people left the company or retired or transferred to
10 other areas what happened to the work that they were doing?
11 MR. LaVAUTE: Objection, no foundation, at this point.
12 He's testifying that -- he hasn't identified anybody that did
13 that, whatever the question is focused on, I'm not quite sure,
14 but --
15 HEARING OFFICER PROTAS: Why don't you try giving us a
16 basis for your answer.
17 BY MR. COHEN:
18 Q Let me ask you this, have new employed been hired in the
19 finishing department in the last couple years?
20 A Yes.
21 Q Were they hired to replace people who left?
22 A Yes.
23 Q And just replace people who transferred outside of the
24 finishing department?
25 MR. LaVAUTE: I'm going to object still, there is no

1 foundation for this witness to testify on this subject.

2 HEARING OFFICER PROTAS: Well, it looks like he's

3 thinking.

4 THE WITNESS: I'm trying to think of anybody who

5 transferred out of that department since I've been there and off

6 the top of my head I can't recall anybody that's transferred

7 out.

8 BY MR. COHEN:

9 Q The people who you've identified who were represented by

10 the union in Vineland who are no longer in finishing, those

11 people transferred before you got there?

12 A That's correct.

13 Q Okay.

14 HEARING OFFICER PROTAS: Mr. Cohen, are you going to

15 offer the job descriptions?

16 MR. COHEN: Yes, I am, I'd like to offer Petitioner's

17 Exhibit P-3.

18 MR. LaVAUTE: No objection.

19 HEARING OFFICER PROTAS: Petitioner's P-3 is admitted.

20 (Employer/Petitioner's Exhibit P-3 identified and received)

21 HEARING OFFICER PROTAS: Maybe you could clear something

22 up for me. Can you account for the work that was formerly done

23 on the rotary machines; now you're down to one. How is it that

24 in Vineland more of that type of machine were in operation than

25 currently are? Does the work not exist or is it done in some

1 other way or if you don't know?
2 THE WITNESS: No, I can't speak to it because there was
3 only one there when I arrived.
4 HEARING OFFICER PROTAS: Okay.
5 BY MR. COHEN:
6 Q I am showing you what's been marked as Petitioner's
7 Exhibit P-4. Are these the job descriptions for every other
8 production job in the Buena Facility?
9 A Yes, as far what I see, yes.
10 Q Okay.
11 MR. COHEN: I'd like to offer that.
12 HEARING OFFICER PROTAS: Just so we don't lose one,
13 they're not clipped together, could you just flip through the
14 various job titles?
15 MR. COHEN: Do you want to just go through the job titles
16 for me?
17 HEARING OFFICER PROTAS: Just read them out so we know
18 that --
19 THE WITNESS: Sure. A,B and C operator. A, B and C
20 operator injection molding, B operator on glass, Blender, G-
21 technician injection, crew leader, electrical mechanic,
22 electrician, electronics technician, facilities coordinator
23 technician, floor person, incoming quality inspector, inventory
24 control clerk specialist, lead blender, lead electronics
25 technician, lead mold mechanic, leads GC inspector, machinist,

1 manufacturing maintenance mechanic, mold and die mechanic,
2 packer, Quality Control inspector, Quality Control packer,
3 Quality GMP audit specialist, set-up operator glass, senior
4 Quality Control inspector, set-up mechanic, storeroom mold
5 tooling attendant, utility maintenance worker, Vision system
6 technician, warehouse attendant, I believe that's it.
7 HEARING OFFICER PROTAS: Thank you. Any objection?
8 MR. LaVAUTE: I'm going to need a little bit to look at
9 them.
10 HEARING OFFICER PROTAS: Off the record.
11 (Off the record for counsel to inspect job descriptions)
12 HEARING OFFICER PROTAS: Back on the record.
13 MR. LaVAUTE: I have some questions on Voir Dire.
14 VOIR DIRE
15 BY MR. LAVAUTE:
16 Q Mr. Hutchinson, where are these descriptions kept?
17 A Human Resources.
18 Q A lot of them are dated 2007; are you aware of that?
19 A Yes.
20 Q Do you know why there were a list of job descriptions
21 approved in 2007?
22 A I don't know the answer to that.
23 Q Were there job descriptions before 2007?
24 A Yes.
25 Q Are you aware of any changes in these jobs from a before

1 and after standpoint?
2 A Not to my knowledge.
3 Q How about the other ones in Petitioner's P-4, finishing
4 department job descriptions, are you aware of any changes in
5 those from the previous descriptions to the ones that are
6 introduced in evidence here?
7 A Not to my knowledge, I wasn't involved in the changes.
8 MR. LaVAUTE: I don't object to these documents.
9 HEARING OFFICER PROTAS: Petitioner's P-4 is received in
10 evidence.
11 (Employer/Petitioner's Exhibit P-4 identified and received)
12 MR. COHEN: I have nothing further of this witness.
13 HEARING OFFICER PROTAS: Mr. LaVaute, do you need some
14 time?
15 MR. LaVAUTE: I do need a few minutes, I need some time.
16 I want to review some documents before examine him. I'm
17 wondering if we'll want to incorporate this with the idea of
18 grabbing something to eat if anybody wants to do that? It's
19 going to take me more than 15 minutes or half an hour to get
20 ready to examine him, so -- it's a little early. Do you want
21 to take a break and have me do this?
22 HEARING OFFICER PROTAS: Why don't you do that, why
23 don't you take -- if you need 15 minutes, why don't you take 15
24 minute and then we'll go back for a time and we can at least get
25 started. If you have more, maybe we can take a lunch break then

1 and you can have another crack at it.

2 MR. LaVAUTE: Okay.

3 HEARING OFFICER PROTAS: But for now, let's go off the

4 record for 15 minutes.

5 (Off the record for counsel to peruse documents)

6 HEARING OFFICER PROTAS: Back on the record.

7 CROSS EXAMINATION

8 BY MR. LaVAUTE:

9 Q Mr. Hutchinson, you told us about your work history with

10 Comar, but I want to clarify a couple of things with you.

11 A Okay.

12 Q From January of '99 until when were you in the glass

13 division?

14 A Until January of 2008. Most of the time with Comar and a

15 short amount of time with Kerasheimer.

16 Q Where is the glass division located?

17 A Barr's Grove, Vineland.

18 Q In Vineland?

19 A Yes.

20 Q Is it there now?

21 A Yes.

22 Q During that time were you familiar with the Buena

23 operations?

24 A Somewhat. Only from review meetings, you know performance

25 review meetings where they were combined. Not specifics as to

1 what was going on there.
2 Q What was your job in the glass division?
3 A When I first went over there I was the Quality Manager
4 until January of 2000 when I became the plant manager and that
5 was my role until I came back to Comar.
6 Q And as Director of Operations in Buena, is it for the
7 entire Buena operation?
8 A For the manufacturing operations. It doesn't include
9 corporate or technical operations or engineering.
10 Q You came here in January 2008, right?
11 A Yes.
12 Q It's true, isn't it, that there have been no substantial
13 changes in operations at Comar in terms of the production in
14 Buena since you got here?
15 A Nothing significant, no other than the, you know, a
16 decrease in activity, reduced in sales, just like the rest of
17 the country is seeing.
18 Q You're not aware of any significant changes in the let's
19 say three years or so before you took this job at Comar in
20 Buena, are you?
21 A No, sir.
22 Q The company, as far as you know, has been making the same
23 type of product all along, right?
24 A Other than I know that in the past few years they had
25 added some new products, the oral dosing syringe and the dosage

1 cup, you know, were added over the past few years.
2 Q I think you said the majority of the product is the same
3 as it was in the past, mainly dropper assemblies, right?
4 A That's correct.
5 Q And the work configuration that illustrates in this large
6 blueprint that you discussed --
7 A Yes.
8 Q -- Petitioner's Exhibit P-1, excuse me the work
9 configuration hasn't changed since January of 2008, right?
10 A Other than there is a few machine moves that I talked
11 about, the branding machines moving from one side of the
12 finishing building to the other side of the finishing building.
13 Q Okay, but I presume that that didn't impact the employees
14 directly?
15 A No.
16 Q Are you familiar with who the relocated Vineland employees
17 are?
18 A For the most part I know, you know, who they are, yes.
19 Q There is about 16 of them left at the current time,
20 correct?
21 A Yes.
22 Q Is it true that as far as you know there hasn't been any
23 significant change in the work that they do during the time
24 you've been there anyway from January '08?
25 A Yes, not since I've been there, that's correct.

1 Q Are you aware of any significant change in the work they
2 do in the three years prior to your getting there?
3 A I don't know what they did prior to me getting there.
4 Q How about supervisors, have there bene changes in
5 supervisors of any significance since January of '08?
6 A Yes, in the finishing building I moved Ed Mattingly to the
7 warehouse position.
8 Q A supervisor?
9 A Yes, and moved a supervisor from molding into the
10 finishing.
11 Q Is that the only one, the only move.
12 Q We moved -- due to economic cutbacks, we moved some other
13 -- we moved the maintenance supervisor to an hourly coordinator
14 position and moved a project manager into the maintenance role.
15 That's always the same.
16 Q Have there been any changes in the manner of supervision?
17 A Not to my knowledge.
18 MR. LaVAUTE: That's all the questions I have.
19 HEARING OFFICER PROTAS: Any redirect?
20 MR. COHEN: No.
21 HEARING OFFICER PROTAS: Thank you, you're excused.
22 (Witness excused.)
23 HEARING OFFICER PROTAS: Off the record.
24 (Off the record to obtain the next witness)
25 HEARING OFFICER PROTAS: Back on the record. Would you

raise your right hand?

Whereupon,

ALAN DEAN

Having been duly sworn or affirmed, testified as follows:

HEARING OFFICER PROTAS: Take a seat, please and could you state your name -- full name for the record please?

THE WITNESS: Alan Dean.

HEARING OFFICER PROTAS: Proceed.

DIRECT EXAMINATION

BY MR. COHEN:

Q Mr. Dean, what's your title with the company?

A Director of Human Resources.

Q How long have you been there?

A Since January of 2007.

Q Have you been involved in negotiations with the union?

A I have.

Q Do you remember approximately when negotiations began?

A Approximately June/July of 2007.

Q Prior to the negotiations beginning did the union make information requests of the company?

A They did.

Q Were one of those information requests the job descriptions?

A I believe it was, yes.

Q Were those job descriptions turned over to the union prior

1 to negotiations?
2 A They were.
3 Q Did the union ask to take a walk through the plant?
4 A They did.
5 Q Were they allowed to -- were they given a walk through the
6 plant?
7 A Yes.
8 Q Now, how long did the company and the union negotiate? If
9 the negotiations began in January --
10 A We started in 2007. We've had no recent meetings, but
11 we've been going at it since June/July 2007.
12 Q At any point in time has -- during negotiations, has the
13 union described which job classifications performed work in
14 (indiscernible)
15 A Not to my understanding.
16 Q Did the company at any point in time in the negotiations
17 propose which job classifications would be considered part of
18 the union?
19 A We did.
20 Q What was the company's proposal?
21 A The company's proposal was the operators, float people and
22 set-up mechanics that were part of the finishing building.
23 Q Did the union mutually agree to that?
24 A Yes, they did.
25 Q Did there come a point in time when the union changed

1 their position?
2 A Yes, they did.
3 Q Do you remember approximately when that was?
4 A Approximately August of 2008.
5 Q What was their position at that point in time on what the
6 union should do?
7 A They wanted to represent only the employees who moved from
8 the Vineland facility to Buena.
9 Q Did that include people who were no longer working in
10 finishing according to the union?
11 A That would include people that were no longer working in
12 finishing, yes.
13 Q At any point in time has the union delineated in
14 negotiations, or at any point, what job classifications they
15 consider to be part of the existing Board unit?
16 A No.
17 Q At any point in time has the company explained that you
18 cannot distinguish between any of the employees in finishing in
19 terms of who performs the work that used to be performed in
20 Vineland?
21 A That's correct, we have told them that. We can't
22 distinguish.
23 Q Was there a tentative agreement on that?
24 MR. LaVAUTE: Objection, leading in form.
25 HEARING OFFICER PROTAS: That's true.

1 BY MR. COHEN:
2 Q Did the union object when the company said that at the
3 commencement of negotiations?
4 MR. LaVAUTE: Objection, I'm going to object to leading
5 the witness on this at this point.
6 BY MR. COHEN:
7 Q What did the union just go through the history of the
8 negotiations in terms of what the union's position was as to
9 what the unit is?
10 A Early in negotiation we had been discussing all along,
11 beginning in early 2007 that the unit would be the finishing
12 building and the positions that were in there. We continued to
13 negotiate the six people that were outside of the finishing
14 building that moved from the Vineland Facility. A number of
15 proposals were made throughout bargaining session.
16 Finally, in an effort to move things along we allowed
17 those people to be included, not their positions, into the unit.
18 We certainly believed we had an agreement at that point in time
19 and continued to negotiate through 2008 to the August period
20 where we had --
21 Q Up until the August period what was the unit that you
22 believed that had been agreed to?
23 A The finishing building including the operators, floor
24 people and set-up mechanics.
25 HEARING OFFICER PROTAS: Plus these six people?

1 THE WITNESS: Plus the six people that were outside of
2 the finishing building.
3 BY MR. COHEN:
4 Q In August did the union -- again, what happened in August?
5 A In August we were told that the bargaining session was
6 being --
7 MR. LaVAUTE: Which August are we talking about?
8 BY MR. COHEN:
9 Q What August, I assume it was August 2009?
10 A August 2008, the union indicated that they were changing
11 their position in the unit, they only wanted to represent those
12 employees who moved from the Vineland's Facility at this point
13 in time.
14 Q At any point in negotiations was there any discussion
15 about the unit placement of people who replaced the people in
16 the finishing who came from Vineland?
17 A There was no discussion. Basically the replacements would
18 not be in the union was what we had asked the question and got
19 from the union as a clarification.
20 Q And that was as of August of 2008?
21 A Yes.
22 Q To your knowledge as Human Racecourse and having access to
23 the records were there people who transferred from Vineland to
24 the finishing department in Buena who no longer worked for the
25 company?

1 A Yes.
2 Q Were they replaced?
3 A Yes, they were.
4 Q Are those replacements now working in the finishing
5 department?
6 A Some are.
7 Q Was the union asked whether or not they wanted to
8 represent those people?
9 A I don't know that they were specifically asked if they
10 wanted to represent those people.
11 Q What was their position -- at any point in time did they
12 ever say what job classifications they wanted to represent?
13 A No clarification on job classifications, just the people.
14 As of August 2008, just the people that moved from the Vineland
15 Facility to the Buena Facility.
16 Q Did it make a difference what jobs they held?
17 A It did not make a difference.
18 Q Now, can you just explain in terms of wages, how have
19 wages been set for the finishing department over the last two or
20 three years?
21 A Wages, basically we have an annual performance evaluation
22 and merit increase take place in September. Typically we decide
23 on a budget. Employees are evaluated, based off of their
24 evaluations they can receive a percent increase plus or minus
25 that budget score. It can ranger a little bit depending on

1 their performance.

2 But on our recent '07, '08 performance evaluations we

3 asked the union for permission, on the finishing building, to

4 move forward with those evaluations under the standard process

5 that I described and certainly shared with them information

6 about all the finishing department employees as to that process.

7 Q Was there any difference in terms of in the finishing

8 building as to the process in which people were given increases

9 between people who used to work in Vineland and people who did

10 not work in Vineland?

11 A It was the same process.

12 Q Let me direct your attention to September of 2008. Had

13 there been an attempt to bring a offer to the union by wage

14 increase with union represented employees?

15 A In the August 2008 period, yes, there was.

16 Q Was that implemented for the union for unit employees as

17 opposed to anyone else?

18 A The -- would you repeat the question?

19 Q In September of 2008 were the 16 employees treated any

20 differently from everyone else in terms of wages?

21 A No, they were treated identical.

22 Q Was that done with the knowledge and the permission of the

23 union?

24 A It was.

25 Q Now, in terms of fringe benefits, is there any difference

1 in health insurance that is provided to the 16 employees that
2 the union seeks to -- has sought to represent since August of
3 2008 and the rest of the employees?
4 A There is.
5 Q What is the difference?
6 A The difference is the 16 employees have the '99 plan which
7 was in effect at that point, reinstated for their health
8 benefits.
9 Q Is that pursuant to the Board Order?
10 A It was.
11 Q Other than that, is there any difference in terms of the
12 health insurance?
13 A Contributions; contributions, the contribution levels for
14 the 16 are single, $10 a week; families, $20. So that is a
15 difference.
16 Q Is that pursuant to the Board Order, about following the
17 unilateral changes?
18 A Yes.
19 Q Is it still company-provided health insurance?
20 A Yes.
21 Q In terms of pension, 401-K, is there any difference
22 between the 16 employees the union has been seeking to represent
23 since August of 2008 and everyone else?
24 A The only difference in our current 401-K program.
25 Q Was there a difference that was negotiated with the union?

1 A There was no difference other than our current 401-K
2 program.
3 Q In terms of the negotiation of the 401-K, was that
4 negotiated on behalf of just the -- at the time it was
5 negotiated, was it negotiated just on behalf age the 16
6 employees the union is now seeking to represent or was it --
7 negotiated on behalf of the entire finishing department?
8 A It was negotiated on the finishing department.
9 Q Did the union at that point in time say that they didn't
10 represent the entire finishing department?
11 A They did not.
12 Q What about shifts, was there any negotiation with the
13 union about shift changes?
14 A We began the process of implementing 12-hour shifts
15 because some of the prior Vineland employees would be impacted
16 by that. We did seek their knowledge and permission to move
17 forward with the implementation of the 12-hour shifts.
18 Q Is the 12-hour shift something that was implemented for
19 all the employees in the finishing department?
20 A The 12-hour shifts were mainly for operations outside of
21 the finishing areas and again, when we sought their permission
22 it was not on the 12-hour shift per se, but it was on the terms
23 and conditions that were going to change for those people who
24 were represented from Vineland that moved over and were outside
25 the finishing department.

1 Q Now, are there any other differences for these 16
2 employees that came about because of the Board Order affecting
3 the changes?
4 A The ones that I can recall from the top of my head,
5 additional holidays. I think there were two additional holidays
6 in the current offering. An additional personal day, sick days
7 were reinstated for the 16. I think those are the major areas
8 that I can recall.
9 Q In the negotiations did the company -- what was the
10 company's position about who this would cover?
11 A We certainly looked to as it related to the finishing
12 department to negotiate terms for holidays, it would get sick
13 days, we negotiated those terms, but to try to do it for
14 everyone in the finishing building and certainly those six
15 outside the finishing building.
16 Q Was the company's proposal with the union set for all of
17 the benefits for the entire finishing department?
18 MR. LaVAUTE: Objection.
19 HEARING OFFICER PROTAS: Basis?
20 MR. LaVAUTE: I don't understand the question. You're
21 talking about reaching a complete agreement; what are you
22 talking about?
23 BY MR. COHEN:
24 Q I'm talking about agreement on the issue of equalizing
25 benefits for the entire finishing department?

1 A All except for vacation, yes.
2 Q What was the one difference in terms of vacation?
3 A Our position was we wanted to maintain the current
4 practice that we have which is the maximum of four weeks of
5 vacation. The union's position was looking to have additional
6 vacation up to the five-week limit that was a part of the prior
7 terms and conditions in 1999.
8 Q And at the time the union made that proposal was that
9 proposal made for the entire finishing department?
10 A It was.
11 Q Other than the things that you have mentioned is there
12 any difference at all in any of the benefits that are provided
13 to the 16 employees represented by the union and everyone --
14 every other production employee in the facility?
15 A I hit the main differences.
16 Q Did the company end the company pension plan -- freeze it?
17 A The company did freeze a prior pension program, yes.
18 Q Was it frozen for everyone including the 16 employees?
19 A It was frozen for all those who were participants under
20 that program.
21 Q Was that negotiated with the union?
22 A We did -- we had sought to go ahead and terminate that
23 frozen plan. We did seek permission for the union to do that
24 based off of the participants -- the 16 participants who
25 remained under that program.

1 Q At the time that that was negotiated did the union also
2 negotiate on behalf of the entire finishing department?
3 A I believe they did, yes.
4 Q Is there one new resource department that applies to all
5 the production employees?
6 A Yes.
7 Q Is there one employee handbook?
8 A There is.
9 MR. COHEN: This is Petitioner's Exhibit P-5.
10 (Employer/Petitioner's Exhibit P-5 identified)
11 Q Just again so we're absolutely clear, at any point in
12 time had the union ever identified which job classifications
13 performed work that formerly was done in Vineland?
14 A No.
15 Q Since August of 2008 has the union taken any position
16 other than they want to represent the 16 employees who used to
17 work in Vineland?
18 A Not since August 2008.
19 MR. COHEN: I have no further questions.
20 MR. LaVAUTE: What are you doing with Petitioner's
21 Exhibit P-5
22 MR. COHEN: I'm sorry, I'd like to offer Petitioner's
23 Exhibit P-5.
24 MR. LaVAUTE: Voir Dire?
25 HEARING OFFICER PROTAS: Sure.

1 VOIR DIRE

2 BY MR. LaVAUTE:

3 Q So Mr. Dean, do you remember that Comar was directed by

4 the Labor Board to rescind certain changes made to these

5 relocated workers that were in the employee handbook?

6 A I remember that as a part of the Board Order, yes.

7 Q And, are you aware that this document, Petitioner's P-5

8 contains provisions that you or Comar was directed to rescind?

9 Are you aware of that?

10 A I'm aware that this book contains provisions that don't

11 apply to the 16.

12 Q Okay to the extent you were asked whether there was a

13 handbook that applied to everybody, your answer is not all of

14 the handbook applies to everyone, correct?

15 A The provisions of this handbook apply to everyone and the

16 supplement we gave to the 16 gives them clarification of where

17 there are differences.

18 Q Can you answer the question I just asked you?

19 A Say that one more time?

20 Q To the extent you have a handbook here that its provisions

21 does not apply to all the employees; isn't that true?

22 A This handbook applies to all the employees with the

23 addendums that go along with it.

24 Q Where are the addendums?

25 A They were handed out to the employees who were impacted by

1 changes from this handbook.

2 Q What are the addendums?

3 A They relate to a body of things, but as it related to

4 items that we were asked to reinstate that we got from the

5 that had to do with their health care coverage, the sick pa

6 benefits, had to do with holidays, had to do with vacation

7 employees received a special letter indicating those chang

8 them. Any employees that were in --

9 Q How about bereavement?

10 A If bereavement applied it was in the letter, yes.

11 Q How about this statement at the end that says they

12 they're an employees of will and can be fired for any rea

13 any time?

14 A Again, they are -- I think that that provision was

15 in the letter as it relates to their representation.

16 Q You believe that that provision doesn't apply to t

17 isn't that correct?

18 A That is correct.

19 HEARING OFFICER PROTAS: Do we have a copy of th

20 letter?

21 MR. LaVAUTE: I've got other documents, but my

22 with this document is that it's represented to be a ha

23 that applies to everybody and it obviously is not.

24 MR. COHEN: Yes, sir, applies to everybody exc

25 the changes that the Board ordered us to make.

1 HEARING OFFICER PROTAS: I think that's where the record
2 stands and you can quibble over how it characterizes, but I
3 think you can have an adequate record to argue.
4 BY MR. LaVAUTE:
5 Q Was this negotiated with the union, Mr. Dean, this
6 handbook before you produced it --
7 MR. COHEN: Objection, it has nothing to do with this
8 case.
9 MR. LaVAUTE: Pardon me?
10 MR. COHEN: It has nothing -- this is not an unfair labor
11 practice proceeding. Whether it was -- the handbook as
12 negotiated with the union has absolutely nothing to do with
13 this.
14 HEARING OFFICER PROTAS: Well, you can answer the
15 question.
16 THE WITNESS: This handbook is a handbook that's been in
17 place for a while. As changes happen we update it from time to
18 time and as changes happen with the union employees when we were
19 asked to reinstate we did that by a direct letter to those
20 employees indicating the differences for them as it related to
21 handbook provisions.
22 BY MR. LaVAUTE:
23 Q When did that letter happen?
24 A That would have been early 2007 they received that letter
25 Q So I repeat my question, did you negotiate over this with

1 the union before you implemented this in February '08 is the
2 date on it?
3 A Again, this applies --
4 Q It's a yes or no.
5 A Were we in negotiations --
6 Q No, did you negotiate with the union over this before you
7 implemented it in February 2008?
8 A It was already in place, Jim, it was already in place.
9 Q What's the '08 February date mean?
10 A That's just a date that appears on the document every time
11 you -- on word processing every time you pull it up, it's just a
12 date change.
13 Q Are you testifying that this was not reissued in 2008?
14 A It was not reissued, this is our handbook that's bene in
15 place for a long time.
16 MR. LaVAUTE: I have no other questions on Voir Dire. I
17 object to the document, I don't think it's an accurate
18 representation of the current situation regarding the 16
19 remaining relocated Vineland workers.
20 HEARING OFFICER PROTAS: I'm going to admit the exhibit.
21 (Employer/Petitioner's Exhibit P-5 received)
22 MR. COHEN: One more question.
23 DIRECT EXAMINATION (Continued)
24 BY MR. COHEN:
25 Q Was the handbook part of the union's request for

1 information prior to negotiations was a copy of the handbook
2 provided to the union?
3 A It was.
4 Q And at any point in time has the company refused to
5 bargain with the union over a single union proposal?
6 A We have not.
7 MR. LaVAUTE: Objection.
8 HEARING OFFICER PROTAS: That answer is in the record,
9 that's fine. Anything further, Mr. Cohen?
10 MR. COHEN: Nothing further.
11 HEARING OFFICER PROTAS: Mr. LaVaute, would you like a
12 lunch break to prepare for your cross examination?
13 MR. LaVAUTE: I think that makes sense.
14 HEARING OFFICER PROTAS: Okay, how about -- it looks
15 like we have the luxury of time, so you don't have any other
16 witnesses?
17 MR. COHEN: No.
18 HEARING OFFICER PROTAS: Mr. Lavaute, do you have any
19 witnesses?
20 MR. LaVAUTE: I may have some witnesses, yes, but I'm
21 going to have to evaluate that depending on what the outcome of
22 this witness is.
23 HEARING OFFICER PROTAS: Well, all right, I'm not sure
24 where we're going then, so why don't we say -- it's 10 after
25 12:00, let's say 10 after 1:00.

1 MR. LaVAUTE: Thank you.

2 HEARING OFFICER PROTAS: Off the record.

3 (Whereupon, at 12:10 p.m. the hearing was adjourned for

4 lunch.)

5

6

1 A F T E R N O O N S E S S I O N

2 (1:16 p.m.)

3 HEARING OFFICER HENRY R. PROTAS: On the record. You are

4 still under oath, have a seat. When you're ready.

5 CROSS EXAMINATION

6 BY MR. LaVAUTE:

7 Q Mr. Dean, you said that the company gave the union

8 information about the finishing department employees at the

9 beginning of negotiations; is that correct?

10 A You asked that question one time.

11 Q Did you say that the company gave the union information

12 about the terms and conditions of the finishing department

13 employed at the beginning of negotiations?

14 A What I said was the union requested information and we

15 complied with that request.

16 Q That compliance was pursuant to the NLRB's order, wasn't

17 it?

18 A Yes, it was.

19 Q And, I'm showing you Union U-1, I'm showing you a letter

20 dated March 20, 2007; did you send that letter?

21 (Union Exhibit U-1 identified)

22 A I did.

23 Q Well, in that letter you recognized -- the company

24 recognized the union as the representative of the unit stated in

25 the first paragraph there in block indented style, right?

1 A That's correct.
2 Q That is the unit description that was contained in the
3 Board's Decision, wasn't it?
4 A Work previously done in the Vineland facility.
5 Q Sorry?
6 A Work previously done in the Vineland Facility.
7 Q At the time you saw Union Exhibit U-1 did you know what
8 jobs the relocated Vineland workers were doing?
9 A Just complying with the Board Order.
10 Q Did you not understand my question? Did you want me to
11 repeat my question?
12 A Please?
13 Q At the time you sent Union Exhibit U-1 to the union, did
14 you know what jobs the relocated Vineland workers were doing?
15 A Yes, I would have known what they were doing.
16 Q Those were the workers that you were recognizing the union
17 was their representative of, correct?
18 A Those were the workers that the Board Order told us that
19 we were to recognize the union for.
20 Q The relocated Vineland workers, correct?
21 MR. COHEN: Objection, that's not what the letter says.
22
23 MR. LaVAUTE: I'm not asking about the letter, I'm asking
24 him a question.
25 BY MR. LaVAUTE:

1 Q You were ordered to recognize the union as a
2 representative of the relocated Vineland workers, were you not?
3 MR. COHEN: Objection as argumentative and the letter
4 speaks for itself.
5 HEARING OFFICER PROTAS: Well, do you understand the
6 question?
7 THE WITNESS: Ask it one more time.
8 BY MR. LaVAUTE:
9 Q You were ordered to recognize the union as the bargaining
10 representative of the relocated Vineland workers, were you not?
11 MR. COHEN: Again, I object. That is a legal conclusion
12 that is the issue in this case and it's not what this says.
13 HEARING OFFICER PROTAS: Yes, I have to agree, that is
14 the legal issue.
15 MR. LaVAUTE: Okay, we will give him another document
16 maybe it will help. This is Union Exhibit U-2.
17 (Union Exhibit U-2 identified)
18 BY MR. LaVAUTE:
19 Q Take a look at that, please.
20 (Witness perusing document)
21 Let me know when you're ready.
22 A Okay.
23 Q You wrote that letter, did you?
24 A I did.
25 Q Did you send it to the employees of Comar?

1 A Yes.
2 Q In it you stated, third paragraph, we will be recognizing
3 the union as the bargaining representative of the former
4 applicator employees, correct?
5 A That's what it says, yes.
6 Q The former applicator employees would be the relocated
7 Vineland workers, correct?
8 A That would be correct.
9 Q How many of them were there at the time you wrote this
10 letter?
11 A Approximately 17.
12 Q There are 16 of them now?
13 A Approximately.
14 Q At the time you wrote this letter, Union Exhibit U-2, was
15 this supposed to be a recognition as you granted in Union
16 Exhibit U-1? We're talking about the same unit here, right?
17 A The intent of the letter was to communicate our intentions
18 to comply with the Board Order as stated.
19 Q And the compliance part with the unit was the --
20 recognizing the union as bargaining representative of the former
21 applicator employees, the 17 relocated workers, correct?
22 A Right, as well as many other things.
23 Q Right. I'm only talking about the recognition part of it.
24 A We were told in the Board Order we needed to recognize you
25 as the official bargaining representative for the people that

1 moved from -- the work that moved from Vineland to Buena.
2 Q The 17 people. right?
3 A They were listed in the actual Board Order so I don't know
4 if that's a question, they were listed in the Board Order. I
5 didn't make them up, they were just listed there.
6 Q All right. Now, referring again to Union Exhibit U-2, did
7 you know what jobs those 17 workers were doing at the time you
8 wrote this letter?
9 A Yes.
10 Q In fact, six of them were not in the finishing building,
11 their jobs were not in the finishing building; is that correct?
12 A Yes, we didn't believe that those six --
13 Q Just answer the question, please.
14 MR. COHEN: No, can he be allowed to answer the question
15 before being cut off rudely?
16 HEARING OFFICER PROTAS: It's a yes or no.
17 BY MR. LaVAUTE:
18 Q It's a yes or no question, can you answer the question?
19 A Ask it again, please.
20 Q At the time you wrote the letter you knew what jobs these
21 workers -- these six workers were in, correct?
22 A I knew what jobs everyone did, yes.
23 Q The six workers were in jobs outside the finishing
24 department, correct?
25 A Yes, we believed they were jobs outside --

1 Q Answer the question, please.
2 HEARING OFFICER PROTAS: Try to restrict your answers to
3 the question asked.
4 BY MR. LaVAUTE:
5 Q It's a yes or no question.
6 A Ask it again.
7 Q The six people were in jobs outside the finishing
8 department, correct?
9 A That is correct.
10 Q Thank you. Did the jobs of those six people change at any
11 time from the date you wrote the letter until the end of the
12 negotiations in February of 2009, the last negotiating session?
13 A No, those jobs were basically -- people were doing the
14 same jobs.
15 Q And, were those the six people that you testified there
16 was an understanding or a proposal by the company -- let me
17 rephrase that. There was a proposal by the company that those
18 people would be in the unit by name, but not by position; are
19 those the six people that you were referring to?
20 A Those are the six people.
21 Q Your proposal, meaning Comar's proposal was that their job
22 would not be in the unit, just the six people by name?
23 A Yes, because we certainly recognized that were doing work
24 that was never done at the Vineland Facility.
25 Q The union's position all along was that those six people

1 were in the unit regardless of what work they did, correct?
2 A That's not correct.
3 Q No?
4 A The union knew that those people, some of them were doing
5 jobs that were --
6 Q Don't tell us what the union knew.
7 MR. COHEN: Excuse me --
8 MR. LaVAUTE: Tell us what the union said.
9 MR. COHEN: I object to this question, he does not allow
10 the witness to answer any question and he's being argumentative
11 with the witness.
12 HEARING OFFICER PROTAS: Well, you were asked about what
13 the union was doing and --
14 MR. LaVAUTE: But he was cut off.
15 HEARING OFFICER PROTAS: Right.
16 MR. LaVAUTE: What the union knew was not responsive to
17 the question.
18 HEARING OFFICER PROTAS: Ask the question again please.
19 BY MR. LaVAUTE:
20 Q The union's position stated to the company was that the
21 six people were in the unit regardless of what jobs they did;
22 isn't that true?
23 A That's what the union wanted, yes.
24 Q Well, that was our position, was it not?
25 MR. COHEN: Objection. He said that's what the union

1 wanted; he says that was their position. What is the purpose of
2 arguing with the witness?
3 HEARING OFFICER PROTAS: What he's trying to clarify is
4 he said what did the union say; he is saying what the union
5 wanted which could be two different things, so he's just
6 clarifying.
7 BY MR. LaVAUTE:
8 Q That was our position, wasn't that stated to the company
9 that these people were in the unit regardless of the jobs they
10 were doing?
11 A That's not my belief. That's not what you said, no.
12 HEARING OFFICER PROTAS: He's asking you what the union
13 said, okay, so you're saying that that is not what the union
14 said?
15 THE WITNESS: It's not what the union said.
16 HEARING OFFICER PROTAS: Okay.
17 BY MR. LaVAUTE:
18 Q What did the union day about these six people?
19 A Basically through our discussions where we started from
20 was that we believed that the six were not ever doing work that
21 was done in the Vineland Facility, so we asked at that point in
22 time when we were negotiating over the finishing building, to
23 have these folks have the opportunity to take jobs in the
24 finishing building and come into that particular unit.
25 The union said no to that. We basically, you know, then

1 to continue the negotiations suggested that to move this along
2 that we would agree that these six people that were doing jobs
3 that were never done in Vineland they would be in the unit, but
4 their positions could not and the union never agreed with that,
5 so the union did not indicate that their positions they held
6 were ever in the unit, only that they came from Vineland
7 therefore they were -- they'd like to have them in the unit.
8 Q They were in the unit, they belonged in the unit?
9 A Not their positions.
10 Q Well, Mr. Dean, our position was that these individuals --
11 MR. COHEN: Objection --
12 MR. LaVAUTE: -- belonged in the unit.
13 MR. COHEN: Objection, if Mr. LaVaute wants to testify
14 he can testify.
15 HEARING OFFICER PROTAS: He's right, you can't really pose
16 a question that way.
17 MR. LaVAUTE: I did not make it a reference that I would
18 testify. I'm was just asking him a follow-up question that he's
19 testifying about.
20 HEARING OFFICER PROTAS: Okay, just make sure it's a
21 question, that's all.
22 MR. COHEN: No, he was saying this is our position --
23 MR. LaVAUTE: Well, it was going to be finished with
24 that was our position, was it not.
25 HEARING OFFICER PROTAS: Why don't you start it was it

1 not our position?
2 BY MR. LaVAUTE:
3 Q Mr. Dean, wasn't it the union's position that the
4 individuals were in the unit regardless of what jobs they were
5 on?
6 A The union wanted the six people in the unit.
7 Q And it didn't matter, did it, to the union what jobs they
8 were working on?
9 A I don't know if it did or not.
10 MR. LaVAUTE: I offer Union Exhibits U-1 and U-2.
11 MR. COHEN: No objection.
12 HEARING OFFICER PROTAS: Union's Exhibits U-1 and U-2
13 are admitted.
14 (Union Exhibits U-1 and U-2 received)
15 BY MR. LaVAUTE:
16 Q This is Union Exhibit U-3. Would you review Union U-3
17 first and tell me if you recognize it?
18 (Union Exhibit U-3 identified)
19 A Yes.
20 Q Was that letter sent to me from Kimberly Altschuler?
21 A I can't say who received it, but certainly it indicates
22 here that it was directed to you.
23 Q You got a copy of it, right, you received it?
24 A I'm sure it's in my records, yes.
25 Q What is this communication, Mr. Dean?

1 A The first paragraph indicates that based off of your
2 indication to change terms and conditions of employment for the
3 relocated Vineland workers that you were in a process to do that
4 per the communications attached.
5 MR. LaVAUTE: I would offer Union Exhibit U-3.
6 MR. COHEN: No objection.
7 HEARING OFFICER PROTAS: Union Exhibit U-3 is admitted.
8 (Union Exhibit U-3 received)
9 BY MR. LaVAUTE:
10 Q Mr. Dean, the changes that were reflected in that letter,
11 were those changes in fact made by Comar?
12 A These are the changes that we were asked by the union to
13 reinstate.
14 Q Is that a yes?
15 A Yes, any way of communications to the employees that would
16 have been our reinstatement notice to them.
17 Q To your knowledge are these changes still in effect today?
18 A They are.
19 Q The items that are in the memo attachments here are items
20 as to which the relocated 16 Vineland workers terms and
21 conditions are different from other -- from the other unit
22 workers, correct?
23 A These terms are different, yes.
24 Q Looking here at the second page of a memo, paragraph 8,
25 you made reference to different premium levels for the relocated

1 workers, correct?
2 A That is correct.
3 Q Their contribution premium contribution for that health
4 insurance is lower than the other unit employees, isn't that
5 true?
6 A That is correct.
7 Q This document refers to restoring 1999 benefit levels; do
8 you know what those difference in levels are?
9 A In general terms, yes, not in specifics.
10 Q Did you help put together the response to my subpoena?
11 A I did.
12 Q if I give you the book will it help you identify what the
13 benefit -- different benefit levels are or not?
14 A The '99 benefit plan is not in there, which is the health
15 care plan.
16 Q Okay, but that plan still remains in effect for the
17 relocated workers?
18 A Yes.
19 Q Are the benefit levels marked there under that plan?
20 A They are.
21 Q On a weekly basis what's the difference in single and
22 family contributions between the unit workers and the related 17
23 -- 16?
24 A It depends upon the tier that the employee is in. We have
25 four tiers from employee only up to family so it would depend

1 upon the tier. For the prior Vineland employees single rates is
2 $10 and I think the family rate is $20 a week.
3 Q Okay. Would you take another look at Union Exhibit U-2,
4 please?
5 (Witness perusing document)
6 When you recognized the union as the bargaining
7 representative of the former advocator employees as you state in
8 this communication, did you know what the job classifications
9 were for those employees in the unit?
10 A Only by the Board Order.
11 Q Didn't you know what job classifications those people were
12 working in at the time -- at this time? We are referencing
13 2007, March?
14 A I would have known that by information I had available.
15 Q That's my question. You knew what job classifications
16 they were in, didn't you?
17 A But all this communication was really directed at the
18 compliance with the Board Order.
19 Q I understand that. That's not my question. My question
20 is you knew, didn't you, what the job classifications these
21 people were in, right?
22 A I answered that.
23 HEARING OFFICER PROTAS: What is the answer?
24 THE WITNESS: The answer was yes.
25 HEARING OFFICER PROTAS: All right.

1 THE WITNESS: I knew what they were in because I had
2 access to that date.
3 BY MR. LaVAUTE:
4 Q So you therefor we knew what job classifications were
5 covered by the bargaining unit at this time, is that right?
6 MR. COHEN: Objection, that calls for a legal conclusion.
7 THE WITNESS: Would you repeat the question?
8 BY MR. LaVAUTE:
9 Q So when you wrote the letter you knew what job
10 classifications were covered by the unit at this time?
11 A No, I did not.
12 Q You didn't?
13 A I did not.
14 Q But you've already said the unit was the relocated
15 applicator employees?
16 A We didn't have a choice, we had to recognize the Board
17 Order regardless of position that you were their representative
18 of the 16 or 17 employees, so from our perspective there wasn't
19 a choice here.
20 Q So you were compelled to recognize us as representative of
21 these people?
22 A We complied with the Board Order and of the people that
23 were in the Board Order, recognized you as their bargaining
24 agent, yes.
25 Q And know what jobs they were doing at the time?

1 A It didn't matter what jobs they were doing.
2 Q I didn't ask you if it mattered, I said you knew what jobs
3 they were doing at the time?
4 A I knew, but it didn't matter.
5 Q Is that the bargaining unit in which you started
6 negotiations with the union in July of 2007?
7 A Our first proposal was for the finishing building.
8 Q What was the union's first proposal?
9 A The union's first proposal is -- maybe off the record, but
10 basically they wanted to represent a broader population than
11 just the 16.
12 Q That was the settlement proposal you're making reference
13 to --
14 A The union came in with --
15 Q -- right?
16 A -- that's correct, a broader application.
17 Q And that was conditioned on getting a contract in the
18 relocated unit and then getting majority status wherever else we
19 could get it; isn't that true?
20 A I don't know about that, what you asked initially was
21 where did the union start and I said to you the union started --
22 Q I said starting in negotiations.
23 MR. COHEN: Mr. Hearing Officer, the witness can't
24 constantly be interrupted with every answer he gives.
25 MR. LaVAUTE: Well, I only interrupt him if he's telling

1 me what I said and it's wrong.

2 MR. COHEN: if you allow him to finish his sentence and

3 finish what e says and then if he wants to ask another question

4 he can. This has been a constant cutting off the witness in

5 mid-sentence.

6 HEARING OFFICER PROTAS: Let's deal with this objection

7 as far as this objection is concerned. Try to let him finish

8 his answer then.

9 BY MR. LaVAUTE:

10 Q My question dealt with the union's negotiation proposal

11 for the contract.

12 A Your first question about your position was what was our

13 position and I said your position was that you wanted to

14 represent a broader population at the COMAS Facility.

15 MR. LaVAUTE: We're going to have to go off the record

16 for a moment so I can locate a document, please.

17 HEARING OFFICER PROTAS: Off the record.

18 (Off the record for a short break)

19 JUDGE LAYWOMAN: Back on the record.

20 MR. LaVAUTE: I would like to introduce Union U-4 for

21 identification.

22 (Union Exhibit U-4 identified)

23 BY MR. LaVAUTE:

24 Q Have you seen that before, Mr. Dean?

25 MR. COHEN: Can I please see a copy of something before

1 he shows it to the witness

2 HEARING OFFICER PROTAS: You sure can.

3 MR. COHEN: Show it to me before you show it to the

4 witness?

5 MR. LaVAUTE: I will be glad to do so. My mistake.

6 BY MR. LaVAUTE:

7 Q Take a look at that and tell me if you recognize it?

8 A Yes.

9 Q Is that the union's first proposal that you were referring

10 to?

11 A The first written.

12 Q The first written?

13 A Not actual.

14 Q The first written?

15 A That's correct.

16 Q Do you remember it was presented to Comar on June 21 of

17 '07?

18 A Approximately.

19 Q Now, what was the first collective bargaining agreement

20 negotiating date, do you remember?

21 A Some time after that.

22 Q July 7th perhaps?

23 A Yes, perhaps.

24 Q So was this Union Exhibit U-4 presented to Comar in a

25 meeting between the parties?

1 A It was.
2 Q This states it was a framework for settlement of
3 litigation, correct?
4 A If that's what it says on the document, I don't have it in
5 front of me.
6 Q Well, for purposes of clarifying the witness's prior
7 testimony, I'm going to make this an exhibit but alternatively
8 we can summarize what I think are the important parts of it
9 which are that --
10 MR. COHEN: No, I object to any summary. If he wants to
11 put it into evidence, he can put it into evidence. I don't want
12 him summarizing documents.
13 HEARING OFFICER PROTAS: That's probably the best way to
14 go.
15 MR. LaVAUTE: Okay, I offer Union U-4.
16 MR. COHEN: Are you providing s copy?
17 MR. LaVAUTE: Right.
18 MR. COHEN: No objection.
19 HEARING OFFICER PROTAS: Union U-4 id admitted.
20 (Union Exhibit U-4 received)
21 MR. LaVAUTE: This would be Union U-5, please.
22 (Union Exhibit U-5 identified)
23 BY MR. LaVAUTE:
24 Q Now, is this the prior contract, the Vineland contract
25 with the union?

1 A I'm going to state that it is, I have no actual -- it
2 certainly indicates it's the contract between Comar and the
3 Glass Workers between the dates of October '96 through '99.
4 HEARING OFFICER PROTAS: Can we get a stipulation that
5 that's what it is?
6 MR. COHEN: Without having gone through it I will accept
7 the representation that that's what it is.
8 HEARING OFFICER PROTAS: That's good enough, I'll accept
9 that and you're offering that into evidence?
10 MR. LaVAUTE: Yes.
11 HEARING OFFICER PROTAS: Okay, Union U-5 is admitted.
12 (Union Exhibit U-5 received)
13 MR. LaVAUTE: This is Union Exhibit U-6.
14 (Union Exhibit U-6 identified)
15 BY MR. LaVAUTE:
16 Q Can you tell us what that document is, Mr. Dean, Union U-
17 6?
18 A It's a proposal from United Steel Workers to Comar
19 regarding negotiations.
20 Q That was the union's written proposal given to you across
21 the table, was it not?
22 A I believe it was, yes.
23 Q Now, Mr. Dean, wasn't it the company's proposal to expand
24 -- strike that. Proposal to have the bargaining unit encompass
25 the entire finishing department?

1 A It was our proposal to find, under the new contract, the
2 finishing department and the jobs that made up the finishing
3 department as the new bargaining unit, yes.
4 Q Did the parties have an agreement for these negotiations
5 that all items agreed to were tentative, not reaching a complete
6 agreement?
7 A No to my understanding, that's not the case.
8 Q Did the parties have an understanding that any agreement
9 that was reached between them was subject to approval by the
10 International Union or Pittsburgh as it was referred to?
11 A I don't recollect that that was a stipulation.
12 Q I don't know what you mean by a stipulation, do you
13 remember that being said?
14 A Not as you relate it to, you know, the entire agreement.
15 I don't know if you had to get permission or some sort of
16 sanctioning from the National Group from time to time, but we
17 were under the impression as we proceeded here that everything
18 that was being agreed upon was something that we were using in
19 good faith to arrive upon a contract, not that it would be then
20 totally thrown out at the end of the day because we go through
21 all these deliberations and the United Steel Workers says it's
22 not -- that was never our belief.
23 Q Well, are you familiar with the concept of negotiations
24 over the unit as a permissive subject of bargaining?
25 MR. COHEN: Objection, this is not examination, this is

1 --

2 HEARING OFFICER PROTAS: Sustained.

3 MR. LaVAUTE: Union U-7, Your Honor.

4 (Union Exhibit U-7 identified)

5 HEARING OFFICER PROTAS: I don't think you've moved U-6

6 into evidence yet, did you?

7 MR. LaVAUTE: There may be a few I haven't moved into

8 evidence, but my intention is to move them all into evidence.

9 HEARING OFFICER PROTAS: Okay, just do you don't forget.

10 MR. COHEN: I object to this, this has absolutely no

11 relevance to this proceeding.

12 HEARING OFFICER PROTAS: Well, it hasn't been identified

13 yet.

14 BY MR. LaVAUTE:

15 Q Do you recognize that document, Mr. Dean?

16 A This was a document that was done prior to my arrival at

17 Comar.

18 Q Have you ever seen it?

19 A Not to my recollection.

20 Q By the way, you don't have any written agreements by the

21 union to this finishing department unit the company wanted, do

22 you?

23 A Only through the notes that we all maintained throughout

24 that negotiation session that clearly indicated a meeting of the

25 minds of the terms and conditions that we negotiated up through

1 the August 8th date.

2 Q What notes are you referring to, your own notes?

3 A The notes that you took, the notes that Skip took, and the

4 notes that John Shinn and --

5 Q Have you ever seen their notes?

6 A Because I know the conversations that were at those

7 meetings, I know that those notes would reflect that

8 understanding.

9 Q How do you know what that understanding was if you don't

10 know what a permissive subject of bargaining is?

11 MR. COHEN: Objection.

12 HEARING OFFICER PROTAS: Sustained. The whole idea of

13 asking him about permissive subjects requires a --

14 MR. LaVAUTE: Well, he's making a legal -- he's making

15 an assumption that because something was discussed it was agreed

16 to.

17 HEARING OFFICER PROTAS: That has nothing to do with the

18 definition of a permissive subject. Once you start using that

19 term it goes way beyond testimony.

20 MR. COHEN: He didn't say discussed, he said agreed to.

21 The concept of discussed and agreed to has nothing to do with

22 whether it's permissive or not permissive.

23 MR. LaVAUTE: I'm taking this back.

24 HEARING OFFICER PROTAS: We're not going to have

25 witnesses discussing whether something is permissive or not.

1 MR. COHEN: I agree.
2 BY MR. LaVAUTE:
3 Q You've never seen the union's notes, have you?
4 A They never offered to share them.
5 Q Mr. Dean, you're just going to have to answer my
6 questions. You've never seen them have you?
7 A No.
8 Q And you don't know what they say, do you?
9 A If I haven't seen them it would be obvious I wouldn't know
10 what they say.
11 Q You've never shared your notes with the union have you?
12 A I don't know that that's not true.
13 Q Do you have any recollection of sharing them with the
14 union?
15 A Well, I don't know if through any affidavit processes
16 we've gone through in the recent past that my notes might not
17 have been shared, so I don't know that to be true.
18 Q Okay, is that the only that you think they may have been
19 shared?
20 A Yes, but they never requested those either.
21 Q The parties had no agreed on procedure for producing notes
22 after meetings and not having each party review them and okay
23 them, did they?
24 MR. COHEN: Objection, what does this have to do with the
25 unit clarification proceeding?

1 HEARING OFFICER PROTAS: I agree, if there is --
2 MR. COHEN: This is not an unfair labor practice charges
3 that were gone through and resolve by this region.
4 HEARING OFFICER PROTAS: If there's notes that prove
5 something that's relevant, fine, but --
6 MR. LaVAUTE: This was brought up on their direct
7 examination. If they're not contending that there was some
8 agreement on this unit that they want, then I don't need to
9 pursue this. I presume that they brought it up for a reason.
10 HEARING OFFICER PROTAS: Okay, but if there is some
11 document and some notes that prove your position fine, but the
12 procedures for taking notes or not taking notes or reviewing
13 notes really isn't -- doesn't advance your case at all. You
14 either have a document ore you don't.
15 MR. LaVAUTE: I'm not sure I follow what you mean, but
16 I'm ready to move on in any event.
17 HEARING OFFICER PROTAS: Okay.
18 MR. LaVAUTE: I want to find out from the witness
19 something that's unclear on the record.
20 BY MR. LaVAUTE:
21 Q Mr. Dean, there was never any written agreement signed off
22 by the parties on this finishing department unit, was there? By
23 signed off I mean initialed or executed?
24 A There was no contract through the end of the negotiations
25 no, there was no official contract but there certainly --

1 Q Okay, you've answered that part of the question and there
2 was no tentative agreement signature sheet, was there kept
3 during negotiations, signed off on by the parties?
4 A Our process working through negotiations --
5 Q I'm asking you a direct question, can you answer my
6 question, please? Was there a tentative agreement sign-off
7 procedure during the negotiations whereby the parties executed
8 or initialed tentatively agreed to items?
9 A There was no procedure in place.
10 Q Thank you. No contract was reached, was it, between the
11 parties?
12 A The only thing -- right there wasn't a contract, but the
13 last thing that remained was basically had to do with vacation.
14 All other terms and conditions had been agreed to up to the
15 August 8th meeting, basically, so we had --
16 Q We didn't have an agreement on wages, did we?
17 A At that meeting we did, yes. The only thing that was left
18 outstanding in August of 2008 a vacation, but we had gone
19 through all the negotiations and you can't get to a point in
20 August of 2008 where you've got one thing left on the table and
21 the parties don't know where you stand, that's just not
22 realistic. That's just not realistic.
23 MR. LaVAUTE: Are we going to let the witness testify
24 about what's realistic?
25 MR. COHEN: I think the evidence speaks for itself in terms

1 of --

2 HEARING OFFICER PROTAS: Try to narrow your answers to

3 the questions.

4 BY MR. LaVAUTE:

5 Q Mr. Dean, by February 10th there was an agreement was

6 there; February 10th, 2009, you were at that meeting?

7 A I was.

8 Q Were you at the July 2008 meeting?

9 A I was at all the meetings.

10 Q So you remember a meeting in July 2008?

11 A I can refer to my notes, but I'm sure I was there, yes.

12 Q When Mr. Shinn said, we're no longer willing to discuss

13 the finishing department -- a finishing department unit?

14 A I thought that was in August of 2008 not July.

15 Q You remember the meeting though when he said that we're no

16 longer -- the union is no longer willing to discuss a finishing

17 department unit; do you remember that?

18 A Those weren't his full words, but I do remember that.

19 Q In substance was that what you understood?

20 A He changes his position, yes.

21 Q The union's position was stated on February 10th, 2009

22 that it would not negotiate for a unit covering the finishing

23 department?

24 A It would not negotiate other than the 16 where it had

25 majority interest on the part of that group, it would not

1 negotiate on any other group.
2 Q The company told the union that unless it was willing to
3 negotiate for another unit there wouldn't be any further
4 meetings?
5 A The union did not want to proceed forward unless the 16
6 were identified as the unit.
7 Q Do you remember your attorney telling the union to --
8 there won't be any further meetings unless you negotiate the
9 unit?
10 A No, I do not; we were open to --
11 Q Do you remember --
12 MR. COHEN: No, allow him to finish the answer.
13 MR. LaVAUTE: No, he's answered the question.
14 MR. COHEN: No, he hasn't.
15 MR. LaVAUTE: He doesn't remember that. That's fine,
16 it's the answer.
17 MR. COHEN: No, let him give the answer of what was said
18 at that meeting.
19 HEARING OFFICER PROTAS: That's for cross examination
20 The answer is no. Go ahead.
21 BY MR. LaVAUTE:
22 Q Do you remember your lawyer saying to the union call me if
23 you change your mind? Contact us if you change your mind?
24 A That was over a broader set of issues.
25 Q Do you remember those words being said?

1 A Yes, over a broader set of issues.
2 Q And do you remember that the company would have no wage --
3 MR. COHEN: First of all, what does this have to do with
4 the unit clarification proceeding. There have already been
5 unfair labor practice charges that have been investigated and
6 dismissed. What does this have to do with the unit
7 clarification?
8 MR. LaVAUTE: Well, you now mentioned the charges, so
9 let me just say, it has a lot to do with them because it has to
10 do with a historical bargaining unit and it has to do with our
11 position that no agreement was ever reached on a different unit
12 and that any subjects -- any discussion of such a different unit
13 was at the company's request and --
14 MR. COHEN: That is absolute --
15 MR. LaVAUTE: Excuse me, I'm not done. As a permissive
16 subject of bargaining we were entitled to discuss it. Now --
17 MR. COHEN: Now that you're finished can I say
18 something?
19 He's filibustering.
20 MR. LaVAUTE: I'm not done yet. You have to be quiet
21 for a while if you can. So the company's charge against the
22 union was dismissed where the company claimed the union had
23 reneged on an agreement on the finishing department unit. The
24 Region found insufficient evidence to support that because there
25 were things up in the air and there was no complete contract

1 reached.

2 I intend to submit that dismissal letter into evidence.
3 It was never appealed and I intend to put the union's charges,
4 which are still pending, one on a motion for reconsideration,
5 and one on appeal to the General Counsel into evidence because
6 they bear on these issues of whether the parties have changed a
7 historical unit, so I want to put you -- I might aa well get
8 that out there now since it's been mentioned a few times by Mr.
9 Cohen.

10 MR. COHEN: And it has nothing to do with it and both
11 the union's charges against the company were also dismissed and
12 re-appealed and dismissed. This is not -- excuse me, we are not
13 litigating an unfair labor practice charge here, so asking what
14 positions were taken about further bargaining at the last
15 session isn't relevant to this proceeding. it has nothing to do
16 with this proceeding.

17 HEARING OFFICER PROTAS: Well, clearly whether any of
18 this conduct was an unfair labor practice doesn't have anything
19 to do with this proceeding. However, and I'm not necessarily
20 convinced that it's going to be totally relevant, but the issue
21 of bargaining history in the context of a UC hearing is relevant
22 so to the extent there's been a history of bargaining and
23 certain unit versus another unit that testimony I'm allowing in
24 and only for that purpose, not for any finding of any position
25 was a ULP.

1 MR. LaVAUTE: Well, there is a another aspect of this
2 ULP business though that is relevant and that is Board Law
3 indicates that if the employer is seeking a finding in a unit
4 clarification proceeding that preempts charges that are pending,
5 CA charges that are pending that's not an appropriate unit
6 clarification matter and so I think that the status of the
7 (8)(a)(5) appeals are pertinent from that standpoint.
8 MR. COHEN: That is something that this Region dislikes
9 administratively, that is something that Mr. LaVaute argued to
10 the Board that the UC should not go ahead because of his appeal
11 of dismissals of the union charges and the Region has already
12 decided to go ahead, so if he wants to make another -- send
13 another letter again asking, as he sent numerous letters asking
14 that there be no UC hearing, he could do so, but this is not to
15 vindicate it here. No, it is not.
16 MR. LaVAUTE: That's why we're having a hearing to get
17 the answers.
18 MR. COHEN: Not whether or not --
19 MR. LaVAUTE: The Board ultimately I going to decide
20 this --
21 MR. COHEN: -- whether or not there should be a UC
22 hearing or not based on his pending unfair labor practice
23 charges.
24 MR. LaVAUTE: That's a factor that Board Law considers
25 and I want the Board to have this record when it takes this up.

1 HEARING OFFICER PROTAS: Well, it's certainly not
2 prejudicial to your position, but the only thing is I'm
3 concerned about is the time spent quibbling about it. I mean
4 it's a relatively cut & dry thing -- dismissed.
5 MR. LaVAUTE: I have copies of these pieces of paper to
6 put into evidence.
7 MR. COHEN: I have no objection to him putting in all
8 the documents, but questioning this witness at this point in
9 time about legal issues or what was said at the last negotiating
10 session about further sessions, is irrelevant to this,
11 irrelevant.
12 HEARING OFFICER PROTAS: I don't even know where we are
13 at this point, but --
14 MR. LaVAUTE: I'm ready to proceed.
15 HEARING OFFICER PROTAS: Okay.
16 MR. LaVAUTE: Union U-7 has not been identified so I'm
17 going to have to seek the situation from counsel to put it in, I
18 guess.
19 HEARING OFFICER PROTAS: Okay, U-7 is --
20 MR. LaVAUTE: It's the letter from the Region to Mr.
21 Cohen.
22 HEARING OFFICER PROTAS: Oh, it's a dismissal letter?
23 MR. LaVAUTE: No, it's December '06 letter.
24 HEARING OFFICER PROTAS: Oh.
25 MR. COHEN: You have it?

1 MR. LaVAUTE: I have it, you don't have it yet.
2 HEARING OFFICER PROTAS: Is there any objection to
3 putting that in?
4 MR. COHEN: Yes, I do, it's completely irrelevant. It
5 has to do with before this case was settled with the General
6 Counsel in the matter of the underlying was resolved. It has
7 absolutely nothing to do -- we are not vindicating -- the
8 history of the unfair labor practice charges which the Board has
9 already found were completely remedied, so I don't agree with
10 this.
11 HEARING OFFICER PROTAS: Well, you don't have to agree
12 with it, so you're not agreeing to it, it's not coming in. That
13 was an easy one for me.
14 MR. LaVAUTE: Let's hold that spot open though in case
15 we --
16 HEARING OFFICER PROTAS: It's identified.
17 MR. LaVAUTE: Union Exhibit U-8, please.
18 (Union Exhibit U-8 identified)
19 BY MR. LaVAUTE:
20 Q I bet you can identify this letter? Did you send it?
21 A I did.
22 MR. LaVAUTE: I offer Union Exhibit U-8.
23 MR. COHEN: No objection.
24 HEARING OFFICER PROTAS: Union Exhibit U-8 is admitted
25 into evidence.

1 (Union Exhibit U-8 received)

2 BY MR. LaVAUTE:

3 Q Take a look at Union Exhibit U-9, for identification Mr.

4 Dean and tell me if you're familiar with that document?

5 (Union Exhibit U-9 identified)

6 A This was dated 12-31-04, so it was done well before my

7 time at Comar.

8 Q The question is are you familiar with it?

9 A No.

10 Q Looking st the document --

11 MR. COHEN: Objection to the witness being questioned

12 about a document that he cannot identify, he has not seen it.

13 HEARING OFFICER PROTAS: Let's see what the question is

14 first.

15 BY MR. LaVAUTE:

16 Q Looking at the document it lists the relocated Vineland

17 employees, does it not? Take a look at it and see if you can

18 confirm that?

19 MR. COHEN: How is this witness supposed to confirm

20 that, it was years before he was employed.

21 MR. LaVAUTE: A simple factual question. Either he

22 knows or he doesn't.

23 THE WITNESS: I can't confirm everybody.

24 BY MR. LaVAUTE:

25 Q You can't?

1 A I cannot.
2 Q Which ones can't you confirm?
3 A The ones that are still employed today that I know that
4 came over from Vineland, they're still with us today.
5 Q Let me ask you this, how many of these listed people are
6 in the category that you can't confirm?
7 A Do you want mr to call them out by name?
8 Q Yes.
9 A Mary Cione, Lea Clark, Michelle Guilford, Theresa Morgan,
10 Debra Stamm, Lenell Stewart, those are some that I don't
11 recognize.
12 Q Of the other ones that you do recognize, you see the job
13 titles, job locations are listed there?
14 A I do see them listed here.
15 Q Can you tell us whether those have changed since -- are
16 they any different presently, let's put it that way?
17 A So ask your question one more time?
18 Q The job titles and physical job locations, for the people
19 that you do recognize, are they different presently for anybody?
20 A Some are.
21 Q Some are and who would they be?
22 A Ruth Benowitz.
23 Q Is she in the finishing department now?
24 A She is not.
25 Q Where is she?

1 A Cod cup.
2 Q Is she one of the six?
3 A She is.
4 Q Did she go to cod cup some timer after 2004?
5 A I'm going to -- I would be making a guess on that.
6 Q So you don't know?
7 A I don't know.
8 Q When did cod cup operations start?
9 A I don't know the exact date, it started before I got
10 there.
11 Q Who else?
12 A James Massey, has him classified aa a finishing
13 maintenance mechanic; he is a maintenance for the entire
14 facility now.
15 Q All right, who else?
16 A Doris McGaha.
17 Q What is she now?
18 A Doris is a cup operator.
19 Q Okay.
20 A It says here that Florence Simione has voluntarily
21 resigned. I don't know what that means because I know she's an
22 employee today in our glass group. Some of the employees that
23 may be finishing operators B could now be A's based off of
24 promotional opportunities that they've gone through, so I don't
25 know that this is a fair representation of what exists today.

1 MR. LaVAUTE: All right, I'll withdraw the exhibit.
2 (Union Exhibit U-9 withdrawn)
3 MR. COHEN: You know what, I'd like to offer it.
4 MR. LaVAUTE: It hasn't been authenticated.
5 MR. COHEN: That's okay.
6 BY MR. LaVAUTE:
7 Q Now, Mr. Dean, the merit increases you said have been
8 given the last two to three years; is that your testimony?
9 A We have given merit increases since I've been there in
10 September of every year.
11 Q Are you aware that merit increases were given prior to
12 your arrival on the scene?
13 A Again, no firsthand evi -- I mean I have no -- I didn't do
14 it, I wasn't responsible for it, but I'm assuming they were
15 done.
16 Q Did you review prior merit increases in conjunction with
17 the ones that you were reviewing?
18 A No.
19 Q By the way, no proposals on wage increases other than
20 these merit -- other than the merit increase in wages, there
21 were no wage proposals that got implemented through negotiations
22 were there?
23 A We has not reached a final contract.
24 Q Okay.
25 A However, we did ask for permission to move forward with

1 the wage increases and most recently when we had reached
2 agreement of two-and-a-half percent in the August agreement, we
3 got -- we asked for a clarification in terms of implementing
4 that for the 16 folks that you wanted to represent at that point
5 in time.
6 Q Implementing what?
7 A What we has agreed to in terms of the wage part of our
8 negotiations, we has reached an agreement and as we normally
9 do, we reach out and said listen now that you say you want to
10 represent just the 16 we asked for clarification on how we could
11 go about doing that for them.
12 It was, I think -- I think it was a two-and-a-half
13 percent increase in the third year and we asked for guidance in
14 terms of doing that and you said no, so we eventually treated
15 them like we did everybody else.
16 Q You gave then merit increases?
17 A We did.
18 Q All right, so --
19 A So we were acting on our -- you know, all of the terms of
20 our negotiations.
21 Q But it wasn't implemented?
22 A No, but what was a standard thing between us throughout
23 this whole process, with the finishing department all the way
24 along when we has opportunities to make sure that we were
25 bringing you into the loop we asked for clarification on

1 implementation of wage increases, anything that was happening in
2 the plant as it related to the finishing department and the six,
3 we always asked for clarification so we really went over and
4 above the process here to make sure that throughout this whole
5 negotiation process you were in the loop, you has agreement and
6 that we were looking to continue to comply with and reach a
7 contract.
8 Q The 401-K proposal applied to everybody on the unit,
9 didn't it, all the hourly workers?
10 A It does apply to everyone.
11 Q That was discussed with the union?
12 A We discussed the 401-K as a part of our negotiation
13 sessions, yes, we did. The union presented proposals, we
14 presented proposals, the union finally accepted our current
15 401-K program for the finishing department and at that point in
16 time the unit that we had described which was the finishing
17 department and the six people outside the finishing department.
18 Q You won't find any written proposal by the union covering
19 anything like a 401-K for the finishing department, will you?
20 A The union -- and I answered the question?
21 Q Will you find a written proposal by the union?
22 A I believe the union made a request for the union's 401-K
23 program for the finishing department and we reviewed that
24 collectively, we collectively decided that the 401-K program
25 that Comar has would apply to the then bargaining unit which was

1 the 50 employees in the finishing department and the six people
2 outside.
3 Q That was the unit you wanted?
4 A That was the unit we had agreed to in negotiations.
5 Q That was the unit that was under discussion?
6 A It was not under discussion, it was a meeting of the
7 minds, Jim. Again, I'll get back to you Jim, I think the
8 evidence here if submitted in terms of the notes clearly states
9 our agreement through all of the terms and conditions reaching
10 the August date.
11 Q You're not answering my question any longer and the time
12 for speeches are on your own dime not on mine.
13 MR. LaVAUTE: I'm going to move to strike that last
14 serendipitous statement by the witness here.
15 THE WITNESS: You put in here this Union U-8, just dated
16 May 29th, 2008, the provision day, what is the current
17 bargaining unit and it has the employer's written position.
18 MR. COHEN: The responses from the union it basically
19 says that that was the position, it was agreed to.
20 HEARING OFFICER PROTAS: Does this really add anything?
21 MR. LaVAUTE: This is the reason, this was an anti-union
22 campaign, this is why the union said we're not going to be
23 willing to discuss a larger unit any longer because you're
24 engaging in an anti-union campaign and we'll never get majority
25 status.

1 MR. COHEN: That charge was filed and dismissed and
2 appealed and dismissed.
3 HEARING OFFICER PROTAS: When was a part of -- I don't
4 think it really matters, you're talking about -- you -- I'm
5 permitting you to go down this path because history of
6 collective bargaining is something that's relevant, but here you
7 have a perfectly concise statement of where you were in May of
8 2008 and I understand I guess in August 2008 there was a change?
9 MR. COHEN: That's correct.
10 HEARING OFFICER PROTAS: But as far as --
11 MR. LaVAUTE: This is the company's position where we
12 were.
13 MR. COHEN: It's responsive, why don't you put that in
14 there.
15 MR. LaVAUTE: And -- there's communication from the
16 union, from me that we'll put in.
17 HEARING OFFICER PROTAS: Okay, I think that's probably -
18 -
19 MR. LaVAUTE: Finishing building and represented
20 employees to us means the presently represented employees that
21 is the Vineland workers.
22 MR. COHEN: This has already been gone over throughout
23 this proceeding. The union has already filed charges over this
24 and the union has a -- Mr. LaVaute can put in letters that he
25 wants to put in, but the union actually put out a very specific

1 response to this in which they did not contest that this was the
2 agreed upon unit at the time.
3 What happened was, let the record be complete and you
4 know what, I have no problem with putting in all of the charges
5 and dismissal letters in, after this was put in a
6 decertification petition was filed. The union then changed
7 their position as to the bargaining unit. The Region found that
8 it was only a tentative agreement on the bargaining unit and
9 therefore it was not binding because there was final agreement
10 and the Region --on that basis the Region dismissed the charge.
11 There was no dispute that -- and there was a response
12 from the union that was sent out to all of the employees --
13 MR. LaVAUTE: There side was chosen.
14 MR. COHEN: Well, then put in the response from the
15 union.
16 MR. LaVAUTE: There is no response to all the employees.
17 MR. COHEN: There was a response by the union to this
18 document.
19 HEARING OFFICER PROTAS: All I'm suggesting is that when
20 you have a document it does -- I doubt that you're going to
21 undercut what the employer's position was where they have it in
22 writing at a time when it wasn't particularly a bone of
23 contention or we didn't know we'd be here to cross examine the
24 nuances of that. I don't know that you're going to advance
25 things -- anyway, for what its worth, I think you have a pretty

1 good record already, but if you have any other questions, sure.
2 MR. LaVAUTE: Okay.
3 BY MR. LaVAUTE:
4 Q The 401-K plan that was put in place for the finishing
5 department is the same plan that we put in place that is in p
6 place for all of the Buena workers; is that true?
7 A Are you asking that as it relates to negotiations or are
8 you asking that as it relates to -- or does our 401-K plan apply
9 to every employee today. The answer is yes.
10 MR. LaVAUTE: I have no further questions.
11 MR. COHEN: I have several.
12 REDIRECT EXAMINATION
13 BY MR. COHEN:
14 Q In terms of the -- after the -- after Comar complied with
15 the Board Order and negotiated an agreement with tho Board to
16 comply --
17 A Yes.
18 Q -- what was Comar's attitude in regard to anything having
19 to do with the union?
20 MR. LaVAUTE: Objection, that's too broad to deal out.
21 HEARING OFFICER PROTAS: Do you understand the question?
22 If you can, answer it.
23 THE WITNESS: Our goal was to move forward and look to
24 get a contract. That was our goal.
25 BY MR. COHEN:

1 Q Now, let me ask you this, did the company believe that
2 the six employees who were no longer in finishing were doing
3 work that used to be performed as part of the applicator
4 division in Vineland?
5 A That was not our position.
6 Q Why did the company agree to initially bargain with the
7 union regarding those six people?
8 A Initially we offered proposals for them to come into the
9 finishing department because we felt like they were outside of
10 the work that was done at Vineland and moved to Buena.
11 Q Was that proposal made in the beginning of bargaining?
12 A As we were discussing the bargaining unit, yes, that was a
13 position we had.
14 Q What was the union's response to the position that they
15 should be transferred back into the finishing department?
16 A The union did not want the employees to be transitioned
17 back into tho finishing department as an offering.
18 Q Now, did tho company explain why it believed that the
19 entire finishing department was the Board unit?
20 A Well, the work that was done at the Vineland Facility was
21 pretty much the same that was being down at the finishing
22 department, if not identical in terms of dropper assemblies.
23 That's what we did at our Vineland Plant, we assembled dropper
24 assemblies, that's what we do within our finishing department at
25 Buena today.

1 Q Was that reason given to the union in terms of why the
2 company proposed that the finishing department be the unit?
3 A Yes.
4 Q And did the union object at the time?
5 A No.
6 Q In fact, the proposal that the union made that Mr. LaVaute
7 showed you, Exhibit U-6, tho union's proposal, did it ever talk
8 about representing just the 16 or 17 employees chosen to work in
9 the applicator division?
10 A No.
11 Q In fact, at any point in time until August of 2008 did the
12 union ever take the position that the unit was only the 16 or 17
13 people who used to work in Vineland?
14 A It did not.
15 Q At any point in time did the union offer any counter
16 proposal to the company's claiming that the bargaining unit was
17 the finishing department, that that was the people who performed
18 work that used to be performed in Vineland?
19 A No counter proposal to that.
20 Q Did it agree that that was the proper unit?
21 A Yes.
22 Q In terms of the six people, why did the company agree to
23 include the six people but not their positions?
24 A To get at the reason we started bargaining to begin with,
25 to reach a contract, so in a good faith effort to move

1 bargaining along we had decided to go ahead and grandfather
2 those people in, not their positions in an effort to reach a
3 contract.
4 Q Was that tied to -- at all times to tho concept that it
5 would be the finishing department and those six?
6 A It was the finishing department and the six, but any
7 replacements for the six would not be in the bargaining unit
8 going forward.
9 Q And during the bargaining did the company point out that
10 people who had transferred into finishing from Vineland that a
11 number of them had left and been replaced?
12 A Yes.
13 Q Initially, before August of 2008 was it the union's
14 position that those people should be in the bargaining unit?
15 A By accepting the finishing department that seems to be
16 true.
17 MR. LaVAUTE: Objection, the witness is drawing a
18 conclusion.
19 BY MR. COHEN:
20 Q Well, did they ever ask that anyone be carved out of the
21 production employees in the finishing department?
22 A No, they did not.
23 Q Until August of 2008?
24 A That's correct.
25 Q Now, in terms of the difference in the -- just so the

1 record is clear, the difference is for the 16 people, were those
2 difference anything other than a remnant of complying with the
3 Board Order?
4 A No, they were specifically that.
5 Q As of August of 2008, before the union changed its
6 position, was there an agreement, was there agreement on having
7 uniform benefits for everyone in the finishing department? For
8 example, was there an agreement on holidays?
9 A Yes, there was.
10 Q What was the agreement?
11 A We had reached 10 holidays at that point .
12 Q Was that for everyone in tho finishing department?
13 A It was.
14 Q Including people who used to work in Vineland?
15 A Yes.
16 Q And in terms of all the other differences in terms and
17 conditions of employment that were different for people who used
18 to work in Vineland, other than vacation was there an agreement
19 that everything would be uniform --
20 MR. LaVAUTE: I'm going to object to leading the witness
21 on this.
22 HEARING OFFICER PROTAS: It's true.
23 BY MR. COHEN:
24 Q What was the position at that point before August 2008,
25 was there any agreement on what the benefits were going to be

1 for employees in the finishing department?
2 A Yes, we had reached agreement on all terms and conditions
3 that were discussed except for vacation and wage and at the
4 August meeting we did reach agreement on wages.
5 Q Now, you were asked about in the summer Mr. LaVaute made
6 reference to July and you said you believed it was August, but
7 there was a meeting where Mr. Shinn came in and said something
8 about a change in the union's position?
9 A Again, August/July 2008 when we got together for a
10 scheduled -- normally scheduled bargaining session it was our
11 belief at that point in time that we would probably come out of
12 that with a contract because we were very close and at that
13 meeting is where he announced the union's position, they were
14 changing it from what we had agreed to before, which was the
15 finishing department and the six outside to now only wanting to
16 represent the current Vineland employees who now work in the
17 unit that were part of the Board Order.
18 Q From June of 2007 until that date had the union ever taken
19 the position that the unit is only those 16 people?
20 A No.
21 Q Was there something that happened prior to the meeting
22 that Mr. Shinn made reference to in terms of why he was changing
23 his position?
24 A The petition that had been filed.
25 Q The decertification petition?

1 A That is correct.
2 Q Now, after the May 29th letter that you were shown,
3 Union's UB the company described what the agreement was on the
4 unit, did the union ever say that that was incorrect?
5 A No.
6
7 MR. COHEN: I have no further questions.
8 HEARING OFFICER PROTAS: Mr. LaVaute?
9 RECROSS EXAMINATION
10 BY MR. LaVAUTE:
11 Q Mr. Dean, you have changed in your testimony that those
12 changes; you're not changing that testimony, are you?
13 A Restate the question.
14 Q You testified to me that the changes the company rescinded
15 for the relocated workers are still --those changes are still in
16 place, the rescission is still in place today?
17 A That's correct.
18 Q Okay, you're not changing that testimony, right?
19 A No.
20 MR. LaVAUTE: No other questions.
21 FURTHER REDIRECT EXAMINATION
22 BY MR. COHEN:
23 Q Just so we're clear, the rescission is still in place
24 because no final contract was entered into that made terms
25 uniform?

1 A Right, we are still acting on keeping those changes in
2 place anticipating that we would move forward towards a contract
3 and then implement at that point in time.
4 A Implement what exactly?
5 A Hopefully a signed contract.
6 Q In terms of the agreement that was in place as of the
7 tentative agreement that was in place as of August what are --
8 MR. LaVAUTE: Objection, leading in form.
9 MR. COHEN: It's not --
10 MR. LaVAUTE: Leading in form.
11 BY MR. COHEN:
12 Q As of August, as you understood the status of
13 negotiations, there was agreement regarding rescinding the
14 rescission except for vacation?
15 A Yes.
16 Q The reason why the rescission has not been rescinded is
17 that because there has been no contract meeting?
18 A That is correct.
19 MR. COHEN: That's it.
20 MR. LaVAUTE: I have no other questions.
21 HEARING OFFICER PROTAS: Thank you, you're excused.
22 (Witness excused)
23 HEARING OFFICER PROTAS: You have nothing further? Does
24 the union have any witnesses?
25 MR. LaVAUTE: Yes, we do, but I'm going to need some

1 time to put some things together.

2 HEARING OFFICER PROTAS: How much time do you think you

3 need?

4 MR. LaVAUTE: It's going to take me some time to do it.

5 HEARING OFFICER PROTAS: How about 15 minutes?

6 MR. LaVAUTE: I'll try to do it in 15 minutes.

7 HEARING OFFICER PROTAS: Okay, we'll be off until 10 to.

8 (Off the record for counsel to prepare witness)

9 HEARING OFFICER PROTAS: Back on the record. Who is

10 your witness?

11 MR. LaVAUTE: The union will call John Shinn.

12 HEARING OFFICER PROTAS: Okay. Please raise your right

13 hand.

14 Whereupon,

15 JOHN SHINN

16 Having been duly sworn or affirmed, testified as follows:

17 HEARING OFFICER PROTAS: Have a seat and give your name,

18 please?

19 THE WITNESS: John Shinn, S-h-i-n-n.

20 DIRECT EXAMINATION

21 BY MR. LaVAUTE:

22 Q John, you hold a position with the Steelworkers

23 International Union?

24 A Yes, I do, I'm the New Jersey SubDistrict Director.

25 Q In conjunction with that position have you had

1 responsibilities with respect to the Comar continuing dispute?
2 A Yeah, I got involved with Comar right after the plate
3 glass workers merged with the United Steelworkers.
4 Q Have you been a participant in the negotiations between
5 Comar and the union as a result of the NLRB's Decisions and
6 Orders?
7 A Yes, I have.
8 Q Are you familiar with the trans-marine part of the NLRB
9 order?
10 A Yes, I am.
11 Q When was the first time that the union was granted access
12 to Comar's facility in Buena?
13 A I believe it was June of 2007.
14 Q At that time was there any negotiating for a new contract
15 on that date?
16 A No, that was just a plant tour.
17 Q After that did there come a time when the union made a
18 proposal to the company for a settlement of the litigation?
19 A Yeah, prior to our first bargaining sessions, there was a
20 proposal made.
21 Q Would you tell us generally what that proposal was?
22 A Yeah, my recollection of it was if we could reach an
23 agreement to cover the relocated Vineland employees and if we
24 can get a majority status of the remaining company maintenance
25 and production employees that contract would apply then in terms

1 that we would agree to give the company a substantial break on
2 the trans-marine remedy.
3 Q Was that a proposal that was made for litigation
4 settlement -- was that -- what was the company's response to
5 that?
6 A They rejected that outright.
7 Q After that was there -- was there bargaining sessions
8 scheduled for the new contract?
9 A Yes, I believe when we took the plant tour we scheduled at
10 least the first date of negotiations which I believe -- I'm not
11 sure if it was July or August of 2007.
12 Q I'm showing you what's been identified and entered as
13 union U-6, do you remember that document?
14 A I do.
15 Q Was that presented -- how was that presented to the
16 company?
17 A That was handed across the table at our first negotiation
18 session.
19 Q And the unit that's described in that proposal is what
20 group of employees?
21 A It says the company recognized the United Steel Paper and
22 Forestry, Rubber, Manufacturing, Energy, Allied Industrial
23 Service Workers International Union, AFL-CIO, CLC also known in
24 short as United Steelworkers USW as the exclusive bargaining
25 representative for hourly paid production workers who are

1 performing the work that was formerly done aa part of the
2 Applicator Division of Comar at its Facility located in
3 Vineland, New Jersey, except the exclusions in there.
4 Q What group of workers was that?
5 A That was the --I believe 17 or 18 at the time that were
6 relocated.
7 MR. COHEN: Objection as to what the unit was. It
8 speaks for itself. He has a document that shows that that was
9 16 or 17, that's what was said. That's today. Asking him what
10 group of employees is that, that's the question that we're
11 determining here.
12 MR. LaVAUTE: It's his proposal, he ought to be able to
13 testify as to what it was for.
14 HEARING OFFICER PROTAS: That's right. That testimony
15 comes in.
16 BY MR. LaVAUTE:
17 Q Was this -- did this language track the Board's unit in
18 the Decision?
19 A That's my understanding from consultation with you.
20 Q Now, at that first bargaining session was there -- were
21 there any ground rules agreed to?
22 A Yes, we talked about ground rules in the beginning of the
23 sessions after we talked about wanting to try to reach a fair
24 equitable agreement. Anything agreed to would be a tentative
25 agreement based upon completion of an entire agreed to contract.

1 Any TA would be conditioned upon a complete agreement.
2 There was also mention that any agreement has to be
3 approved by Pittsburgh, the International Union.
4 Q Now, in the subsequent negotiations, Mr. Shinn, was the
5 union willing to discuss employees and issues that went beyond
6 the 16 or 17 relocated workers?
7 A Yeah, we discussed people beyond the 17 workers.
8 Q For example, did the parties spend any time in the
9 negotiations on the proposition that they might put the entire
10 unit work force into the Steelworkers Health Plan?
11 A Yeah, we put a proposal on the table to get the insurance
12 information from the company's current plan so we could take it
13 back to the United Steelworkers Health and Welfare Fund to see
14 if we can get a better level of benefits for a cheaper price and
15 save the company and our members money.
16 Q In discussing that what was the union's objective?
17 A We would be willing to talk about any issue to try to get
18 to a collective bargaining agreement. We even offered the
19 company, if people were not included in the agreement, they
20 would also be allowed to participate in the Steelworkers Health
21 and Welfare Fund as part of the entire facility even though they
22 wouldn't be union members, including salaried employees.
23 Q Was this effort with respect to the Steelworkers Health
24 Fund, was that the subject of one meeting or was it more than
25 one meeting?

1 A No, it was many meetings. We had an information request
2 out, they got the claims information, the experience and
3 everything to us so we could go back and get it to the
4 Steelworkers Health and Welfare Fund so it was over the course
5 of two or three meetings at least we discussed the health
6 insurance issue.
7 Q In the negotiations with respect to the subject of wages,
8 how was that dealt with by the parties; was it specific to
9 specific jobs or job classifications or was it discussed in some
10 other manner?
11 A We discussed wages as using the employee's current base
12 rate and a percentage applied to the employee's current base
13 rate of the people we were talking about.
14 Q So, did the wage negotiations get conducted by reference
15 to just a percentage increase?
16 A Yes.
17 Q Now, there was a -- did there come a time when the company
18 proposed a bargaining unit consisting of the finishing
19 department workers?
20 A Yes, that was really the first negotiating session in July
21 or August -- July, excuse me, it was July. The company proposed
22 that the bargaining unit be the finishing department employees,
23 that was in the first meeting, actually the first proposal
24 across the table.
25 Q Did that subject, the bargaining unit that was larger than

1 the relocated workers, was that a subject that was discussed a
2 few times or many times?
3 A Multiple times because it increased the 17 to around 53 or
4 54 total and we had the six people outside the finishing
5 department, so we had many discussions about that.
6 Q Did the union have majority standing in that 50 employee
7 grouping?
8 A No, not at all, we had probably around 11 out of the 47,
9 48 at the time I believe it was. Actually, we took a caucus
10 right after the company gave that proposal across the table and
11 I believe I was the first one to say how could we agree to a
12 contract to cover people that weren't our members, wouldn't that
13 create a problem down the road.
14 Q Okay, and how did the union view the likelihood that it
15 would get a contract -- be able to put together a contract
16 covering this larger group?
17 MR. COHEN: I object to the union's view. If this
18 witness wants to testify as to what was said during negotiations
19 or things that actually happened, but the union's view isn't
20 relevant.
21 MR. LaVAUTE: I think it's relevant.
22 HEARING OFFICER PROTAS: I'll allow it, go ahead.
23 BY MR. LaVAUTE:
24 Q Do you remember the question?
25 A No, please.

1 Q What was the union's view as to the likelihood of being
2 able to enter into a contract covering a group of the entire
3 finishing department or larger for that matter?
4 A We were hoping the company would bargain in good faith and
5 get to a reasonable contract where we would go back and sign up
6 the people that weren't our members and give them proof that
7 there is a contract with better benefits than they had and also
8 protections that a collective bargaining agreement would give
9 them.
10 Q Were we certain we were going to be able to get those
11 people?
12 MR. COHEN: I object to this testimony. This is what
13 was in his mind.
14 HEARING OFFICER PROTAS: Well, it's one-half of the
15 equation.
16 BY MR. LaVAUTE:
17 Q Were we certain we were going to be able to get a majority
18 of those people signed up?
19 A No.
20 Q Did there come a time when the union concluded that the
21 company was going to conduct an anti-union campaign?
22 MR. COHEN: Objection, leading.
23 HEARING OFFICER PROTAS: He's right, this is leading.
24 MR. COHEN: Also relevance.
25 HEARING OFFICER PROTAS: An that too.

1 MR. LaVAUTE: Well, I'm going to show him Union Exhibit
2 U-8 here.
3 HEARING OFFICER PROTAS: That's already in evidence.
4 MR. LaVAUTE: Right.
5 BY MR. LaVAUTE:
6 Q Do you recognize that document?
7 A Yes, I do.
8 Q Did this document cause the union to reach a conclusion as
9 to the likelihood of getting a majority status in this overall
10 group or larger group the company was seeking?
11 A No, we were extremely concerned. This was not the first
12 letter, I believe it was the second letter that came out and we
13 viewed this as a clear attempt by the company to run an anti-
14 union campaign against our union.
15 MR. COHEN: I object and move to strike that. It's
16 absolutely irrelevant at this proceeding.
17 HEARING OFFICER PROTAS: Well, I would agree.
18 MR. LaVAUTE: Well, let me be heard on it.
19 HEARING OFFICER PROTAS: It doesn't really matter what
20 caused or motivated the bargaining history, it is whatever it --
21 it was what it was. I mean, I don't -- the motivation --
22 MR. LaVAUTE: It supports the union's position that it
23 changed its position on what it was willing to consider as far
24 as a bargaining unit and in that respect I think it is relevant.
25 HEARING OFFICER PROTAS: Well, I agree with you to the

1 extent it shows the timing of change of position, timing of the
2 change, but certainly the Reader of the Record is not going to
3 be influenced in any way as to any claim that there was an anti-
4 union campaign here.
5 If the union thought that or said it thought that and
6 changed its position -- it's the change of position that really
7 matters. Okay, go ahead.
8 BY MR. LaVAUTE:
9 Q Did that document and the other letter cause the union to
10 have questions about whether it could ever achieve a majority
11 status to support a large bargaining unit group?
12 A Well, these two letters -- well this letter and the other
13 letter and also combining the fact that a decertification
14 petition came out about a week after this letter was sent out.
15 It gave us grave concerns about the ability to sign people up
16 into our union.
17 Q Did you believe you could have a contract -- a new
18 contract with the company for the finishing department without
19 having majority status?
20 A No.
21 Q Did you have a meeting with the company on July 8th, 2008?
22 A Yes, I did.
23 Q Where was that?
24 A I believe it's the Clarion Hotel on Route 70 in Cherry
25 Hill, New Jersey.

1 Q Was this a negotiating meeting?
2 A Yes, it was.
3 Q What did you say to the company about the bargaining unit?
4 A I told the company that circumstances has changed, that
5 it's clear that the company I engaged in an anti-union campaign
6 and we no longer agreed with their proposed bargaining unit and
7 we're proposing that the relocated Vineland employees are the
8 bargaining unit.
9 Q Was there a letter sent -- follow-up on that?
10 A Yes, there was.
11 Q Do you recognize Union U-10?
12 (Union Exhibit U-10 identified)
13 A I do, that's the letter that I received a copy of that was
14 sent right after the negotiating sessions.
15 MR. LaVAUTE: I offer that into evidence.
16 MR. COHEN: No objection.
17 HEARING OFFICER PROTAS: That's Union Exhibit U-10 is
18 admitted.
19 (Union Exhibit U-10 received)
20 BY MR. LaVAUTE:
21 Q Now, this letter, Union U-10, refers to a union proposal,
22 does it not?
23 A Yes, it does.
24 Q Did the company respond to this proposal?
25 A No, they did not.

1 Q When was the net meeting held between the parties?
2 A February 20th, 2009.
3 Q Were you at that meeting -- you were at that meeting?
4 A Yes, I was.
5 Q Can you tell us what happened at that meeting? First of
6 all, was there a discussion about the union's proposal?
7 A Yes, Jim LaVaute opened the meeting by saying the company
8 owes us a response to the union's July 8th, 2008 proposal.
9 Q What did the company say to that?
10 A The company said they have a problem that they have a
11 fundamental difference that the finishing department was the
12 bargaining unit. They felt we agreed on plus the six people and
13 you can't have a bargaining unit of just relocated workers.
14 Q Did they say what their response was to the union's
15 proposal or what the status of that proposal was?
16 A They wouldn't respond to the union's proposal, they said
17 that the union would not agree to another -- to their unit,
18 there is nothing else to talk about was their only response.
19 Q Was there any talk about having a next meeting?
20 A No, they said if you change your position on the unit,
21 call us.
22 Q At that session did the union tell the company what the
23 union's position on the unit was?
24 A The union again you did it, Jim LaVaute, told the company
25 this is an appropriate unit because it's a Board Order unit.

1 Q Did we tell the company whether we were willing to
2 entertain any other unit?
3 A No, we did not.
4 MR. COHEN: Could we stop this business of leading, this
5 is a little bit leading.
6 HEARING OFFICER PROTAS: That's true. Try to refrain
7 from leading questions.
8 MR. LaVAUTE: I'm all done.
9 HEARING OFFICER PROTAS: Okay.
10 CROSS EXAMINATION
11 BY MR. COHEN:
12 Q Mr. Shinn, let's work backwards from the February 2009
13 meeting; do you recall at that meeting that I notified the union
14 that I intended to file a unit clarification to get
15 clarification as to what the unit would be?
16 A You did.
17 Q Do you recall me saying that -- asking the union in case
18 support for a position that a unit made up bad no people as
19 opposed to job classifications can be an appropriate unit, do
20 you remember me asking?
21 A You did and Mr. LaVaute said there was two Board Orders
22 saying this was the appropriate unit.
23 Q Do you remember me asking how you can possibly have a unit
24 if you have people performing the exact same jobs with the exact
25 same supervisors where one position was in the union and one

1 position was not in the union, how that could possibly work on a
2 day-to-day basis; do you remember me asking that?
3 A You did say that.
4 Q And do you remember me saying that we are willing to
5 continue discussing this, we wouldn't agree to it, but we were
6 willing to discuss it if the union could explain to us how as a
7 practical matter you could have people performing the same jobs,
8 some in the union and some not in the union?
9 A I remember you saying that but I also remember you closing
10 out the meeting --
11 Q We will follow the same ground rules that Mr. LaVaute
12 said, do you remember me saying that in the union that we are
13 willing to continue talking about this is the union could
14 explain to us how a practical matter you could have people doing
15 the exact same job with the exact same supervisor, one in the
16 union and others not in the union?
17 A You did say that and LaVaute's response was this is an
18 exceptional case you created ten years ago and that's why we
19 have Board Orders.
20 Q Did Mr. LaVaute say that the union would only consider at
21 this point -- from this point to honor a union made up of the 16
22 union employee transferred from Vineland?
23 A We said our unit proposal was not going to change as the
24 Board Orders relocated workers from Vineland.
25 Q And did Mr. LaVaute say you were not willing to consider

1 any unit other than that unit because it was the only unit in
2 which the union represents a majority?
3 A Yes, he did.
4 Q Do you remember me telling Mt. LaVaute that we are willing
5 to continue to negotiate during the hours of unit clarification
6 proceedings?
7 A I remember you closing out the day by saying unless you
8 change your position we have nothing else to talk about.
9 Q Would you answer the question?
10 A That is the answer to the question.
11 Q No, that's not the question asked. Do you recall me
12 specifically saying that we were willing to continue negotiating
13 during the pendency of the unit clarification petition?
14 A I do not recall that.
15 Q You don't recall it?
16 A I recall you saying unless you change your position on
17 the unit we have nothing else to talk about. Call us if you
18 change your position.
19 Q Did you file an unfair labor practice charge with the
20 Board claiming that that's what was said at negotiations?
21 A I'm not sure whether we did or not.
22 Q You're not sure whether you filed an unfair labor practice
23 that was dismissed?
24 A I did not personally.
25 Q I didn't ask you whether you, I didn't mean you --

1 A You said they.
2 Q I understand. Did the union file an unfair labor practice
3 charge alleging that the company was refusing to bargain?
4 A Yes, we did.
5 Q Was it dismissed?
6 A I'm not sure of the finding of the --
7 Q You're not sure?
8 A That's right.
9 Q Okay Now, were you involved with the first Comar decision
10 back in 1999?
11 A No, I was not.
12 Q Are you aware of -- how many people actually transferred
13 from Vineland to Buena?
14 A Through discussion --
15 MR. LaVAUTE: This is outside the scope of direct
16 examination, I object.
17 HEARING OFFICER PROTAS: Well, I don't have a problem
18 with that but where is this leading?
19 MR. COHEN: If you would just let me -- it's up to the
20 connection.
21 HEARING OFFICER PROTAS: Okay.
22 BY MR. COHEN:
23 Q How many people transferred initially?
24 A I don't know.
25 Q Was it a lot more than 16?

1 A I really don't know.
2 Q Are you telling me that the only people -- we can go back
3 and look at the records, but are you telling me that the only
4 people who transferred were these 16 employees?
5 A I didn't say that, I said when I started and got involved
6 with this case there were 16 or 17 people.
7
8 Q What about the people -- were there any people who
9 replaced people who were originally transferred back in whatever
10 it was, 1997?
11 A I don't know that.
12 Q You don't know that?
13 A I wasn't involved.
14 Q Do you remember that being raised during negotiations in
15 February of 2009 about -- what about the replacements for
16 Vineland people who have since left the company?
17 A No, I don't remember that.
18 Q You don't remember that? What was the union's position
19 about replacements, people who moved from Vineland but had since
20 left the company?
21 A My answer is still no.
22 Q You don't remember?
23 A Third time, no.
24 Q You have bargaining notes, Mr. Shinn?
25 A I have notes.

1 Q You have notes? What is the union's position about people
2 who have replaced people who transferred back in the '90s from
3 Vineland?
4 MR. LaVAUTE: Objection, beyond the scope of this
5 proceeding.
6 HEARING OFFICER PROTAS: Well, to see what the position
7 is today, you can only get that from a witness so you -- but are
8 you asking back from negotiations?
9 MR. COHEN: I'm trying to understand what the union's
10 position is regarding replacements for the people who were
11 transferred from Vineland to Buena.
12 HEARING OFFICER PROTAS: I think that should come from
13 Mr. LaVaute. You're asking the current position.
14 MR. COHEN: Yes, he's representing the union, I can't
15 ask him their position?
16 MR. LaVAUTE: No, it's improper, that's a legal
17 position.
18 MR. COHEN: Okay.
19 BY MR. COHEN:
20 Q Now, the original settlement proposal to settle
21 litigations about you getting cards signed, that was to
22 represent the entire plant, wasn't it?
23 A That's correct.
24 Q It was not just to represent employees in the finishing
25 department, it was to represent employees in every single

1 production job that existed in the company?
2 A Production and maintenance.
3 Q Now, in any of your proposals to the company when there
4 was a discussion about the finishing department between July --
5 the entire finishing department being in the bargaining unit
6 from July of 2007 until July of 2008, do you have any proposals
7 that show that the union said that this is conditioned upon the
8 union getting the majority of people to signing cards?
9 A No.
10 Q Did the union ever say that at negotiations that this was
11 conditioned upon getting people to sign cards?
12 A We never said that across the table, no.
13 Q You talked about the fact that you were negotiating terms
14 to cover the entire -- all of the employees in the finishing
15 department from July of 2007 until July of 2008, weren't you?
16 A I never testified to that. We were negotiating to get to
17 a collective bargaining agreement.
18 Q At that point in time were you negotiating terms that were
19 going to cover everyone who was going to be in the bargaining
20 unit?
21 A Yes.
22 Q What was your understanding at that point in time of what
23 the bargaining unit was going to be?
24 A We talked during the course of negotiations about the
25 finishing department plus the six with the understand that we

1 knew we'd have to sign them up.
2 Q That was the union's understanding?
3 A Right.
4 Q Not expressed at the table?
5 A Correct.
6 Q So you then were -- I think your terms when Mr. LaVaute
7 asked you what you were doing to -- the union were going to --
8 the union's idea was to negotiate a contract with all the
9 finishing department and then you would present, I think those
10 were your terms on direct examination, then you would present
11 that contract to the finishing department employees and use
12 that, in your mind, to get them to sign cards?
13 A Repeat the question?
14 Q Yes. I believe your testimony was that you were
15 negotiating a contract covering all of the finishing department
16 employees and then you would present that contract to the
17 finishing department employee who didn't transfer from Vineland
18 in order to get them so they would see what they would be
19 getting once they signed up with the union?
20 MR. LaVAUTE: I object, that's not his testimony.
21 MR. COHEN: That's not your testimony?
22 MR. LaVAUTE: That's not his testimony.
23 HEARING OFFICER PROTAS: Well, that's the question to
24 him, is that your testimony?
25 BY MR. COHEN:

1 Q Wasn't that your testimony?
2 A No, that wasn't my testimony.
3 Q What was your testimony about presenting the contract to
4 the 50-some odd employees in the finishing department?
5 A My testimony was we were negotiating with the
6 understanding that we would have to sign people up, we couldn't
7 force a contract with people that aren't members of the union
8 and we would hope -- we were hoping the company would bargain in
9 good faith to a reasonable contract which would show
10 enhancements.
11 Q Didn't you testify on direct that you were planning on
12 showing the completed contracts to the 50 employees?
13 A I don't believe I ever said show the completed contract, I
14 said let them know that they has better benefits.
15 Q And where would those better benefits be reflected?
16 A In the collective bargaining agreement.
17 Q In a collective bargaining agreement so you were going to
18 show the better benefits that those people were going to get in
19 the collective bargaining agreement that you were negotiating on
20 their behalf with the company, correct?
21 A That's correct.
22 Q How exactly were you negotiating such a contract if
23 according to your testimony today you actually didn't represent
24 those people?
25 A We knew what we would have to do at the end of the day if

1 we has a collective bargaining agreement. That's how we did it.
2 Q That's how you did it, and prior to July 9th, 2008, the
3 letter that was in -- was there any document that you presented
4 to the company at any point in time which identified the
5 bargaining unit as being the 16 employees who used to work at
6 Vineland?
7 A Our first proposal.
8 Q The proposal that says all hourly paid production workers
9 who performing the work that was formerly done as part of the
10 Applicator Division of Comar?
11 A Yes.
12 Q Does that say the 16 employees who used to work in
13 Vineland?
14 A It doesn't say that specifically.
15 Q It doesn't say -- do you have any writing that says that
16 what this meant to you was the 16 employees who used to work at
17 Vineland?
18 A Not that I'm aware of.
19 Q Now, in terms of the -- are you aware of whether the cod
20 line or the cup line did work that was performed in Vineland?
21 A I'm not aware of that.
22 Q You're not aware of that. Assuming that that was work
23 that was never performed at Vineland, is it your position
24 nonetheless the people who were doing that work who used to work
25 in Vineland are part of the Board Ordered bargaining unit?

1 A I don't understand the work that was performed in
2 Vineland, in fact, I don't even understand the question.
3 Q You don't understand the question. Do you understand that
4 certain lines that are performed in Buena were never performed
5 in Vineland; are you aware of that?
6 A Yes, I know that.
7 Q Okay, which lines are you aware of?
8 A I'm not that familiar with what was done prior to me
9 coming on the scene right prior to negotiations starting.
10 Q Do you have anyone who can testify that the cod line, the
11 cup line was work performed in Vineland?
12 MR. LaVAUTE: Objection to the question of this witness.
13 BY MR. COHEN:
14 Q You have no idea?
15 A No.
16 Q All right. You said -- I wrote down, I tried to write
17 down what you said. You said you changed your position, and
18 when I say you, I mean you as the union representative, you
19 changed your position on the bargaining unit after May 19th; is
20 that correct?
21 A I said we changed our position at the negotiation session.
22 Q Can you explain what your position was before that July
23 session and what your position was after?
24 A Well, we were talking about the finishing department and
25 the six former employees outside the finishing department so we

1 wanted to make it clear that we no longer were willing to agree
2 to the company's proposal because that was the company's
3 proposal, the unit being the finishing department.
4 Q Did you also testify that that was after the
5 decertification petition was filed?
6 A I did.
7 Q You also testified about that after a contract was reached
8 I think your exact words were you were going to sign people up
9 in our unit; what did you consider to be -- when you said "our
10 unit," what was our unit?
11 A It would be our unit if we could sign them up, that would
12 make it our unit .
13 Q It would make it your unit so when you testified on direct
14 that your position prior to May 19th was you were going to sign
15 people up on our unit, you meant it wasn't your unit until you
16 signed people up, that's your testimony?
17 A My testimony is we knew we could not apply a contract
18 without people that never signed cards to be represented by our
19 union, a majority status of the union.
20 Q And that's your understanding, so for example do you have
21 -- does the Steelworkers represent any companies that the
22 bargaining units existed for 30 years?
23 A Repeat the question?
24 Q Sure. The Steelworkers have represented units that have
25 been in existence for 30 years?

1 MR. LaVAUTE: I'm going to object to that question.
2 It's outside the scope of this issue.
3 THE WITNESS: I understand -- okay ask me another
4 question
5 BY MR. COHEN:
6 Q Are you telling me it is your understanding that in order
7 for the union to represent employees those individual employees
8 have to have signed union representation cards even if they're
9 in a unit that has existed for years?
10 MR. LaVAUTE: I'm going to object to this, this is
11 asking for as law conclusion and it's beyond what the witness
12 has testified his understanding as to these negotiations which
13 is what the issue is.
14 HEARING OFFICER PROTAS: He said he understood our unit
15 to mean -- that's it, it's not advancing any difference.
16 BY MR. COHEN:
17 Q Is it -- can you tell me what job classifications -- what
18 position the union is taking as to what job classifications are
19 in the Board Unit?
20 A No, not without looking at a sheet of paper.
21 Q Of what?
22 A Our former members in those jobs.
23 Q So it's just whatever jobs your former members are in?
24 A That's correct.
25 Q No matter what jobs they are?

1 A Correct.

2 MR. COHEN: I have nothing further -- actually I do, I

3 mean let me just ask you this. I apologize.

4 BY MR. COHEN:

5 Q The May 29th letter from Mr. Dean that you made reference

6 to was Exhibit U-8. The union put out a response to that?

7 A A response to this letter you just gave me?

8 Q No, no, no, the May 29th letter from Comar which is this

9 right here. Did the union put out a response to that?

10 A Do you want me to read this?

11 Q Sure.

12 (Witness perusing document)

13 MR. LaVAUTE: Well, let's let him answer the first

14 question, did the union put out a response to the May 29th

15 letter?

16 THE WITNESS: No, we did not.

17 BY MR. COHEN:

18 Q You didn't put out any response?

19 A No.

20 Q So this document that I have marked as Petitioner's

21 Exhibit P-6, you've never seen this before?

22 (Employer/Petitioner's Exhibit P-6 identified)

23 A I seen it, it was a draft that was never put out.

24 Q Who did the draft?

25 A I did most of the drafting.

1 Q You did the draft?
2 A Yes.
3 Q Okay, and was there a reason why you didn't put it out?
4 A Yeah, I just decided not to put it out in response to the
5 letter. Some of my work they didn't put out.
6 Q Was there anything in this draft that was not the truth?
7 MR. LaVAUTE: I'm going to object to that question, I
8 think it's unfair to ask the union to take a look at a document
9 that he apparently drafted some time ago with the -- over a year
10 ago and ask him if there is anything untrue --
11
12 MR. COHEN: Mr. LaVaute, are you suggesting answers to
13 the union?
14 HEARING OFFICER PROTAS: Let me ask, is there something
15 in here -- this would be an admission is there something in here
16 in particular that you're looking for an admission. There is a
17 lot in here, I guess.
18 MR. COHEN: Yes, is there anything in here that is
19 inaccurate from the union's perspective?
20 HEARING OFFICER PROTAS: I think the point he is making
21 is direct them to something in particular.
22 MR. COHEN: Let me ask you, was it not put out because
23 it was inaccurate in any way?
24 MR. LaVAUTE: Objection, that goes to internal union
25 affairs --

1 MR. COHEN: So what?

2 MR. LaVAUTE: It is an improper question. You're asking
3 the union to testify about an internal union matter of
4 communication with its members. There is a quasi-judicial
5 protection really -- a quasi-fiduciary protection under the case
6 by the name of Verbiglia which you may not be familiar with.
7 You should read it some time

8 MR. COHEN: I am familiar with it, but I don't have your
9 level of expertise.

10 MR. LaVAUTE: It protects the union against this kind of
11 fishing expedition.

12 MR. COHEN: This is a fishing expedition?

13 HEARING OFFICER PROTAS: Again is there a particular
14 paragraph --

15 BY MR. COHEN:

16 Q No, this is something you drafted in response to Mr.
17 Dean's May 29th letter, correct?

18 A It's a draft, the draft was never sent.

19 Q Did you ever put out anything to any employees prior to
20 July basically disagreeing as to what is the current bargaining
21 unit that's referred to in the May 29th letter from Mr. Dean?

22 A No.

23 MR. COHEN: I have nothing further.

24 REDIRECT EXAMINATION

25 BY MR. LaVAUTE:

1 Q So Mr. Shinn, when you a when you had it in mind you would
2 negotiate a contract that you would show to the finishing
3 department workers, which contract was that going to be?
4 MR. COHEN: I object to anything that is in his mind.
5 if he wants to -- bargaining history has nothing to do with what
6 was in his mind. He's already testified as to what was said and
7 what was not said during bargaining. I don't think it's
8 relevant to what was in his mind.
9 HEARING OFFICER PROTAS: Frankly, I don't understand the
10 question. Which contract? What are you referring to, there was
11 negotiations over a contract. What do you mean which contract?
12 MR. LaVAUTE: Well, it could either be a finishing
13 department contract or a relocated department contract or it
14 could be a relocated workers contract.
15 HEARING OFFICER PROTAS: I don't think you've laid a
16 foundation that there were two contracts being discussed.
17 There's been a description of the potential bargaining unit that
18 there were negotiations over that. You know, if there were
19 alternative contracts being discussed, you might want to go into
20 that.
21 I just haven't heard anything like that.
22 MR. LaVAUTE: I'll withdraw the question.
23 BY MR. LaVAUTE:
24 Q Whatever the contract was, what did the union believe it
25 had to do in order to apply it to the finishing department?

1 MR. COHEN: I object, unless this was stated in
2 negotiations, there was some kind of bargaining, what he's
3 testifying now is to what the union believed and it is
4 irrelevant. The only thing that this has to do with is
5 bargaining history.
6 HEARING OFFICER PROTAS: It might be irrelevant, I think
7 it's also repetitive.
8 THE WITNESS: You'd have to have a majority status
9 covered under that contract.
10 MR. LaVAUTE: No further questions.
11 RECROSS EXAMINATION
12 BY MR. COHEN:
13 Q Is it the union's position that a unit other than the 16
14 current Vineland employees who used to work in Vineland, no
15 matter what their positions are, that other than that the union
16 does not represent a majority in any other unit?
17 MR. LaVAUTE: He's asking the union for a position and I
18 object to that.
19 MR. COHEN: Well, he already testified he said they had
20 a collective bargaining unit. Has the union's position changed
21 from what it said in collective bargaining that only the unit in
22 which they represent a majority is a unit of 16 employee who
23 used to work in Vineland, no matter what jobs they're in?
24 HEARING OFFICER PROTAS: You can answer that.
25 THE WITNESS: I would rather not answer that because it

1 gets directly to our Local, we have an ongoing organizing
2 campaign.
3 HEARING OFFICER PROTAS: With that explanation I agree,
4 don't answer that.
5 MR. COHEN: I have nothing further.
6 HEARING OFFICER PROTAS: Thank you.
7 (Witness excused.)
8 HEARING OFFICER PROTAS: Let's go off the record.
9 (Discussion off the record.)
10 HEARING OFFICER PROTAS: On the record. We were having
11 a discussion so the Petitioner's P-6 which has not yet been
12 offered or admitted. What purpose do you have for offering
13 this?
14 MR. COHEN: To show the union's position as of the date
15 of the date of that letter which was May 29th, was what the
16 bargaining unit was.
17 HEARING OFFICER PROTAS: Where in -- is the Reader going
18 to know this?
19 MR. LaVAUTE: It starts with Dear Finishing Department
20 employees.
21 HEARING OFFICER PROTAS: Oh, so that's what you're
22 honing in on?
23 MR. COHEN: Yeah, but the whole thing talks about what's
24 been agreed to and what's going to happen when you're
25 represented by the union, etcetera, etcetera It makes it quite

1 clear in terms of what the agreement was at that point in time
2 with the union.
3 MR. LaVAUTE: Well, this part is an internal
4 confidential document not presented to the company and not
5 distributed to the workers, so I object to it.
6 MR. COHEN: If he has bargaining notes that says what
7 was agreed to, it would be admissible into evidence.
8 HEARING OFFICER PROTAS: Well, now that I understand the
9 point of it, I will admit this. Petitioner's P-6 is moved into
10 the record.
11 (Employer/Petitioner's P-6 received)
12 HEARING OFFICER PROTAS: There was another exhibit,
13 Union U-10.
14 MR. LaVAUTE: I think I gave you my copy of it.
15 MR. COHEN: I don't have a copy of the union's
16 settlement letter.
17 MR. LaVAUTE: There is only one copy of it, we need to
18 make copies.
19 MR. COHEN: You can even mail mr a copy, that's fine.
20 HEARING OFFICER PROTAS: We're dealing now with Union
21 U-10. is that something you decided not to offer?
22 MR. LaVAUTE: No, I do want to offer that.
23 MR. COHEN: Is that the letter from the original I
24 don't have any objection.
25 HEARING OFFICER PROTAS: Union U-10 is admitted into

1 evidence.

2 (Union's U-10 received)

3 HEARING OFFICER PROTAS: Let's go back off the record.

4 (Discussion off the record)

5 HEARING OFFICER PROTAS: Back on the record. Okay.

6 MR. LaVAUTE: You're going to have to give me a second

7 to get them together now.

8 HEARING OFFICER PROTAS: Okay.

9 MR. LaVAUTE: If you wish, I will just identify what it

10 is I want to put into evidence and then you can go on.

11 HEARING OFFICER PROTAS: Okay, you can just represent

12 what it is.

13 MR. LaVAUTE: My understanding is Union 7 is in

14 evidence, let me ask that question.

15 HEARING OFFICER PROTAS: No apparently not.

16 MR. LaVAUTE: I want to put in Union Exhibit U-7.

17 MR. COHEN: What is Union U-7?

18 MR. LaVAUTE: This is the December 4, 2006 letter from

19 Dorothy Moore Duncan.

20 MR. COHEN: I object to it.

21 MR. LaVAUTE: We'll let the Hearing Officer review it.

22 HEARING OFFICER PROTAS: I don't see how this has anything

23 to do with this case.

24 MR. LaVAUTE: It's a letter from the Regional Director

25 pointing out that a change in the bargaining unit is a

1 permissible subject.

2 HEARING OFFICER PROTAS: That's a matter of law.

3 MR. LaVAUTE: They went into negotiations with that

4 understanding.

5 HEARING OFFICER PROTAS: You're offering that?

6 MR. COHEN: I object.

7 HEARING OFFICER PROTAS: I agree, I'm not going to admit

8 that into evidence.

9 MR. LaVAUTE: How about the rejected exhibit file?

10 HEARING OFFICER PROTAS: Sure.

11 (Union Exhibit U-7 in rejected exhibit file)

12 MR. LaVAUTE: I have a copy of a -- I guess we need to

13 mark this?

14 HEARING OFFICER PROTAS: If you want to put them in the

15 rejected exhibit file you should have them marked just in case

16 they don't come in.

17 MR. LaVAUTE: This is an October 31, 2008 letter, a

18 letter to Mr. Cohen and charge that he filed having to do with

19 the union's pulling back refusing to entertain the finishing

20 department unit and there is a Finding in here that there is

21 insufficient evidence to support the claim that there was an

22 agreement reached on the finishing department unit.

23 MR. COHEN: I object. It's an Administrative

24 determination. You know what that's okay, that's fine because

25 there is a statement in here, "Although the union substantially

1 modified its position on the composition of the agreement on
2 July 8th by proposing that it's unit consist solely of the 17
3 transferee from Vineland without regard to job duties or work
4 locations, there was insufficient evidence the parties reached
5 final agreement in the composition of the evidence."
6 You know what, I have no problem put it in.
7 HEARING OFFICER PROTAS: Okay. In that case Union U-11
8 is admitted.
9 (Union U-11 identified and admitted)
10 MR. LaVAUTE: The next document is actually a group of
11 three documents having to do with Case 4-CA-36275. The union'
12 charge against the employer and a May 8th letter from me to
13 General Counsel requesting reconsideration of the denial of
14 Appeal for the Dismissal of that Charge and acknowldgment of the
15 receipt of the Motion of Reconsideration dated May 12, 2009.
16 HEARING OFFICER PROTAS: You're representing that that
17 Motion hasn't yet been ruled on?
18 MR. LaVAUTE: Correct.
19 MR. COHEN: Does the document include the Dismissal
20 letter and the Appeals Dismissal?
21 MR. LaVAUTE: No, it doesn't.
22 MR. COHEN: Well, then I object unless it's a complete
23 set including the Dismissal letter and Appeals Dismissal.
24 HEARING OFFICER PROTAS: To move this along, can we get
25 that added.

1 MR. LaVAUTE: Can we do what?

2 HEARING OFFICER PROTAS: Add the Dismissal letter and

3 the Appeals Dismissal?

4 MR. LaVAUTE: I don't have them with me, but I don't

5 have a problem including therm in the packet.

6 HEARING OFFICER PROTAS: Why don't we just agree and we

7 can submit therm after the fact. The agreement will be on the

8 two unfair labor practice charges that are pending, the charges

9 will be submitted, the Dismissal letter and one of them has to

10 do with the Region's finding there has been full compliance with

11 the Board Order, that the Region's determination and Appeals'

12 determination and any motion for Reconsideration will be

13 including in the packet for it's complete record. Those are the

14 only pending matters that are open.

15 Off the record.

16 HEARING OFFICER PROTAS: We have an agreement then that

17 the offered exhibit will be supplemented with the Region's

18 Dismissal as well as the Dismissal by Appeals. Copies of that

19 will be sent to me by he employer and I --

20 MR. COHEN: By the Union, They're submitting them not

21 me.

22 HEARING OFFICER PROTAS: Oh, I'm sorry. Will be

23 submitted by the union and I will forward them to the reporting

24 service to complete the record.

25 MR. COHEN: And a copy will be sent to me obviously?

1 HEARING OFFICER PROTAS: Okay.

2 MR. LaVAUTE: So the plan is I'll complete the exhibit

3 and send it to you and to Mr. Cohen and then you'll take care of

4 getting it to the reporters?

5 HEARING OFFICER PROTAS: Yes, and that exhibit related

6 to -- what was the case number on that again?

7 MR. LaVAUTE: 4-CA-36275.

8 HEARING OFFICER PROTAS: Okay, how did you maker that,

9 the entire package was marked as --

10 MR. COHEN: Well, she hasn't marked it so we'd better

11 get that.

12 HEARING OFFICER PROTAS: That will be Exhibit U-12 when

13 it's completed and it's submitted to me. That is conditionally

14 admitted.

15 (Union Exhibit U-12 identified and admitted.)

16 MR. LaVAUTE: I have a similar situation with 3-CA-36714

17 for a charge dated April 14th, 2009.

18 HEARING OFFICER PROTAS: I think it should be 4-CA,

19 right?

20 MR. LaVAUTE: Sorry, yes. On Appeal and a receipt of

21 the Appeal dated July 1, 2009. It's still pending.

22 HEARING OFFICER PROTAS: You're going to supplement that

23 with the --

24 MR. LaVAUTE: Denial of the Regional Director for

25 Dismissal.

1 HEARING OFFICER PROTAS: The Regional Director's
2 Dismissal and the Denial.
3 MR. LaVAUTE: This is an Appeal. Appeals hasn't acted
4 on the Appeal yet.
5 HEARING OFFICER PROTAS: The Appeal is still pending.
6 MR. LaVAUTE: Right,
7 HEARING OFFICER PROTAS: That's Exhibit U-13.
8 (Union U-13 identified and received)
9 MR. COHEN: Just so the record is clear, one of these,
10 the Union Appeals, as part of the Appeal the Region's
11 determination is that there has been full compliance. I just
12 want to make sure that it's complete.
13 MR. LaVAUTE: The next exhibit will be the Appeal from
14 the Regional Director, June 16, 2009 a letter refusing to reopen
15 the compliance case on 4-CA-28570 and 4-CA-33903.
16 That Appeal was filed June 29th, 2009 and is still pending. I
17 will supplement this with the Regional Director's denial letter.
18 MR. COHEN: Just so we're clear, I want you to keep in
19 the record not only the denial letter, but the request to
20 reopen, but the finding that was made months earlier that it is
21 closed.
22 MR. LaVAUTE: Okay, we can do that.
23 HEARING OFFICER PROTAS: Great. That would be Union
24 Exhibit U-14.
25 (Union Exhibit U-14 identified and received)

1 MR. LaVAUTE: So the RD's closing, Union's request to
2 reopen or denial and the union's appeal. It will be U-14, did
3 you say?
4 HEARING OFFICER PROTAS: Yes.
5 MR. LaVAUTE: Now, on the other items that you said you
6 weren't going to put in, the Employer's Motion to Reopen in 2003
7 and the brief in 2006, can we mark those and put them in the
8 rejected exhibits file?
9 HEARING OFFICER PROTAS: Sure.
10 MR. LaVAUTE: In conjunction with that, I also want to
11 mark a September 200 letter filed by Comar with the Third
12 Circuit in which it stated that the larger unit in operation is
13 non-union.
14 HEARING OFFICER PROTAS: That's in the rejected exhibit
15 file.
16 MR. LaVAUTE: So I understand. And we can mark that.
17 (Union Exhibit U-15 identified and in rejected exhibit file)
18 MR. LaVAUTE: Then there is a 2004 filing portion of
19 their Memorandums of Law and support motion to reopen the
20 record. Mark that, please and that's another one you're
21 rejecting?
22 HEARING OFFICER PROTAS: Yes.
23 (Union Exhibit U-16, identified and rejected exhibit file)
24 MR. COHEN: I had also two notes rejected. You don't
25 put in parts of documents.

1 MR. LaVAUTE: If you want I'll give you the whole thing.
2 HEARING OFFICER PROTAS: That's okay.
3 MR. LaVAUTE: We have Union U-17. Comar's brief in
4 support of exception to the Decision to ALJ Bogas. Portions of
5 their brief.
6 (Union Exhibit U-17 identified and received)
7 MR. LaVAUTE: Now we have the records I need to view and
8 --
9 HEARING OFFICER PROTAS: Okay, let's go off the record.
10 (Whereupon, at 5:00 P.m. the hearing was adjourned recessed
11 to reconvene on Tuesday, July at 10:00 a.m.)
12
13

1 C E R T I F I C A T E

2 This is to certify that the attached proceedings

3 before the NATIONAL LABOR RELATIONS BOARD, REGION FOUR

4 In the Matter of:
5 Comar, INC.,
6
7 Employer/Petitioner,
8
9 and
10
11 UNITED STEEL, PAPER AND
12 FORESTRY, RUBBER,
13 MANUFACTURING, ENERGY,
14 ALLIED INDUSTRIAL AND
15 SERVICE WORKERS
16 INTERNATIONAL UNION,
17 Union Involved.
18
19
20
21 Case No.: Case No. 4-UC-440
22
23 Date: July 20, 2009
24
25 Place: Philadelphia, Pennsylvania
26
27 were held as therein appears, and that this is the original
28 transcript thereof for the files of the Board.
29
30
31
32
33 Official Reporter
34
35

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of: COMAR, INC., Employer/Petitioner, and UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION Union Involved.	Case No. 4-UC-440

The above entitled matter came on for hearing pursuant to notice, before HENRY R. PROTAS, Hearing Officer, at One Independence Mall, 615 Chestnut Street, room number 3, Philadelphia, Pennsylvania, on Tuesday, July 21, 2009, at 10:00 a.m.

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(973) 692-0660

1 A P P E A R A N C E S
2
3 On behalf of the Employer/Petitioner:
4
5 Joel E. Cohen, Esq.
6 McDermott, Will & Emery, LLP
7 340 Madison Avenue
8 New York, New York 10173-1922
9 215-547-5566
10
11 On behalf of the Union Involved:
12
13 James R. LaVaute, Esq.
14 Blitman & King, LLP
15 Franklin Center Center, Suite 300
16 443 North Franklin Street
17 Syracuse, New York 13204-1415
18
19
20
21
22
23

1
2
3 **I N D E X**
4

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
Anthony Wiessner	167	176	191	-	-
Jacqueline Auberzinsky	192	197	-	-	-
Alan Dean	199	208	215	-	-

1 **E X H I B I T S**
2

3 EXHIBIT	IDENTIFIED	IN EVIDENCE
4 Employuer/Petitioner's		
5 P-7	204	202
6 P-8	203	204
7 Union's		
8 U-12 (A thru E)	164	164
9 U-13 (A thru E)	164	164
10 U-14 (A thru C)	165	165
11 U-18	167	167
12 U-19	167	167
13 U-20 thru 25	167	167
14 U-26	172	174
15 U-27	172	176
16 U-28	174	176

17

1 **P R O C E E D I N G S**

2 (10:00 a.m.)

3 HEARING OFFICER PROTAS: We're on the record. What we're
4 going to do now I think in an off the record discussion we've
5 come to some agreement as far as the exhibits that were formally
6 identified as Union Exhibits 12, 13 and 14. They're going to be
7 what was previously proposed as those exhibits is, are going to
8 be supplemented now, and we're going to describe the sub-parts
9 and put them into the record.

10 We're starting now Union Exhibit 12.

11 MR. LAVAUTE: Right, and the first part of that is Union
12 Exhibit 12(A), which is the charge in 36275 dated 8/4/08. And
13 12(B) is the dismissal letter dated October 31, 2008. And 12(C)
14 is the denial of the appeal dated May 1 '09. And 12(D) is the
15 Union's motion for reconsideration dated May 8, 2009. And 12(E)
16 is the letter from appeals confirming receipt of the motion for
17 reconsideration.

18 COURT REPORTER: What's the date of that letter?

19 MR. LAVAUTE: I'm sorry?

20 COURT REPORTER: What's the date of that letter?

21 MR. LAVAUTE: May 12 '09, 2009. I seem to have additional
22 copies which I'll give to the reporter here.

23 COURT REPORTER: I don't have a copy for May 12. Oh, I'm
24 sorry, it's 12(E).

25 MR. LAVAUTE: Yes, 12(E).

1 COURT REPORTER: Okay.

2 MR. LAVAUTE: Can I ask is the May 12 letter over there,

3 of appeals, by any chance? All right, I'll give her mine.

4 HEARING OFFICER PROTAS: Is there any objection to the

5 admission of 12(A through E)?

6 MR. COHEN: No, I don't object to any the exhibits.

7 HEARING OFFICER PROTAS: Okay, good, that's 12 through 14.

8 **(Union Exhibits 12(A through E) identified and received)**

9 HEARING OFFICER PROTAS: Now, we'll go to Union Exhibit 13.

10 MR. LAVAUTE: Union 13, well I'll wait for the reporter. All

11 set? Union 13 is case 36714. And 13(A) is the charge dated

12 4/15/2009. And 13(B) is the dismissal dated June 12, 2009. And

13 13(C) is the appeal to the General Counsel dated June 25, 2009.

14 And 13(D) is the letter from the General Counsel dated July 1,

15 2009 confirming receipt of the appeal.

16 HEARING OFFICER PROTAS: Okay, that exhibit is admitted

17 into

18 evidence.

19 **(Union Exhibit 13(A through D)identified and received)**

20 MR. LAVAUTE: Thank you. Does the reporter have those

21 documents? No, she's got her hand out.

22 HEARING OFFICER PROTAS: I'm going to need another copy of

23 the dismissal letter.

24 MR. LAVAUTE: It's 36714.

25 HEARING OFFICER PROTAS: I don't think I have copies of

1 13(D). I need to figure that out, sorry, 14, I need, no, 13.
2 MR. LAVAUTE: This is 13.
3 HEARING OFFICER PROTAS: All right, I do have copies.
4 MR. LAVAUTE: Next is paperwork in connection with closing
5 of the compliance cases and the appeal of that. Do you have the
6 letters there?
7 HEARING OFFICER PROTAS: Yes.
8 MR. LAVAUTE: All right. This is will be Union 14, I
9 mean, 15, I believe, right, 14, sorry. And 14(A) is the letter
10 of October 31, 2008 from Dorothy Moore Duncan closing the
11 compliance cases in 28570 and 33903.
12 COURT REPORTER: I'm sorry, don't -
13 MR. LAVAUTE: And 14(B) is the letter from Dorothy Moore
14 Duncan dated June 16, 2009 denying the Union's request to
15 rescind her action in closing those two cases.
16 And 14(C) is the Union's June 25, 2009 Appeal to the
17 General Counsel from the Regional Director's refusal to rescind
18 her closing of the cases.
19 Those are all the documents for that exhibit.
20 HEARING OFFICER PROTAS: Okay. Then, Union Exhibit 14 is
21 admitted into evidence.
22 **(Union Exhibits 14(A through C) identified and received)**
23 HEARING OFFICER PROTAS: Okay, let's go off the record.
24 **(Off the record)**
25 HEARING OFFICER PROTAS: Back on the record.

1 MR. LAVAUTE: I have a number of exhibits that I'd like to
2 introduce that I've shown to Mr. Cohen this morning. I don't
3 remember what you said about these. Do you have a problem with
4 these?
5 MR. COHEN: I really don't have a problem with it.
6 MR. LAVAUTE: Okay. Well, let me go through them. Union
7 Exhibit 18 is a letter dated August 6, 2007 from Mr. Cohen to
8 myself. Union 19 is a stipulation of payment and settlement
9 agreement in cases 28570 and 33903, executed November 21 '07. I
10 gave you a stack of them, right, to mark?
11 COURT REPORTER: No, you took them back.
12 MR. LAVAUTE: Did I?
13 HEARING OFFICER PROTAS: Well, I'm going to give them back
14 to you so we don't lose them, all right. Okay.
15 MR. LAVAUTE: With respect to Union 19, one of the
16 execution dates is the date I just gave. There are other dates
17 on it as the parties executed the document.
18 Union 20 is the letter dated July 21 '08 from myself to
19 Mr. Cohen. Union 21 is the letter dated August 1, 2008 from
20 myself to Mr. Cohen. Union 22 is the November 18, 2008 letter
21 myself to Mr. Cohen. Union 23 is the December 5, 2008 letter
22 myself to Mr. Cohen. Union Exhibit 24 is the letter dated
23 December 11, 2008 from Mr. Cohen to me. And Union 25 is the
24 letter of December 17, 2008 from myself to Mr. Cohen.
25 I offer those exhibits.

1 HEARING OFFICER PROTAS: All right, Union's Exhibits 18
2 through 25 are admitted.
3 **(Union Exhibits 18 through 25 identified and received)**
4 MR. LAVAUTE: Do you want us to proceed now?
5 HEARING OFFICER PROTAS: Yes, please.
6 MR. LAVAUTE: The Union calls Mr. Wiessner.
7 HEARING OFFICER PROTAS: Please raise your right hand.
8 Whereupon,
9 **ANTHONY WIESSNER**
10 Having been first duly sworn, was called as a witness and
11 testified as follows:
12 HEARING OFFICER PROTAS: Please have a seat and give your
13 full name, please.
14 THE WITNESS: My name is Anthony Wiessner, W-I-E-S-S-N-E-
15 R.
16 **DIRECT EXAMINATION**
17 BY MR. LAVAUTE:
18 Q Mr. Wiessner, are you employed by Comar?
19 A Yes, I am.
20 Q And have you been employed by Comar for a length of time?
21 A Yes, I have.
22 Q How long?
23 A Since 1980.
24 Q And did there come a time when you began working at Buena?
25 A Yes, in --

1 Q When was that?
2 A In October, 19 -- 2003.
3
4 Q And prior to that did you work at another location of
5 Comar?
6 A From 1980 to September 1999, in the Vineland applicator
7 division.
8 Q And what was your, did you work for Comar during the
9 period of '99 to 2003?
10 A No, I wasn't at the plant at that particular time. I was
11 recalled in 2003.
12 Q And in 2003, what job did you work at Buena?
13 A I worked in the warehouse as a warehouse attendant.
14 Q And have you held that job at Buena from that time until
15 now?
16 A Yes, I have.
17 Q And what did you do, what job did you hold when you worked
18 at Vineland?
19 A I worked in the warehouse. I did various jobs in the
20 warehouse, mostly worked in the shipping and receiving
21 department.
22 Q And in Vineland were you covered by the Union contract?
23 A Yes, I was.
24 Q Are you one of the so-called six that we've referred to in
25 this case?

1 A Yes, I am.
2 Q I'd like you to tell us, please, about the other five of
3 the six. First of all, are any of them working cup room?
4 A Two are. Doris McCaha, she works in the cup room. And
5 Ruth Benowitz, she works in --
6 Q And would you tell us about the remaining three of the six
7 what they're doing now one by one?
8 A Florence Simione, she works in the glass department.
9 She's a inspector.
10 Q In quality control?
11 A In QC, yes.
12 Q When she worked in Vineland did she work in QC?
13 A Yes, she did.
14 Q Next?
15 A A James Massey, he was a, he worked in the, he worked on
16 the machines in Vineland. He also worked in, on the machines
17 in, Buena also.
18 Q When you say, "worked on the machines", what do you mean?
19 A In other words, maintenance.
20 Q And the third one?
21 A The third one is Michael Munson. And he --
22 Q What's Mr. Munson's current job?
23 A He currently works in the facilities in the Buena Plant.
24 Q What did he do in Vineland?
25 A He worked as a setup operator in Vineland.

1 Q And did Mr. Munson recently --
2 MR. COHEN: Judge, can we please not have leading
3 questions.
4 HEARING OFFICER PROTAS: That's a fair request.
5 MR. LAVAUTE: Well, it's not leading. It doesn't suggest
6 the answer.
7 MR. COHEN: Well, did Mr. Munson just recently?
8 HEARING OFFICER PROTAS: I mean as far as leading I
9 disagree, but it's somewhat leading, so try not to.
10 THE WITNESS: Mr. Munson works --
11 BY MR. LAVAUTE:
12 Q And before you answer that let me rephrase it.
13 A Okay.
14 MR. LAVAUTE: Are you directing me to rephrase the
15 question?
16 HEARING OFFICER PROTAS: Yes, please.
17 BY MR. LAVAUTE:
18 Q What's Mr. Munson's current job status?
19 A His current status, he works in the facilities in the
20 Buena Plant.
21 Q Okay, and are you aware of any recent communication from
22 Mr. Munson about his job?
23 MR. COHEN: Objection, that's hearsay.
24 MR. LAVAUTE: Mr. Wiessner is an officer of the Union, he
25 would be aware of requests concerning the bargaining unit. How

1 does --

2 MR. COHEN: How could that not be hearsay?

3 MR. LAVAUTE: It's in conjunction with his official

4 capacity.

5 HEARING OFFICER PROTAS: Is this something coming from the

6 Employer or this is a statement from the employee to the Union?

7 MR. LAVAUTE: Well, you don't want me to read it, do you.

8 I'm supposed to ask him.

9 HEARING OFFICER PROTAS: Okay. What are you referring to,

10 we'll see how far this goes.

11 THE WITNESS: Mr. Munson recently asked to be put back

12 into the Union.

13 BY MR. LAVAUTE:

14 Q Did he ask you?

15 A He asked the company.

16 HEARING OFFICER PROTAS: But you only know about that

17 because he told you? Did the company tell you about this?

18 THE WITNESS: No, the company didn't tell me.

19 HEARING OFFICER PROTAS: Okay.

20 BY MR. LAVAUTE:

21 Q Was this request in writing?

22 A Yes, it was.

23 Q Did you receive a copy of the letter?

24 A Yes, I did.

25 Q And what did he request?

1 A He requested to be officially put back into the Union.
2 Q Do you know what that "back into the Union" means?
3 A To receive the benefits of the Union under the 1999
4 contract.
5 Q He's not receiving that now?
6 A No, he's not.
7 Q Did I ask you to review the blueprint that was introduced
8 into evidence by the company as Petitioner Exhibit One?
9 A Yes, you have.
10 MR. LAVAUTE: I'm showing the witness Petitioner's Exhibit
11 One.
12 THE WITNESS: Thank you.
13 MR. LAVAUTE: I ask you to mark this as Union 26, please.
14 **(Union Exhibit 26 identified)**
15 BY MR. LAVAUTE:
16 Q And did I also ask you to compare that blueprint with a
17 blueprint that was into evidence from the unfair labor practice
18 case by the Employer as Respondent's 30, 2005 --
19 MR. COHEN: I object to this.
20 HEARING OFFICER PROTAS: On what basis?
21 MR. COHEN: We are not re-litigating the prior unfair
22 labor practice case.
23 HEARING OFFICER PROTAS: I know, but that's the intent.
24 He's trying to show changes over time, is that correct?
25 MR. LAVAUTE: Yes, it's, the intent is to compare the

1 floor layout for the finishing department from the 2005
2 schematic to the one they entered yesterday.
3 HEARING OFFICER PROTAS: So, that's irrelevant as to
4 things that happened since the last hearing not, not re-
5 litigating.
6 MR. LAVAUTE: I'm not re-litigating the unfair labor
7 practice with this. It's evidence in the clarification case as
8 to the floor layout they introduced currently. It's certainly
9 relevant as to whether that's a change if any from prior layout.
10 HEARING OFFICER PROTAS: Okay. You can go ahead.
11 BY MR. LAVAUTE:
12 Q And for clarification of the record here, I copied this
13 morning the portion of the finishing department from the
14 exhibit. And a copy is what I have marked as Union Exhibit --
15 HEARING OFFICER PROTAS: Twenty-six.
16 MR. LAVAUTE: -- 26, that's the only part of this that I
17 intend to submit. I have the complete original here.
18 BY MR. LAVAUTE:
19 Q And looking at Union 26, Mr. Wiessner, could you tell us
20 whether, how that compares to Petitioner's One in terms of
21 similarities or changes?
22 A It's the same layout with a few exceptions, some machines
23 were moved around to different portions of the finishing
24 department, but the machines are, are the same as what it was in
25 2004.

1 Q Now, you said 2004, why did you say that?
2 A Because that was the copy that you gave me for 2004.
3 MR. LAVAUTE: For the record, what he's referring to is
4 the original exhibit that I referred to which bears a date --
5 I'd like the record to reflect this, too -- but there is a date
6 of 9/30/04, and the description of the document is 2005 Current
7 Plant Layout.
8 BY MR. LAVAUTE:
9 Q Is that the one you're comparing?
10 A Yes, I am.
11 MR. LAVAUTE: I'm going to offer Union Exhibit 26.
12 MR. COHEN: No objection.
13 HEARING OFFICER PROTAS: Union 26 is admitted.
14 **(Union Exhibit 26 received)**
15 MR. LAVAUTE: This is 27, please.
16 **(Union Exhibit 27 identified)**
17 BY MR. LAVAUTE:
18 Q Mr. Wiessner, I'm showing you Union Exhibit 27, which is a
19 copy of a subpoenaed document that was produced by the company
20 for this hearing. And do you recognize what that represents?
21 A This is the names of the people in the finishing
22 department and their, and their job descriptions.
23 Q That's current?
24 A The effective date is January 1, 2009.
25 MR. LAVAUTE: Would you mark this as Union 28, please?

1 **(Union Exhibit 28 identified)**

2 BY MR. LAVAUTE:

3 Q And I'm showing you what's been marked as Union Exhibit 28

4 and would you tell us what that is, please?

5 A This is a interoffice memorandum from January 5, 2005, a

6 Union's request for information for a list of employees who

7 accepted transfer from the Vineland Plant to Buena.

8 Q And what is the document that is attached to that cover

9 sheet?

10 A Employees who accepted transfers to Buena, New Jersey on

11 or about September 1999.

12 Q And did I ask you to make a comparison between this last

13 document, the listing of employees who transferred, which bears

14 a date of 1/1/99 to 9/20/04? Did I ask you to compare those

15 employees with the document that's in evidence as Union 27?

16 A Yes, you have.

17 Q And would you tell us, please, what you found when you

18 compared our relocated employees from Vineland in terms of their

19 job classifications, their titles to the current listing?

20 A I found that out of the 16 employees who relocated from

21 Vineland to the Buena Plant --

22 MR. COHEN: There are actually 23 if you have to, they're

23 not 16.

24 THE WITNESS: Well --

25 BY MR. LAVAUTE:

1 Q Sixteen remaining.
2 A Sixteen remaining, sorry. I found that 14 of the 16
3 remaining employees are in the same jobs that they were in
4 Vineland.
5 Q And what about the other two?
6 A The two, a Ruth Benowitz who now works in the cod
7 division, and Doris McGaha who works in a, in the cup division
8 were the only two people in different positions.
9 MR. LAVAUTE: All right. I'm going to offer Union
10 Exhibits 26, 27, and 28.
11 MR. COHEN: No objection.
12 HEARING OFFICER PROTAS: Twenty-six through 28 are
13 admitted.
14 **(Union Exhibits 26 through 28 received)**
15 HEARING OFFICER PROTAS: Just making the record clear,
16 it's called "Cod Cut"?
17 THE WITNESS: Cod is a division. It's a neuro component
18 that Comar makes. It's an oral dispenser, and the cup is a,
19 just a plastic cup which has a dosage for oral medication.
20 MR. LAVAUTE: I have no other questions of the witness.
21 MR. COHEN: Just a few.
22 **CROSS EXAMINATION**
23 BY MR. COHEN:
24 Q Mr. Wiessner, was there a cup, cod operation in Vineland?
25 A No, there was not.

1 Q So, would you agree that Ruth Benowitz and Doris McGaha
2 are performing work that was previously performed in Vineland?
3 A I would agree to that, yes.
4 Q You would agree with that. Now, was there a glass
5 division in Vineland?
6 A Yes, there was.
7 Q And was the glass division part of the unfair labor
8 practice case that was before the Board or was it just the
9 applicator division?
10 MR. LAVAUTE: I'm going to object to asking this witness
11 that question. I think that's a technical question.
12 MR. COHEN: It's a technical question.
13 BY MR. COHEN:
14 Q Does this case, did the prior Board case, are you familiar
15 with the prior Board case?
16 A I'm familiar with it.
17 Q Did it have anything to do with the glass division or did
18 it have to do with the applicator division?
19 A The applicator division.
20 Q The applicator division. Is glass something separate from
21 the applicator division?
22 A At this present time or back in --
23 Q Back then?
24 A Back then?
25 Q Yes.

1 A Glass was included within the applicator division.
2 Q Glass was included within the applicator division?
3 A Yes.
4 Q So, the prior cases will reflect that glass was part of
5 the applicator division.
6 MR. LAVAUTE: Well, I'm going to object to that question.
7 Whether the prior cases reflect it or not, it's not a fair
8 question to ask this witness.
9 HEARING OFFICER PROTAS: I agree.
10 MR. LAVAUTE: The prior cases say whatever they say.
11 BY MR. COHEN:
12 Q Well, what is the basis for your saying that glass was, it
13 was all part of one, then what was the purpose having an
14 applicator division if you, were you here yesterday for the
15 testimony --
16 MR. LAVAUTE: Okay, I'm objecting to this. This is, he's
17 berating the witness.
18 HEARING OFFICER PROTAS: Sustained.
19 MR. LAVAUTE: He asked him a question and he's not obliged
20 to answer, so let's move on.
21 MR. COHEN: Are you the Hearing Officer?
22 MR. LAVAUTE: Well, I --
23 HEARING OFFICER PROTAS: It's sustained.
24 MR. LAVAUTE: I'm representing this --
25 MR. COHEN: Yes, I understand, so I'll move to the next

1 question. I understand you're representing the Union.
2 BY MR. COHEN:
3 Q Were you here yesterday when the current plant manager
4 testified?
5 A Yes, I was.
6 Q And did you hear him testify that he used to work for the
7 glass division, that there was a separate glass division?
8 A The glass division that I am referring, or referring to
9 was the decorating division where they did printing on glass
10 droppers.
11 Q I understand, that's different from the glass division
12 isn't it?
13 A I would believe it would be.
14 Q It would be. Now, Florence Simione is now in the glass
15 department at Buena isn't that right?
16 A Yes.
17 Q The work that's done in the glass department in Buena now
18 is that work that was done as part of the applicator division in
19 Vineland?
20 A In the droppers, yes, it was.
21 Q In the droppers.
22 A Yes.
23 Q You're telling me that all that they do is put decorative
24 things on, that's what they do in the glass division, they're
25 doing the same thing?

1 MR. LAVAUTE: Objection, that's about three questions.
2 No, I'm going to object to this. I think we should have one
3 question at a time, and allow the witness to answer one
4 question. That's about three questions in a stream of -- I
5 object to it.
6 HEARING OFFICER PROTAS: Well, can you answer the
7 question?
8 MR. LAVAUTE: Well, we don't how, which question are we
9 talking about?
10 HEARING OFFICER PROTAS: Well, at this point I don't know
11 either.
12 BY MR. COHEN:
13 Q Are you telling me that's what done in the glass division,
14 the glass department, excuse me, in Buena is the same thing that
15 was done in Vineland?
16 MR. LAVAUTE: Objection, calls for a conclusion.
17 MR. COHEN: Well --
18 HEARING OFFICER PROTAS: No, he can answer that. He can
19 answer that.
20 MR. LAVAUTE: Well, I'm going to ask for a point of
21 clarification, what do we mean the "same thing"?
22 MR. COHEN: The witness --
23 MR. LAVAUTE: Because I don't know what that means.
24 MR. COHEN: Well, you know what, he's, he's, well this is
25 testimony about the exact same thing, the exact same question.

1 He's capable of understanding.

2 MR. LAVAUTE: That's true.

3 MR. COHEN: Then what is the --

4 MR. LAVAUTE: I didn't ask him whether they did the same

5 thing. I asked him what they did.

6 MR. COHEN: Is what is being done in the glass department

7 in Buena currently the same thing that was done in Vineland?

8 MR. LAVAUTE: Objection, define "same thing"?

9 HEARING OFFICER PROTAS: Well, he can define it. It's a

10 question. Please let him answer the question.

11 MR. LAVAUTE: All right.

12 THE WITNESS: They cut the droppers in the applicator

13 division, yes, they did.

14 BY MR. COHEN:

15 Q I understand that. Is that all that the glass department

16 does in Buena?

17 A They cut the droppers and they make the droppers.

18 Q Do you work in the glass division?

19 A No, I do not.

20 Q In the glass department?

21 A No, I don't.

22 Q Do you have, when was the last time you were in the glass

23 department?

24 A Last week.

25 Q Last week. How much time did you spend there?

1 A I don't spend too much at all in there.
2 Q And what is the basis for your knowledge of what the glass
3 department does in Buena?
4 A My knowledge of the glass department is limited to the
5 fact that I know that they make droppers.
6 Q Do you know what else they make?
7 A In the glass department?
8 Q Yes.
9 A As far as they I know they make droppers.
10 Q Are you telling me that you know exactly what goes on in
11 the glass department?
12 MR. LAVAUTE: Objection, argumentative.
13 BY MR. COHEN:
14 Q And you work in the warehouse --
15 MR. LAVAUTE: Argumentative.
16 HEARING OFFICER PROTAS: Sustained.
17 BY MR. COHEN:
18 Q Let me ask you something, in terms of the people, if you
19 could look at the list of people, Christy Armstrong is still at
20 the company?
21 A Yes, she is.
22 Q Ruth Benowitz is still, is we've identified her. Is
23 Barbara Bryant still at the company?
24 A Yes, she is.
25 Q Linda Caudill, she's still at the company?

1 A Yes, she is.
2 Q Mary Cione?
3 A No, not --
4 Q What did she do?
5 A She --
6 MR. LAVAUTE: I'm sorry, I didn't hear his answer to the
7 question.
8 MR. COHEN: She didn't, he didn't answer it yet.
9 BY MR. COHEN:
10 Q What did she do?
11 MR. LAVAUTE: Well, excuse me. I am going to ask that the
12 counsel limit one question at a time.
13 HEARING OFFICER PROTAS: I think you said no, she's not at
14 the company, right, Mary Cione?
15 THE WITNESS: No, not at the present time.
16 BY MR. COHEN:
17 Q What was her job?
18 A She worked in the finishing department.
19 Q And when she left did someone replace her?
20 A I believe so.
21 Q Who was that person?
22 A That I'm not privy to.
23 Q Okay. Lea Clark still work there?
24 A No, she doesn't.
25 Q And where did she work?

1 A She worked in finishing.
2 Q And when did she leave by the way?
3 A I'm not sure of the exact date.
4 Q And did somebody replace her?
5 A I believe so.
6 Q And Margaret Creelman where did she work?
7 A She worked in finishing.
8 Q And is she still there?
9 A Yes, she is.
10 Q And Michelle Guilford?
11 A She does not work there. She's deceased.
12 Q She's deceased, and where did she work?
13 A In the finishing department.
14 Q Did somebody replace her?
15 A I believe so.
16 Q Sarah Hannah?
17 A She still works there.
18 Q Still works there. Beatrice Ingegner?
19 A Ingegner, yes, she still works there.
20 Q Did she work in engineering?
21 A No, she worked in the finishing department.
22 Q She worked in the finishing department, is that where she
23 works now?
24 A Yes, she is.
25 Q Norma Loatmanm?

1 A She still works there.
2 Q She still works there. Carole Loguidice?
3 A Loguidice, yes.
4 Q She still works there?
5 A Yes, she does.
6 Q I believe we discussed Mr. Massey. We discussed Ms.
7 MaGaha.
8 A Excuse me --
9 Q Yes.
10 A -- for one second. Carole left the company recently.
11 Q Carole left the company, did somebody replace her?
12 A As far as I know, yes.
13 Q And James Massey?
14 A He still works there.
15 Q We already described him, right?
16 A Uh-huh.
17 Q Was there a period of time where he left the finishing
18 department?
19 A He's assigned to the machines right now, but he's not
20 assigned to finishing. He's assigned plant wide.
21 Q He's assigned plant wide. And he now wants to be in the
22 Union?
23 A He is in the Union.
24 Q He is in the Union. Has he been getting the same benefits
25 as everyone else?

1 A Yes, he has.
2 Q He has been?
3 A Yes.
4 Q What was your, then I don't understand. Didn't you
5 testify --
6 A Mr. Munson.
7 Q Oh, it was Mr. Munson, I apologize, okay. And we went
8 over Theresa Morgan, she's still there.
9 A No, she died.
10 Q She's the one who died, okay. Rita Odeda?
11 A No.
12 Q No, oh, Theresa Morgan is someone else who died?
13 A Yes.
14 Q And where did she work?
15 A Finishing.
16 Q Did somebody replace her?
17 A As far as I know.
18 Q Rita --
19 MR. LAVAUTE: I'm going to object to the witness answering
20 "as far as he knows". If he doesn't know, he should say he did
21 doesn't know. If he knows then that's fine, too, but --
22 MR. COHEN: Why doesn't Mr. LaVaute suggest that he change
23 his answers to that.
24 MR. LAVAUTE: Well, the answer was "as far as I know". I
25 don't know what that means and I object to the --

1 HEARING OFFICER PROTAS: Well, you can cover that on Cross
2 but for now that's his answer.
3 BY MR. COHEN:
4 Q And Arlene Polleck?
5 A She retired.
6 Q She retired and where did she work?
7 A Finishing.
8 Q And did someone replace her?
9 A I'm not sure if somebody replaced her or not.
10 Q You're not sure. The others you believe so, but after Mr.
11 LaVaute made the objection now you're not sure, is that right?
12 A Because she recently left, I don't know if she's been
13 replaced yet or not.
14 Q Oh, do you, based on your knowledge of what goes on in the
15 finishing department do you assume she will be replaced?
16 MR. LAVAUTE: Objection to what he assumes.
17 HEARING OFFICER PROTAS: You know what, actually I think
18 it's a fair assumption. Why don't you, you can answer that
19 question.
20 THE WITNESS: She'll probably be replaced.
21 BY MR. COHEN:
22 Q JoAnne Saul?
23 A She's still working.
24 Q She's still working. She's in the finishing department?
25 A Yes.

1 Q Florence Simione, we went over her, correct?
2 A Uh-huh.
3 Q Debra Stamm?
4 A She's deceased.
5 Q She's decease, where did she work?
6 A She worked in finishing.
7 Q Did somebody replace her?
8 A Yes.
9 Q Lenell Stewart is he still working there?
10 A No, he's not.
11 Q Where, what happened to him, when did he leave?
12 A He left voluntarily.
13 Q When was that?
14 A I believe it was before I was back in Comar, sometime in
15 2002, 2003.
16 Q Do you know what department he worked in?
17 A I'm not really sure, but I believe he worked in finishing.
18 Q And do you know if someone replaced him?
19 A Yes.
20 Q And Joy West?
21 A She's remarried now but she's still working.
22 Q She's still working in the finishing department?
23 A Yes.
24 Q And Mike Munson that's the person that you mentioned
25 before who now wants to be in the Union --

1 A Yes. --
2 Q -- is that right? The last couple of years was he in the
3 Union?
4 A He was.
5 Q He was, and can you explain to me what you meant by he now
6 wants his Union benefits back?
7 A The company offered him a job outside the Union
8 classification.
9 Q Yes.
10 A And he accepted that.
11 Q He accepted that, and did he thereafter not receive
12 benefits, Union benefits?
13 A Correct.
14 Q And when you say "Union benefits", we're talking about the
15 differences that were described yesterday, is that correct?
16 A Yes.
17 Q And he didn't receive those is that correct?
18 A When he left, no.
19 Q No. And did the Union file any kind of unfair labor
20 practices about it?
21 A No.
22 MR. COHEN: I've nothing else.
23 HEARING OFFICER PROTAS: Mr. LaVaute.
24 MR. LAVAUTE: I've no other questions.
25 HEARING OFFICER PROTAS: Okay, thank you. You're excused.

1 **(Witness excused)**

2 HEARING OFFICER PROTAS: Does the Union have any other

3 witnesses?

4 MR. LAVAUTE: Not at this time.

5 HEARING OFFICER PROTAS: Okay, it looks like we're --

6 MR. COHEN: I'd like to call --

7 HEARING OFFICER PROTAS: You have do have a witness?

8 MR. COHEN: I do have a witness. You know what can I ask

9 Mister, I have one more question for Mr. Wiessner if I can ask

10 him that.

11 HEARING OFFICER PROTAS: Mr. Wiessner, would you mind

12 coming back here. You're still under oath, have a seat, please.

13 **CROSS EXAMINATION (Resumed)**

14 BY MR. COHEN:

15 Q Mr. Wiessner, I'm sorry. You now are a warehouse

16 attendant?

17 A Yes, I am.

18 Q How many other warehouse attendants are there?

19 A On all the shifts or just on the first shift?

20 Q Let's say, you're on the first shift is that right?

21 A Yes, I am.

22 Q About how many others are there?

23 A There's about six I believe the current is four.

24 Q And can you explain what is it that you do differently

25 from all the other warehouse attendants?

1 A My primary responsibility is to bring ware over to the
2 finishing department.
3 Q Are you the only one who brings ware over to the finishing
4 department?
5 A No.
6 Q What about on the second shift is there somebody who
7 brings ware to the finishing department?
8 A Yes, there is.
9 Q And do you know who that person is?
10 A Yes, let me think of his name real quick.
11 Q Is that Mr. Leslie, Christopher Leslie.
12 A Christopher Leslie.
13 Q Is his, as far as you're aware is his job any different
14 from your job?
15 A He's the only one on that particular shift, he does other
16 duties besides bring ware over.
17 MR. COHEN: Nothing further.
18 MR. LAVAUTE: I have another question.
19 **REDIRECT EXAMINATION**
20 BY MR. LAVAUTE:
21 Q When Mr. Munson took the job that ended up with losing his
22 Union benefits did his, what was his pay bases?
23 A I don't understand what you are asking.
24 Q Well, before he changed jobs was he an hourly paid
25 employee?

1 A Oh, yes, he was hourly.
2 Q And what happened when he changed jobs?
3 A I believe he went to salary.
4 Q And as you described it, "into the Union" will his status
5 change?
6 A He's currently receiving hourly rate.
7 MR. LAVAUTE: Okay. Thank you.
8 HEARING OFFICER PROTAS: Okay.
9 **(Witness excused)**
10 **(Off the record)**
11 HEARING OFFICER PROTAS: Back on the record.
12 Whereupon,
13 **JACQUELINE AUBERZINSKY**
14 Having been first duly sworn, was called as a witness and
15 testified as follows:
16 HEARING OFFICER PROTAS: Please give your full name for
17 the record.
18 THE WITNESS: Jacqueline Auberzinsky.
19 **DIRECT EXAMINATION**
20 BY MR. COHEN:
21 Q Ms. Auberzinsky, what's your job title with Comar?
22 A I'm second shift supervisor production finishing
23 department.
24 Q How long have you been with the company?
25 A Thirty-three years.

1 Q And did you work in Vineland?
2 A Yes.
3 Q What was your job when you worked in Vineland?
4 A I worked on the wrapper.
5 Q And at the time were you a supervisor?
6 A No.
7 Q Were you in the Union?
8 A Yes, I was president of the Union.
9 Q And did you move to the Buena Facility after Vineland
10 closed?
11 A No, I went to another division, Contract Packaging.
12 Q And did you eventually go to the --
13 A Buena, yes.
14 Q And when did you go the Buena facility?
15 A In 2002.
16 Q And when did you become the supervisor?
17 A In 2006.
18 Q And are you familiar with the work that is presently being
19 done in the finishing department --
20 A Yes, I am.
21 Q -- in Buena? And are you familiar from having worked in
22 the Vineland facility with the work that was being done in the
23 applicator division in the Vineland facility?
24 A Yes.
25 Q Was that the division you were in?

1 A Yes.
2 Q Can you explain is there any difference between the work
3 that's being done presently in the Buena in the finishing
4 department and the work that was done in Vineland?
5 A No, it's the same work. We have upgraded machines but
6 it's
7 the same thing. We stamp pipettes. e assemble them. We wrap
8 them. It's all the same stuff.
9 Q And in terms of, do you have people who report to you now
10 who used to work in Vineland?
11 A Yes.
12 Q And do you have people who report to you now who never
13 worked in Vineland?
14 A Yes.
15 Q Is there any difference in their work assignments?
16 A No. I rotate every night. I do the scheduling and I
17 rotate every night. They're never on the same machine two
18 nights in a row.
19 Q Can you identify any people in your shift who do work that
20 used to be done in Vineland as opposed to other people who do
21 work that wasn't done in Vineland, can you make any distinction?
22 A Me, personally?
23 Q Yes.
24 A Yeah, I know who worked in our --
25 Q No, I'm not asking that, I'm sorry.

1 A Oh.
2 Q But in terms of the people is there any difference
3 whatsoever in the work given to the people --
4 A No, everybody does the same thing.
5 Q And you supervise everybody?
6 A Yes.
7 Q Now, when you, have there people who were Vineland
8 employees who reported to you over the years since you've been
9 the supervisor who have left?
10 A Uh-huh.
11 Q And have they been replaced?
12 A Yes.
13 Q And are you aware of what goes on in other shifts as well?
14 A Yes.
15 Q And are you aware of other people who have left who used
16 to work in Vineland, have they been replaced?
17 A Yes.
18 Q And has there been any change in the work assignments of
19 the people who replaced former Vineland employees?
20 A No.
21 Q And in terms of the last two to three years has there been
22 any change in the machinery in the finishing department?
23 A Do you mean being moved or upgraded?
24 Q Both.
25 A Well, we have consolidated the safety department. It used

1 to be there was two different areas. And as of December, well,
2 during the shutdown we put all the machines in the same area so
3 it would be easier for the set up mechanic and the operators.
4 Q Okay.
5 A As far as upgrading we've gotten new machines for the
6 stamping. We have the old stamping machines there from
7 Vineland, but we also have new machines that they've built that
8 are more efficient. And the wrappers, there is a wrapper there
9 from Vineland, and then we just got another new one about a
10 month ago.
11 Q Well, let's just talk for a minute the wrapper that was
12 moved from Vineland. Are only people who used to work in
13 Vineland are they the only ones who work only driver machine at
14 Vineland?
15 A No.
16 Q Do they work more than anyone else on the wrapper machine,
17 the former Vineland employees?
18 A No.
19 Q Is that true in regard to all the machines that moved from
20 Vineland?
21 A Yes. Everybody's been trained on every machine.
22 MR. COHEN: I have nothing further of this witness. Oh,
23 can I, actually I do have one more question.
24 BY MR. COHEN:
25 Q Has the company, you've been with the company for over 30

1 years?
2 A Do you mean the glass division or the glass department?
3 Q The glass department.
4 A Okay.
5 Q Let's talk about the glass department, okay.
6 A Okay.
7 Q Was there a glass department in --
8 A Vineland, yes.
9 Q -- Vineland. There was. Does the glass division do the,
10 does the glass department in Buena do the same things as the
11 glass department in Vineland?
12 A Yes, it's the same machines.
13 Q To your knowledge do, are the employees who work in the
14 glass department do they all do the same thing?
15 A Well, some are packers.
16 Q Yes.
17 A Some work on the glass line. Well, like Florence, she's
18 the QC.
19 Q But all the machines in the glass department in Buena all
20 came from Vineland?
21 A I believe maybe 80 percent of them did. I haven't, you
22 know, checked every one out but a lot of them came from
23 Vineland.
24 MR. COHEN: I've nothing further.
25 **CROSS EXAMINATION**

1 BY MR. LAVAUTE:
2 Q Ms. Auberzinsky, you have been at Buena since 2002.
3 A Yes.
4 Q And your testimony about you assign people under your
5 supervision to various machines --
6 A Uh-huh.
7 Q -- and they're not limited to a particular machine is that
8 true?
9 A Yeah.
10 Q And has that been the case since 2002?
11 A Well, I've been supervisor since 2006, but yeah,
12 generally, when I was on the floor we moved around.
13 Q Same thing?
14 A Yeah.
15 Q And when you say "when I was on the floor" do you mean
16 since 2002, is that when you were on the floor, 2002?
17 A I was on the floor from 1976 until 2006.
18 Q When were you on the floor in Buena?
19 A When I worked there in 2002.
20 Q So, when you say "when I was on the floor"?
21 A I worked the machines.
22 Q You mean that everybody rotated in Buena from the time in
23 2002.
24 A In the finishing department, yes.
25 Q When the glass department machines come over from Vineland

1 do you know?
2 A Not offhand, I don't remember, it's been a couple of years
3 they came.
4 MR. LAVAUTE: I have no other questions of the witness.
5 HEARING OFFICER PROTAS: Mr. Cohen.
6 MR. COHEN: Not at this time.
7 HEARING OFFICER PROTAS: Thank you.
8 **(Witness excused)**
9 HEARING OFFICER PROTAS: Does the Employer have anymore
10 witnesses?
11 MR. COHEN: Yes, I just want to call Mr. Dean.
12 HEARING OFFICER PROTAS: Mr. Dean, you're still under
13 oath. Whereupon,
14 **ALAN DEAN**
15 Having been previously duly sworn, was called as a witness and
16 testified as follows:
17 HEARING OFFICER PROTAS: Have a seat, please.
18 **DIRECT EXAMINATION**
19 BY MR. COHEN:
20 Q All right, Mr. Dean, at any point in time have you been
21 aware of any NLRB decision or directive that specified which
22 positions in performed work previously known as part of the
23 applicator division in Vineland?
24 A No.
25 Q In the beginning of negotiations with the Union in 2007

1 did the company ever take a position as to which positions in
2 Buena performed work previously as part of the applicator
3 division in Vineland?
4 A We did.
5 Q And position was that?
6 A Our position was that operators, set up mechanics and
7 floor people in the finishing department did the same work that
8 was being done at the Vineland Plant.
9 Q And did, was that expressed exclusively in negotiations?
10 A Absolutely.
11 Q And did the Union disagree?
12 A No, they did not.
13 Q At point in negotiations, from July 2007 until July 2008,
14 did the Union ever say that any finishing department
15 classifications did not perform work previously known as part of
16 the applicator division in Vineland?
17 A They did not.
18 Q After the changed its bargaining position --
19 MR. LAVAUTE: Objection to leading and form.
20 HEARING OFFICER PROTAS: Well, I think that's testimony.
21 MR. COHEN: There's testimony by Union witnesses that they
22 changed their mind.
23 HEARING OFFICER PROTAS: That's fine.
24 BY MR. COHEN:
25 Q After the Union changed its bargaining position in July of

1 2008 to today has the Union ever asserted that there any
2 finishing department classifications that do not perform work
3 previously performed as part of the applicator division in
4 Vineland?
5 A They have not.
6 Q Has anyone from the Union ever said that it was bargaining
7 for a unit of all finishing department employees only on
8 condition that finishing department employees who never worked
9 in Vineland would thereafter sign Union cards?
10 A They have not.
11 Q Before Mr. Shinn testified about that yesterday had you
12 ever heard of such a thing?
13 A No.
14 Q At any point in time until after the decertification
15 petition was filed in July of 2008 has either the NLRB or
16 the Union defined the unit as the former Vineland applicator
17 employees no matter what positions they hold?
18 A They --
19 MR. LAVAUTE: Objection --
20 THE WITNESS: -- have not.
21 MR. LAVAUTE: -- calls for a conclusion.
22 HEARING OFFICER PROTAS: You can answer that.
23 THE WITNESS: They have not.
24 BY MR. COHEN:
25 Q Now, there was questioning yesterday of, you were here

1 when Mr. Shinn was questioned.
2 A Yes, I was.
3 Q And you remember he was questioned about a document which
4 is Petitioner's Exhibit Five which he identified as a draft.
5 It's in evidence as Petitioner's Exhibit Five.
6 A I do recall, yes.
7 Q Well, I was the one who showed that to Mr. Shinn is that
8 right?
9 A That is correct.
10 Q Do you know where I got it from?
11 A From me.
12 Q And where did you get it from?
13 A From employees in the plant.
14 Q At any point in time from the beginning of negotiations in
15 July of 2007 has Comar ever sought to withdraw recognition from
16 the Union, on the grounds that the Union does not represent a
17 majority of the finishing department employees?
18 A No.
19 Q Now, there was, let me show you --
20 MR. COHEN: Can we have this marked as, what are we up to,
21 seven, Petitioner's 8 I think it is, two copies. Do we have
22 another copy? Did I give you all my copies?
23 BY MR. COHEN:
24 Q Is that the decertification petition that's been referred
25 to?

1 MR. LAVAUTE: Has this been marked?
2 MR. COHEN: Yes, just now.
3 MR. LAVAUTE: What is it?
4 MR. COHEN: Petitioner's 8. It's 7, okay.
5 BY MR. COHEN:
6 Q Is that the decertification petition that was filed by Mr.
7 Snyder?
8 A It is.
9 MR. COHEN: I'd like to offer it.
10 HEARING OFFICER PROTAS: Any objection?
11 MR. LAVAUTE: No objection.
12 HEARING OFFICER PROTAS: P-7 is admitted.
13 **(Petitioner Exhibit Seven identified and received)**
14 BY MR. COHEN:
15 Q And the date was filed according to the document was June
16 11?
17 A Yes, that's correct.
18 Q Now, when employees gave you the document that Mr. Shinn
19 identified as a draft was that before or after the petition was
20 filed?
21 A Before.
22 MR. COHEN: Just so the record is complete this will
23 Petitioner's 8.
24 **(Petitioner Exhibit 8 identified)**
25 BY MR. COHEN:

1 Q Is that the dismissal letter of the decertification
2 from the Regional Director?
3 A Yes.
4 MR. COHEN: I'd like to offer it.
5 HEARING OFFICER PROTAS: Any objection?
6 MR. LAVAUTE: No objection .
7 HEARING OFFICER PROTAS: P-8 is admitted.
8 **(Petitioner Exhibit 8 received)**
9 BY MR. COHEN:
10 Q At any point in time after the draft was given to you by
11 employees in the facility, I'm talking about that response May
12 29 letter. At any point in time were you aware of the Union
13 ever notifying the finishing department employees that it was no
14 longer representing them?
15 A No.
16 Q Now, at negotiations, and after July of 2008, when the
17 Union said it only wanted to represent the 16 or 17 employees,
18 who used to work in Vineland, did the company at that point in
19 negotiations point out anything about other people who
20 transferred from Vineland who had left the company?
21 A Just in terms of what those replacements be in the unit.
22 Q And what was the Union's response at negotiations?
23 A No.
24 Q In terms of the people that the Union, since July 2008,
25 were, was claiming was the unit, the 16 or 17 people, at

1 negotiations after the Union took that position was the Union
2 asked if the replacements for those people, when those people
3 leave the company did they ask whether those people would be in
4 the unit as replacements?
5 MR. LAVAUTE: Objection.
6 THE WITNESS: Yes.
7 MR. LAVAUTE: I don't know what level we're at now. What
8 people are you referring to?
9 MR. COHEN: The 16 or 17. After the Union took the
10 position that the unit was limited to the 16 or 17 people who
11 had transferred from Vineland was the Union asked at
12 negotiations what its position would be about replacements for
13 those people?
14 A Yes, they were.
15 Q And what was the Union's response?
16 A That the replacements would not be in the unit.
17 Q Now, can you explain why the company filed the unit
18 clarification petition?
19 A Well, from the very beginning there was never any
20 clarification from the Board about what the unit was. From our
21 initial position in negotiations we identified what we felt like
22 was the position of the Board Order, which was the finishing
23 department, and the specific positions that made up the
24 finishing department, the operators, set up mechanics, and the
25 floor people.

1 We went through negotiation over a year with that
2 understanding. And then finally got to our negotiations in July
3 of '08, where the Union changed their position, and that's why
4 we wanted again to ask for clarification on who will be in the
5 unit and who will not be in the unit.
6 Q When you say who will be in the unit and who will be in
7 the
8 unit, are you talking about people or are you talking about job
9 classifications?
10 A Job classifications.
11 Q Okay. And is the company, what is the company's position
12 visa vi the position you identified in finishing, the set up
13 men, the operators, I think you mentioned one other?
14 A Floor person.
15 Q Floor person. Is it, what is the company's position in
16 terms of whether that is the Board unit?
17 A We believe that it represents the Board unit. These are
18 people doing work that was formerly done at the applicator plant
19 in Vineland.
20 Q And in terms of the Union's position that it has had since
21 July of 2008, that it's only the 17 people -- and again let me
22 just make sure the record is clear. Prior to July 2008, did the
23 Union ever say that the unit was the 17 people who used to work
24 in Vineland?
25 A They did not.

1 Q And what is the company's position regarding what the
2 Union has been requesting since July of 2008, that the unit is
3 the 17 people who used to work in Vineland?
4 A Our position is that particular unit is an inappropriate
5 unit.
6 Q What is the company's position in terms of, does that
7 represent the unit that the Board found?
8 A We don't think so. If we've got people in that group that
9 never worked in Vineland. And we've got people who are working
10 in Vineland today who are doing work that was done --
11 Q When you say working in Vineland today?
12 A Working in Buena today doing work that was done in the
13 Vineland plant, in the finishing department who are not in the
14 16.
15 MR. COHEN: I've nothing further.
16 HEARING OFFICER PROTAS: I have a question. When it came
17 to compliance in the, with the Board Orders there was a, part of
18 it was to apply the wages of the contract to the bargaining unit
19 is that correct?
20 THE WITNESS: I don't think that's correct.
21 MR. COHEN: To the bargaining committee?
22 HEARING OFFICER PROTAS: No, to the unit.
23 MR. COHEN: No.
24 THE WITNESS: No.
25 HEARING OFFICER PROTAS: No. Was there anything that you

had to apply to?

THE WITNESS: It was a calculation of back wages that was a part of the Board Order that we had to remedy., but there was no requirement to do any escalation of wages that I'm aware of.

HEARING OFFICER PROTAS: Okay.

THE WITNESS: Are you aware of something that --

HEARING OFFICER PROTAS: No, nothing. I'm not suggesting anything. I was just --

THE WITNESS: Okay.

HEARING OFFICER PROTAS: That's fine. Mr. LaVaute.

MR. LAVAUTE: Yes, thank you.

CROSS EXAMINATION

BY MR. LAVAUTE:

Q Mr. Dean, your last bit of testimony I found to be a little confusing and I want to ask you about it. You said the company's position about the Union's unit is that it's inappropriate, you said that. But then you said that there were people in that group who never worked at Vineland, did you mean to say that, the 16 relocated people?

A There are people in the 16 who are doing work today in Buena that was never done in Vineland, that's correct.

Q All right. You didn't mean to say that they never worked in Vineland.

A No, just the work that they're doing today in Buena was

1 never done in Vineland.
2 Q Because all the 16 did work in Vineland and got moved over
3 in 1999, correct?
4 A Not all. Mr. Wiessner didn't come over in '99, as an
5 example.
6 Q Anybody else?
7 A I don't know first-hand but I certainly recollect that
8 from his testimony.
9 Q All right. Now, yesterday I asked you about your
10 communications set in 2007 to all Comar employees, and what you
11 said we will in connection with the NLRB's decision, I'm quoting
12 this, "in connection with the NLRB's decision we will be
13 recognizing the Union as the bargaining representative of the
14 former applicator employees", right, so you knew that's what the
15 Board required.
16 MR. COHEN: We, we, this is, we've already been over this
17 and this is not something I went over again. We already --
18 MR. LAVAUTE: Excuse me.
19 MR. COHEN: Excuse me, allow me to finish, give me the
20 courtesy, okay.
21 MR. LAVAUTE: You'll get it.
22 MR. COHEN: Yeah, you, thank you.
23 MR. LAVAUTE: I'm not going to give it to you.
24 MR. COHEN: So, the fact of the matter is we didn't go
25 into this, and he's already questioned extensively about this

1 yesterday, extensively.

2 MR. LAVAUTE: He's recovered his ground that he already

3 testified about, subject matter anyway yesterday, and so I'm

4 going to follow-up on it.

5 HEARING OFFICER PROTAS: Well, I mean the document says

6 what it says. I understand your point, but is there any need to

7 go further than that?

8 MR. LAVAUTE: I didn't bring him to testify to something

9 else today. I think I'm entitled to ask him a few questions

10 about his testimony.

11 HEARING OFFICER PROTAS: Well, let's see where it goes,

12 okay, go ahead.

13 BY MR. LAVAUTE:

14 Q Do you remember the communication you sent to the

15 employees on March 22 '07 that I just quoted to you in

16 connection with the NLRB's decision, we will be recognizing the

17 Union as the bargaining representative of the former applicator

18 employees, right?

19 A Right.

20 Q So, you knew that's what the Board was requiring?

21 A That's, what the Board required was that we represent

22 that, the Union will represent those 16, that we recognized you

23 as their bargaining agent. But the Board also said, order also

24 said that through negotiation we need to negotiate over the work

25 that was done at the Vineland facility that's now being done in

1 Buena in defining, you know, through negotiations of a group
2 that meets that definition. So, we did both of those things.
3 Q You think the Board said that, huh?
4 A Well, the Board Order --
5 Q Do you think the Board said that?
6 A The Board Order said that again the work that was done in
7 Buena, excuse me, in Vineland is the, as we negotiate is to find
8 a unit, that's where we need to be.
9 Q Now, are you aware of the Transmarine Remedy Requirement?
10 A I am.
11 Q And are you aware that was to paid to the bargaining unit,
12 are you aware of that?
13 A The former applicator employees.
14 Q And you didn't pay anybody else at Buena under that
15 Transmarine Remedy did you?
16 A No, just what the Board Order called for.
17 Q And you understood it was confined to the relocated group
18 of people, correct?
19 A Well, it also was other people who never relocated, who
20 were in the applicator division as well.
21 Q So, it was the relocated people and those that didn't take
22 the relocation?
23 A Well, some of them left in the meantime.
24 Q All the people who started out in Vineland had to be paid
25 as part of this order didn't they?

1 A To some degree, yes, different degrees.
2 Q Now, when you were computing the money that was required
3 to be paid under that Transmarine Order was there discussion in
4 the company about paying other people in Buena who were doing
5 the work that used to be done at Vineland?
6 A I wasn't part of those discussions.
7 Q Were there any such discussions to your knowledge?
8 A Not to my knowledge while I was there.
9 MR. LAVAUTE: Can I have a minute, Mr. Hearing Officer, to
10 talk to my client?
11 HEARING OFFICER PROTAS: Yes, off the record.
12 **(Off the record)**
13 HEARING OFFICER PROTAS: Back on the record.
14 BY MR. LAVAUTE:
15 Q Mr. Dean, who gave you Petitioner's Exhibit Five, it's the
16 draft letter?
17 A I don't recall the specific employee just that it was
18 handed to me.
19 Q Do you remember the setting in which it was handed to you?
20 A I don't recall whether, no, I do not recall the exact
21 setting.
22 Q And when did you get the letter before or after the decert
23 petition?
24 A As I indicated it was before the decert petition was
25 filed.

1 Q And --
2 A What I do recall was it was, it was soon after, a couple
3 days, three to four days after we had sent out the letter.
4 Q You had a meeting with Mr. Snyder about the decert
5 petition --
6 MR. COHEN: Objection.
7 BY MR. LAVAUTE:
8 Q -- right?
9 MR. COHEN: Objection, that has nothing to do with this
10 case.
11 MR. LAVAUTE: Well, it's your evidence, you put it in.
12 MR. COHEN: No, no.
13 MR. LAVAUTE: I'm just exploring it.
14 MR. COHEN: No, this has nothing to do with discussing the
15 decertification. There have already been charges. They've
16 already been resolved. We're not litigating an unfair labor
17 practice charge.
18 HEARING OFFICER PROTAS: Sustained.
19 MR. LAVAUTE: Well, I'd like to be heard on this.
20 HEARING OFFICER PROTAS: Sure. What are you looking to,
21 what evidence are you looking to adduce?
22 MR. LAVAUTE: Well, first of all, the question is what is
23 Mr. Snyder's status? As the Employer stated at the outset of
24 the hearing it's willing to participate in a larger unit, or not
25 necessarily a finishing department unit. And there's going to

1 be questions about individuals who belong in or out of the unit.
2 And what I'm going to be leading to is Mr. Snyder's status and
3 whether he belongs in the unit.
4 HEARING OFFICER PROTAS: What does that have to do with
5 this proceeding though?
6 MR. LAVAUTE: Well, I believe that he's a supervisor.
7 HEARING OFFICER PROTAS: Even at that it doesn't bear on a
8 classification issue. I don't, I mean we got into this because
9 of the issue of bargaining history which is relevant. The
10 handling of the decertification petition is just, you know, an
11 issue that came up, but I don't see how it has anything to do
12 with bargaining history.
13 MR. LAVAUTE: Well, I think that Mr. Snyder's involvement
14 in the decertification effort bears on his status and whether or
15 not he belongs in bargaining unit, and whether he was even in
16 the bargaining unit when the petition was filed.
17 HEARING OFFICER PROTAS: Well, I'm sustaining the
18 objection.
19 BY MR. LAVAUTE:
20 Q Is Mr. Snyder a crew leader?
21 MR. COHEN: Objection.
22 HEARING OFFICER PROTAS: Sustained.
23 BY MR. LAVAUTE:
24 Q Does Mr. Snyder give overtime assignments?
25 MR. COHEN: Objection.

1 HEARING OFFICER PROTAS: Sustained.

2 MR. COHEN: And could he be directed to please stop?

3 HEARING OFFICER PROTAS: Yes, it's only going to the

4 status whether he's a supervisor or not.

5 MR. LAVAUTE: Well, I want to make an offer of proof then.

6 HEARING OFFICER PROTAS: Sure.

7 MR. LAVAUTE: Which is if allowed to question the witness

8 along these lines I would ask him if Mr. Snyder makes

9 substantially more hourly rate than people that we say are in

10 the relocated bargaining unit, and my understand is his answer

11 would be he does. And I would ask him whether Mr. Snyder makes

12 overtime assignments, and I believe the answer would be that he

13 does. And I would ask him whether there are two crew leaders,

14 and I believe that the answer is yes.

15 I believe that I would ask him, I would ask him does he

16 assign work in the finishing department, and if allowed to ask I

17 believe the witness would answer that he does. And I would ask

18 the witness if Mr. Snyder in effect runs the finishing

19 department, and I believe that if allowed to answer the witness

20 would answer that he does.

21 HEARING OFFICER PROTAS: Okay.

22 MR. LAVAUTE: I've no other questions.

23 MR. COHEN: I just have a few.

24 **REDIRECT EXAMINATION**

25 BY MR. COHEN:

1 Q I know you're not a lawyer. Is your understanding in
2 terms of Transmarine, does Transmarine have to do with the
3 remedy because the company didn't bargain with the Union over
4 the effects of the relocation?
5 A That's my understanding.
6 Q And was money paid pursuant to Transmarine to any
7 employees who were in the Union's bargaining unit in Buena
8 regardless of whether they ended up in, in the, in the Union
9 unit in Vineland regardless of whether they ended up in Buena?
10 A Was the money paid to them regardless --
11 Q Yes.
12 A - of where they ended up?
13 Q Yes.
14 A Yes.
15 Q Did the Transmarine as you understand it, and I know it's
16 a legal issue, did the Transmarine Remedy have anything
17 whatsoever to do with the unit placement?
18 A No.
19 Q And did, I'm talking about the unit placement in Buena, it
20 had to do with unit placement in Vineland.
21 MR. LAVAUTE: Objection leading in form. You know I think
22 that asking this witness the legal questions with the qualifier
23 that "I know this is a legal question", is an improper form of
24 question.
25 BY MR. COHEN:

1 Q Well, let me ask --
2 MR. LAVAUTE: I'm going to object to --
3 MR. COHEN: I'll move on to something else.
4 MR. LAVAUTE: I object to continuing with it.
5 MR. COHEN: I'll move on to something else.
6 BY MR. COHEN:
7 Q In terms of the employees who are no longer in the
8 finishing did the Board Order also require the company to
9 bargain about unilateral changes?
10 MR. LAVAUTE: Objection, the Board Order speaks for
11 itself. And I'm going to now raise an objection to further
12 questions about this.
13 HEARING OFFICER PROTAS: Well, the Board Order does speak
14 for itself, and it does deal with unilateral changes.
15 MR. COHEN: Right.
16 HEARING OFFICER PROTAS: So, if --
17 BY MR. COHEN:
18 Q And did the company bargain with the Union regarding the
19 placement of the people who had left the finishing department?
20 MR. LAVAUTE: Objection leading in form.
21 MR. COHEN: How is it leading in form.
22 HEARING OFFICER PROTAS: Well --
23 BY MR. COHEN:
24 Q Did the company bargain over that issue?
25 MR. LAVAUTE: Objection.

1 MR. COHEN: I didn't say didn't the company bargain, did
2 the company --
3 HEARING OFFICER PROTAS: Overruled. Overruled.
4 BY MR. COHEN:
5 Q Did the company bargain over the replacement of those six
6 people who had left the finishing department?
7 A That they were outside of the work that was done at the
8 Vineland plant.
9 Q And what did the company offer to do in regard to those
10 people as part of its initial --
11 MR. LAVAUTE: I'm going to object to this. This is such a
12 rehashing. You limited from me going into matters that were
13 covered yesterday with the witness, and this is just a rehashing
14 of --
15 MR. COHEN: Actually, I don't think --
16 MR. LAVAUTE: -- the testimony that's already in the
17 record.
18 HEARING OFFICER PROTAS: This is a bit of rehashing but
19 just finish your question.
20 BY MR. COHEN:
21 Q What was the company's position regarding those people?
22 A Our initial position at bargaining was that we would allow
23 those people to come into the finishing department as an option,
24 that was rejected.
25 MR. COHEN: Okay. I have nothing further.

1 HEARING OFFICER PROTAS: Frankly, I had some self-interest
2 because you mentioned something that raises a question in my
3 mind, compensation paid to the bargaining unit for unilateral
4 changes as Mr. Cohen just referred to that, are you familiar
5 with that?
6 THE WITNESS: What I am familiar with is at the point in
7 time in '99, of the folks that were in the Union at the
8 applicator, that there were a lot of remedies in that Board
9 Order to handle the various aspects of what happened in '99,
10 whether it was back pay for health care benefits, whether it was
11 back pay for wages, whether it was Transmarine, there were a lot
12 of different things.
13 HEARING OFFICER PROTAS: Mr. -- mentioned the Transmarine
14 Remedy not being applied to anybody other than the people who
15 came over. How about the overtime monetary remedies that were
16 in there. Was any money paid at all to anybody who hadn't come
17 over from Vineland to Buena?
18 THE WITNESS: Well, it, the Board Order only covered the
19 people that were at the Vineland Plant.
20 MR. LAVAUTE: Objection, non-responsive.
21 HEARING OFFICER PROTAS: Are you intimating the answer is
22 no, that no money was paid to anybody who didn't come over from
23 Vineland to Buena?
24 THE WITNESS: No money was paid outside of that, that is
25 correct.

1 HEARING OFFICER PROTAS: Okay, fine. Mr. LaVaute.
2 MR. LAVAUTE: Nothing further from me.
3 BY MR. COHEN:
4 Q Did the Board ever order that payment be made to anyone
5 other than people who were part of the Vineland bargaining unit?
6 MR. LAVAUTE: Objection.
7 HEARING OFFICER PROTAS: Sustained.
8 MR. COHEN: I've nothing further.
9 HEARING OFFICER PROTAS: Mr. LaVaute.
10 MR. LAVAUTE: No.
11 HEARING OFFICER PROTAS: Thank you.
12 MR. LAVAUTE: Nothing further.
13 MR. COHEN: Nothing further.
14 MR. LAVAUTE: Well, I'm going to need a little bit of a
15 recess, just a few minutes.
16 HEARING OFFICER PROTAS: Off the record.
17 **(Off the record)**
18 HEARING OFFICER PROTAS: Back on the record. Does either
19 party have anymore evidence to present?
20 MR. LAVAUTE: We have no more witnesses to present.
21 MR. COHEN: No, nothing further, Mr. Hearing Officer.
22 HEARING OFFICER PROTAS: And I understand the Union would
23 like to state what its position is on this.
24 MR. LAVAUTE: Right, our position is that the Board
25 ordered unit consists of the 16 remaining relocated Vineland

1 workers no matter what jobs they're doing, that is what the
2 Board has directed, that is what the Employer should be
3 bargaining in. To the extent there was discussion or even if
4 there were tentative agreement on a larger unit, that's a
5 permissive subject. We were entitled to stop the discussion
6 which we did clearly. And so the existing unit is the Board
7 ordered unit.
8 HEARING OFFICER PROTAS: Thank you. Are the parties going
9 to be presenting or submitting briefs?
10 MR. LAVAUTE: Yes.
11 MR. COHEN: Yes, we will.
12 HEARING OFFICER PROTAS: Okay. Briefs will be due then on
13 Tuesday, July 28. If extensions are needed direct your request
14 to the regional director.
15 MR. LAVAUTE: Well, I'm going to be in Missoula, Montana
16 on that date, so I will be asking for an extension.
17 HEARING OFFICER PROTAS: I understand.
18 MR. COHEN: And I won't object to his request because he's
19 such a good guy.
20 HEARING OFFICER PROTAS: This hearing has accomplished
21 something. All right. We're adjourned. Thank you. Off the
22 record.
23 **(Whereby, the hearing was closed at 12:00 p.m.)**

1 C E R T I F I C A T E

2 This is to certify that the attached proceedings

3 before the NATIONAL LABOR RELATIONS BOARD, REGION FOUR

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6
7 In the Matter of:
8
9 COMAR, INC.,
10
11 Employer/Petitioner,
12
13 and
14
15 UNITED STEEL, PAPER AND
16 FORESTRY, RUBBER,
17 MANUFACTURING, ENERGY,
18 ALLIED INDUSTRIAL AND
19 SERVICE WORKERS
20 INTERNATIONAL UNION
21
22 Union Involved.
23
24
25
26
27
28
29 Case No.: 4-UC-440
30
31 Date: June 21, 2009
32
33 Place: Philadelphia, PA
34
35 were held as therein appears, and that this is the original
36 transcript thereof for the files of the Board.
37
38
39
40
41 Official Reporter

42

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

COMAR, INC. Employer/Petitioner and	Case 4–UC–440
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION[1] Union Involved	

REGIONAL DIRECTOR'S DECISION, ORDER, AND CLARIFICATION OF BARGAINING UNIT

I. INTRODUCTION

In 1999, the Employer/Petitioner, Comar, Inc., (herein called the Employer) relocated employees represented by the Union Involved, the Steelworkers International Union (herein called the Union), from a facility in Vineland, New Jersey, to a facility 10 miles away in Buena, New Jersey. The Employer withdrew recognition from the Union following the relocation, and the Board found the withdrawal to be unlawful. To remedy this unfair labor practice, the Board ordered bargaining in a unit which it defined as:

> All hourly paid production workers who are performing the work that was formerly done as part of the Applicator Division of Comar, Inc., at its facility then located in Vineland, New Jersey . . .

Comar, Inc., 339 NLRB 903, 904 (2003) (*Comar I*), enfd. 111 Fed. Appx. 1 (D.C. Cir. 2004). A subsequent Board decision reaffirmed this unit definition. *Comar, Inc.*, 349 NLRB 342 (2007) (*Comar II*). Since then, the parties have disputed the identity of the employees included in this unit, and the Employer has filed this petition seeking to have the unit clarified.

The Employer contends that the unit should include all non-supervisory employees working in the Finishing Department at the Buena facility. The Union asserts that unit

[1] The name of the Union Involved appears as corrected at the hearing.

clarification is not warranted under the circumstances of this case and that the Employer's petition should be dismissed. If clarification is deemed appropriate, the Union maintains that the unit should include only those employees who transferred from Vineland to Buena in 1999 and continue to work at Buena.

A Hearing Officer held a hearing in this matter, and both parties filed briefs. I have considered the evidence and arguments presented by the parties and, as discussed below, I have concluded that unit clarification is appropriate and that the unit should be clarified to include all hourly employees currently working in the Finishing Department at the Buena facility. In this Decision, I will first present the facts, starting with a brief overview of the Employer's current operations followed by a review of the sequence of events which gave rise to the present controversy. I will then explain the reasons for finding that unit clarification is appropriate and that all Finishing Department employees should be included in the unit. The Decision concludes with an evaluation of the status of seven employees who transferred to the Buena facility but no longer work in the Finishing Department. I find that two of these employees should be excluded from the unit, but that the record is not sufficient to permit a determination as to the unit placement of the five other employees.[2]

II. FACTS

A. Overview of the Employer's Operations

The Employer manufactures medicine droppers, syringes, dosage cups, bottles, and various other items at its facility in Buena, New Jersey. The Buena facility consists of four buildings. One building houses the Employer's managers and administrators, and employees involved in various facets of the Employer's production process are located in the three remaining buildings.

In the Finishing Department, which occupies an entire building, employees assemble plastic and glass droppers which are used to dispense liquid medications. Medicine droppers consist of a cap, a glass or plastic tube known as a pipette, and a bulb which is squeezed to extract liquid from the pipette. The approximately 39 employees assigned to the Finishing Department run machines which assemble the droppers, stamp calibration lines on the pipettes, cut the pipettes to the proper length, and package the droppers for sale. Employees in the Finishing Department report to Supervisors Jacqueline Auberzinsky and Frederick LeStourgeon, who are not responsible for employees in any other department.

Three types of machines are used to assemble medicine droppers. There are three high-speed assembly machines which turn out up to 300 droppers per minute, four auto dropper assembly machines (ADAMs) which operate at a slightly slower pace than the high-speed machines, and a single rotary assembly machine which assembles about 40 droppers per minute.

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[2] The facts set forth in this Decision come from the Board's Decisions in *Comar I* and *Comar II*, and the evidence presented by the parties at the hearing. The Union's unopposed motion to correct the transcript of the hearing is hereby granted.

The Glass Department, Mold Shop, and Engineering Department share another building. The Glass Department was moved to Buena in 2007 from Vineland. About nine employees work there, and they report to Stephen Gargione, who also supervises the 10 employees assigned to the Mold Shop. The Glass Department makes glass pipettes for the medicine droppers. The Mold Shop repairs the molds used in making the components for the droppers.

The Quality Control Department and Maintenance Department, several other manufacturing departments, and the warehouse are in the fourth and largest of the buildings at the Buena facility. The Quality Control and Maintenance Departments each have 14 employees, and the warehouse has seven employees. Fifteen employees in this building work in the Cup Department making dosage cups, and 52 other employees are assigned to the Blow Mold and Injection Mold Departments where they manufacture components used in droppers.

Sixteen employees who worked at the Vineland facility currently work at the Buena facility, and nine of them work in the Finishing Department. Of the seven remaining former Vineland employees, two work in the Cup Department, one works in Quality Control, one works in the Glass Department, one works in the warehouse, and one is in the Maintenance Department. The record does not clearly indicate the current job status of the other transferred employee, Michael Munson.

B. The Employer's Operations in 1999

In 1983, the Employer purchased the Vineland facility from another company. The Union, which had represented employees at that facility since 1955, continued to represent them. The Union-represented employees working in the Applicator Division at Vineland were most recently covered by a collective-bargaining agreement, effective from 1996 through September 30, 1999, which described the bargaining unit as "all hourly paid production workers" working at a facility located on "Castpa Place and Edrudo Road" in Vineland, New Jersey. The contract specifically indicated that the unit included only Applicator Division employees. As of 1999, the Employer operated another facility in Vineland, the Glass Division, along with the Applicator Division.[3] The Employer also operated the Buena facility at that time, but the Applicator Division was the only one of the Employer's facilities at which employees were represented by a union.

The Applicator Division employees produced medicine droppers using 16 rotary machines and three ADAMs. The rotary machines were generally used for small runs. The three auto dropper assembly machines (ADAMs) operated at a higher speed than the rotary machines and produced more droppers per minute. In addition to operating the rotary machines and ADAMs, some Applicator Division employees assembled droppers by hand, ran stamping machines which etched calibrations on pipettes, and operated wrapping machines which packaged fully-assembled droppers for shipment. There were also employees in the Applicator Division who handled shipping, maintenance work, and quality control work.

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[3] Glass Division employees were unrepresented and were not impacted by the 1999 relocation of Applicator Division employees.

The Employer's second Vineland facility, the Glass Division, produced glass vials and glass pipettes used in dropper assembly. The Employer sold the bulk of its Glass Division in 2007 and relocated the portion of the Glass Division which made glass pipettes to the Buena facility.

In 1999, the Buena facility produced droppers with plastic pipettes. The approximately 65 to 70 Buena employees involved in assembling, stamping, and packaging the droppers were known as the Finishing Department. These employees used three high-speed machines which could produce up to 300 droppers per minute. Because these machines had to be reset each time a different type of dropper was made, they were not practical for use on small production runs. The high-speed machines were also not used in the assembly of droppers with glass pipettes due to problems with breakage. Droppers with glass pipettes, which made up about 10 to 15 percent of the Employer's dropper business, were assembled exclusively at the Applicator Division plant in Vineland. Like the employees in the Applicator Division, employees at the Buena facility operated machines which stamped calibrations on pipettes and wrapped droppers for shipment.

In addition to the Finishing Department, the Buena facility housed the Blow Mold, Injection Mold, and Seal Departments. These Departments were located in a building separate from the Finishing Department and produced components used in the assembly of droppers by both the Finishing Department in Buena and the Applicator Division in Vineland.

C. <u>The Relocation of the Applicator Division</u>

In July 1999, the Employer informed Applicator Division employees and the Union that the Applicator Division would be moved to the Buena facility. The Employer told the employees that they would no longer be represented by the Union following the move and would work under the conditions of employment applied to Buena employees.

The Employer completed this relocation by late September 1999. 47 of the 50 Applicator Division employees were offered jobs in Buena, and 23 of them accepted the transfer offers.[4] Most of the Applicator Division equipment was moved to Buena, including 12 to 14 of the 16 rotary assembly machines and the three ADAMs. The Employer also moved stamping machines, cap-punching machines, a re-knobbing machine which shortened pipettes, machines that assembled bulbs and stoppers, and a wrapper which packaged completed droppers.

The Applicator Division equipment transferred from Vineland was not at that time placed in the Finishing Department where plastic droppers were assembled in Buena. Instead, the equipment was installed in a separate room in the building at Buena which housed the Blow Mold and Injection Mold Departments. All of the transferred employees were assigned to work in this room, and none of the existing Buena employees were assigned to work with them. The transferred employees continued to perform the same jobs which they performed in Vineland and were subject to the same supervision. However, the Employer withdrew recognition from the

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[4] Two additional Applicator Division employees, Jacqueline Auberzinsky and Anthony Wiessner, accepted employment at Buena in 2002 and 2003.

Union as the employees' representative and reduced the transferred employees' benefits to the less generous levels received by Buena employees.

The Employer made almost no effort to integrate the Applicator Division employees into its Buena workforce in the period following the relocation. Applicator Division employees continued to work in a room separate from the other Buena employees between September 1999 and May 2001, although two Applicator Division employees were cross-trained to work on Buena equipment, and two or three Buena employees were trained to use rotary assembly machines. Buena warehouse employees moved components and finished product to and from a staging area near the room in which former Vineland employees worked, but the product was brought into the room by a former Vineland employee. Applicator Division employees used the same time clock and lunchroom as other employees in Buena, but their interaction was limited, and Applicator Division employees remained largely separate from the rest of the Buena workforce.

D. The Board's First Decision (*Comar I*)

In September and October 1999, the Union filed unfair labor practice charges against the Employer relating to the relocation of Applicator Division employees to the Buena facility, and in May 2001, a hearing was held before an Administrative Law Judge. The Judge issued a Decision in August 2001, finding that the Employer had violated the Act by: failing to bargain with the Union over the effects of the relocation on Applicator Division employees; withdrawing recognition from the Union; changing employee working conditions following the relocation; and discharging the Applicator Division employees who refused to accept employment in Buena under the changed conditions of employment. Among other things, the Employer was required to rescind the unlawful changes, make the affected employees whole for any loss of compensation they suffered as a result of these changes, provide a *Transmarine* limited backpay remedy,[5] offer reinstatement to the unlawfully discharged employees, and bargain with the Union in the appropriate unit, as discussed below.

In finding a continued duty to bargain following the relocation, the Judge noted that the transferred Vineland employees remained a distinct group which worked in an area separate from the remainder of the Buena plant and continued to produce the same products they had produced in Vineland, using the same machines and reporting to the same supervisors. The segregation of the Vineland employees coupled with their long history of bargaining caused the Judge to conclude that they remained a separate appropriate unit. However, the Judge recognized that the relocation had altered the circumstances in which the transferred employees worked and made it impossible to define the unit in which the Employer was obliged to bargain as it had been defined in the past. Since Applicator Division employees no longer worked in a separate facility in Vineland, the unit could no longer be described on the basis of their location. Instead, pending an agreement by the parties to alter the unit description, the Judge ordered bargaining in a unit described by the functions the employees performed. Specifically, as noted in the Introduction, the Employer was required to bargain in a unit consisting of "all hourly paid production workers who are performing the work that was formerly done as part of the

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[5] See *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Applicator Division of Comar, Inc. at its facility then located in Vineland, New Jersey . . . ." *Comar I* at pp. 910-911.

The Board adopted the Judge's recommended Order in a Decision issued in July 2003, although it noted that the Employer was free in compliance proceedings to introduce evidence of changes in operations postdating the hearing to the extent that such changes might affect the remedy. *Comar I* at fn. 1. The United States Court of Appeals for the District of Columbia Circuit enforced the Board's Order in May 2004. *Comar, Inc. v. NLRB,* 111 Fed Appx. 1 (D.C. Cir. 2004).

E. The Board's Second Decision (*Comar II*)

Following the Board's initial Decision, the Employer agreed to bargain over the effects of the relocation of Vineland employees to Buena, but insisted that changes in its operations subsequent to the May 2001 hearing had eliminated the unit represented by the Union and extinguished any duty to bargain for a contract. Additionally, a dispute developed over the amounts of monetary compensation due employees as a result of the unfair labor practices found by the Board, and the Union filed new charges over the Employer's responses to its requests for information. A second hearing before an Administrative Law Judge was held on these issues in November 2005.

The Judge issued a Decision in April 2006, and the Board issued a Decision adopting the Judge's conclusions in February 2007. The Employer did not seek Circuit Court review of *Comar II* and instead executed a settlement agreement in November 2007 in which, inter alia, it agreed to comply with its obligations under *Comar I* and *Comar II.*

The Judge's Decision in this second proceeding describes a number of changes in operations at the Buena facility subsequent to May 2001. For one, the Employer decreased its reliance on rotary machines, and only two of the rotary machines remained in operation by 2005. During this same period, the Employer increased its use of ADAMs, adding three machines to the original three. The rotary machines continued to be located in the room to which unit employees were assigned upon their transfer from Vineland in 1999. However, the ADAMs and a number of the other machines which had been shifted from Vineland to Buena were moved to the Finishing Department where they were interspersed among the machines Buena employees had always utilized in making droppers. *Comar II* at pp. 348-349.

The Employer also made changes to the Finishing Department workforce and the employees' job duties. The number of Finishing Department employees was reduced from 90 to 65, and these employees were no longer assigned to operate particular machines, but were moved between machines based on the Employer's needs. Ibid.

Four of the 23 Vineland employees who transferred in 1999 were no longer working at the Buena facility by 2005.[6] Two Vineland employees who did not accept transfers in 1999 – Anthony Wiessner and Jacqueline Auberzinsky – transferred to Buena in 2002 and 2003.

[6] Two of these employees died, and two others resigned.

Almost all of the employees transferred from Vineland were still working in the Employer's Finishing Department in Buena as of 2005, and they continued to perform functions related to the assembly of droppers, the same work they did in Vineland prior to 1999.

Despite the Employer's operational changes, the Judge in *Comar II* did not find that the unit established in the Board's initial Decision had lost its identity. Since the Employer had never remedied the unfair labor practices found in *Comar I* by rescinding the unlawful changes in employee working conditions and bargaining with the Union for a contract covering the unit, the Judge decided that the Employer was precluded from contesting the Union's status as the employees' representative. In the Judge's view, the Employer had to remedy its earlier unfair labor practices before it could argue that operational changes extinguished any duty to bargain. Further, the Judge pointed out that many of the changes on which the Employer based its arguments involved mandatory subjects of bargaining and had been implemented without negotiations. Therefore, the Employer could not rely on these changes to contest the Union's status until it had offered the Union an opportunity to negotiate them. *Comar II* at pp. 356-360.

The Judge also noted that the Employer's Answer to the Compliance Specification claimed that changes made prior to September 30, 2001, had effectively obliterated the unit, but that the Employer had failed to show that the changes on which it relied had occurred by that date. The Judge decided that having selected the September 30 date, the Employer was obliged to show that the unit had been destroyed by that time and barred it from relying on changes made thereafter to support its claim that it had no continuing duty to bargain. *Comar II* at pp. 358-359.

Finally, the Judge indicated that, even if the changes implemented by the Employer between 2001 and 2005 were taken into account, a separate unit of employees performing Vineland work remained in existence. Noting that employees who formerly worked in Vineland continued to manufacture the same products using the same types of machines, the Judge concluded that the incremental changes to production made by the Employer were not sufficient to warrant a withdrawal of recognition given the long history of bargaining. The fact that unit employees might be doing the same type of work on the same equipment as non-unit employees "within a broader facility or group" was deemed by the Judge insufficient to justify a finding that the unit ceased to exist and to relieve the Employer of its obligation to honor the portion of the original Board Order which required bargaining. *Comar II* at p. 360.[7]

One additional comment made by the Judge deserves mention because the Union relies on the remark in making its arguments in this case. The Judge determined the amounts of monetary compensation due former Vineland employees as a result of both changes in terms of employment made by the Employer upon the employees' transfer to Buena and a *Transmarine* remedy. In a footnote, the Judge mentioned that the Employer had expressed concern that the General Counsel was "attempting to bring the entire finishing department at the Buena facility within the bargaining unit" for purposes of calculating the amounts due. The Judge found that this concern was "misplaced" since no attempt had been made to seek monetary damages for individuals other than those who were part of the bargaining unit in Vineland and neither the

[7] In addition to concluding that the Employer had a continuing duty to bargain, the Judge found that it had unlawfully delayed in providing the Union with certain requested information.

General Counsel nor the Union had asked for an alteration in the unit definition set forth in the Board's original Decision. *Comar II* at p. 356, fn. 30.

F. Events Postdating *Comar II*

By letter dated March 20, 2007, soon after the Board adopted the Judge's Decision in *Comar II,* the Employer formally recognized the Union as the representative for the unit described by the Board in *Comar I* and requested that the Union bargain over the effects of the 1999 relocation on former Vineland employees and for a new contract. Among other things, the letter noted that the parties would need to bargain over the composition of the bargaining unit. Two days later, on March 22, the Employer informed employees in Buena that it intended to comply with the Board Decision requiring that it recognize the Union as the representative for "former Applicator employees."

In early June 2007, the Employer restored to those employees who had transferred from Vineland the benefits which those employees had enjoyed prior to the transfer. The enhanced benefits were not made available to employees other than those who had originally worked at the Applicator Division in Vineland, and all former Vineland Applicator Division employees received the additional benefits regardless of what positions they held at the Buena facility at the time benefits were restored.

The Union proposed a settlement in late June 2007 in which it would agree to accept reduced amounts of employee monetary compensation in return for a contract covering the Applicator Division employees who had transferred from Vineland, with an understanding that the Employer would recognize the Union as the representative for the remaining employees at the Buena plant if it could secure an authorization card majority. The Employer rejected this offer.

When formal bargaining began in July 2007, the Employer indicated that it believed the Board-defined unit encompassed all employees in the Finishing Department at Buena because all Finishing Department employees were involved in assembling droppers, the work which had been performed by the Applicator Division in Vineland. It suggested that the parties negotiate for a contract covering Finishing Department employees and offered to transfer back to the Finishing Department six former Applicator Division employees who had moved elsewhere in the Buena plant.

The Union agreed to define the unit as including all Finishing Department employees. The Union rejected the Employer's suggestion that the six former Vineland employees who no longer worked in the Finishing Department be moved back into that Department but insisted that these employees be included in the unit. The Employer agreed to "grandfather" the six employees, but not to include their positions in the unit. The Union acquiesced to this arrangement, and the parties bargained in a unit thus defined for nearly a year. At the hearing in this case, Union negotiator John Shinn claimed that the Union did not regard the entire Finishing Department as the Board-described unit and believed it would have to secure authorization cards from those Finishing Department employees who had not transferred from Vineland before it

would be able to enter into a contract covering them. However, the Union did not communicate these reservations at the bargaining table.

By June 2008, the parties were nearing agreement on a contract. However, on June 11, 2008, Buena plant employee Daniel Snyder filed a petition in Case 4–RD–2141 seeking to have the Union decertified for a unit described in his petition as "all fulltime operators, inspectors, set-up mech. [sic] and floor operators" in the Buena facility's Finishing Department. When the parties met again for bargaining on July 8, the Union announced that it was no longer willing to bargain in a unit of all Finishing Department employees and would only negotiate on behalf of the Buena plant employees who had previously worked at the Applicator Division in Vineland. The Employer objected that this was not the unit in which the Board had ordered bargaining, and each party filed an unfair labor practice charge (Cases 4–CA–36275 and 4–CB–10188) contending that the other party was unlawfully insisting on a modification of the unit.[8] Bargaining was suspended while the charges were investigated.

On October 31, 2008, the Union's charge in Case 4–CA–36275 and the decertification petition in Case 4–RD–2141 were dismissed. Additionally, on the same day, a letter issued closing the *Comar I* and *Comar II* cases based on the Employer's compliance with the Board and Court Orders in those cases. The Employer's unfair labor practice charge in Case 4–CB–10188 was dismissed on November 12, 2008.

The parties met again on February 20, 2009, but did not resolve their dispute over the identity of the employees in the bargaining unit. Although the Employer expressed a willingness to consider the Union's proposed unit, it reiterated its position that the Board-ordered unit included all of the Buena facility's Finishing Department. The Union for its part continued to insist that the Board had only ordered bargaining for employees who transferred from the Applicator Division in Vineland and refused to negotiate on behalf of any additional employees. When the Employer asked if individuals hired to replace departed Applicator Division employees should be included in the unit, the Union said that they should not.

There have been no negotiations since February 20, 2009. On April 15, 2009, the Union filed another unfair labor practice charge, in Case 4–CA–36714, contending that the Employer was unlawfully insisting on a modification of the bargaining unit. This charge was dismissed on June 12. An appeal from this dismissal remained pending before the General Counsel at the time of the hearing in this case, as did a request by the Union that the General Counsel reconsider his denial of its appeal from the dismissal of the Union's charge in Case 4–CA–36275 and the Union's request to reopen the question of whether the Employer had complied with the Board's and Court's Orders in *Comar I* and *Comar II*. I take administrative notice that all of those appeals and requests have since been denied by the General Counsel.[9] I take further notice that

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[8] The Union filed the charge in Case 4–CA–36275 on August 4, 2008, and the Employer filed the charge in Case 4–CB–10188 on August 14, 2008.

[9] On August 31, 2009, the General Counsel denied the Union's appeal of the dismissal of the charge in Case 4–CA–36714, as well as the Union's Motion for Reconsideration in Case 4–CA–36275 and the Union's attempt to "appeal" the decision not to reopen compliance in *Comar I* and *Comar II*.

on September 11, 2009, the Union filed with the Board a document entitled, "Charging Party's Request for Review of the General Counsel's Decision on Appeal From Compliance Determination" in *Comar I* and *Comar II*. Additionally, by letter dated the same date, the Union filed with the General Counsel a Motion for Reconsideration of the denial of the Union's appeal of the dismissal of the charge in Case 4–CA–36714. The Motion for Reconsideration was denied by letter dated September 30, 2009. The Request for Review of the General Counsel's Decision on Appeal from Compliance Determination is pending before the Board.

The Employer has continued to make incremental changes in the Buena facility's operations since the *Comar II* hearing in November 2005. All equipment used to assemble droppers is now located in the Finishing Department including the single rotary assembly machine still in operation. Finishing Department employees, including the nine former Applicator Division employees, rotate jobs daily based on the Employer's requirements. Employees are not designated to operate particular machines, but can work either on equipment which was transferred from Vineland or on equipment which has always been in Buena.

G. The current status of the non-Finishing Department employees who transferred from Vineland to Buena

Seven former Vineland employees now work at the Buena facility in areas other than the Finishing Department. Florence Simione, a quality control employee in the Applicator Division prior to 1999, currently performs quality control functions in the Glass Department in Buena. However, since the Glass Department was not located in the Applicator Division before 1999, Simione did not handle Glass Department quality control while in Vineland although she may have handled similar functions.

Anthony Wiessner, the Local Union President, works in the warehouse at Buena. His primary responsibility is to bring materials to the Finishing Department. Other warehouse employees also perform this function although the record does not indicate how much of their time, or Wiessner's time, is spent on this task.

James Massey worked as a maintenance employee in Vineland and currently works as a maintenance employee in Buena. Employer Director of Operations Donald Hutchinson testified that Massey performs the same tasks as other maintenance employees in Buena. However, the record does not indicate the nature of those tasks, how much of Massey's time is spent performing work related to Finishing Department operations, or how his job duties compare to those of other maintenance employees.

Kristie Armstrong works as a quality control employee at Buena and previously worked as a quality control employee in Vineland. Beyond this, the record does not indicate the precise nature of her duties in either plant nor include any information as to how her work in Buena relates to Finishing Department operations.

Two former Applicator Division employees, Ruth Benowitz and Doris McGaha, transferred from the Finishing Department to jobs in the Cup Department.

Michael Munson, a set-up operator in Vineland, presently works at the Buena facility. Although Wiessner testified that Munson's current job is "outside the Union classification," the record does not indicate the nature of the job or how it relates to Finishing Department operations. An employee list presented by the Employer indicates that Munson is a "303 Facilities Coord/technician."

With the exception of Munson, all former Applicator Division employees currently working in Buena continue to receive the benefits which were included in the Applicator Division collective-bargaining agreement as of 1999 and which are different than those received by other Buena employees.

II. ANALYSIS

A. Unit Clarification Is Appropriate

The Board's authority to issue certifications implies the authority to clarify which employees should be included in the certified unit. *Avecor, Inc.*, 309 NLRB 73, 74, fn. 15 (1992); *The Standard Register Co.*, 146 NLRB 1042, 1043 (1964). Where a unit is defined by function, i.e., in terms of the work performed, the Board will entertain a petition to clarify whether employees who were newly assigned to perform unit work should be included in the unit. *The Sun*, 329 NLRB 854, 857-858 (1999); *Bremerton Sun Publishing Co.*, 311 NLRB 467, 470-471 (1993).

The unit in this case is a functionally-defined unit. Specifically, the Board in *Comar I* ordered bargaining in a unit of hourly-paid production employees at the Employer's Buena facility who perform work formerly done at the Applicator Division facility in Vineland. Nothing in *Comar II* altered this unit description.

The *Comar I* decision was based on Buena plant operations as of May 2001, the date of the first unfair labor practice hearing. As of that date, all of the employees performing Applicator Division work in Buena had transferred from Vineland and worked in a separate area exclusively on machines which had also been moved from Vineland. That arrangement no longer exists. Subsequent to May 2001, Vineland machines were moved to the Buena Finishing Department where they were interspersed among machines that had always been in Buena and machines acquired later. Nine of the former Vineland employees now work next to employees who worked in Buena as of 2001 and employees hired since that date. The former Vineland employees currently assigned to the Finishing Department spend part of their time working on machines that had always been in Buena, and Buena employees sometimes operate former Vineland machines. Additionally, some of the former Vineland employees have departed the Finishing Department and work in other areas of the Buena facility where they may or may not continue to perform former Applicator Division work. In short, the period since 2001 has produced changes in Buena plant operations and work assignments which raise questions as to which employees are presently doing the work of the unit defined by the Board.

These questions were not resolved by the Board in *Comar II*. The relevant issue in that case was whether a separate Applicator Division unit continued to exist; the Board was not asked to define precisely which employees were in the unit. Nor has this question of unit placement been resolved by the parties since *Comar II*, as negotiations are deadlocked over this precise issue - the identity of the unit employees. Indeed, the parties have both filed unfair labor practice charges alleging that their counterparts' bargaining concerning the unit was unlawful, but those charges were dismissed and did not resolve the unit composition question. Thus, the parties have failed to resolve the matter themselves, by negotiation or litigation, and unit clarification proceedings provide the most appropriate way to determine which employees are in the unit.

The Union asserts that clarification is inappropriate because the Employer is seeking to upset the parties' established practice regarding the placement of employees without evidence of recent changes in the employees' duties.[10] According to the Union, the Decisions in *Comar I* and *Comar II* established a unit limited to those individuals who transferred from Vineland, and the parties agreed to continue this unit following the *Comar II* Decision. The Union notes that in *Comar I*, the Board required the Employer to restore to unit employees the working conditions which prevailed in Vineland prior to the relocation. Following *Comar II*, the Employer complied with this portion of the Board Order but limited the restoration remedy to Vineland transferees. The Union did not object to this limited restoration remedy and argues that its decision not to object gave rise to a tacit agreement between the parties to a unit consisting only of employees who moved from Vineland. It is this tacit agreement which the Union contends the Employer is now improperly seeking to overturn through its petition.

There are several flaws in the Union's claim. First, and perhaps most significant, the Board in *Comar I* did not order bargaining in a unit limited to Vineland transfers -- it required the Employer to negotiate in a unit consisting of employees who performed work previously performed in Vineland. The unit was thus defined by function, not by point of employee origination. It may be that as of the first hearing in May 2001, all of the employees in the unit were Vineland transfers, but nothing in *Comar I* suggests that the unit was to be forever limited to employees who moved from Vineland. By describing the unit in functional terms, the Board clearly left open the possibility that non-transfers would eventually be included.

The Union's contention as to *Comar II* is also incorrect. The Board in *Comar II* was asked to decide whether a unit of employees doing former Vineland work continued to exist, not to decide which employees were in this unit, and nothing in *Comar II* altered the unit description from *Comar I*.[11] The unit in which bargaining was required continued to consist of employees performing former Vineland work; it had not been transformed into a unit limited to employees who originated in Vineland.

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[10] In this connection, the Union cites *Kaiser Foundation Hospitals*, 337 NLRB 1061 (2002).

[11] In *Comar II*, a critical issue was whether the Employer needed to comply with the Board's Order in *Comar I* in view of subsequent events, and the Judge found that the Employer's operational changes did not excuse its non-compliance. As the Employer has now fully complied with the Board's Orders in *Comar I* and *II*, these considerations are no longer present.

Moreover, since the Board in *Comar II* was not asked to decide unit placement issues, it is not accurate to say there have been no changes in the Employer's operations which might impact questions of unit placement. Eight years have passed since the original May 2001 hearing in *Comar I* which formed the basis for the Board's unit findings. During that time, a number of Vineland transfers have departed the Employer's workforce and been replaced by new hires, while other former Vineland employees have switched to jobs within the Buena plant which involve performance of non-Vineland work. The Vineland equipment has been moved to the Employer's Finishing Department, and all employees in that Department have been assigned to operate it. In short, the Employer has significantly altered its operations since May 2001 in ways which create questions of unit placement, and clarification is an appropriate vehicle for resolution of those questions.

Additionally, the evidence simply does not support the Union's claim that the parties tacitly agreed to a unit limited to Vineland transfers following *Comar II*. When bargaining started in the summer of 2007, the parties expressly agreed to bargain in a unit including all Finishing Department employees plus Vineland transfers employed outside the Finishing Department, and they continued to negotiate in this unit for nearly a year before the Union changed its position and insisted on limiting the unit. Thus, assuming that the limitation of the restoration remedy to Vineland transfers might imply agreement to a transfers-only unit, the parties' subsequent express agreement to bargain in a broader unit suggests something quite different. At best, the parties' conduct was ambiguous, but, in any case, there was never a clear acknowledgement that the unit would be limited to Vineland transfers, and the Employer's petition therefore does not seek to overturn an established practice regarding unit placement.

The Union, citing *Al J. Schneider & Associates,* 227 NLRB 1305 (1977), further contends that clarification is not appropriate because unfair labor practice charges pending at the time of the hearing in this case raised the same unit issues for which the Employer seeks clarification. However, these charges, as well as the Union's requests for reconsideration by the General Counsel, have been finally dismissed after the hearing closed and cannot as a consequence serve as an impediment to the processing of this petition. The Union's Request for Review of the General Counsel's denial of its appeal to the closing of *Comar I* and *Comar II* on compliance does not require a different result.

But, even if the charges are somehow resurrected or new charges raising similar issues are filed, the Board's Decision in *Schneider* would not preclude unit clarification. In *Schneider,* the union filed unfair labor practice charges claiming that two related companies should be viewed as a single employer which unlawfully failed to apply the union's contract to employees of the non-union employer. The employer countered with a unit clarification petition seeking a finding that the two companies were not a single employer, but the Board dismissed the petition. Although the Board's Decision noted that the employer was seeking clarification in advance of the resolution of the union's charges, this was not the primary reason given for dismissal. Instead, the Board denied clarification because it found that the employer's petition did not raise issues of unit placement "cognizable in a unit clarification proceeding." Id. at 1306. Thus, *Schneider* does not stand for the proposition that dismissal of a unit clarification petition is required whenever parallel unfair labor practice charges are pending.

Moreover, Board Decisions issued since *Schneider* have made clear that clarification is appropriate to resolve issues of unit scope as well as issues of unit placement. In this connection, see *Armco Steel Co.*, 312 NLRB 257, 259 (1993), in which the Board stated, inter alia, that unit scope issues involving relocated employees "are as readily resolvable in UC proceedings as they are in any other type of representation proceeding."[12] But, even if the distinction between unit scope and unit placement underlying the result in *Schneider* were still viable, it would not prevent clarification in this case. The Employer concedes the scope of the unit here, i.e., all employees performing Applicator Division work. The issue is whether specific individuals belong in this unit, a question of unit placement. Therefore, for all these reasons, I find that unit clarification is appropriate in the circumstances of this case.[13]

B. The Unit

1. *The Finishing Department*

As stated above, the Board held in *The Sun,* above at 859, that where a unit is described by function, employees who are newly assigned to perform unit work are presumed to be included in the unit unless their performance of unit work is either incidental to their primary work functions or an insignificant part of their work assignments. The party seeking to exclude such employees can overcome this presumption only by showing that the new group is sufficiently dissimilar from existing unit employees that their inclusion would render the unit no longer appropriate.

Applying this standard, I find that all hourly-paid, non-supervisory employees presently working in the Finishing Department at the Buena facility must be included in the unit. The Finishing Department currently performs the work that was the primary focus of the Applicator Division in Vineland, i.e., assembling droppers using rotary machines and ADAMs and performing ancillary stamping and wrapping functions. Performance of this work is not the province of any particular employee or group of employees at Buena. Instead, work assignments are regularly rotated, and all Finishing Department employees are periodically called upon to

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[12] The Board stated in *U.S. Tsubaki, Inc.*, 331 NLRB 327, 328 (2000), that "in *Armco* the Board relied heavily on the expediency and efficiency of utilizing unit clarification proceedings in resolving unit scope . . . issues."

[13] The Union further contends that the Employer should be estopped from arguing for a unit extending beyond Vineland transfers because it signed the settlement agreement in November 2007 providing for bargaining in the Board-ordered unit. The Union cited *Premier Living Center,* 331 NLRB 123 (2000) and *Keeler Die Cast v. NLRB,* 185 F.3d 535 (6th Cir. 1999) in support of this argument, but those cases are inapposite. The employers in both of those cases signed election agreements that included certain classifications of employees in bargaining units and then claimed after the unions won those elections that employees in these classifications should be excluded. The Board refused to entertain the employers' arguments, finding that they were precluded from challenging the appropriateness of units to which they had expressly agreed. Because the Employer in this case never expressly agreed to a transfers-only unit, the principles announced in *Grancare* and *Keeler Die Cast* do not apply.

handle former Applicator Division work. Performance of such tasks is not insignificant or incidental to the employees' primary functions, it is the essence of their work.

Some of the current Finishing Department employees transferred from Vineland and have always been included in the unit. However, the Finishing Department also includes employees who have always worked at Buena and since 2001 have performed some former Applicator Division work. These employees perform a sufficient quantity of such work as part of their primary work functions that they should be viewed as presumptively part of the Board-ordered unit. Thus, to exclude these employees, the Union must show that their inclusion will render the unit inappropriate.

The Union has not sustained this burden. The Finishing Department occupies its own building within the Buena facility in which employees perform distinct functions under separate front-line supervision. The employees in the Finishing Department share a common work area, common work functions, and common supervision. The former Vineland employees receive slightly enhanced benefits which they enjoy as a legacy of their Union representation in Vineland, but the Board in *The Sun* indicated that such variations in working conditions should not be a significant factor in determining whether additional employees could be added to a functionally-described unit. Id. With this factor removed, there is nothing suggesting that the addition of non-transferred Finishing Department employees would render the existing bargaining unit inappropriate.

The Union contends that including all Finishing Department employees in the unit would be an improper accretion, but the Board in *The Sun* held that an accretion analysis is not appropriate in cases where employees are newly assigned to perform unit work in a functionally-defined unit. Rather, such employees are viewed as the equivalent of employees newly hired into a more traditionally-defined unit. 329 NLRB at 860. In this connection, an accretion analysis is normally inapplicable where newly-hired employees perform the same basic functions which unit classifications have historically performed because such employees are viewed as belonging in the unit rather than added by accretion. *Developmental Disabilities Institute, Inc.*, 334 NLRB 1166, 1168 (2001).

The Union further contends that including all Finishing Department employees in the unit is inconsistent with the Board's traditional reluctance to disturb historic units absent compelling circumstances. According to the Union, there has been a more than 40-year bargaining history in a Vineland-only unit, and this history compels exclusion from the unit of any employee who did not begin his or her employment in Vineland. This argument, however, ignores the relocation of employees from Vineland to Buena. As the Judge and the Board recognized in *Comar I*, a unit defined by location "no longer conforms to the reality stemming from the relocation" and accordingly redefined the unit so that it was based on function rather than location. 339 NLRB at 911. In light of this redefinition, there is no basis on which to claim the continued existence of a historic unit limited to Vineland transfers.[14]

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[14] The cases cited by the Union to support its historic unit argument all involved attempts to alter unit scope and are easily distinguishable from the situation presented here. In *P. J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988), the Board rejected a petition by a union which

In sum, I find it is appropriate to clarify the unit to include all hourly-paid production employees employed in the Finishing Department at the Employer's Buena facility. *Paper Mfrs. Co.*, 274 NLRB 491, 497-498 (1985), enfd. 786 F.2d 163 (3d Cir. 1986).[15]

2. *Other Former Vineland Employees*

There remains for consideration the status of the seven employees who transferred to Buena from Vineland but are no longer employed in the Finishing Department. Because the Employer seeks to exclude these employees, it bears the burden of demonstrating either that they no longer perform more than an insignificant amount of former Applicator Division work or that their inclusion would render the unit inappropriate. *The Sun,* above.

Ruth Benowitz and Doris McGaha have transferred from the Finishing Department to the Cup Department. The dosage cups produced there were never made by the Applicator Division in Vineland. Thus, McGaha and Benowitz are no longer performing unit work. Further, their inclusion would create an inappropriate unit; the Cup Department is located in a different building from the Finishing Department and has its own set of supervisors and 13 other employees. The only seeming distinction between McGaha, Benowitz, and the other Cup Department employees is that McGaha and Benowitz once worked in Vineland. Standing alone, this is not a sufficient distinction to justify separate representation status. I shall therefore clarify the unit to exclude Benowitz and McGaha.

As to the other former Vineland employees, the record is not sufficient to determine whether to include them in the unit. Warehouse employee Anthony Wiessner spends most of his time delivering work to the Finishing Department, a task which suggests he should remain in the unit. But, he is employed in a different department under different supervision, and the record does not indicate where he performs his work functions or how his job duties compare to those

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represented employees in an 11-county unit for a unit which would encompass 33 counties. *Met Electrical Testing Co., Inc.*, 331 NLRB 872 (2000), involved an effort to carve one facility out of a multi-location unit, while in *Canal Carting, Inc.*, 339 NLRB 969 (2003), a union sought to combine two historically separate units. None of the attempts to alter unit scope in these cases was accompanied by any significant change in employer operations. The petition in this case, in contrast, was filed after a significant modification in operations and does not involve an effort to alter unit scope. The Employer is instead seeking to clarify the identity of unit employees in light of the changes to its operations that have occurred since the Board first ordered bargaining.

[15] In *Paper Mfrs. Co.*, the Board found that a unit remained intact following relocation to an existing facility, but that employees newly hired to perform unit work following the relocation had to be included. The newly-hired employees were presumed to support the Union to the same extent as employees who had been relocated, and the increase in the size of the unit from 40 to 70 employees as a result of their employment was held not to defeat the obligation to bargain. Applying the same analysis here, employees assigned to perform unit work since the 1999 relocation from Vineland to Buena can appropriately be included in the bargaining unit even if their inclusion significantly increases the size of the unit.

of the other maintenance employees. The record contains minimal evidence regarding the duties performed by James Massey, Kristie Armstrong, Michael Munson, and Florence Simione. Although these employees now work outside the Finishing Department, it is possible that they perform a sufficient amount of former Applicator Division work and have sufficient contact with Finishing Department employees to justify their continued inclusion in the unit. I shall, therefore, leave the status of Wiessner, Massey, Armstrong, Munson, and Simione to further bargaining by the parties. If they are unable to resolve the placement of these individuals, another request for clarification would be appropriate.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Union is a labor organization within the meaning of the Act.

4. The bargaining unit represented by the Union shall be clarified as indicated below.

V. ORDER

IT IS HEREBY ORDERED that the petition is granted and that the bargaining unit is clarified to include all employees in the Finishing Department at the Employer's Buena, New Jersey facility, excluding all other employees, guards, and supervisors as defined in the Act.[16]

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by electronic filing through the Agency's website at **www.nlrb.gov**. A copy of the request for review must be served on each of the other parties to the proceeding, and with the Regional Director either by mail or by electronic filing. Guidance

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[16] As stated above, Doris McGaha and Ruth Benowitz are excluded from the unit, and this Decision has not determined whether James Massey, Kristie Armstrong, Michael Munson, Florence Simione, and Anthony Wiessner are included in the unit.

for electronic filing can be found under the **E-Gov** heading on the Agency's website. This request must be received by the Board in Washington by 5:00 p.m., EDT (or 11:59 p.m. if filed electronically) on **October 30, 2009**.

Signed: October 16, 2009

at Philadelphia, PA

Dorothy L. Moore-Duncan

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

EXHIBIT C

Bernard T. King
Charles E. Blitman*
Jules L. Smith
James R. LaVaute
Donald D. Oliver
Jennifer A. Clark
Melvin H. Pizer°
Monica R. Heath
Kenneth L. Wagner
Timothy R. Bauman
Stephanie A. Miner
Nathaniel G. Lambright

Daniel E. Kornfeld°°
Daniel R. Brice
Edward J. Steve*
Jonathan M. Cerrito^

Kelly L. Cook, CEBS
Leslie A. DiGenova, CEBS

Nathan H. Blitman (1909-1990)

* Also admitted in MA
° Also admitted in FL
°° Also admitted in MD and DC
^ Also admitted in CT

Blitman & King
Attorneys and Counselors at Law LLP

Syracuse
Rochester
Albany

Franklin Center, Suite 300
443 North Franklin Street
Syracuse, New York 13204-1415

Phone: 315.422.7111
Fax: 315.471.2623

Franklin Center, Suite 300
443 North Franklin Street
Syracuse NY 13204-1415
Phone: 315.422.7111
Fax: 315.471.2623

The Powers Building, Suite 207
16 West Main Street
Rochester NY 14614-1601
Phone: 585.232.5600
Fax: 585.232.7738

800 Troy-Schenectady Road
Latham NY 12110-2424
Phone: 518.785.4387
Fax: 518.785 9264

www.bklawyers.com

April 25, 2007

VIA FACSIMILE - 856-692-9251
and U.S. REGULAR MAIL

Alan Dean, Director
Human Resources
Comar, Inc.
One Comar Place
Buena, New Jersey 08310

COPY

Re: Comar, Inc.

Dear Mr. Dean:

The Union has reviewed the materials that you forwarded to us with your March 20, 2007 letter, to determine which of the current terms and conditions of employment we want Comar to rescind and/or return to the status quo ante. Please note that we are not requesting Comar to reduce any employee's current wage rate, based upon the representation that has been made by Comar's attorney that all current wages at the Buena facility are now greater than the wage rates that existed under the expired collective bargaining agreement at the time of the relocation of the bargaining unit from Vineland in 1999.

The following terms and conditions of employment of the relocated employees (as well as the unlawfully terminated unit employees) should be restored based on the terms of the expired collective bargaining agreement:

1. Restore seniority of the employees to their seniority that existed at the time of the relocation, with additional accrued seniority based on the time that has passed since the relocation to the current date.

Grant the relocated unit employees and terminated employees a shift preference based on their correct seniority dates. A number of employees were reassigned in August, 2003 and Comar should at this time grant them a shift preference based on their correct seniority. You should note that the bargaining unit employees at Vineland had been credited for seniority purposes, for their employment with Comar's predecessors. Their current seniority should include that credit.

2. Reinstate the paid holidays under the terms of the expired collective bargaining agreement.

3. Reinstate vacation pay and vacation entitlement pursuant to the terms of the expired collective bargaining agreement.

4. Restore the group insurance plan that was provided for under the expired collective bargaining agreement, including the benefit levels and employee cost levels in existence in September, 1999 prior to the relocation.

5. Restore sick leave pursuant to the terms of the expired collective bargaining agreement.

6. Restore call-in pay pursuant to the terms of the expired collective bargaining agreement.

7. Restore death in the family benefits pursuant to the terms of the expired collective bargaining agreement.

8. Restore the jury duty benefit pursuant to the terms of the expired collective bargaining agreement.

There are other additional terms and conditions of employment that are presently in place at Buena that we are not requesting Comar to rescind.

Please contact me, or have your attorney contact me, if there are any questions about the contents of this letter.

Please advise me, in detail, when these changes are to be made and when they are effective.

For purposes of effects bargaining, it is important for the Union to know whether Comar acknowledges its monetary liability under the Transmarine remedy that has been imposed by the Board and the Court of Appeals. We await Comar's response on that.

Very truly yours,

BLITMAN & KING LLP

James R. LaVaute

JRL:im

cc: Timothy J. Tuttle, Chairman
USW Flint Glass Industry Conference

John Shinn, Staff Representative
United Steelworkers

Anthony Wiessner, Vice President
Local 591T

Kimberly Altschuler, Esq.
McDermott Will & Emery, LLP
(via fax and U.S. Mail)

Elana Hollo, Esq.
National Labor Relations Board, Region 4

3

McDermott
Will & Emery

Boston Brussels Chicago Düsseldorf London Los Angeles Miami Munich
New York Orange County Rome San Diego Silicon Valley Washington, D.C

Strategic alliance with MWE China Law Offices (Shanghai)

Kimberly Nerenberg Altschuler
Associate
kaltschuler@mwe.com
212.547 5654

May 24, 2007

VIA FACSIMILE AND FEDERAL EXPRESS

James R. LaVaute, Esq.
Blitman & King LLP
Franklin Center, Suite 300
443 North Franklin Street
Syracuse, New York 13204-1415

Re: Comar Inc.

Dear Mr. LaVaute:

Your April 25, 2007 letter to Alan Dean was forwarded to me for response. As I indicated to you in our recent telephone conversation, Comar is in the process of restoring the terms and conditions of employment for former Vineland Applicator employees employed at the Buena facility, per your request in the April 25th letter. Attached is a memorandum Comar plans to send to the affected employees regarding restoration. Please review the memo and contact me with any questions. Comar plans to distribute the memo and implement the restoration of benefits the week of June 4, 2007.

As to the Transmarine remedy, Comar acknowledges that it has monetary liability, however it believes that the way the remedy has been calculated is excessive and duplicative of the backpay award. In light of the foregoing, Comar requests that the parties start bargaining over the effects of the relocation and the new contract so that Comar assess the costs associated therewith. Please let me know when you are available to set up dates for bargaining.

Sincerely,

K. Altschuler

Kimberly Altschuler

cc: Alan Dean (by fax)

To:

From: Alan Dean

Date: June ___, 2007

Re: Terms & Conditions of Employment

As you know, Comar, Inc. previously made the decision to comply with the February 2, 2007 National Labor Relations Board ruling. One aspect of that ruling was that Comar was required to rescind changes to the terms and conditions of employment for the former Applicator Division bargaining unit employees presently employed at Buena and restore benefits as they existed in 1999. On April 3, 2007, the union informed Comar that they would advise us as to the terms and conditions of employment they wanted rescinded and restored. We recently received that guidance and are now implementing the Union's requested changes.

Effective ___, the following terms and conditions are being restored consistent with the Union contract language, which was in effect as of September 1999. A brief summary of those changes are provided below.

1. Your seniority will include <u>all</u> of your time working for Comar, Inc. and with Comar's Applicator Plant predecessors. You will be given shift preference based on your total seniority as well as your ability to meet essential job requirements. If you would like to indicate a new shift preference, please submit your request to the Human Resources Department for evaluation by June __, 2007.

2. Your paid holidays will now include President's Day, Decoration Day, New Year's Eve and two (2) additional Personal Days, but will not include Memorial Day.

3. Vacation is based on the following schedule

Under 3 Years	5 Days Vacation, or 40 Hours
Greater Than 3, but Less Than 8 Years	10 Days Vacation, or 80 Hours
Greater Than 8, but Less Than 16 Years	15 Days Vacation, or 120 Hours
Greater Than 16 Years	One Additional Day per Year, Maximum 25 Days, or 200 Hours

4. You will be entitled to a maximum of one (1) day of paid sick leave for same day surgery and a maximum of four (4) days for in-hospital stays.

5. You will be entitled to four (4) hours pay if you report to work and are sent home due to lack of work and you were not properly notified two hours prior to your scheduled start time.

6. You are entitled to two (2) additional days of paid bereavement leave (in addition to the three (3) days already offered) for the death of a spouse.

7. You are entitled to the difference between what you are paid for jury duty and your regular base rate for up to five (5) days, based one occurrence during a calendar year, unless you are asked to serve on two different types of juries.

8. The group health plan and employee contribution levels will be restored to the 1999 levels. A copy of the 1999 plan is attached as well as a summary of some of the key benefit level changes. To immediately restore the 1999 benefit levels, you will continue to submit claims incurred to Aetna for payment under our current 2007 plan. Comar then requests that you submit an Aetna "explanation of benefit" form to the Human Resources for reajudication of the claim under the 1999 plan so that Comar can make necessary reimbursements.

Please contact me if you have further questions.

Sincerely,

Alan Dean
Human Resources Director

Enclosures

EXHIBIT D

Name	Address			Shift	Date of Hire	Hourly Rate	Title
Ballurio, Joy E.	18 Vassar Place		Vineland	1	12/15/1975	$12.24	B Operator - Plastics
Blackwell, Shirley M.	Box 549	Railroad Avenue	Richland	1	04/25/1988	$12.36	B Operator - Plastics
Bryant, Barbara	226 Foster Avenue		Vineland	2	07/25/1973	$12.07	B Operator - Plastics
Caradonna, Robert A.	1453 Venezia Avenue		Vineland	2	07/28/2005	$14.42	707 Set-up Operator - Plastics
Castro, Irene	Po Box 371		Minotola	2	04/18/1994	$11.85	B Operator - Plastics
Caudill, Linda M.	436 Porchtown Road		Pittsgrove	1	06/15/1981	$15.63	Set-up Operator - Plastics
Collazo, Carmen A.	1591 E. Wheat Road		Vineland	1	05/02/1990	$12.15	A Operator - Plastics
Colon, Lidia	1976 N. East Ave Lot 191		Vineland	1	02/16/1994	$12.39	A Operator - Plastics
Creelman, Margaret A.	1710 E. Wheat Road		Vineland	2	07/24/1985	$12.96	722 A Operator - Plastics
Cruz, Jose	951 W Weymouth Rd		Newfield	3	08/23/2004	$14.64	Set-up Operator - Plastics
Defalco, Charlotte L.	713 Broadway		Vineland	1	02/03/1989	$12.37	A Operator - Plastics
Dibona, Laurence	5757 Independence Rd		Vineland	1	06/25/1991	$22.11	Set-up Mechanic
Digiuseppe, Doris	449 S. First Road		Hammonton	2	07/10/1995	$12.23	707 Set-up Operator - Plastics
Donnally, Todd	303 Arlington Court		Egg Harbor Tw	3	05/31/2006	$14.11	601 Set-up Mechanic
Encarnacion, Rafael	358 E. Oak Road		Vineland	2	09/24/1986	$22.40	730 Crew Leader
Farley, John E.	705 Weymouth Rd		Buena	1	09/22/1997	$16.31	Set-up Operator - Plastics
Farley, Patricia A.	204 Derosa Drive		Vineland	1	02/08/1977	$12.65	A Operator - Plastics
Goff, Samantha	29 Montrose Street		Vineland	3	09/13/2006	$10.50	Utility Operator
Garvin, Sara A.	5 James Place		Pittsgrove	2	03/17/1997	$12.01	B Operator - Plastics
Hannah, Sarah H.	1162 Columbia Avenue		Newfield	2	08/16/1976	$14.00	A Operator - Plastics
Henderson, Stanley W.	580 Shiloh Pike Rt. 49		Bridgeton	1	02/04/2004	$16.87	601 Set-up Mechanic
Hoffman, Joseph H.	30 Cedarwood Drive		Pittsgrove Twp	2	12/08/1997	$20.57	Set-up Mechanic
Hoffman, Robert J.	173 Point Breeze Dr.		Milliville	1	03/29/1999	$14.06	Floor Person
Ingegneri, Beatrice C.	1976 N. East Ave.	#65	Vineland	2	08/13/1979	$12.07	B Operator - Plastics
Loatman, Norma J.	24 Applewood Lane		Pittsgrove	2	07/14/1982	$14.00	722 A Operator - Plastics
Loguidice, Carole D.	1280 E. Oak Road		Vineland	1	08/03/1971	$12.12	B Operator - Plastics
Majewska, Grace	19 Tomasello Dr		Millville	3	08/06/2007	$10.00	C Operator
Medina, Maria V.	737 W. Earl Drive		Vineland	1	06/07/1990	$12.39	A Operator - Plastics
Muniz, Irma B.	604 S. 2nd Street		Vineland	2	09/11/1989	$13.19	A Operator - Plastics
Ojeda, Rita F.	854 East Garden Road	Apt. A	Vineland	2	01/10/1977	$13.91	722 A Operator - Plastics
Ormsby, Debra R.	192 Bartal Ct.		Atco	1	05/29/1996	$12.46	Set-up Operator - Plastics
Pastirko, Patricia J.	1616 Pennsylvania Av	Box 73	Vineland	2	05/30/1995	$12.10	A Operator - Plastics
Pollock, Arlene	1983 S. Main Road		Vineland	2	05/15/1963	$11.95	B Operator - Plastics
Reyes, Luz M.	187 Wheat Rd		Buena	1	10/20/1997	$12.08	A Operator - Plastics
Rowe, Carl J.	4305 Stanley Terr.		Newfield	2	01/09/1995	$14.84	Set-up Operator - Plastics
Sanchez, Elba I.	1047 E. Park Avenue	Apt # E7	Vineland	1	09/17/1991	$13.27	Set-up Operator - Plastics
Santiago, Milagros	1659 Eilene Drive		Vineland	1	11/14/1994	$12.39	A Operator - Plastics
Saul, Joeanne	81 Fox Rd.		Bridgeton	1	02/02/1981	$12.62	A Operator - Plastics
Snyder, David P.	190 S.Delsea Dr		Malaga	1	04/25/1977	$23.28	730 Crew Leader
Torres, Jose	1364 Dogwood Lane		Vineland	1	10/31/1990	$13.65	Set-up Operator - Plastics
Udowiczyk, Michael	196 5th Ave.		Estell Manor	2	02/28/1994	$13.18	Floor Person
Ufgo, Donald M.	PO Box 1101		Vineland	1	06/11/1996	$10.00	724 C Operator - Plastics
Velez, Irma	2200 Berkeley Drive		Vineland	3	07/05/2006	$10.00	724 C Operator - Plastics
Velez, Maria	1348 Venezia Avenue		Vineland	1	06/08/1990	$12.45	A Operator - Plastics
Viera, Judith A.	1976 N. East Ave.	#15	Vineland	1	05/19/1992	$12.36	A Operator - Plastics

Wendling, Joann A.	2230 Berkley Drive		Vineland	1	12/06/1991	$12.14	A Operator - Plastics
Wilson, James A.	118 N.E. Ave.		Vineland	1	07/06/2004	$14.90	601 Set-up Mechanic

EXHIBIT E

419

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

COMAR, INC.

and

Cases 4-CA-28570 and
4-CA-33903

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-CIO

STIPULATION OF PAYMENT AND SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED, by and between Comar, Inc., the Respondent, herein, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, the Union, herein, and the General Counsel for the National Labor Relations Board, herein called the Board, on behalf of the Board, that:

1. In settlement of the monetary portions of the Board's Order in *Comar Inc.*, 339 NLRB 903 (2003), enfd. *Comar, Inc. v. NLRB*, 111 Fed. Appx. 1 (D.C. Cir. May 19, 2004), (herein *Comar I*) and the Board's Order in *Comar Inc.*, 349 NLRB No. 33 (2007), (herein *Comar II*) Respondent agrees to pay, as set forth below, the following sums:

a. To the employees set forth in paragraph 2(b) of the Order in *Comar II*, $1,452,582.00 consisting of $1,208,946.56 in wages and $243,635.44 in interest.

b. To the Board as payment of amounts due under paragraph 2(j) of the Board's Order in *Comar I*, $750,000.00.

c. To certain employees as payment of amounts due under paragraphs 2(c) and 2(e) of the Board's Order in *Comar I*, $263,198.42 consisting of $189,413.47 in wages, $39,237.28 in health insurance premium reimbursements, $12,513.53 in 401(k) contributions, and $22,034.14 in interest.

2. Respondent acknowledges that, for the payments above in paragraph 1, it must deduct all applicable tax withholdings and remit all applicable tax contributions as required by Federal and State law.

3. By no later than December 21, 2007, the Board will notify Respondent of the amounts of each check to be made pursuant to this Agreement, and will advise Respondent of the precise manner in which the checks shall be transmitted to the Board.

4. Respondent will pay all sums set forth above in paragraph 1 no later than close of business on January 11, 2008.

5. In the event that Respondent fails to comply with its obligations under paragraphs 1(b) and 1(c) of this Agreement, including but not limited to the failure to make timely payment of sums due under those paragraphs, and after 14 days notice from the Regional Director of the Board's Fourth Region of such noncompliance without remedy by Respondent, the Regional Director may issue a Compliance Specification, herein called the Specification, reflecting the full remedy due under the Board's Orders in *Comar I* and *II*, including backpay and interest, which remedy is in excess of the sums listed above. Thereafter, the General Counsel may file a Motion for Summary Judgment with the Board on the allegations of the Specification. In such event, the allegations of the Specification shall be deemed to be true by the Board, Respondent will not contest the validity of any such allegations, and the Board may enter findings of fact, conclusions of law, and an order on the allegations of the Specification. Upon receipt of the Motion for Summary Judgment, the Board shall issue an Order requiring Respondent to show cause why the Motion for Summary Judgment should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause is whether Respondent has failed to comply with the terms of this Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Specification to be true and, consistent therewith, make findings of fact and conclusions of law consistent with those allegations. The Board may then issue an Order providing a backpay remedy in accordance with the allegations of the Specification. The Board's Order may then be enforced by the Board's application to the appropriate United States Court of Appeals and the Court's enforcing Judgment may be entered thereon ex parte and without opposition from Respondent, provided that the figures and amounts are those set forth in the Specification.

6. In addition to the actions set forth above, Respondent will, separately, execute a Stipulation of the Parties for Entry of a Consent Judgment in *Comar II* (herein Stipulation for Entry of Judgment) within 5 business days of the approval of this Agreement by the Regional Director of the Board's Fourth Region.

7. By entering this Agreement and by executing the Stipulation for Entry of Judgment, Respondent acknowledges its continuing obligations to bargain with the Union as required by the remedial bargaining provisions set forth in the Board's Orders in *Comar I*, as enforced, and *Comar II*. By entering this Agreement, the Union is not waiving any claim that the Respondent is failing to meet its bargaining obligations. Also, neither the Respondent nor the Union waives its right to assert a claim of bad faith bargaining, or a defense of good faith bargaining.

8. The Regional Director will continue to monitor bargaining and will close these cases on compliance upon determination that Respondent has complied with all of its

obligations, including its bargaining obligations, as set forth in *Comar I*, as enforced, and in *Comar II*.

RESPONDENT COMAR, INC.

By: _____

Name: MICHAEL RUGGIERI

Title/Date: PRESIDENT 11/21/07

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO

By: _____

Name: _____

Title/Date: _____

APPROVED BY:
NATIONAL LABOR RELATIONS BOARD
REGION 4

By: _____

Name: _____

Title/Date: _____

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EXHIBIT F

(1)

U 1

March 20, 2007

VIA UPS

Mr. Timothy J. Tuttle
United Steel, Paper and Forestry, Rubber, Manufacturing
Energy, Allied Industrial and Service Workers International
Union, AFL-CIO
1440 South Byrne Road
Toledo, OH 43614-2398

Re: Comar, Inc.

Dear Mr. Tuttle:

We are hereby recognizing the United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, f/k/a American Flint Glass Workers Union of North America, AFL-CIO (the "Union") as the bargaining representative of the bargaining unit as follows:

> All hourly paid production workers who are performing the work that was formerly done as part of the Applicator Division of Comar, Inc. at its facility then located in Vineland, New Jersey, except plant executives, salesmen, office employees, janitors, watchmen and foremen, as excluded by the provisions of the Labor Management Relations Act of 1947 as amended (the "Bargaining Unit").

In connection therewith, we intend to restore status quo as of September 1999, the date of the relocation of the Vineland, New Jersey facility to Buena. Towards this end, Comar is making offers of reinstatement to all of the former Bargaining Unit employees who did not accept positions when the Vineland facility was relocated to Buena. To the extent Comar does not currently have open positions due to current employees having greater company seniority than such Bargaining Unit employees; such Bargaining Unit employees will be placed on a preferential hiring list. Moreover, Comar will be making the Bargaining Unit whole for all backpay and benefit contributions owed from September 27, 1999 through and including December 31, 2002, per the National Labor Relations Board's calculations.

Moreover, under this cover letter, we have included the outstanding information concerning non-Bargaining Unit employees, as found by Judge Paul Bogas (and as indicated to Comar by the National Labor Relations Board) including, (i) copy of Comar's health and dental policies, which includes employee contribution amounts; (ii) a copy of Comar's Employee

One Comar Place, Buena, NJ 08310 • Phone 856/692-6100 • Fax 856/692-9251
www.comar.com

Handbook, which was previously provided to your legal counsel, Jim LaVaute in 2005; and (iii) an unredacted chart showing the terms and conditions of employment for hourly employees working at the Buena, New Jersey facility (with the exception of the Bargaining Unit, which information was previously provided). If the Union would like to review the source documentation underlying the chart (e.g., payroll data etc), Comar will make such documentation available at its corporate offices located at the Buena, New Jersey.

Additionally, Comar is willing to rescind unilateral changes made to the terms and conditions of employment for those current Comar employees who are within the scope Bargaining Unit and for those who accept reinstatement. Please advise as to which unilateral changes, if any, you wish Comar to rescind because, as you know, over the passage of time, many of the Bargaining Unit's terms and conditions of employment are better than what they were in 1999, such as wages. Moreover, since September 1999, the American Flint Glass Workers, the former bargaining representative, merged with the United Steel Workers and likely many of the health and welfare funds have changed. Thus, in order to begin contributing to such funds, we will need detailed information, including, but not limited to the appropriate fund name(s) and plan information in order for Comar to contribute appropriately. We also need to know whether those funds will cover employees and accept contributions even though a collective bargaining agreement has not been negotiated.

Finally, Comar also requests to bargain with the Union regarding (i) a new collective bargaining agreement; (ii) the effects of the September 1999 relocation of the Vineland, New Jersey facility; and the effects of changes in working conditions that have taken place since September 1999 to date, which affect the Bargaining Unit. As a threshold matter, the parties will have to bargain about the composition of the Bargaining Unit so that Comar can appropriately identify and rescind unilateral changes.

After you have had an opportunity to review the foregoing, please contact me at your earliest convenience so that we can set dates to begin bargaining.

Very Truly Yours,

Alan Dean
Director of Human Resources, Comar Inc.

Cc: James R. LaVaute, Esquire, Blitman & King, LLP
Shane D. Thurman, Compliance Officer, NLRB
Kimberly Altschuler, Esquire, McDermott Will & Emery, LLP

EXHIBIT G

July 10, 2007

USW Local 591 Contract Proposal

To

COMAR

Maintain all terms and conditions from the contract between the parties dated October 1, 1996 through September 30, 1999 as improved through the company's letter dated June 15, 2007, except for the proposed changes listed below:

#1 COVER PAGE: Change the name of the Union and the Company to:

COMAR and the UNITED STEELWORKERS on behalf of its local 591

#2 PREAMBLE: Delete and replace with the following.

This Agreement, made and entered into to be effective _____,2007, is by and between Comar, Inc. (hereinafter referred to as the "Company") and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC on behalf of its local #591 (hereinafter referred to as the "Union")

#3 ARTICLE 1: RECOGNITION

Delete and replace with the following:

The Company recognizes the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (also known in short as United Steelworkers or USW) as the exclusive bargaining representative for all hourly paid production workers who are performing the work that was formerly done as part of the Applicator Division of Comar, Inc. at its facility then located in Vineland, New Jersey, except plant executives, salesmen, office employees, janitors, watchman and foremen, as excluded by the provisions of the Labor Management Relations Act of 1947 as amended.

#4 ARTICLE 3: UNION SECURITY & CHECK-OFF

Section 3: Delete the 2nd through the 5th sentence.

Section 8: New Section

U6

The Company will check off monthly dues, including initiation fees and assessments, each in the amounts designated by the Union's International Secretary-Treasurer, effective upon receipt of individually signed voluntary check-off authorization cards. The Company shall within 30 days remit any and all amounts so deducted to the Union's International Secretary-Treasurer with a complete summary of USW Form R-115 or its equivalent. A copy of the authorization card will be forwarded at the time of signing to the Financial Secretary of the Local Union.

The Union will be notified of the amount transmitted for each Employee (including the hours and earnings used in the calculation of such amount) and the reason for non-transmission such as in case of interplant transfer, layoff, discharge, resignation, leave of absence, sick leave, retirement, or insufficient earnings.

The Union shall indemnify the Company and hold it harmless against any and all claims, demands, suits, and liabilities that shall arise out of or by reason of any action taken by the Company for the purposes of complying with the foregoing provisions.

#5 ARTICLE 5: HOURS OF WORK

The Union may submit a proposal at a later time after discussion.

6 ARTICLE 9: VACATIONS

#7 ARTICLE 10: GROUP INSURANCE / APPENDIX "C"

Delete the first 3 paragraphs and replace with the following language:

Section 1 The Medical benefits that were implemented in the Company's letter to Union employees dated June 15, 2007 (including benefit levels and employees premium contributions) will be provided to all employees in a separate Booklet and remain in effect for the duration of this agreement.

Section 2 Insert paragraph 4 with one change. Increase 2 months to 4 months.

Section 3 Insert paragraph 5 with one change. Increase 3 months to 4 months.

Section 4 Insert paragraph 6 with one change. Increase 4 $5,000 TO $10,000.

Section 5 New section: Life Insurance and AD&D

The Union will submit a proposal at a later time.

Section 6 New Section: Short Term and Long Term Disability

The Union will submit a proposal at a later time.

#8 ARTICLE 11 PENSION PLAN/ 401-K/ APPENDIX "D"

The first 3 paragraphs remain the same.

Replace the 401-K language with the following language:

The Company agrees to contribute 5% of each individual employees total earning into either the Steelworkers Pension Trust or the Steelworkers 401-K Plan, the specific plan to be determined in these negotiations.

#9 ARTICLE 13: DISCHARGES

Delete Section 3

#10 ARTICLE 14: REDUCTION OF FORCE

Section 1 Delete the words experience, efficiency, attendance and physical condition in the 2nd sentence.

Section 5 Delete the words physically fit and efficiency in the 1st sentence.

Section 7 Discussion

11 ARTICLE 15: ADJUSTMENT OF DISPUTES

The Union will submit a proposal at a later time which will include a grievance procedure and an arbitration provision.

12 ARTICLE 17: UNION PRIVILEGES

Section 2 Discussion

13 SICK LEAVE

#14 ARTICLE 22: FIXED FINANCIAL ARRANGEMENTS

Delete

#15 New ARTICLE 22: PROTECTION OF THE BARGAINING UNIT

During the term of this collective bargaining agreement, the Company shall not relocate the work of the new unit or terminate the business (or any part of it) of the applicator division. Comar shall maintain the number of full time unit employees at a minimum of 160 employees. If Comar, or the plant, or any assets involving the work of the unit, are sold to, conveyed, assigned or otherwise transferred to new owners or operators, Comar (as a condition of any such transaction) shall obtain the agreement of the new owners or operators to hire the unit employees and then to recognize the Union as exclusive bargaining representative of those employees and to comply with the terms of the unexpired collective bargaining agreement for them.

#16 ARTICLE 27: DURATION

Open for discussion

17 APPENDIX "A": WAGES

- Any Union member who moved from the Vineland facility to the Buena facility who did not receive a wage increase of at least 3% in any of the years from 1999 up to and including 2007, will have their wages adjusted to reach an increase of 3% each year during the period 1999 to end of 2007, prior to the across the board wage adjustments in the next paragraph.

- Wages will be increased by _____ each year of the contract.

18 New ARTICLE: POLITICAL ACTION COMMITTEE CHECK-OFF

THE UNION RESERVES THE RIGHT TO ADD TO, AMEND AND/OR MODIFY THESE PROPOSALS DURING THE COURSE OF NEGOTIATIONS.

EXHIBIT H

(2)

Date: March 22, 2007

To: All Comar Employees

From: Alan Dean

Re: National Labor Relations Board

We have been involved in litigation with the United Steel Workers (the "Union") and the National Labor Relations Board ("NLRB") for a number of years over the effect of our closing our Vineland Applicator Division and moving it to our Buena facility in 1999. In short, when we consolidated the smaller unionized Applicator Division into the larger non-union Buena Finishing Department, we believed that the Union no longer represented the former Applicator employees. It has been our position that due to changes in our business after the consolidation of operations, that the former Applicator employees merged into the Finishing Department in Buena and that no separate identity existed.

Despite our position, on February 2, 2007, the NLRB denied Comar's appeal and affirmed the ruling against us. The NLRB's decision is appealable to the Federal Court in Washington D.C., and while we continue to believe the NLRB decision was wrong, in order to move Comar forward, we have decided to follow the NLRB decision.

In connection with the NLRB's decision, we will be recognizing the Union as the bargaining representative of the former Applicator employees. We will be bargaining with the Union regarding the terms and conditions of employment of these employees and the effects on them of the relocation to Buena. We will also be offering reinstatement, based on seniority, to Applicator employees who did not take positions in Buena, if positions are open and paying back wages to certain employees affected by the transfer from Vineland to Buena. In the coming days, you will also see NLRB notices around the facility outlining Comar's responsibilities under the NLRB decision.

Despite all of this, I assure you that it will be business as usual here at Buena. If you have questions about how this decision will affect you, please contact me at any time. We will keep you informed of any developments as they occur.

One Comar Place, Buena, NJ 08310 • Phone 856/692-6100 • Fax 856/692-9251
www.comar.com

This fax was received on the Blitman & King LLP fax server on Monday, March 26, 2007.

EXHIBIT I

A-21

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

COMAR, INC.

and Case 4-CA-28570

AMERICAN FLINT GLASS WORKERS
UNION OF NORTH AMERICA, AFL-CIO,

COMPLAINT AND NOTICE OF HEARING

American Flint Glass Workers Union of North America, AFL-CIO, herein called the Union, has charged that Comar, Inc., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.*, herein called the Act. Based thereon, the Acting General Counsel, by the undersigned pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in this proceeding was filed by the Union on September 10, 1999, and a copy was served by first class mail on Respondent on September 13, 1999.

(b) The first amended charge in this proceeding was filed by the Union on October 4, 1999, and a copy was served by first class mail on Respondent on October 5, 1999.

(c) The second amended charge in this proceeding was filed by the Union on October 19, 1999, and a copy was served by first class mail on Respondent on October 20, 1999.

(d) The third amended charge in this proceeding was filed by the Union on January 3, 2000, and a copy was served by first class mail on Respondent on January 4, 2000.

(e) The fourth amended charge in this proceeding was filed by the Union on February 6, 2001, and a copy was served by first class mail on Respondent on February 6, 2001.

2. (a) At all material times, Respondent, a New Jersey corporation with facilities in Vineland and Buena, New Jersey, herein called the Vineland facility and the Buena facility, respectively, has been engaged in the manufacture of packaging products and medical device components for pharmaceutical, health care and personal care customers.

GENERAL COUNSEL'S EXHIBIT K

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), sold and shipped goods valued in excess of $50,000 directly to points outside the State of New Jersey.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times, American Flint Glass Workers of America and its Local #591, herein collectively called the Union, have been labor organizations within the meaning of Section 2(5) of the Act.

4. At all material times, Gene J. Concordia and John Ford held the positions of Executive Director of Manufacturing Operations and Director of Plastics Operations, respectively, and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

5. (a) The following employees constituted a unit, herein called the Unit, appropriate for the purposes of collective bargaining:

> All hourly paid production workers employed by Respondent at the Vineland facility, but excluding plant executives, salesmen, office employees, janitors, watchmen and foremen, guards and supervisors as defined in the Act.

(b) At all material times, Respondent and the Union were parties to a series of collective bargaining agreements, the most recent of which, herein called the Agreement, was effective by its terms from October 1, 1996 through September 30, 1999. Pursuant to the Agreement, Respondent recognized the Union as the exclusive collective bargaining representative of the Unit.

(c) At all material times, since at least October 1, 1996 until on or about September 27, 1999, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

6. Between July 15, 1999 and July 20, 1999, Respondent decided to consolidate its operations at the Vineland and Buena facilities and to transfer the work performed by Unit employees and the machinery involved to the Buena facility.

7. (a) On or about September 8, 1999, the Union, by letter, requested Respondent to furnish it, inter alia, with the following information:

> specific plans detailing the Company's proposed consolidation, as it pertains to the Applicator Business and the workers employed in the business.

(b) On or about September 14, 1999, the Union orally requested Respondent to furnish it with the location of the machinery at the Buena facility, the supervisory structure at the Buena facility, and the hours of operation at the Buena facility after the consolidation referred to above in paragraph 6.

(c) On or about September 20, 1999, the Union, by letter requested Respondent to furnish it, inter alia, with the following information

> management's plan with respect to both the move itself and the operation of the new facility, including but not limited to physical location within the Buena facility, supervisory structure, staffing, hours of operation and other terms and conditions of employment.

(d) The information requested by the Union, as described above in subparagraphs (a), (b) and (c), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective bargaining representative of the Unit.

(e) Since on or about September 8, 1999, Respondent has failed and refused to furnish to the Union the information it requested as set forth above in subparagraphs (a), (b) and (c), except that Respondent has furnished the dates the machinery would be moved, the work shift schedules, wage rates and health benefits to be in effect for employees at the Buena facility after the consolidation.

(f) Respondent consolidated its operations at the Vineland and Buena facilities, without affording the Union an opportunity to bargain with Respondent concerning the effects of this conduct on the Unit as to the ways in which the consolidation might affect the employment status and wages and benefits of the transferring Unit employees.

8. On or about July 1, 1999, the Union, by letter, requested that Respondent recognize it as the exclusive collective bargaining representative of the Unit and bargaining collectively with the Union for a successor agreement to the Agreement referred to above in paragraph 5(b).

9. (a) Since, on or about July 1, 1999, Respondent has failed and refused to bargain with the Union for a successor agreement to the Agreement referred to above in paragraph 5(b).

(b) Since, on or about September 27, 1999, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective bargaining representative of the Unit.

10. (a) On or about September 27, 1999, Respondent established new wages, hours and other terms and conditions of employment for the Unit.

(b) The wages, hours and other terms and conditions of employment referred to above in subparagraph (a), constitute mandatory subjects for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in subparagraph (a), without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

11. On or about September 27, 1999, by conditioning their employment on their acceptance of the new wages, hours and terms and conditions of employment referred to above in paragraph 10, Respondent caused the termination of employment of the following Unit employees:

Theresa Capaldi	Gail P. Paulitis
Judith A. Carney	Ella Percev
Shelley A. Carney	Linda L. Pierce
Nancy L. Fairman	Helena A. Pollock
Vessi A. Gargoff	Ingrid R. Regalbuto
John G. Gray	Rhonda J. Rio
Catherine Guilford	Sandra M. Thurston
Michelle Guilford	June M. Walko
Robert Joslin	Alice Weddington
Latanya M. Mack	Anthony Wiessner

12. By the conduct described above in paragraphs 7(e), 7(f), 9, 10(a), 10(c) and 11, Respondent has been failing and refusing to bargain with the exclusive collective bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

13. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE as part of the remedy the unfair labor practices alleged above in paragraphs 7 and 12, the Acting General Counsel seeks an order requiring Respondent to make whole the Unit in the manner set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). The Acting General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

WHEREFORE, and as an additional remedy for the unfair labor practices alleged above in paragraphs 11 and 12, the Acting General Counsel seeks an Order requiring Respondent to reimburse the unit employees named in paragraph 11 for any extra federal and/or state income taxes that would or may result from a lump sum payment of backpay to them.

PLEASE TAKE NOTICE that commencing at 11:00 a.m. on the 21st day of May, 2001, and on consecutive days thereafter, a hearing will be conducted at the National Labor

Relations Board, One Independence Mall, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania, before an Administrative Law Judge of the Board on the allegations in this Complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony.

Respondent is further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned an original and four (4) copies of an answer to this Complaint within 14 days from service of it, and that unless Respondent does so, all the allegations in the Complaint shall be considered to be admitted to be true and shall be so found by the Board. Respondent is also notified that pursuant to the Board's Rules and Regulations, Respondent shall serve a copy of its answer on each of the other parties.

Form NLRB-4338, Notice, and Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, are attached.

Signed at Philadelphia, Pennsylvania this 7th day of February, 2001.

JOHN D. BREESE
Acting Regional Director, Fourth Region
National Labor Relations Board

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A-26

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMAR, INC. and AMERICAN FLINT GLASS WORKERS UNION OF NORTH AMERICA, AFL-CIO	Case 4-CA-28570 Date of Mailing: February 7, 2001

AFFIDAVIT OF SERVICE OF: COMPLAINT AND NOTICE OF HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid certified mail upon the following persons, addressed to them at the following addresses:

MS. ELLEN DUFFY, COMAR, INC., ONE COMAR PLACE, BUENA, NJ 08310 (Z 239 318 576 RRR)

TIMOTHY J. BROWN, ESQUIRE, DILWORTH PAXSON, LLP, 3200 MELLON BANK CENTER, 1735 MARKET STREET, PHILADELPHIA, PA 19103 (Z 239 318 577 RRR)

AMERICAN FLINT GLASS WORKERS UNION, 1440 SOUTH BYRNE ROAD, TOLEDO, OH 43614 (Z 239 318 578)

JAMES R. LAVAUTE, ESQUIRE, BLITMAN & KING, LLP, 500 S. SALINA STREET, SUITE 1100, SYRACUSE, NY 13202 (Z 239 318 579)

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Subscribed and sworn to before me this 7th day of February, 2001	Designated Agent /s/ Norma Callahan NATIONAL LABOR RELATIONS BOARD

EXHIBIT J

United States Government

NATIONAL LABOR RELATIONS BOARD
Region Four
615 Chestnut Street - Seventh Floor
Philadelphia, PA 19106-4404

Telephone: (215) 597-7601
Fax: (215) 597-7658
Email: Region4@NLRB.GOV

December 4, 2006

RECEIVED

BLITMAN & KING LLP

Joel Cohen, Esquire,
McDermott Will & Emery
340 Madison Avenue
New York, NY 10017

Re: Comar, Inc.
Cases 4-CA-28570 and 4-CA-33903

Dear Mr. Cohen:

Having reviewed the exchange of your correspondence with Union counsel James R. LaVaute, and without prejudice to our position regarding your client's compliance with the enforced Order in this case, the bargaining unit is described in the enforced Board Order and the underlying Board decision at 339 NLRB 903, 911 (2003). That continues to be a viable unit. As recognized in the Board decision, bargaining to modify the unit descripition would involve a permissive subject id. at 911 With respect to the additional issue you raise regarding the identification of the unilateral changes to be rescinded, these changes include, but are not limited to, those identified by ALJ Kocol, in the Board's Decision, 339 NLRB at 909-10, 912. These include changes to wages and benefits, merger of the seniority lists, the required signing of an "Employee Agreement" and performance evaluations, as well as those changes made after the close of the hearing before Judge Kocol. A list of many of these changes was set forth in Appendix 1 to Counsel for the General Counsel's Brief to Administrative Law Judge Paul Bogas. I have attached a copy to this letter for your convenience.

Very truly yours,

Dorothy L. Moore-Duncan

DOROTHY L. MOORE-DUNCAN
Regional Director

Enclosures:
cc:
James R. LaVaute, Esquire, Blitman & King, LLP, Franklin Center, Suite 300, 443 North Franklin Street, Syracuse, NY 13204

DLMD/tsl
tsl: H:\R04COM\GROUPS\Compliance\Hollo\Comar-ltr to Cohen 11-28-06.doc

47

APPENDIX 1

COMAR HANDBOOK COMPARISON

Comar Handbook 1998 (JTX 2)	Comar Handbook March 2001 (JTX 5)
	No mention of Union employees or of a collective bargaining agreement
Employee Agreement – pg. 2 – Only the Chief Operating Officer has authority to enter into agreement concerning employment	Employee Agreement – pg. 30 – Only President and Chief Executive Officer have authority to enter into agreement concerning employment
EEO – pg. 5 – Comar complies with state and local discrimination laws	EEO – pg. 3 – Comar complies with Federal, State and local discrimination laws
Sexual Harassment Policy – pg. 5-6	Sexual Harassment Policy – pg 24-25 and Copy of policy effective 9/13/00 and revised 2/14/01 – greater depth and breadth, clearly different
Life Threatening Illness – pg. 7	Accommodation of Disabilities – pg3 – Change in requirement to work with life threatening illness, from "weight of medical evidence" to "certification from your physician." Also, AIDS dropped as a specific life threatening illness
Work Habits – pg. 7	Work Habits - pg. 4 – Reference to *Discipline Procedures* dropped
Employee Benefits – pg. 9 – (a) Benefits eligibility after 90 days (b) No mention of pre-tax benefit (c) Double indemnity for accidental death (d) Two open enrollment periods/year (e) No short-term disability	Employee Benefits and Services – pg. 9, 10 (a) Benefits eligibility after 30 days (b) Pre-tax benefit (c) Eligible children (d) Loss of double indemnity for accidental death (e) Optional Supplemental Life Insurance (f) One open enrollment period/year (g) Short-term disability (h) Health benefits continue up to 12 weeks of absence
	HIPAA language – pg. 11
	Employee Assistance Program (EAP)
Retirement Savings Plan – pg. 10 (a) Dollar for dollar match up to 3% (b) No loan option	Retirement Savings Plan – pg.13 (a) Dollar for dollar match up to 4% (b) Loan option
Vacations – pg.13- 14 (a) Vacations granted according to plant seniority (when requested between January 1 and February 28)	Vacations – pg. 14-15 (a) No mention of seniority (b) Two-tier accrual based on 8 and 12 hour work schedules (c) Different accrual rates (d) Effective 2002, vacations can be mandatory during plant shutdowns

Comar Handbook 1998 (JTX 2)	Comar Handbook March 2001 (JTX 5)
Holidays – pg. 12 (a) Employees on alternate work schedules are compensated under the Paid Time Off program (b) Provision for posting of holiday observances and effect on plant closure	Holidays – pg 15-16 (a) No mention of Paid Time Off program (b) Two-tier pay based on 8 and 12 hour work schedules (c) Holiday work at time and ½ (d) No provision for posting of holiday observances and effect on plant closure
	Emergency Days – pg. 16 (a) Two unpaid days off per year
Leaves of Absence – pg.14-15 (a) Personal Leave of Absence of up to 30 days	Leaves of Absence – pg 21-22 (a) No Personal Leave of Absence provision (b) Terms of FMLA incorporated into policy (c) FMLA Policy appendix, effective 9/13/00, revised 2/14/01
Bereavement Leave – pg. 15 (a) Employees eligible for three days after 6 mos. employment	Bereavement Leave – pg.16 (a) Employees eligible for three days after 30 days employment (b) Bereavement leave Policy appendix, effective 3/1/01
Employment Classifications – pg. 16 (a) Explanation of Exempt and Non-exempt classifications	Employment Classifications – pg. 17 (a) No explanation of Exempt and Non-exempt classifications (b) Employees temporarily assigned to different class will be paid no less than minimum rate for the class
Paychecks – pg. 16 (a) Employees required to record hours worked	Paychecks – pg. 17 (a) No mention of employees being required to record hours worked
Overtime – pg. 17-18 (a) No mention of 12-hour schedules	Overtime – pg. 17-18 (a) 12-hour schedules
Shift differentials – pg 18 (a) 2nd shift - $.15/hr, 3rd shift - $.20/hr (b) No mention of 12-hour schedules (c) Shift times: 3:30 pm to 12 am & 11:30 pm to 8 am	Shift differentials – pg 18 (a) 2nd shift - $.25/hr, 3rd shift - $.35/hr (b) 12-hour schedules + $.25/hr (c) Shift times: 4 pm to 12 am & 12 am to 8 am
Transfers/Promotions/Shift Changes – pg. 18-19 (a) Postings include certain details and are posted for 5 days (b) "Reasonable Accommodations" language (c) Stated transfer requirements	Job Availability Notices – pg. 19 (a) No standards for Postings (b) 10 day posting period (c) No "Reasonable Accommodations" language (d) No stated transfer requirements
Training – pg. 19-20 (a) Attendance requirement not explicitly stated	Training – pg. 20 (a) Attendance required – condition of employment

Comar Handbook 1998 (JTX 2)	Comar Handbook March 2001 (JTX 5)
Educational Assistance Program – pg. 20 (a) Few details	Educational Assistance Program – pg. 13 (a) Substantial Detail
Performance Evaluation – pg. 20 (a) evaluations not necessarily coincide with salary adjustments	Performance Evaluations – pg. 20 (a) Formal, annual evaluations
Safety – pg. 21-22 (a) "Reasonable Accommodations" language (b) Notify supervisor of medications (c) Specific forklift safety items (d) "Avoid shortcut" language (e) No Smoking Security – pg. 22 (a) Package pass required to remove items (b) All packages/lunchboxes can be inspected in or out of facility	Employee Safety and Security – pg. 5 & 7 (a) Safety footwear (b) Broad forklift safety item (c) Employees must be authorized to operate equipment (d) Specific prohibition against using another employee's keys, code, or swipe card
Visiting Other Areas/Leaving Premises – pg. 23	
Personnel Records – pg. 24 (a) "Violations" [of rules] "will not be tolerated"	Employee Records – pg. 27
	Employee Computer, Software and Internet Use – pg. 28 (a) Policy appendix, effective 3/1/01, revised 2/14/01
Confidentiality – pg. 24 (a) Specific examples of "confidential" info (b) Likely 8(a)(1) violation, in part	Confidentiality – pg. 25 (a) Broader, less specific confidentiality language
Bulletin Boards – pg. 25 (a) Specific prohibition against posting info near Company bulletin boards and time clock area (b) Information Centers in cafeteria	Bulletin Boards – pg. 28-29
Working Time – pg 26 (a) Supervisor will inform of meal and break periods	Work Schedule – pg.18 (a) Meal and break periods set forth for 8 & 12-hour, and non-continuous shift schedules
Attendance – pg. 26 (a) Elaborate point system	Attendance – pg. 19 (a) Entire point system and several supporting/related paragraphs omitted
Perfect Attendance Bonus – pg. 28 (a) $50/calendar qtr (b) $100/calendar year (c) Broad list of absences not affecting bonus	Attendance Incentive Plan – pg. 19 (a) $200/calendar year (b) Narrow list of absences no affecting bonus (c) Attendance Incentive Plan policy effective 3/1/01

Comar Handbook 1998 (JTX 2)	Comar Handbook March 2001 (JTX 5)
Dress Code – pg. 29 (a) Certain departments may have specific dress codes	Dress Code – pg. 6 (a) Addition of footwear
Drug and Alcohol Policy – pg. 29	Drug and Alcohol Policy – pg. 6 (a) Referral to EAP (b) Drug and Alcohol Abuse Policy, effective 1/15/01, revised 2/14/01 [Policy appears to be massive, all-encompassing plan]
Business Ethics – pg. 29-30	
Employee Conduct – pg. 30-31	Employee Code of Conduct – pg. 23-24 (a) Zero tolerance for violence in the workplace
Leaving the Company – pg. 33	Leaving the Company – pg.29 (a) List of considerations with respect to layoffs
	Emergency Notification Policy – pg. 29
	Uniforms – pg. 27

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