

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

REDBURN TIRE COMPANY,

and

Cases 28-CA-023527  
28-CA-061437

GENERAL TEAMSTERS (EXCLUDING MAILERS),  
STATE OF ARIZONA, LOCAL UNION NO. 104, AN  
AFFILIATE OF THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS.

**Redburn Tire Company's Application for  
Attorneys' Fees & Expenses**

Pursuant to 5 U.S.C.A. § 504 (hereinafter referred to as the Equal Access to Justice Act ("EAJA")) and 29 C.F.R. § 102.143 *et seq.*, Redburn Tire Company ("Redburn") hereby files its Application for its fees and reasonable expenses incurred in the above-referenced matter.

**I. PROCEDURAL HISTORY**

This action stems from a Charge filed with the National Labor Relations Board ("NLRB") by the Teamsters Local Union No. 104 (the "Union") on May 27, 2011, alleging that Redburn engaged in an unfair labor practice by improperly declaring impasse. On July 20, 2011, the Union filed another Charge, alleging that Redburn had "interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act (the "Act") by, among other ways, threatening to permanently replace unfair labor practice strikers." The Charge also claimed that Redburn had discriminated against its employees by, "among other ways, hiring permanent employees to replace employees exercising their section 7 rights to engage in an unfair labor practice strike." The Union amended this Charge on August 30, 2011, and more specifically alleged that Redburn interfered with its employees' rights by: 1) interrogating its employees about their union or concerted activities; 2) threatening employee's with discharge and unspecified reprisals for engaging in protected concerted activities; 3) threatening to inflict physical violence upon the employees' bargaining representative; 4) threatening to implement its final offer without bargaining to impasse; 5)

threatening to permanently replace its employees engaged in an unfair labor practice strike; 6) informing employees that they could not withdraw funds from their 401(k) plans; and 7) issuing unwarranted discipline to its employees. Redburn cooperated with the Region's investigation and both of its principals were interviewed by the Region and provided affidavits.

On August 31, 2011, the Acting General Counsel ("GC") consolidated the Union's Charges and filed its Consolidated Complaint (the "Complaint"). In the Complaint, the GC alleged: 1) Redburn's President, J.D. Chastain, threatened Redburn's employees with "unspecified reprisals" if they contacted Redburn's customers about the terms and conditions of their employment; 2) Chastain threatened to inflict physical violence upon Redburn's employees' bargaining representative; 3) Redburn's Secretary-Treasurer, Donald Leffler, threatened to implement Redburn's final offer without bargaining to impasse; 4) Chastain and Leffler interrogated Redburn's employees about their Union and concerted activities; 5) Redburn posted a sign at its facility, threatening to permanently replace its employees engaged in an unfair labor practice strike; 6) Redburn threatened its employees with discharge; 7) Redburn threatened its employees by telling them they could not withdraw funds from their 401(k) plans; and 8) Redburn issued unwarranted discipline to several employees. The GC filed an Amended Complaint on December 5, 2011, adding allegations that Redburn failed and refused to reinstate employees who made unconditional offers to return to work.

Redburn responded to the Complaint and denied the allegations. A hearing was held before Administrative Law Judge Gerald Wacknov, December 13 through December 15, 2011. Judge Wacknov issued his Decision on April 23, 2012, dismissing the Complaint in its entirety, based on the following findings:

- There was no merit to the GC's contention that Chastain had made unlawful threats of reprisal and/or physical harm. (ALJD, 12)<sup>1</sup>
- Redburn and the Union had reached an impasse before Redburn implemented its final offer. (ALJD, 12)
- Chastain and Leffler did not interrogate Redburn's employees about their Union and concerted activities (ALJD, 13)

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<sup>1</sup> The following designations are used herein: "ALJD" - Administrative Law Judge's Decision; "T" - hearing transcript; "RPHB" - Redburn Post-Hearing Brief; "GC" - Acting General Counsel's Exhibits; "Board" - NLRB Decision & Order.

- The strike at issue was not an unfair labor practice strike, and instead was "clearly an economic strike from its inception." Therefore, it was not unlawful for Redburn to advise its striking employees of the number of replacement applications it had received. It also was not unlawful for Redburn to hire permanent replacements for the striking workers. (ALJD, 13-14)
- Redburn did not attempt to mislead or prevent its employees from withdrawing their funds in their 401(k) as retaliation for the employees' union activities. (ALJD, 14)
- Redburn had legitimate reasons for issuing discipline to employees. (ALJD, 13)

On May 21, 2012, the GC filed the following exceptions to Judge Wacknov's Decision:

- The ALJ's failure to find and conclude that Redburn violated Section 8(a)(1) of the Act by threatening to implement its bargaining proposal.
- The ALJ's failure to find and conclude that Redburn violated the Act by threatening to permanently replace employees engaged in an unfair labor practice strike by posting a sign announcing the number of striker replacement applications received.
- The ALJ's failure to find and conclude that Redburn violated the Act by declaring an impasse in negotiations, declaring its intent to implement its bargaining proposal, implementing its bargaining proposal, and increasing the amount charged to its Unit employees for health insurance premiums, without first bargaining with the Union to a good-faith impasse and at a time when no overall good faith impasse had been reached on bargaining for a successor agreement.
- The ALJ's failure to find and conclude that the strike by Redburn's Unit employees was caused, and prolonged, by Redburn's unfair labor practices.
- The ALJ's failure to find and conclude that Redburn violated the Act by failing and refusing to reinstate its Unit employees engaged in an unfair labor practice strike upon their unconditional offer to return to work.

- The ALJ's failure to find and conclude that a meeting between Redburn and the Union's President took place on May 9, 2011.<sup>2</sup>

On August 31, 2012, the NLRB issued its Decision and Order affirming Judge Wacknov's rulings, finds and conclusions, and adopting the recommended Order.

## **II. REDBURN IS ENTITLED TO ITS FEES UNDER THE EAJA.**

The EAJA provides:

An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust.

5 U.S.C.A. § 504(a)(1).

For the reasons set forth below, Redburn is a prevailing party entitled to recover its fees and reasonable expenses under the EAJA.

### **A. Redburn is a "Prevailing Party" Under the EAJA.**

A "party," for purposes of the EAJA, includes a corporation with a net worth that does not exceed \$7,000,000 and that does not have more than 500 employees, at the time the adversary adjudication is initiated. Redburn is in the commercial tire sales business and currently has approximately 235 employees spread over thirteen sales offices and five retread (or "recap" or "cap") shops. (T, 29, 67) At the time the Complaint was filed, Redburn had less than 250 employees and its net worth did not exceed \$7 million dollars. (Exhibit A, attached hereto) Redburn is thus a "party," as defined by the EAJA.

Additionally, there is no question that Redburn prevailed in this action. As detailed above, Judge Wacknov dismissed the GC's Complaint, in its entirety. The GC filed exceptions to Judge Wacknov's Decision, but the NLRB affirmed the Decision in total.

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<sup>2</sup> The GC *did not* take exception to the following conclusions of the ALJ: 1) There was no merit to the GC's contention that Chastain had made unlawful threats of reprisal and/or physical harm; 2) Chastain and Leffler did not interrogate Redburn's employees about their Union and concerted activities; 3) Redburn did not attempt to mislead or prevent its employees from withdrawing their funds in their 401(k) as retaliation for the employees' union activities; and 4) Redburn had legitimate reasons for issuing discipline to employees.

**B. General Counsel's Position Was Not Substantially Justified.**

As a prevailing party, Redburn is entitled to recover its fees under the EAJA, so long as the General Counsel's position was *not* substantially justified or unless special circumstances make an award unjust. 5 U.S.C.A. § 504(a)(1); 29 C.F.R. § 102.144(a). The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who must show that its position was substantially justified. 29 C.F.R. § 102.144(a). Whether a position was substantially justified is determined based upon the administrative record, as a whole. 5 U.S.C.A. § 504(a)(1). Whether a decision was "substantially justified" is based on reasonableness, and where the General Counsel can show that its case had a reasonable basis *both* in law and fact, no award will be made. *Int'l Maint. Sys. Group, Inc.*, 267 NLRB No. 188, \*6, 267 NLRB 1136, 1139, 114 L.R.R.M. (BNA) 1138 (N.L.R.B. 1983) (citing EAJA legislative history).

Here, the GC was aware, before it even filed its Complaint, that its position was not substantially justified. As outlined below, from the outset, Redburn informed the GC, and demonstrated during the GC's investigation, that the allegations the GC later included in the Complaint were not supported by fact or law. This was only corroborated by the testimony presented at the hearing. The GC proceeded with this matter nonetheless.

The following is a detailed account of why each of the GC's claims against Redburn lacked substantial justification.

**1. The GC's Claim that Redburn Threatened Reprisal or Violence.**

The GC alleged in the Complaint that Redburn's President, J.D. Chastain, threatened Redburn's employees with "unspecified reprisals" if they contacted Redburn's customers about the terms and conditions of their employment and also threatened to inflict physical violence upon Redburn's employees' bargaining representative. However, the undisputed facts and the relevant law, show that this claim was not substantially justified.

The claim regarding Chastain's unlawful threats is predicated on an April 28, 2011, bargaining session. The facts of what occurred during this bargaining session were outlined in witness affidavits previously provided by Chastain and Leffler to the GC. (Exhibit B, 6, attached hereto; Exhibit C, 9, attached hereto) Chastain's affidavit was provided to the GC on July 19, 2011; Leffler's affidavit was provided on July 14, 2011. Importantly, these affidavits were both provided *before* the Complaint was filed. The same facts were presented at the hearing and were

undisputed by the Union. (RPHB, 16-17) Based on these undisputed facts, there simply was no legal support for the GC's position that Chastain made unlawful threats. (RPHB, 16-18) Judge Wacknov found "no merit to the General Counsel's contention that during the April 28, 2011 negotiation session the two statements by Chastain to [Union Spokesmen] Ienuso constituted, respectively, an unlawful threat of unspecified reprisal and a subsequent unlawful threat of physical harm." (ALJD, 12) The GC did not even file an exception to this finding, which further illustrates the lack of merit to this claim. (Board, 1, n. 2) It is clear, based on the record, that the GC lacked substantial justification for bringing this allegation against Redburn.

**2. The GC's Claim that Redburn Threatened to Implement its Final Offer Before Bargaining to Impasse.**

In the Complaint, the GC alleged that "on or about May 25, 2011, the Respondent, by Donald Leffler, by letter threatened to implement the Respondent's final offer without bargaining to impasse." This claim was not substantially justified by the facts and/or relevant law.

In their July 2011 affidavits, Chastain and Leffler provided great detail regarding the bargaining history between Redburn and the Union. (Exhibit B and C) Then on August 9, 2011, counsel for Redburn summarized this bargaining history in a letter to NLRB Regional Director, Cornele Overstreet. (Exhibit D, attached hereto) Counsel explained that the parties had engaged in no less than 15 bargaining sessions regarding a new collective bargaining agreement. The parties had reached agreement on all items but one, which concerned the employee share of dependent health premiums for employees with more than 10 years of service. For sixth months, and after multiple bargaining sessions, there was absolutely no progress on that issue. Then at a meeting held on May 9, 2011, the Union's Secretary Treasurer declared that the Union would *never* agree to Redburn's proposal. Based on this comment, the months of bargaining without making any progress, and the Union's rejection of Redburn's proposal on the issue at two ratification meetings, Redburn concluded it had reached impasse. (Exhibit D, 3)

In the August 9, 2011, letter, counsel for Redburn advised the Regional Director that the Union would not succeed on the merits of its allegation that impasse had not been reached. (Exhibit D, 3) But despite this information, and the information provided in Chastain's and Leffler's affidavits, the GC filed the Complaint on August 31, 2011, alleging Redburn violated the Act by implementing its final offer before impasse.

At the hearing, the same facts were yet again recounted regarding the bargaining history between the parties. (RPHB, 3-7) In his Decision, Judge Wacknov summarized these undisputed facts. (ALJD, 4-7) Judge Wacknov concluded that after many bargaining sessions, and with concessions by Redburn, "the parties had no further proposals to present." (ALJD, 12) After Redburn presented its last and final offer, Judge Wacknov found that the "Union not only had nothing further to propose but was also insistent that there would be no agreement unless Redburn changed its last and final offer." (ALJD, 12) Based on these circumstances, Judge Wacknov concluded that the parties had reached an impasse. (ALJD, 12) Because he found that the parties reached a lawful impasse before Redburn announced its intent to implement its final offer, Judge Wacknov found that Redburn had not violated the Act. (ALJD, 12) The NLRB affirmed this finding.

The GC was aware of the undisputed facts regarding the parties bargaining history, even before it filed the Complaint. On these facts, and as Judge Wacknov found, there was no basis in law to conclude that Redburn had violated the Act by threatening to implement its final offer before reaching impasse. (RPHB, 7-9) Therefore, the GC lacked substantial justification for this claim. Furthermore, the allegedly unlawful letter was not sent to any employee but, instead, was sent only to the Union's business agent, Ienuso, who was not an employee within the meaning of Section 2(3) of the Act.

**3. The GC's Claim that Redburn Interrogated its Employees about Their Union and Concerted Activities and Issued Unwarranted Discipline.**

The GC alleged that on June 6, 2011, Leffler and Chastain interrogated Redburn employees about their union and concerted activities. The GC also claimed that these employees were issued unwarranted discipline. The facts, as corroborated by Union witnesses, show that this claim is not substantially justified.

Chastain and Leffler's alleged interrogation of Redburn employees is based on their meeting with three employees who failed to report, or call in, for their regularly scheduled shifts on June 4, 2011 (the day after Redburn employees had engaged in a protected walk-off). Chastain and Leffler detailed these meetings in their affidavits. (Exhibit B, 8; Exhibit C, 12-13) At the hearing, Leffler provided the same account of his and Chastain's meetings with these three employees. (RPHB, 12-15) Two of these employees did not testify, and the one who did testify *corroborated* Leffler's account of the interviews. (RPHB, 13) Based on these undisputed facts,

Judge Wacknov found "no merit" to the GC's assertion that Chastain and Leffler had interrogated these employees. (ALJD, 13) In fact, he concluded that the "record shows ... that Leffler and Chastain *assiduously avoided*, on the advice of counsel, interrogating [the employees] about such matters." (ALJD, 13) Judge Wacknov concluded that Chastain and Leffler simply wanted to know why these employees, unlike the other employees who had engaged in the walk-off the day before, had failed to report to work on June 4 and why they had failed to call into report their absence as required by Redburn policy. (ALJD, 13) He found that Chastain and Leffler had "legitimate reasons for conducting the interviews." (ALJD, 13) The GC did not file an exception to Judge Wacknov's conclusion on this claim; again, illustrating the claim lacked a reasonable basis in fact or law. (Board, 1, n.2)

The GC's claim regarding unwarranted discipline is similarly unfounded. Redburn issued written warnings to two of the three employees who failed to report to work on June 4, 2011 (the other employee did not receive discipline because he did not thereafter report to work again). (RPHB, 12-13) The employees admitted that they had failed to comply with Redburn's call-in rule. (RPHB, 12) Leffler explained in his affidavit, and testified at trial, the legitimate reason that Redburn issued these warnings. (Exhibit C, 13; ALJD, 13) Further, the Union representative testified at the hearing that he did not file a grievance regarding the issue, because the employees had been "wrong." (T, 229) Judge Wacknov concluded, based on the evidence, that "Leffler and Chastain had legitimate reasons for imposing the discipline." (ALJD, 13) The GC also did not file an exception to this claim.

The facts on this claim are undisputed, and as Judge Wacknov concluded, on the facts, there is no legal basis for finding that Redburn violated the Act. (RPHB, 11-15) There was simply no substantial justification for this claim.

**4. The GC's Claim that Redburn Unlawfully Threatened to Permanently Replace Striking Employees and Did Permanently Replace Striking Employees.**

The GC's next allegation was that Redburn unlawfully threatened to permanently replace striking employees by posting a sign at its facility. The GC alleged that these employees were engaged in an unfair labor practice strike. The GC also claimed that Redburn unlawfully permanently replaced the striking workers. These claims were not substantially justified by the facts, and are actually contrary to the settled legal precedent.

The GC's claim about the sign concerns the following sign that Redburn posted on June 28, 2011:

STRIKER  
REPLACEMENT  
APPLICATIONS  
RECEIVED  
125+

(RPHB, 15) The sign was posted where picketing employees could see it and it remained up for several hours. (RPHB, 15) In affidavits dated respectively August 4, 2011 and August 5, 2011 (before the Complaint was amended to assert new allegations in this regard), both Chastain and Leffler testified that the sign was posted to encourage striking workers to return to work. (Exhibit F, 4, attached hereto; Exhibit G, 5, attached hereto)

On July 27, 2011, counsel for Redburn sent the GC a letter regarding the sign. In that letter, counsel explained that Redburn's posting of the sign did not constitute an unfair labor practice. (Exhibit E, attached hereto) Counsel pointed out that "it is well established that an employer lawfully may advise striking employees that it is considering hiring replacements." (Exhibit E, 2) Counsel directed the GC to the seminal case on the issue, *River's Bend Health & Rehabilitation Svcs.*, 450 NLRB 184 (2007).

On August 9, 2011, counsel for Redburn reiterated that the sign was not an unfair labor practice, in a letter sent to the Regional Director. (Exhibit D) Counsel stated that "[i]n an effort to convince the striking employees to return to work so that replacements would not be hired, [Redburn] posted [the] sign on its property near the picket line." (Exhibit D, 3) Counsel again asserted that the sign was lawful, for the reasons cited in his July 27, 2011 letter and based on the lead case cited therein. (Exhibit D, 4) Counsel pointed out that the sign could not have been an unlawful attempt to dissuade the employees from exercising their rights to strike, as they were already on strike. (Exhibit D, 4) Further, the sign made no reference to permanent replacement, although under long-standing case law, that too would have been lawful. (Exhibit D, 4)

At the hearing, Leffler credibly testified that the sign was posted to encourage striking workers to return to work. (T, 69) Leffler also testified at the time the sign was posted, Redburn had not yet hired any permanent replacements. (T, 69) Based on the evidence presented at the hearing, Judge Wacknov concluded that the strike was "clearly an economic strike from its inception." (ALJD, 13) And because it was an economic strike, rather than an unfair labor

practice strike, Judge Wacknov found that it was not unlawful for Redburn to post a sign advising striking employees of the number of striker replacement applications it had received, in an effort to induce the strikers to return to work. (ALJD, 13) Judge Wacknov's finding, based on the undisputed facts, is consistent with the clearly established case law. (RHBP, 15-16) Further, the finding was affirmed by the NLRB on appeal.

Regarding the GC's claim that Redburn unlawfully permanently replaced the striking employees, Chastain and Leffler testified in their affidavits that they permanently replaced the workers in early July 2011. (Exhibit F, 4; Exhibit G, 5) Leffler sent an e-mail to Ienuso on July 15, informing him about the permanent replacements. (Exhibit F, 4; Exhibit G, 5) Counsel for Redburn outlined these facts in his July 27 and August 9, 2011 letters. (Exhibits D and E)

On September 23, 2011, via e-mail, Ienuso advised Redburn that the strikers were unconditionally offering to return to work. (RPHB, 11) At the time of the hearing, there had been two vacancies in the retread shop and those positions were offered to, and filled by, two of the strikers. (RPHB, 11)

Judge Wacknov concluded, that because the strike was "clearly an economic strike," it was not unlawful for Redburn to hire permanent replacements for striking employees, notify the Union that the strikers had been permanently replaced, and refuse the Union's unconditional offer to return to work on behalf of the permanently replaced strikers. (ALJD, 13-14) The GC filed an exception to this finding, but the NLRB affirmed it.

Based on the facts, which were conveyed to the GC and the Regional Director prior to the Complaint being filed, these claims have no basis in fact or law, and thus the GC lacked substantial justification for bringing them against Redburn.

**5. The GC's Claim that Redburn Threatened its Employees by Refusing to Allow them to Withdraw from their 401(k)s.**

The Complaint alleged that Redburn, by its HR representative, unlawfully threatened employees by telling them that they could not withdraw their §401(k) funds. This claim is not substantially justified by the facts or the law.

In his August affidavit, Leffler testified that on July 20, 2011, he sent Ienuso an e-mail in response to his question from the day before, about how striking employees could get their 401k funds. (Exhibit E; Exhibit G, 6) Leffler informed Ienuso that the employees should contact Tina Quihuis and that she would prepare the appropriate form to send to the employees. (Exhibit E;

Exhibit G, 6) When the employees completed the form, Quihuis would then submit it for processing. (Exhibit E; Exhibit G, 6) Counsel for Redburn advised the Regional Director of the same facts, in his letter dated July 27, 2011. (Exhibit E, 2)

During the hearing, the only evidence offered by the GC to support this allegation was the testimony of Union steward Ruben Martinez, Jr., that the HR representative told him that he was not eligible to withdraw §401(k) funds because he was still employed and, therefore, too young to qualify. (T, 291) Under the plan document, an employee could not withdraw the full amount of their 401(k), unless he was over 55 years old and either quit or had been terminated. (ALJD, 11)

It also became clear during the hearing that the GC had not given much thought to its allegation regarding employees being denied access to their 401(k)s. Counsel for Redburn, the GC, and Judge Wacknov, engaged in the following discussion, trying to clarify the GC's position:

MR. PETTIBONE: Your Honor, if I may interrupt for a second. There is obviously an allegation in the Complaint that the Company violated the statute by not allowing some of the strikers to withdraw 401(k) money. I'd like to know if it is the General Counsel's position that the Company ignored eligibility requirements in so denying some of the requests. Are they saying we didn't follow the plan?

MS. DAVIDSON: No, the contention is that employees were informed they could not withdraw their funds and that is the --

MR. PETTIBONE: You've got the plan documents, the eligibility requirements are in there to withdraw the money. Are you saying that we didn't follow them, that we didn't adhere to the eligibility requirements, that we violated what was in the plan?

MS. DAVIDSON: We did --

JUDGE WACKNOV: Yeah, go ahead.

MS. DAVIDSON: If there is an, if there is not an objection, I'd like to finish with the witness.

JUDGE WACKNOV: Well, I don't know if it's an objection, but apparently there is a plan, a 401(k) plan that has some requirements of how to, when and how you can take the money out, so are you saying that, you're alleging -- what are you alleging as an unfair labor practice?

MS. DAVIDSON: That employees could not withdraw their 401(k) funds after they had been permanently replaced.

JUDGE WACKNOV: And what if the plan says that a strike can't withdraw your 401(k) funds? That's not the Company's problem, that's the plan, isn't it?

MS. DAVIDSON: Well, that would be their defense for post-hearing argument.

JUDGE WACKNOV: Okay. So the answer is no, General Counsel's not saying the Company didn't follow the plan, that's the answer.

MR. PETTIBONE: Thank you.

JUDGE WACKNOV: You're just saying under the circumstances you should have ignored whatever the plan says?

MS. DAVIDSON: No, that is not --

JUDGE WACKNOV: Then what --

MS. DAVIDSON: -- that's not what I'm saying.

JUDGE WACKNOV: Then what should the Company have done.

MS. DAVIDSON: Well, this is, that's for the Company's defense. Right now --

JUDGE WACKNOV: But, in other words, you don't know what the Company should have done? In other words, you don't know, you're just throwing it out there and hoping, thinking well, we'll let the Company respond to that?

MS. DAVIDSON: Well, employees believe they were fired and that they could not withdraw their -- well, employees believe they were fired and that they could not withdraw their 401(k) money.

JUDGE WACKNOV: So then the employees believed they were fired, because there's something in the plan that says what should happen if employees are fired, in the 401(k) plan? Or do you know? You know what the 401(k) plan says?

MS. DAVIDSON: Yes, yes, it's actually in evidence now, Your Honor. I'd have to read the exact wording. I don't want to characterize it without having the language right in front of me.

JUDGE WACKNOV: In other words, you don't know what the Company was supposed to do? Is there any -- I guess -- is there any Board precedent that says no matter what the 401(k) plan is, in a situation like this, where you have a strike, for [sic] a discharge, the Company has to turn over the 401(k) funds to the Employee, is there a case like that? Maybe there is, I mean, I don't know. Or are you just making this up, you know, making it up and then figuring well, we'll just throw this in and see what happens? What I'm asking is, what's the precedent that you're relying on here for making this allegation in the Complaint?

MS. DAVIDSON: It's just, it's our contention that the 401(k) plan does allow these employees to receive their 401(k) monies.

JUDGE WACKNOV: Okay, so then you're saying the Company is not abiding by what's in the 401(k) plan, isn't that what you're saying?

MS. DAVIDSON: In essence, yes.

JUDGE WACKNOV: Okay. So the answer to your question is yes, you're not following the provisions of the 401(k) plan, that's the Company's -- that's the General Counsel's argument.

MR. PETTIBONE: Thank you.

(T, 141-145)

This testimony only confirms that the GC's position on this claim was not substantially justified, as the GC could not even articulate a specific basis for his claim. Based on the evidence, Judge Wacknov concluded that the GC had not demonstrated that Redburn had attempted to either mislead the employees or prevent them from withdrawing their funds as a form of retaliation for their union activities. (ALJD, 14) Judge Wacknov stated that the Plan document, introduced into evidence at the hearing, enumerated the criteria under which employees may or may not be able to withdraw their 401(k) funds. (ALJD, 14) Finally, Judge Wacknov concluded that Leffler was "clearly trying to be accommodating" when he responded to Ienuso and directed him to Redburn's HR representative. (ALJD, 14)

The GC did not file an exception to Judge Wacknov's finding regarding this claim. This demonstrates the claim's lack of merit. Based on the facts, Redburn's HR representative was clearly only conveying the plan's eligibility criteria for withdrawal of funds. (RPHB, 18) There

was no basis for the GC's contention that this statement was intended as an unlawful threat of retaliation for the striking employees.

### **III. REDBURN'S REQUESTED FEES & EXPENSES**

As set forth above, Redburn was the prevailing party in this matter, and the GC's position was not substantially justified, thus Redburn is entitled to recover its fees under the EAJA. Additionally, pursuant to 29 C.F.R. 102.145(b), Redburn is entitled to recover the reasonable expenses incurred by counsel.<sup>3</sup>

Specifically, Redburn seeks recovery of the following fees and expenses:

#### **ATTORNEYS' FEES**

**Complaint:**

<b>Time Keeper</b>	<b>Total Hours</b>	<b>Amount Requested<sup>4</sup></b>
<b>Attorneys</b>		
Jon E. Pettibone	156.60	\$11,745.00
Rachel L. Robertson	18.6	\$1,395.00
Nicholas O. Anderson	17.0	\$1,275.00
Dawn C. Valdivia	4.2	\$315.00
David B. Kern	.40	\$30.00
Brian Howie	.30	\$22.50
Marian Zapata-Rossa	.30	\$22.50
<b>Paralegal</b>		
Sandra Smith	82.6	\$6,195.00
<b>TOTALS</b>	<b>280.00</b>	<b>\$21,000.00</b>

<sup>3</sup> Under the regulation, an award may include the reasonable expenses of the attorney, so long as the attorney ordinarily charges clients separately for such expenses.

<sup>4</sup> The EAJA allows parties to recover attorneys' fees at a rate of \$125.00 per hour. 5 U.S.C.A. § 504(b)(1)(A). However, the NLRB regulations limit recovery of attorneys' fees to a maximum of \$75.00 per hour. 29 C.F.R. § 102.145. All fees have been reduced to the maximum amount allowable under the NLRB regulations.

**Appeal to NLRB:**

<b>Time Keeper</b>	<b>Total Hours</b>	<b>Amount Requested</b>
<b>Attorneys</b>		
Jon E. Pettibone	17.7	\$1,327.50
<b>Paralegal</b>		
Sandra Smith	.9	\$67.50
<b>TOTALS</b>	<b>18.6</b>	<b>\$1,395.00</b>

**EAJA Fee Application**

<b>Time Keeper</b>	<b>Total Hours</b>	<b>Amount Requested</b>
<b>Attorneys</b>		
Jon E. Pettibone	3.5	\$262.50
Rachel L. Robertson	50.10	\$3,757.50
<b>TOTALS</b>	<b>53.6</b>	<b>\$4,020.00</b>

**TOTAL REQUESTED ATTORNEYS' FEES** **\$ 26,415.00**

**EXPENSES**

<b>Date</b>	<b>Description</b>	<b>Cost</b>
09/12/11	Westlaw and Lexis Charges	\$678.88
09/19/11	Westlaw and Lexis Charges	\$281.75
09/26/11	Westlaw and Lexis Charges	\$1,470.88
	Pacer research charges	\$1.68
10/21/11	Color copy charges	\$1.60
	Copy charges	\$46.90
11/18/11	General Teamsters Local Union No. 104 Witness Fee and roundtrip mileage	\$48.33
	Copy charges	\$.70
12/01/11	Color copy charges	\$30.40
12/01/11	Color copy charges	\$1.60
12/08/11	Color Copy charges	\$165.20

Date	Description	Cost
12/08/11	Color Copy charges	\$5.60
12/22/11	Jon Pettibone December 14, 2011 Ampco Parking	\$12.00
12/22/11	Jon Pettibone December 15, 2011 Ampco Parking	\$5.00
	Copy charges	\$498.20
	Fax charges	\$14.40
01/05/12	Intelliquick Delivery Don Leffler- 12/8/11	\$56.25
01/05/12	Intelliquick Delivery NLRB- 12/09/11	\$11.25
01/05/12	Intelliquick Delivery Process Serve- Teamsters Local 104	\$67.00
01/10/12	Intelliquick Delivery NLRB- 12/12/11	\$28.13
01/13/12	Argie Reporting Service Hearing Transcript	\$1,019.13
	Copy charges	\$1.20
09/12/12	Westlaw and Lexis Charges	\$277.20
<b>TOTAL</b>		<b>\$4,723.28</b>

These attorneys' fees and expenses are supported by the attached document. (See Exhibit H, attached hereto).<sup>5</sup>

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of September 2012.

QUARLES & BRADY LLP  
Renaissance One  
Two North Central Avenue  
Phoenix, AZ 85004-2391

By /s/ Rachel L. Robertson

Jon E. Pettibone  
Rachel L. Robertson

Attorneys for Respondent

<sup>5</sup> The invoices attached as Exhibit H do not include all portions of the bill sent to the client. The excluded pages concerned separate legal matters. Also, on the first invoice, dated September 6, 2011, the only time included in this Application is the time entry dated August 31, 2011. There was no August 2012 bill mailed to the client, as there was no time entered in the matter in July 2012. Finally, the time billed on this matter for August 2012, was erroneously billed to the wrong matter number, as evidenced by the September 7, 2012 invoice.

I hereby certify that on September 28, 2012, I electronically transmitted the attached document to the National Labor Relations Board using the NLRB E-Filing System and transmitted a copy via email to:

Cornele A. Overstreet ([nlrregion28@nlrb.gov](mailto:nlrregion28@nlrb.gov))  
Mary Gray Davidson ([mary.davidson@nlrb.gov](mailto:mary.davidson@nlrb.gov))  
Teamsters Local 104 ([jerry.ienuso@teamsterslocal104.com](mailto:jerry.ienuso@teamsterslocal104.com))  
Teamsters Local 104 ([randy.hancock@teamsterslocal104.com](mailto:randy.hancock@teamsterslocal104.com))

/s/ Jeannie Fraser  
*An employee of Quarles & Brady LLP*

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

REDBURN TIRE COMPANY,

and

Cases 28-CA-023527  
28-CA-061437

GENERAL TEAMSTERS (EXCLUDING MAILERS),  
STATE OF ARIZONA, LOCAL UNION NO. 104, AN  
AFFILIATE OF THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS.

**VERIFICATION**

I, Rachel L. Robertson, am an attorney representing the Respondent, Redburn Tire Company ("Redburn"), in this matter. I have prepared the foregoing Application for Attorneys' Fees and Expenses and state under penalty of perjury that the statements therein are true and correct of my own personal knowledge or the best information available to me.

I have also prepared the attached exhibits to the Application for Attorneys' Fees and Expenses. Exhibit A includes copies of Redburn's balance sheets, as of August 31, 2011, and copies of Redburn's 941 forms for the second and third quarters of 2011. Exhibit B is a Confidential Witness Affidavit of Redburn President, J.D. Chastain, which was subscribed and sworn to NLRB Field Attorney, Mary G. Davidson, on July 19, 2011. Exhibit C is a Confidential Witness Affidavit of Redburn Secretary-Treasurer, Donald Leffler, which was subscribed and sworn to Mary G. Davidson on July 14, 2011. Exhibit D is a letter prepared by my colleague, Jon Pettibone, and sent to the NLRB Regional Director on August 9, 2011. Exhibit E is a letter prepared by Jon Pettibone and sent to Mary G. Davidson on July 27, 2011. Exhibit F is a Confidential Witness Affidavit of J.D. Chastain, which was subscribed and sworn to Mary G. Davidson on August 4, 2011. Exhibit G is a Confidential Witness Affidavit of Donald Leffler, which was subscribed and sworn to Mary G. Davidson on August 5, 2011. Finally, Exhibit H consists of copies of Quarles & Brady's invoices for this matter. This includes formal invoices sent to Redburn from September 2011 through July 2012, as well as an invoice sent in September 2012. A draft bill for September 2012 time through a portion of September 27, 2012, is attached. The final version will be mailed to the client in October 2012.

I state under penalty of perjury that Exhibits A-H are as I have stated herein and are all true and correct of my own personal knowledge or belief.

Executed on September 28, 2012, in Phoenix, Arizona.

Rachel L. Robertson  
Rachel L. Robertson

STATE OF ARIZONA        )  
County of Maricopa        )

SUBSCRIBED AND SWORN to before me on this 28 day of September, 2012, by Rachel L. Robertson.

Carol L. Jones  
Notary Public

My Commission Expires:



## **Exhibit A**

09/20/2011

REDBURN TIRE COMPANY  
BALANCE SHEET  
As Of August 31, 2011

Page 1

===== ASSETS =====

CASH IN BANK	1,502,402.11
ACCOUNTS RECEIVABLE - OPEN	6,328,110.73
RESERVE - BAD DEBTS	-30,000.00
INVENTORY	8,789,908.22
LIFE INSURANCE - C.S.V.	108,750.00
PREPAID INSURANCE	36,339.42
PREPAID RENT	0.00

TOTAL CURRENT ASSETS 16,735,510.48

LAND & BUILDINGS	794,466.80
RESERVE - BUILDINGS	-546,853.08
LEASEHOLD IMPROVEMENTS	260,265.83
RESV DEPR - LEASHOLD IMPROVEMENTS	-49,905.83
FURNITURE & FIXTURES	14,572.03
RESV DEPR - FURNITURE & FIXTURES	-14,572.01
SHOP & SERVICE EQUIPMENT	46,965.42
RESV DEPR - SHOP & SERVICE EQUIP	-46,160.32
RETREAD EQUIPMENT	2,947,748.13
RESV DEPR - RETREAD EQUIPMENT	-2,460,610.48
TRUCKS	3,176,433.34
ACCUM DEPR - TRUCKS	-1,438,151.54
AUTOS	113,608.23
ACCUM DEPR - AUTOS	-7,300.35

TOTAL FIXED ASSETS 2,790,506.17

FUNDS ON DEPOSIT	123,249.82
INVESTMENTS	55,134.00
NOTES RECEIVABLE	47,140.35

TOTAL OTHER ASSETS 225,524.17

TOTAL ASSETS 19,751,540.82

=====

09/20/2011

REDBURN TIRE COMPANY  
BALANCE SHEET  
As Of August 31, 2011

Page 2

===== LIABILITIES =====

CLAIM ACCOUNT - INSURANCE	123,117.28
CURRENT LIABILITIES	0.00
ACCOUNTS PAYABLE	12,917,450.42
CLAIMS	308,320.24
NOTES PAYABLE	121,614.98
CONTRACTS PAYABLE	103,955.04
SALES TAX	345,848.50
ACCRUED EXPENSES	369,094.14
PAYROLL TAXES	-83,776.95
ACCRUED DIRECTORS FEES	0.00
ACCRUED COMMISSIONS	1,135,696.03
EMPLOYEE DEDUCTIONS	13,821.32
RESV ADDED COMPENSATION	0.00
INCOME & PROPERTY TAXES	118,327.57

TOTAL CURRENT LIABILITIES 15,350,351.29

MORTGAGES & NOTES - LONG TERM	815,936.72
LONG TERM CONTRACT	490,571.67

TOTAL LONG TERM LIABILITIES 1,306,508.39

TOTAL LIABILITIES 16,779,976.96

===== EQUITY =====

CAPITAL STOCK & SURPLUS	132,311.44
ACCUMULATED ADJUSTMENTS	2,839,252.42

TOTAL EQUITY 2,971,563.86

TOTAL LIABILITIES AND EQUITY 19,751,540.82

Form **941 for 2011: Employer's QUARTERLY Federal Tax Return**  
 (Rev. January 2011) Department of the Treasury — Internal Revenue Service

950111  
 OMB No. 1545-0029

(EIN)   -

Employer identification number

Name (not your trade name)

Trade name (if any)

Address

Number  Street  Suite or room number

City  State  ZIP code

Report for this Quarter of 2011  
 (Check one.)

1: January, February, March

2: April, May, June

3: July, August, September

4: October, November, December

Prior-year forms are available at [www.irs.gov/form941](http://www.irs.gov/form941).

Read the separate instructions before you complete Form 941. Type or print within the boxes.

**Part 1: Answer these questions for this quarter.**

1	Number of employees who received wages, tips, or other compensation for the pay period including: Mar. 12 (Quarter 1), June 12 (Quarter 2), Sept. 12 (Quarter 3), or Dec. 12 (Quarter 4)	1	<input type="text" value="228"/>
2	Wages, tips, and other compensation	2	<input type="text" value="2645314.97"/>
3	Income tax withheld from wages, tips, and other compensation	3	<input type="text" value="279383.26"/>
4	If no wages, tips, and other compensation are subject to social security or Medicare tax	<input type="checkbox"/> Check and go to line 6e.	
5a	Taxable social security wages	Column 1	<input type="text" value="2598559.00"/> × .104 = <input type="text" value="270250.14"/>
5b	Taxable social security tips	Column 2	<input type="text" value="."/> × .104 = <input type="text" value="."/>
5c	Taxable Medicare wages & tips		<input type="text" value="2737573.20"/> × .029 = <input type="text" value="79389.63"/>
5d	Add Column 2 line 5a, Column 2 line 5b, and Column 2 line 5c.	5d	<input type="text" value="629023.03"/>
5e	Section 3121(q) Notice and Demand—Tax due on unreported tips (see instructions)	5e	<input type="text" value="."/>
6a	Reserved for future use	<b>Do Not Complete Lines 6a-6d</b>	
6b	Reserved for future use		
6c	Reserved for future use		
6d	Reserved for future use		
6e	Total taxes before adjustments (add lines 3, 5d, and 5e)	6e	<input type="text" value="629023.03"/>
7	Current quarter's adjustment for fractions of cents	7	<input type="text" value="1.50"/>
8	Current quarter's adjustment for sick pay	8	<input type="text" value="."/>
9	Current quarter's adjustments for tips and group-term life insurance	9	<input type="text" value="."/>
10	Total taxes after adjustments. Combine lines 6e through 9	10	<input type="text" value="629024.53"/>
11	Total deposits, including prior quarter overpayments	11	<input type="text" value="629194.55"/>
12a	COBRA premium assistance payments (see instructions)	12a	<input type="text" value="."/>
12b	Number of individuals provided COBRA premium assistance	12b	<input type="text" value="."/>
13	Add lines 11 and 12a	13	<input type="text" value="629194.55"/>
14	Balance due. If line 10 is more than line 13, enter the difference and see instructions	14	<input type="text" value="."/>
15	Overpayment. If line 13 is more than line 10, enter the difference	15	<input type="text" value="170.02"/>

For 2011, the employee social security tax rate is 4.2% and the Medicare tax rate is 1.45%. The employer social security tax rate is 6.2% and the Medicare tax rate is 1.45%.

Check One:  Apply to next return.  Send a refund.

▶ You MUST complete both pages of Form 941 and SIGN it.

Next ▶

Form **941 for 2011: Employer's QUARTERLY Federal Tax Return**  
 (Rev. January 2011) Department of the Treasury — Internal Revenue Service

950111  
 OMB No. 1545-0029

(EIN)   -

Employer identification number

Name (not your trade name)

Trade name (if any)

Address

Number  Street  Suite or room number

City  State  ZIP code

**Report for this Quarter of 2011**  
 (Check one.)

1: January, February, March

2: April, May, June

3: July, August, September

4: October, November, December

Prior-year forms are available at [www.irs.gov/form941](http://www.irs.gov/form941).

Read the separate instructions before you complete Form 941. Type or print within the boxes.

**Part 1: Answer these questions for this quarter.**

1	Number of employees who received wages, tips, or other compensation for the pay period including: Mar. 12 (Quarter 1), June 12 (Quarter 2), Sept. 12 (Quarter 3), or Dec. 12 (Quarter 4)	1	<input type="text" value="236"/>
2	Wages, tips, and other compensation	2	<input type="text" value="3127367"/> <input type="text" value="50"/>
3	Income tax withheld from wages, tips, and other compensation	3	<input type="text" value="662486"/> <input type="text" value="29"/>
4	If no wages, tips, and other compensation are subject to social security or Medicare tax	<input type="checkbox"/> Check and go to line 6e.	
5a	Taxable social security wages	Column 1	<input type="text" value="2666954"/> <input type="text" value="20"/>
5b	Taxable social security tips	Column 2	<input type="text" value="277363"/> <input type="text" value="24"/>
5c	Taxable Medicare wages & tips		<input type="text" value="3256708"/> <input type="text" value="37"/>
5d	Add Column 2 line 5a, Column 2 line 5b, and Column 2 line 5c	5d	<input type="text" value="371807"/> <input type="text" value="79"/>
5e	Section 3121(c) Notice and Demand—Tax due on unreported tips (see instructions)	5e	<input type="text"/>
6a	Reserved for future use	<b>Do Not Complete Lines 6a-6d</b>	
6b	Reserved for future use		
6c	Reserved for future use		
6e	Total taxes before adjustments (add lines 3, 5d, and 5e)	6e	<input type="text" value="1034294"/> <input type="text" value="08"/>
7	Current quarter's adjustment for fractions of cents	7	<input type="text" value="5"/> <input type="text" value="42"/>
8	Current quarter's adjustment for sick pay	8	<input type="text"/>
9	Current quarter's adjustments for tips and group-term life insurance	9	<input type="text"/>
10	Total taxes after adjustments. Combine lines 6e through 9	10	<input type="text" value="1034299"/> <input type="text" value="50"/>
11	Total deposits, including prior quarter overpayments	11	<input type="text" value="1034469"/> <input type="text" value="52"/>
12a	COBRA premium assistance payments (see instructions)	12a	<input type="text"/>
12b	Number of individuals provided COBRA premium assistance		<input type="text"/>
13	Add lines 11 and 12a	13	<input type="text" value="1034469"/> <input type="text" value="52"/>
14	Balance due. If line 10 is more than line 13, enter the difference and see instructions	14	<input type="text"/>
15	Overpayment. If line 13 is more than line 10, enter the difference		<input type="text" value="170"/> <input type="text" value="02"/>

For 2011, the employee social security tax rate is 4.2% and the Medicare tax rate is 1.45%. The employer social security tax rate is 6.2% and the Medicare tax rate is 1.45%.

▶ You MUST complete both pages of Form 941 and SIGN it.

Next ▶

## **Exhibit B**

DUPLICATE

(2-08)

Case: 28-CA-23527

County of Maricopa )  
: ss  
State of Arizona )

**Confidential Witness Affidavit**

I, James Donald (J.D.) Chastain, hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

- 1. My business address is 3801 West Clarendon Avenue, Phoenix, AZ 85019-3717.
- 2. My business telephone number is 602.272.7601. My cell phone number is 602.531.2518. My

email address is jd@rtco.net.

3. I am present in the office of Board Agent Mary Davidson along with Jon Pettibone, attorney for Redburn Tire Company (the Employer). I am co-owner of the Employer along with Don Leffler. I am President of the Employer and Leffler is the Secretary-Treasurer. I have worked for Employer since the mid-1970s and have been a co-owner for fifteen years.

4. The Employer employs approximately 250 employees in Arizona, Nevada, Texas, New Mexico and Colorado. About 70 employees are in the Phoenix-Mesa area, eleven of whom are tire retreaders. In addition to the Phoenix facility, the Employer has about 30 employees performing tire retreading in Tucson, Arizona, Albuquerque, New Mexico, Las Vegas, Nevada and El Paso, Texas. The eleven retreaders working for the Employer in Phoenix are covered by a collective-bargaining agreement (the Agreement) between the Employer and the International Brotherhood of Teamsters Local Union No. 104 General Teamsters (Excluding Mailers) (the Union). None of the employees working in the Employer's other locations are represented by a union. For as long as I can recall, the Employer has had a collective bargaining agreement with the Union. The latest Agreement with the Union expired on December 31, 2010. The Union notified the Employer that it wanted to reopen the Agreement within the window period allowed by the Agreement. The first bargaining session occurred on December 15, 2010. I and Leffler participated for the Employer. Negotiating for the Union were the

JDC  
- 1 -

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine use for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further unfair labor practice or representation case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

JDC Initials

Business Representative of the Union, Jerry Ienuso, and two employees who are members of the Union, Ruben Martinez, and Ruben Martinez, Jr., who is also the Union steward. With the exception of one meeting at the Union's office, we met for all contract talks at the offices of the Federal Mediation and Conciliation Service (FMCS) in Phoenix. Federal mediator Ron Collotta met with us for every session except one when Pete Cinquimani, Jr., another federal mediator, filled in for Collotta.

5. The negotiators met approximately twelve times beginning December 15, 2010 until the last session on June 2, 2011. I did not attend one of the negotiating sessions. I am providing the Board Agent with the sign-in sheets for all sessions I attended. There was one session at the Union office on May 9, 2011, and there is no sign-in sheet for that session. Usually the meetings started at approximately 1 p.m.

6. During the bargaining sessions we had lots of verbal agreements but we did not sign anything showing that we had reached agreement.

7. At our first bargaining session on December 15, 2010 we exchanged proposals with the Union. I am providing the Board Agent with copies of the proposals presented by the Employer and the Union that day. The Employer's proposal is attached as Exhibit 1 and the Union's proposal is attached as Exhibit 2. We worked off these proposals, which are red-lined copies of the prior Agreement, during different bargaining sessions. Generally, when the Employer and the Union came to agreement on an issue I would note that on the Employer's proposal by writing "OK" and the date we reached agreement. I made the handwritten notes that are on the proposals I provided to the Board Agent. I made some notes on the Union's proposal, but I cannot say that those notes indicate agreement on those items. After we exchanged proposals, we read them and then discussed some of the major items in the proposals. We talked about wage proposals. The Employer did not offer a pay increase but we offered an increase in bonuses based on units produced per man hour. In the retread shop, we produce a certain amount of units per day and we have an incremental bonus system based on a unit per man hour calculation. The Employer proposed reducing the number of personal days; possibly changing how seniority is figured; changing the health insurance benefit to where unit employees would pay a portion of the premiums just like all our other employees. The back page of the Employer's proposal includes a schedule of what all existing employees are currently paying for their health insurance at all of the Employer's different locations. The Employer proposed eliminating the benefit that the Employer would pay the entire cost of covering the eligible dependents of unit employees who have worked for the Employer for than 10 years. The Employer also

proposed eliminating the \$200 per month stipend it paid to employees who chose not to participate in the Employer's health insurance benefits. The prior contract included a "Schedule of Insurance" which listed amounts to be paid by unit employees for themselves and their dependents, but an arbitrator ruled that the schedule of insurance could not be implemented. As I recall, the arbitrator ruled that an employee with more than ten years of service did not have to pay health insurance for his dependents. I don't recall how long that session lasted. I don't recall that we reached agreement on any proposals that first session.

8. We next met on December 22, 2010 at the FMCS office. I believe there was also a session the day before, on December 21, but I was not at that session. Everyone signed in at that meeting, including myself, Leffler, Ienuso, Martinez, Sr., Martinez, Jr., and Collatta. At that session the Union gave the Employer a counterproposal, which I am providing to the Board Agent, and is attached as Exhibit 3. Those are my handwritten notes on the Union's proposal. I recall that this was a fairly lengthy meeting, which began around 1 p.m., but I do not know how long it lasted. We came to verbal agreement on certain issues at that session. My recollection is that we reached agreement on a lot of items, but I do not recall the specific items we agreed on. I took notes on some items we agreed on at the bargaining sessions, but not necessarily all items we agreed to are reflected in my notes. I will provide my bargaining notes to the Board Agent. We discussed the health insurance benefits at that meeting, but I can't recall if either party made a new proposal. The Union did agree to the Employer's proposal to eliminate the \$200 a month stipend paid to unit employees who did not participate in the Employer's health insurance plan.

9. We met again on January 4, 2011 at the FMCS, again around 1 p.m. I don't recall how long that meeting lasted. Based on my notes, we discussed Article 2 (wages); Article 6 (holidays and personal days); Article 21 (Christmas bonus); Article 7 (vacations); and Article 8 (seniority). My notes reflect an "Ok" on the Employer's proposal regarding vacations. There was no agreement on wages that day but my notes reflect that we discussed an increase in pay and a contingency bonus based on units per man hour. My notes do not reflect any discussion on the health insurance issue.

10. We next met on January 13, 2011, at the FMCS office, beginning around 1 p.m. I don't recall how long that session lasted. According to the sign-in sheet for that day, everyone was present except for Ruben Martinez, Jr. My notes reflect that the Union made a counter-offer that day on Article 2 (wages) and that the Employer made a different proposal on wages, but my notes do not reflect that we reached any agreement on

wages that day. The Union also agreed to the Employer's proposed deduction for poor workmanship. We discussed starting the unit per man hour at a certain amount, 1.30. The Union wanted one personal day for all employees and an additional personal day for those with ten years or more of service. My notes show we agreed to Article 21 regarding a Christmas bonus and selling back sick days.

11. Our next session took place on January 25, 2011, at the FMCS office, beginning around 1 p.m. According to the sign-in sheet, everyone was in attendance that day. My notes from that session show that the Employer gave a counter offer on wages that day. We offered a \$0.35 raise per hour in 2011 and a \$0.25 per hour raise in 2012 with an additional \$0.25 per hour increase if the group achieved the unit per man hour goal for the year 2011. The Employer also proposed \$0.25 per increase for 2013 with an additional \$0.25 per hour increase if the group achieved the unit per man hour goal for the year 2012. My notes do not reflect that reached any agreement on wages, health insurance or any other issue at that session. I do not recall how long that session lasted.

12. We met again on February 15, 2011, again at the FMCS office, beginning around 1 p.m. According to the sign-in sheet, everyone attended except for Ruben Martinez, Sr. I don't recall how long that session lasted. My notes reflect that the Employer presented a package offer on various items that day, but my notes do not show what the Employer offered. At that time, my notes show we had four open issues on Articles 2 (wages), 6 (holidays), 23 (health insurance) and 24 (funeral leave). My notes show that on Article 2, the Union withdrew their objection to the Employer's proposal to deduct from the bonus incentive when there is poor workmanship. As for Article 6, my notes show the Union proposed wanting to "red circle" existing employees. I don't recall what issue the "red circling" related to and my understanding of "red circling" is to leave an item as it is. My notes show that on the health insurance, the Union wanted its current proposal to stay the same. On Article 24, my notes show the Union proposed two days off with pay. My notes reflect that that were a lot of proposals and counter proposals that day, and there was some verbal agreement, I do not recall on which issue, but my notes do not reflect that we reached any agreement on the health insurance issue that day.

13. The next bargaining session took place on March 1, 2011, at the FMCS office, starting around 1 p.m. at the FMCS office. The sign-in sheet shows that everyone attended that day. At this meeting, the Employer gave the Union its last, best and final offer, which is attached at Exhibit 4. This offer did not change the previous offer made by the Employer on January 25, 2011 on wages. The offer did not change the Employer's prior

position on health insurance benefits. I believe we had agreement on some of the four open issues, but I know we did not agree on the health insurance issue. My notes show that Ienuso accused the Employer of "regressive" bargaining, whatever that means. I may have referred to the Employer's health insurance proposals four years ago during the bargaining sessions and said that is what we want now. I do not recall if the Union responded to the Employer's last, best and final offer at the March 1 meeting or afterwards. I believe the Union took the Employer's last, best and final offer to the unit employees and that the offer was declined. I do not recall how long this session lasted.

14. The next meeting between the Union and Employer occurred on March 29, 2011. I did not attend that meeting, and I do not know what occurred at that meeting. I am aware that the Union offered a counter package proposal, but I am not familiar with its contents.

15. We next met with the Union on April 11, 2011 at the FMCS office beginning around 1 p.m. I attended that meeting along with Leffler, Ienuso, Martinez, Martinez Jr. and Collotta. I don't recall how long that meeting lasted. My notes only reflect that a package proposal was delivered by the Employer (attached as Exhibit 5) responding to the Union's proposal made on March 29, 2011. The Employer's package proposal differed from its March 1, 2011 last, best, final offer in that we offered additional wages and changed the health insurance proposal. Initially, the Employer offered that unit employees pay exactly the same rates as all other of the Employer's employees starting immediately. In this April 11, 2011 proposal we reduced the initial cost that unit employees would have to pay for health insurance so that the costs were phased in over a three-year period eventually reaching at the end of the three years the same rates that other employees pay now. We assume that health insurance costs would increase over the years, but we were proposing only that unit employees, at the end of three years, pay the current health insurance rates. I do not recall if the Union responded to that proposal. We discussed that the employees of our competitors are paying health insurance and we need to stay competitive with our competitors in all issues. One of our largest competitors, GCR, is just down the street from us, and we are both distributors for Bandag, which was purchased by Bridgestone three years ago. I know that all of GCR's employees, including their rereaders, pay for their health insurance, and to be competitive, we need all of our employees to pay for health insurance. <sup>NEITHER I OR LEFFLER</sup> I do not recall that Leffler ever said that the Employer cannot continue to pay for unit employees' health insurance. The Union did present a laundry list of items contained in a letter dated April 11, 2011 showing information it wanted from the Employer, including a list of the Employer's

customers. We did not have the information requested that same day, and I believe, to the best of our ability, that we provided the information the Union asked for within the timeframe requested by the Union. We <sup>HAS ST</sup> ~~has~~ the Union sign a confidentiality agreement that they we would not disclose the information we were releasing to them.

16. Our next session occurred on April 28, 2011, but I do not have a sign-in sheet that day. This session occurred at the FMCS office, and I attended along with Leffler, Ienuso, Martinez, Martinez Jr., and Cinquimenta, who was filling in for Collotta. I do not have any notes from that session. We usually met in a large <sup>JDI</sup> ~~room~~ room at the FMCS office, but there was another group using the room that day and we met in somebody's office around a small, round table. I think we gave the Union all of the information the Union had requested that we could provide at that time. Leffler gave the Union all sorts of information requested by the Union including packets of information on insurance and everything else. I believe the Employer provided everything the Union requested about health insurance, except, possibly information we could not disclose under HIPAA or other laws. It was a short meeting, as I recall, possibly an hour or an hour and a half. I think there was a discussion about the customer list we had provided and what the Union would be doing with the customer list. Ienuso said they would be calling our customers and talking about various things. I told Ienuso to be careful what they say to our customers because Ienuso had portrayed to me that they would be talking to the customers and asking if the customers were thinking of leaving Redburn and going to our competitors. I took offense to that and said be careful how you say it when you talk to the customers. My recollection of what I said <sup>THAT</sup> ~~if~~ that if you contact the customers and say the wrong thing, the Union will be in a world of hurt. Ienuso stood up after I said that with his fists clenched and screaming. I don't recall all the different things he said. I believe Ienuso used the f-word but I do not believe I used the f-word. We were in a very small room with a very small table and when Ienuso stood up he was just inches from me. So, I stood up. I don't recall what I said except that maybe we need to go outside to discuss this. I was thinking that it was no use screaming in front of everybody and maybe we should go outside to discuss this. I was not threatening Ienuso when I suggested we go outside and my intent was not to do physical harm to him but was to go outside to get some space between us and cool down a bit. Unfortunately, Cinquimenta was outside the room at that time and he apparently heard the commotion and came back in. Cinquimenta said something like, what the heck happened? He said we need to separate you guys and so I went into one room with Leffler and the other three for the Union stayed in that same room. Cinquimenta went back and forth between our two rooms, but I don't recall what he had to say. The meeting was adjourned shortly

after we separated. We had prepared a counterproposal to the Union's last offer, which I believe we presented to the Union that day. I believe we told Cinquementa to tell the Union representatives that this proposal dated April 28, 2011 is our last, best and final offer. In that offer, the Employer agreed to the Union's position on all issues except health insurance benefits. To the best of my recollection, Cinquementa told the Union that this was our last best and final offer.

17. The next meeting we had, as I recall, was on May 9, 2011 at the Union hall with Andy Marshall, the secretary-treasurer of the Union. I was at that meeting along with Leffler, Ienuso and Marshall. I don't recall that either Martinez or Martinez, Jr. were at that meeting. The Union requested the meeting with Marshall at the Union hall. The meeting lasted an hour to an hour and a half, as I recall. Marshall did the majority of the talking. The best of my recollection is that the Union wanted to know if the Employer would come off our position and that the health insurance was the big thing. The Union indicated that the Employer's proposal on health insurance would essentially be a cut in pay for the unit employees. I believe we said that the health insurance issue was the only issue still out there, and that we came off our initial position that unit employees immediately pay what all other employees pay for health insurance and that we would phase it in over three years. My recollection is that Marshall did some quick calculations and said that there is no way the Union could recommend a contract to the members where they would be taking a step backwards, but he indicated the Union would take it to the members for a vote. I don't recall if I or Leffler said anything in response to that except, maybe, we're sorry he feels that way. The Union did not present any proposals at that meeting.

18. I believe Ienuso sent an email to Leffler sometime after that meeting around May 20 stating that the unit employees rejected the Employer's last, best and final offer made April 28, 2011. The Employer sent a letter to Ienuso dated May 25, 2011, signed by Leffler, stating that we do not foresee that we will change our position on the health care premium issue and that "both parties' recent unwillingness to further compromise on this issue has convinced us that we are at an impasse in our effort to reach agreement on a successor contract." We advised the Union that "it is our intent to implement our final offer effective June 1, 2011." I believe we are still at an impasse. Ienuso wrote a letter dated June 1, 2011 in response to Leffler's letter. Ienuso wrote that "The Company's claim to 'impasse' is false."

19. Leffler told me about a meeting he had on June 2, 2011 with the Union. I don't recall where that meeting occurred or what Leffler told me about the meeting. I believe the Union presented a proposal on that date, but I wasn't there to discuss it. I will let Leffler describe what happened at that meeting.

20. On June 3, 2011, all of the unit employees left the shop an hour before they were scheduled to leave. Mike Salaz, the retread shop manager, came to my office and told me the shop left an hour early. I said, okay, just keep me in the loop.

21. On Saturday, June 4, 2011, all unit employees were scheduled to work and three unit employees did not show up for work and did not call in. They are Ruben Martinez (Sr.), George Clark and Juan Ybarra. Employees are supposed to call in to the shop manager when they can't work and they normally do call in. This was unusual to have three employees with a no-call, no-show. There is a written schedule posted right by the time clock at the beginning of every week that tells employees the hours they will be working that week. The schedule that week showed that the unit employees were to work on Saturday. I will try to provide the Board Agent with a copy of the schedule for that week. After a few hours of working that day, everybody had to go home because we could not complete the process without the three employees who did not show up for work that day. The three employees who did not show up on Saturday did come to work on Monday, June 6, 2011. <sup>we spoke</sup> I spoke to the three employees separately. Present at each meeting was Leffler, Salaz, and the shop steward, Ruben Martinez, Jr. We asked each of the three employees why didn't you call, why didn't you come in when you normally call in? Martinez (Sr.) told me that he didn't need to work on Saturdays anymore and he didn't feel like he needed to call in either. I believe Clark said he was feeling ill and couldn't find his mobile phone and just didn't bother to call in. I believe Ybarra said, speaking through an interpreter from the office, said he was sick and didn't bother calling in. The meetings with each employee lasted five to minutes. Mike Salaz told me either before or after these meetings with the employees, this was unusual for the employees not to call in and that they always call in.

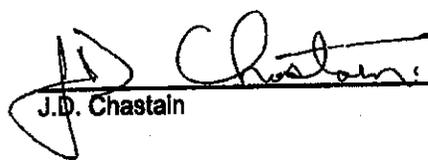
22. We did meet again with the Union on July 14, 2011 in the Employer's conference room. This meeting lasted about half an hour. I and Leffler met with the Ienuso, Martinez, Martinez, Jr., and Collotta. The Union asked for this meeting. At the meeting, the Union verbally presented a proposal. As I recall, there was a slight change from the Union's prior proposal but they were still proposing that dependent coverage be free after

WE ASK  
ten years service. \*will provide the Board Agent with the Union's proposal made that day and a clarification that the Union later sent to Leffler via email.

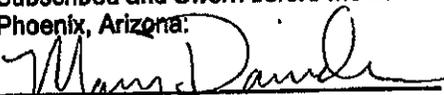
I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this statement consisting of 9 pages, including this page, I fully understand its contents, and I certify that it is true and correct to the best of my knowledge and belief.

Dated this 19th day of July 2011.

  
J.D. Chastain

Subscribed and Sworn before me at  
Phoenix, Arizona:

  
Mary G. Davidson  
Field Attorney,  
National Labor Relations Board

## **Exhibit C**

Leffler  
AZ

DUPLICATE

Case: 28-CA-23527

1 County of Maricopa )  
2 : ss  
3 State of Arizona )

4 Confidential Witness Affidavit

5 I, Donald Leffler, hereby state as follows:

6 I have been given assurances by an agent of the National Labor Relations Board that this Confidential  
7 Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be  
8 disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a  
9 formal proceeding.

- 10 1. My business address is 3801 West Clarendon Avenue, Phoenix, AZ 85019-3717.
- 11 2. My business telephone number is 602.272.7601. My email address is donl@rtco.net.
- 12 3. I am present in the office of Board Agent Mary Davidson along with John Pettibone, attorney for  
13 Redburn Tire Company (the Employer). I am co-owner of the Employer along with J.D. Chastain. I am  
14 Secretary-Treasurer of the Employer and Leffler is the President. I began working for the Employer in 1976 and  
15 became a co-owner in 1984. *Chastain AZ*

16 4. The Employer employs approximately 220 employees in Arizona, Nevada, Texas, New Mexico  
17 and Colorado. About 70 employees are in the Phoenix-Mesa area, eleven of whom are tire retreaders. The  
18 eleven retreaders working for the Employer in Phoenix are covered by a collective-bargaining agreement (the  
19 Agreement) between the Employer and the International Brotherhood of Teamsters Local Union No. 104 General  
20 Teamsters (Excluding Mailers) (the Union). None of the employees working in the Employer's other locations are  
21 represented by a union. For as long as I can recall, the Employer has had a collective bargaining agreement with  
22 the Union. The latest Agreement with the Union expired on December 31, 2010. I believe the Union notified me  
23 that it wanted to reopen the Agreement within the window period allowed by the Agreement. We had 12 formal  
24 bargaining sessions prior to today and a separate meeting at the Union hall and another sidebar with the Union's  
25 negotiator, Jerry Ienuso. Each session ran anywhere from 3 to 4 hours. We had an additional bargaining session  
26 today.

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*[Signature]* Initials

1           5.       The first contract negotiation session occurred on December 15, 2010. I was not at the first  
2 negotiating session, I don't recall why, but J.D. Chastain participated for the Employer. I have provided the Board  
3 Agent with the sign-in sheets for each negotiating session, except one where I do not believe there was a sign-in  
4 sheet. The sign-in sheet for December 15, 2010 shows that Chastain was there and along with the Union's  
5 representatives Jerry Ienuso, Ruben Martinez, Sr., and Ruben Martinez, Jr., who are both employees of the  
6 Employer. Martinez Jr. is also the Union steward. With the exception of one meeting at the Union's office, we  
7 met for almost all contract talks at the offices of the Federal Mediation and Conciliation Service (FMCS) in  
8 Phoenix. Federal mediator Ron Collotta met with us for every session except one when Pete Cinquimani, Jr.,  
9 another federal mediator, filled in for Collotta. Prior to the December 15, 2010 bargaining session, Chastain and I  
10 prepared a proposal based on the expired contract, which I have provided to the Board Agent. The Employer's  
11 proposal shows additions and strike outs to the expired contract that the Employer proposed. The Employer's  
12 proposal is attached as Exhibit 1. After the first session, I met with Chastain and he showed me the Union's  
13 proposal (attached as Exhibit 2), which also shows additions and strike outs to the expired contract. Chastain  
14 showed me a list of questions from the Union that he had written down during the bargaining session. At least  
15 twice over the course of the negotiating sessions, in late December 2010 and early February 2011, <sup>the parties</sup> ~~we~~ each ~~of~~  
16 made a list of the items we had agreed to.

17           6.       The next negotiating session occurred on December 21, 2010. The sign-in sheet for that meeting  
18 shows that I attended, along with Ienuso, Martinez, Martinez Jr. and Collotta. Most of the meetings started  
19 around 1 or 1:30 p.m. when the two guys from the shop finished work for the day. I do not recall how long that  
20 meeting lasted. The Union presented a list of information it wanted from <sup>of</sup> the Employer such as the wages paid  
21 to unit employees, their dates of hire, vacation, personal days, Christmas bonuses, and eligible dependents under  
22 the Employer's health insurance plan. Sometime after that meeting, the Employer provided the information  
23 requested to the Union. The Union's list of requested information and the Employer's response are attached as  
24 Exhibit 3. I have some notes from the bargaining sessions, which I am providing to the Board Agent, but not all

Page 2

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*Leffler* Initials

*Letter  
JZ*

1 of them are dated. Many of my notes were written on the proposed agreement, which I would take back to my  
2 office and incorporate into a new document as we came to agreement on various items. My notes reflect that on  
3 that day we discussed Articles 8, 14, 15, 16, 22, 23. The Union agreed to delete Article 16 (Credit Union)  
4 because nobody participated in the credit union. Fairly early on, I don't recall the date, Ienuso suggested we  
5 concentrate in the beginning on items other than wages and health insurance. So that's what we focused on. *JZ  
at first.*

6 7. We met the following day, December 22, 2010, again at the FMCS office. Both Chastain and I  
7 were present, along with Ienuso, Martinez, Martinez, Jr., and Collotta. I don't remember how long it lasted. The  
8 Union presented a counter proposal and I made notes on that counterproposal (attached as Exhibit 3(a). After  
9 that session, Ienuso sent an email dated December 27, 2010 showing what we had agreed to and which items  
10 were still open. I responded on December 28, 2010, via email, stating that I have attached the Employer's  
11 revised proposal that reflects the Union's agreed upon deletions of Articles 16 and 20 and the added language  
12 that we discussed for the Union's approval. The Union's email and my response and revised proposal are  
13 attached as Exhibit 4. Ienuso sent me an email dated December 29, 2010 (Exhibit 5) regarding his recollection of  
14 negotiations, what the parties had agreed to so far, and Article 4 (management rights and discharge).

15 8. We presented a counter proposal (attached as Exhibit 5) at the next negotiating session which  
16 took place January 4, 2011 at the FMCS office. I attended, along with Chastain, Ienuso, Martinez, Martinez, Jr.,  
17 and Collotta. I do not recall how long that session lasted. My notes do not indicate that the Union gave a written  
18 proposal at that January 4 meeting. The Employer's counter proposal was printed before the January 4 meeting  
19 and during the meeting certain things got scratched out and added in. We proposed a change in wage rates for  
20 2012 and 2013. The contingent increase to the wage rates in Article 2 was based on production the prior year  
21 and would apply to the entire group of unit employees for the coming year. The bonus calculation in Article 2 is  
22 based on the prior month's production and is shared among the entire group of unit employees. We were  
23 discussing deductions to the bonus for retreads that failed within a certain time frame, such as during the first  
24 10% of wear, and other problems that have occurred. In late December 2010 we discussed the fact that a huge

Page 3

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*JZ* initials

*Left for  
AZ*

1 account, Swift Transportation, inspects every tire we deliver to them for flaws and that Swift finds a problem in  
2 *most of the AZ*  
~~every single load~~

3 9. The next negotiating session occurred on January 13, 2011 at the FMCS office, which I attended  
4 along with Chastain, Ienuso, Martinez and Collotta. The Union offered a wage proposal and a personal days  
5 proposal at this session.

6 10. The next meeting took place at the FMCS office on January 25, 2011. I was there, along with  
7 Chastain, Ienuso, Martinez, Martinez Jr., and Collotta. I do not recall any of the substance of that meeting.

8 11. On February 1, 2011, I sent Ienuso an email (Exhibit 6) showing items we had agreed on so far  
9 and items we had not yet agreed on, which were Articles 2(B) (wages), 6, 23, and 24. Everything else had been  
10 agreed to by that point. Ienuso replied on February 1, 2011 and noted that I had not included Article 23. I  
11 responded on February 2 that Article 23 was still open but that I had made the changes the Union mentioned.

12 12. Our next negotiating session took place on February 15, 2011 when the Employer presented a  
13 package counter proposal. I was at the meeting, and the sign-in sheets reflect that Chastain was also there,  
14 along with Ienuso, Martinez, Jr. and Collotta. I recall that we wanted to present a package to get it done with and  
15 to get a contract. By February 1, the only open items were wage rates, funeral leave, health insurance, and  
16 personal days. Both parties had proposed three-years for the term of the agreement but had not yet signed off on  
17 that item. So, we presented the first package out of two at that session. I said, <sup>multiple times AZ</sup> "this is a package proposal. The  
18 company is willing to take positions in the package that we wouldn't necessarily take if it wasn't tied together."  
19 We offered the package proposal (Exhibit 7) and then Chastain and I caucused alone at some point during the

20 meeting and decided to offer higher wage rates than the Union had proposed as of mid-January 2011 to make the  
21 package offer more attractive. Ienuso said "that's great, we'll take the 50-cent wage increase." <sup>or words to that effect. AZ</sup> I probably said,  
22 "Jerry, it's a package." ~~At some point in the meeting we said, "you can't take a piece of the package, and the next~~  
<sup>of the Union AZ</sup> <sup>I also said that AZ</sup>  
23 meeting we'll have a final offer for you." Ienuso was commenting all along that "we don't approve pay cuts; you're  
24 going to charge us more for insurance and this will affect the overall pay." <sup>or some thing to that effect. AZ</sup> The Union uses the phrase "give

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*AZ* Initials

(2-08)

*Lu Pflor*

*or concessions*

1 backs<sup>or concessions</sup> which I believe means that after a contract approval employees would be making less, and the Union says  
 2 It does not approve "give backs." During our bargaining sessions, I<sup>or concessions</sup> would multiply the wage increase by 40  
 3 hours a week and come up with a figure that when combined with the insurance premiums showed some net  
 4 decrease, but I would point out that the guys have been working <sup>a lot of</sup> solid overtime hours for the past four or five  
 5 months, which would make up for the insurance premiums, and that <sup>some</sup> not all of them <sup>have waived</sup> are even taking the health  
 6 insurance, <sup>coverage</sup> so the numbers are different than his calculations. All along we were telling the Union negotiators that  
 7 all of our other employees pay for their medical insurance, so <sup>we agreed to raises</sup> here is more money to make it easier on the bottom  
 8 line for the Union employees. We had already given the Union a current schedule of health insurance premium  
 9 rates. From the very beginning, and I'm not sure this was ever understood, I tried to explain that the insurance  
 10 premium deductions are taken pre-tax, and so the amounts stated in the premiums schedule are not the actual  
 11 amounts that will be paid by employees, which, because premiums are deducted pre tax, is 75 to 80% of the  
 12 amount reflected on the schedules. I am providing to the Board Agent documents that reflect the amounts unit  
 13 employees paid for health insurance in May 2011 compared to what they would pay for the full month of June  
 14 2011, after the Employer implemented its last, best and final offer. Those documents are attached as Exhibit 8.

15 13. Our next bargaining session took place March 1, 2011 at the FMCS office. The sign-in sheet  
 16 shows that I was there, along with Chastain, Ienuso, Martinez, Martinez, Jr., and Collotta. At this session, the  
 17 Employer presented <sup>a</sup> ~~the~~ last, best and final offer (Exhibit 9), which we had told them we would be presenting at our  
 18 February 15 session. In this final offer, we went back to the Union's last wage offer, which was less than our  
 19 package offer, we increased the benefit for holidays, and we put in that unit employees would be paying the same  
 20 schedule of insurance that all of our other employees <sup>pay</sup> paid. The mediator said Ienuso wanted a current schedule  
 21 of premiums and so I signed the schedule of premiums (Exhibit 10) that I had been presenting all along to show  
 22 that these are the current employee rates. Under the prior contract, the Employer did not charge employees with  
 23 ten years or more of service for their individual or dependent insurance. Employees with less than ten years of  
 24 service paid for any health insurance they opted for, either for themselves or their dependents, under the old

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*Lu* Initials

(2-08)

Letter  
AZ

1 contract. The Union's only proposal up to that point on health insurance was their initial proposal for free  
 2 insurance for everybody, including dependents, after an employee attains three years of service. At our last <sup>meeting</sup> ~~last~~ <sup>AZ</sup>  
 3 session, when we presented the package offer, we agreed to leave in the old contract's personal days, which was  
 4 more than what the Union had requested. We also agreed to the Union's last offer that was on the table  
 5 regarding wages, so all that was left was the health insurance issue. We asked the Union to take our last, best  
 6 and final offer to the members for a vote and they said they would.

7 14. Two days later, on March 3, 2011, Ienuso sent me a letter (Exhibit 11). I responded to Ienuso's  
 8 letter by my own letter dated March 9, 2011 (Exhibit 12). On March 16, 2011, Ienuso sent me an email (Exhibit  
 9 13) advising the Employer that the employees had taken a vote on March 15, 2011 and voted 100% "no" on the  
 10 Employer's ~~last~~ and final offer.

11 15. Sometime after this meeting, and before the March 29, 2011 bargaining session, the mediator,  
 12 Collotta, called me and said Ienuso wanted to meet with the company. Ienuso and I met alone in Collotta's office,  
 13 I don't recall the date, and the only item we discussed was health insurance. That meeting lasted an hour or less.  
 14 We discussed the fact that there is no free insurance anymore and everyone pays for health insurance. I ended  
 15 up proposing that we take the premiums schedule in the expired contract, start with the third year premiums in  
 16 that schedule, and we would be willing to look at phasing in the premiums over three years. We took out the old  
 17 contract and looked at the premium schedule in it and said if we take these numbers and work with them, let's see  
 18 if we can get a contract. Ienuso didn't make any commitment but it was a totally different environment than with  
 19 the bargaining committee members there.

20 16. The next bargaining session occurred on March 29, 2011. I was there along with Ienuso,  
 21 Martinez, Martinez, Jr. and Collotta. Ienuso presented a counterproposal (Exhibit 14) at this meeting which  
 22 included an increased wage rate of 10-cents each year compared to what the Union had proposed back in  
 23 January and which the Employer had matched in its last, best and final offer of March 1. In this counterproposal,  
 24 the Union was also presenting a schedule of health insurance premiums phased in over three years. Ienuso used

Page 6

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 Initials

Leffler  
AZ

1 the premium schedule in the old contract and did change the premium for individuals but kept the same spouse  
 2 and dependent coverage premiums from the old contract, which is where the big numbers are. I confirmed with  
 3 Ienuso that this premium schedule referred only to the basic health insurance plan and not the "buy up" plan  
 4 which employees have the option to <sup>elect, AZ</sup> join. I made a note on the counterproposal that the Union's counterproposal  
 5 only referred to the basic health insurance plan. The other printed notes at the bottom of counterproposal's  
 6 second page are Ienuso's notes and indicate that the Union was proposing that employees with less than ten  
 7 years service would pay for their insurance and their dependents' insurance, and that employees with more than  
 8 ten years service would only pay for their individual insurance and would not have to pay anything or their  
 9 dependents' insurance. Prior to this meeting, back in December 2010, I had given the Union information (in  
 10 Exhibit 3) showing the Employer's cost of providing health insurance to individuals in response to the Union's  
 11 question about why <sup>won't AZ</sup> we provide free insurance. The information we provided showed that coverage for  
 12 spouses and dependents was the most costly. After March 1, 2011, the only remaining issue was health  
 13 insurance and the Employer had matched everything else the Union had proposed. Since Chastain was not at  
 14 that meeting I told the Union I would take their counterproposal and discuss it with Chastain.

15 17. At our next bargaining session, on April 11, 2011, Ienuso presented a cleaned-up copy of the  
 16 counter proposal (Exhibit 15). Present at this session were myself, Chastain, Ienuso, Martinez, Martinez, Jr., and  
 17 Collotta. A lot of things happened in that meeting. We presented a second package proposal at that point to try  
 18 to wrap things up. We matched the Union's March 29 <sup>increased AZ</sup> wage proposal, we agreed to the Union's holiday proposal,  
 19 and we agreed to the Union's proposal that employees would pay for health insurance through COBRA after a  
 20 month off work, instead of one week off work as the Employer had proposed. On the health insurance issue, I did  
 21 what I had asked the Union to do by starting with year three in the prior contract and then bumped the premiums  
 22 up each year after that. We kept the first year premiums the same as the ending schedule from the expired  
 23 contract. In 2012, we went up \$20 in the dependent category, and in the final year of the contract, 2013, we put in  
 24 the current rates that our employees are paying in 2011. So we froze in place the rates that unit employees

Page 7

## PRIVACY ACT STATEMENT

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 Initials

(2-08)

1 would be paying for health insurance, even though we told the Union that the rates for other employees would  
 2 likely go up by 2013. The Union said they could not give an answer to our package proposal until we supplied  
 3 them with all the information they requested that same day in a prepared information request (Exhibit 17). The  
 4 Union was requesting information about the cost to the Employer for health insurance, which the Employer had  
 5 already provided, as well as customer information, which was a new request. We had told the Union that none of  
 6 our competition has free insurance. In fact, we told the Union at <sup>an early</sup> ~~our second~~ bargaining session that one of our  
 7 new competitors is located at the state prison near Gila Bend, where prisoners will be doing retreading for Swift  
 8 Transportation, and we heard that <sup>Continental Tire</sup> ~~Swift~~ is only paying the state \$7 an hour for that labor. We told the Union that,  
 9 ~~at our second bargaining session and their jaws dropped, when we said that.~~ <sup>when</sup> So the Union knows that we are  
 10 competing with people that have different costs than we do. The only open item for the <sup>prior</sup> ~~past two or three~~  
 11 bargaining sessions was the health insurance issue. You could say it was the only issue going back to <sup>February 15</sup> ~~March 1~~  
 12 when we had accepted everything but the insurance. We did supply the information the Union requested, subject  
 13 to a confidentiality agreement which I emailed to Ienuso on April 18, 2011, and he and the other Union bargaining  
 14 committee members signed on April 19, 2011 (Exhibit 18). I had to create programs to respond to such requests  
 15 as what customers we had in 2007 that we no longer had in 2008, and the same for 2008 and 2009, etc. The  
 16 information we supplied in response to the information request is in Exhibit 19. I faxed the customer information  
 17 to Ienuso on April 22, 2011. Then, on April 27, 2011, I emailed Ienuso .pdf files, totaling 439 pages (Exhibit 20),  
 18 responding, in part, to the request for insurance information. The first three items listed on the cover page of  
 19 Exhibit 20 are what I emailed that day. I provided the items listed under A through M on the cover page of Exhibit  
 20 20 at our next meeting on April 28, 2011. At some point <sup>prior to</sup> ~~after~~ the Union's April 11, 2011 information request, I  
 21 don't recall the date, Ienuso suggested, as an option, that unit employees join the Teamsters' health insurance  
 22 plan, and in item M I gave Ienuso a schedule which showed that it would cost the Employer about \$3,000 more a  
 23 month to join the Teamsters' plan because we had three or four employees who had declined insurance coverage  
 24 and the Teamsters' plan required that every employee be covered. <sup>and because of other differences</sup> Ienuso, though, never made a formal

Page 8

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(2-08)

1 proposal that we join the Teamsters' plan. I also sent Ienuso an email on April 27 (Exhibit 21) attaching a  
 2 schedule showing the cost of health insurance premiums, which we had previously provided to the Union.

3 18. The next bargaining session took place on April 28, 2011 at the FMCS office. Collotta was not  
 4 available that day, and Pete Cinquemani filled in for Collotta. There were other groups meeting at the FMCS  
 5 office that day, and so we were not in the usual conference room but instead met in Collotta's office around a  
 6 small table. There was no sign-in sheet, but I was there at the table, along with Chastain, Ienuso, Martinez, and  
 7 Martinez, Jr. I gave the Union the rest of the information the Union had requested on the insurance issue (A-M in  
 8 Exhibit 20). <sup>Ienuso AZ</sup> Chastain was on my left, and Martinez, Jr. was on my right. I asked Ienuso what was the relevancy  
 9 of all the information that the Union had requested. Chastain, who does sales for the Employer, asked, "what are  
 10 you going to do with the customer information?" Ienuso said, "I'm going to call them," or something to that affect.  
 11 Chastain said, "you need to be careful calling our customers, or you could be in a world of hurt." Cinquemani was  
 12 not in the room at that time. Ienuso then leapt to his feet and leaned across the 42-inch table, in J.D.'s face, and  
 13 yelled, "Are you fucking threatening me?! Are you fucking threatening me?!" Ienuso was red in the face.  
 14 Chastain stood up then and said, "do we want to take this outside?" Chastain told me later that he thought Ienuso  
 15 was going to take a swing at him. At some point I stood up and said, "Jerry, sit down. You're in his face. Nobody  
 16 is threatening you" or something to that effect. At about that time, Cinquemani came in and asked, "what's going  
 17 on?" I said, <sup>was AZ</sup> "J.D. is telling Jerry that he needs to be careful talking to our customers. <sup>He could subject the Union to</sup> Depending on what you say <sup>liability.</sup>  
 18 <sup>I told Jerry, AZ</sup> this could be tortious interference with a business relationship." I said, "write it down, Jerry," and I told him how  
 19 to spell tortious. Ienuso said something like, "take your tortoise and shove it." At some point, Cinquemani asked  
 20 us to the leave and Chastain and I went down to the other room. Cinquemani came down a little while later and  
 21 said "Jerry's really hot." I said, <sup>or something to that effect AZ</sup> "we're trying to tell Jerry you can't just say anything to our customer; he can  
 22 expose the local to a liability claim." Cinquemani said, <sup>that AZ</sup> "He's so mad, I don't think he'll want to talk anymore." I  
 23 said, <sup>that AZ</sup> "it doesn't matter, we have a final offer we want to present to them, and we <sup>want AZ</sup> are going to do it." We went back  
 24 to Collotta's office and gave our offer (Exhibit 22) to Ienuso. I had some pre-prepared notes I wanted to discuss

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(2-08)

*Leffler AT*

*except it's not a package*

*similar to what*

1 with the Union telling them this was ~~the same thing~~ we had previously presented on April 11 and showing them a  
2 change we had made, deleting the words "Package Proposal" and putting "Effective Date" in Article 2 and deleting  
3 "01/01/11." I read my notes (Exhibit 23) to the Union's bargaining committee and explaining that none of our  
4 competitors offers free insurance. I told them that this is a final proposal and that we wanted the Union to put it to  
5 a vote.

6 19. On May 6 I had not heard back from the Union on our final offer and so I sent an email (Exhibit  
7 24) to Ienuso asking for an update on the final offer. Ienuso responded that the Bargaining committee is not  
8 recommending the Employer's offer and it will be voted on May 20. He also wrote that the Union's Principal  
9 Officer, Andy Marshall, is seeking a meeting with me on May 9. Chastain and I went to the meeting with Marshall  
10 and Ienuso on May 9 at the Union hall. Once it started, the meeting lasted about 45 minutes. We met in a  
11 conference room. Marshall flipped through papers the first few minutes. I was thinking, I wish you'd prepared for  
12 this meeting before we got here. Marshall began every sentence with "so you're telling me" even when we hadn't  
13 said anything. The meeting didn't go anywhere. The whole tone was "what are you (the Employer) going to  
14 change to get a contract?" I don't recall his exact words, but Marshall said the Union was not going to approve  
15 any "give backs" or anything that reduces the net paycheck. *Concessions AT* He said such things as, "So you're telling me you  
16 want the employees to take a pay cut?" *Even though you've said you can't afford it* "So you're telling me you can't afford this?" I said, "we never said we

17 ~~can't afford it and I sent an email to that effect.~~ I told Marshall that three guys don't even take the insurance and  
18 one, who has less than ten years, is already paying for his insurance, and so four of the guys are going to get a  
19 pay raise. Marshall said, "so you should get four yes votes then." I said, "I don't think we can count on that."  
20 They wanted to know what we would offer to get a final contract, and we said we gave you our final offer.  
21 Marshall said, "if this is what you've got, it's not going to be approved." *These quotes may not be exact but they reflect the gist of the conversation*

22 20. On May 20, I received an email from Ienuso (Exhibit 25) informing us that the Employer's final  
23 offer had been rejected 100% by the membership. I wrote a letter in response to Ienuso dated May 25, 2011  
24 (Exhibit 26) and hand delivered it to the Union hall. In that letter, I advised Ienuso that we are convinced that we

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*AT* Initials

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(2-08)

1 are at an impasse and it is our intent to implement our final offer effective June 1, 2011. I believed we were at an  
 2 impasse because over all the months they had made no movement on the insurance issue. They were still  
 3 talking about free insurance, and we told them all along that free insurance is not offered by any of our  
 4 competition. We had even reduced what they had to pay to phase in premium payments. We had been  
 5 negotiating against ourselves. We matched them on wages, but they kept talking free insurance. They had never  
 6 come off of free dependent insurance, and we had come off asking them to pay what all our other employees paid  
 7 and even went lower than we thought we should have, but we wanted to get a contract.

8 21. The Union asked to have another bargaining session on June 2. Chastain was out of town that  
 9 day, and so I went over and met with the Union's bargaining committee and Collotta at the FMCS office. I said,  
 10 "Jerry, like I told you, if you have something meaningful to offer us, we're willing to meet with you. Do you have  
 11 something to offer?" He said, we do, but we need to caucus first. I waited more than a half hour and told Collotta  
 12 that I had another appointment and I can't wait ~~an hour~~ while they decide whether to give me their proposal.  
 13 Collotta left and came back and said Jerry's upset. I went back in and talked to Ienuso and said, "Here I am. Are  
 14 you going to give me a proposal or not?" He said, "well, you're not going to stay and negotiate." I said, "what's  
 15 there to negotiate? <sup>There's only one open item.</sup> ~~Either you give me your proposal or not.~~ I have to take it back and discuss it with J.D."  
 16 Ienuso said, "I'm not going to give it to you because you're not staying to negotiate." I said, "there's one issue,  
 17 insurance, and so what's your proposal? Let me have it." He said, "I'm not going to give it to you." So, I said,  
 18 "I'm going to write down that you're refusing to give it to me." He said, "go ahead, write it down." I did and I told  
 19 him, you've got my email address, if you want to send it to me, go ahead. I then left. That afternoon, around 5  
 20 p.m., Ienuso emailed me his proposal. I responded the following day. Our email exchange and the Union's  
 21 proposal are attached as Exhibit 27. Ienuso's comments are in blue and my responses are in red ink. Page 1 of  
 22 the Union's proposal are previous Union proposals that we had agreed to and put in our final offer. Those things  
 23 were off the table and already handled. Page 2, schedule of insurance, is identical except that the Union said the  
 24 free insurance begins after twelve years of service instead of ten, but everybody who had been getting free

Page 11

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1 dependent insurance had more than twelve years of service. That was seven out of the eleven bargaining unit  
 2 employees who had been getting free dependent insurance. Only one person had fewer than twelve years  
 3 service and he was only taking individual insurance. The other three unit employees waived insurance coverage.  
 4 I wrote in my email to Lenuso responding to this proposal that "since your position on the only open issue has not  
 5 changed in any significant way, we again reject it." *These quotes may not be exact but they do reflect the gist of the conversation*

6 22. We implemented the final offer on June 1, 2011. We issue paychecks on Thursdays for the prior  
 7 week, so the first paycheck reflecting the implemented offer was June 9, 2011. The net effect of our  
 8 implementing was that almost half the unit employees got raises. *greater than the increased medical costs -* Plus, they were working overtime almost every  
 9 week since March and got time and a half for that. We post a schedule outside the manager's shop office  
 10 showing the work schedule for that week. The schedule is taped onto the shop window. The work schedule for  
 11 the week of May 31 through June 4, 2011 was probably posted sometime at the end of the prior week and  
 12 showed the scheduled hours for Tuesday through Saturday and 8 hours on Saturday, June 4, 2011. I am  
 13 providing the Board Agent with a copy of the schedule, attached as Exhibit 28. The group was scheduled to work  
 14 9 hours on June 3, 2011, and the entire group walked out an hour early that day. The shop manager, Mike Salaz,  
 15 *reported that* ~~called me and said,~~ *had* ~~everybody's just left.~~ *or something to that effect* ~~He told me that they didn't say anything to him about leaving. That~~  
 16 *also said* ~~had never happened before to my recollection.~~ *None of the employees were disciplined for*  
 17 *walking off that day -*

18 23. On Monday, June 6, 2011 I learned from ~~the shop manager, Salaz,~~ that only eight of the guys  
 19 showed up for work on Saturday, and three did not show up at all: Ruben Martinez, Sr., Juan Ybarra, and George  
 20 Clark. *said* ~~Salaz told me that the three did not call in. From what Mike told me, those guys knew to call in because~~ *said*  
 21 *they had done so before,* ~~With that many gone it disrupts production. I know some of them even have the manager's home phone number~~  
 22 *T* ~~and have called him at home to say they're not going to be into work. There are so few of them and they know it~~  
 23 ~~disrupts the process if they are not at work. Salaz said~~ *said* ~~they couldn't really do any of the work on Saturday with~~  
 24 ~~the three missing so they all went home after an hour or so at work. Salaz told me that the guys who'd come in at~~  
 4 a.m. to work that day were upset that they had to go home. The three who did not show up on Saturday were

Page 12

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(2-08)

1 at work on Monday, and so <sup>we</sup> told the manager to let them know that we wanted to talk to them at the end of their  
 2 shift to find out why they didn't call and didn't show. Chastain, Salaz and I met with each of the three individually,  
 3 along with Martinez, Jr., the shop steward. We had a translator for one of the guys who does not speak English  
 4 real well, Juan Ybarra. Ybarra showed us a bottle of pills and said through the translator that he had hurt himself  
 5 and he's in pain and thinks he has a hernia. He said he was going back to the doctor on Tuesday because it  
 6 wasn't getting better. When I asked the translator why Ybarra said he didn't call in, the translator said he used a  
 7 phrase that means something like, "why bother." Clark told us he was sick on Saturday and forgot to call and  
 8 when he remembered to call, he couldn't find his cell phone. Martinez, Sr. told us he wasn't obligated to work  
 9 Saturdays and he won't work next Saturday either. Martinez said the Union contract says the hours of work are  
 10 Monday through Friday. The steward had a copy of the contract and we pulled it out and read it to him and told  
 11 him, <sup>that's not what it says - DJ</sup> "you're wrong." It says in Article 3 that "actual hours and days of week shall remain flexible and are <sup>DJ</sup>  
 12 determined by Company requirements." We pointed out to him, you've been working Saturdays <sup>for some time</sup> since March. His  
 13 whole attitude was belligerent. He did end up working the next Saturday, though, along with everyone who was  
 14 supposed to be there. The next day, June 7, we met with Martinez, Sr., and Clark at the end of shift and gave  
 15 each an Employee Warning Report (Exhibits 29 and 30). Ybarra was not at work that day. Salaz and Martinez  
 16 Jr. were in those meetings. We told them we're giving you a warning for not calling in and not showing up. The  
 17 steward said to the men, "you don't have to sign anything; you don't need to say anything." Both men refused to  
 18 sign the warnings, and the manager signed as acknowledgement that it was presented to them. Because people  
 19 <sup>had said at the bargaining table that DJ</sup> were saying they never got a copy of the employee handbook, we attached to the warnings the page they had  
 20 signed acknowledging that they had received the employee handbook. The employee handbook is referenced in  
 21 the collective-bargaining agreement under Article 5. We had prepared an Employee Warning for Ybarra but he  
 22 has not been back to work since June 6, so we have not issued it. The Union did not file any grievances on the  
 23 Employee Warnings we did issue.

Page 13

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*I believe, JL*

1           24.     On June 14, 2011, around 8:30 a.m., during break time, lenuso took everybody out of the shop  
 2 and into the street and they began a strike. The strike is still going on. I was at work that day and somebody,  
 3 maybe Salaz, told me that Jerry came over, met with all of them, and they went outside. Jerry <sup>had JL</sup> has picket signs in  
 4 his trunk. I walked out to see what was going on and it was confusing because there was a plain clothes police  
 5 officer across the street because the Teamsters had called them beforehand. The officer introduced himself to  
 6 ~~me~~ <sup>us JL</sup> as part of a <sup>community affairs JL</sup> ~~twelve-man~~ strike squad. There has been an officer there every day they are picketing,  
 7 sometimes two officers. The picketers are there generally Monday through Friday, 7 a.m. – 11 a.m. We talked to  
 8 lenuso and I asked him to have the guys move their vehicles off the property because five cars had once before  
 9 been t-boned at that spot and we wanted them off the property for liability purposes. They moved their vehicles  
 10 off the property. The picket signs say "Teamsters" and "On Strike". The ones I saw today had "Redburn Tire"  
 11 written on them. Today, there were about 30 picketers. We worked out a deal with lenuso allowing some of the  
 12 employees on strike to use <sup>some of their JL</sup> their vacation time.

13           25.     On July 7, 2011, lenuso sent an email asking to meet with me and Chastain and the bargaining  
 14 committee. This morning, lenuso, Martinez, Martinez, Jr., Collotta, Chastain, and I met in the Employer's  
 15 conference room. I asked if the Union had anything to offer. lenuso did not have a written proposal. lenuso said  
 16 he's met with the 11 strikers recently and talked about what it would take for a mutual agreement. He said they all  
 17 have agreed that they will pay the insurance premium amounts in our final offer, except they want to retain the  
 18 benefit of free dependent insurance for employees with more than ten years service. There is nobody currently  
 19 working for the Employer with less than 10 years service who has dependent coverage, and so their offer has no  
 20 effect at this time, ~~but it might benefit us in ten years.~~ lenuso also said he would "red circle" the ten-year  
 21 dependent care so that new employees would not get that benefit. My understanding is that to "red circle" an item  
 22 means that new employees do not get that benefit. lenuso also <sup>said he would change JL</sup> changed his position on employee-only  
 23 insurance to meet the Employer's final offer. I told lenuso we would talk about it and get back to him. lenuso  
 24 wanted an immediate response but I told him there are legalities we need to check out.

Page 14

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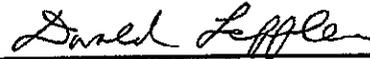
Leffler DZ

1

I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

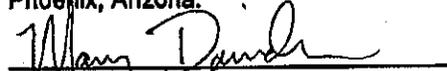
I have read this statement consisting of 15 pages, including this page, I fully understand its contents, and I certify that it is true and correct to the best of my knowledge and belief.

Dated this 14th day of July 2011.



Donald Leffler

Subscribed and Sworn before me at  
Phoenix, Arizona:



Mary S. Davidson  
Field Attorney,  
National Labor Relations Board

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 initials

## **Exhibit D**



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August 9, 2011

**FILED ELECTRONICALLY**

Cornele A. Overstreet, Esq.  
Regional Director  
National Labor Relations Board  
Region 28  
2600 North Central Avenue, Suite 1800  
Phoenix, Arizona 85004-3099

RE: Redburn Tire Co.  
28-CA-023527 and 28-CA-061437

Dear Mr. Overstreet:

On behalf of Redburn Tire Company, I am responding to your August 4, 2011, letter seeking the Employer's position with respect to the possibility that Section 10(j) relief may be sought in these cases. For the reasons stated below, injunctive relief should not be sought in these cases and both charges should be dismissed, absent withdrawal.

**I. 28-CA-023527**

On May 25, 2011, Redburn Tire's Secretary Treasurer and co-owner, Don Leffler, advised Local 104's business agent, Jerry Ienuso, that Redburn intended to implement on June 1, 2011, its last offer for a new collective bargaining agreement ("CBA") to replace the one that expired on December 31, 2010. This followed months of intense negotiations.

The parties have met in no less than 15 bargaining sessions, facilitated by the presence of the FMCS, starting on December 15, 2010, and had reached agreement on all but one item, i.e., the employee share of dependent health premiums for employees with more than 10 years of service. Of the eleven employees in the bargaining unit, seven had more than 10 years of service.

The parties had bargained over a similar Employer proposal in the negotiations which had led to the predecessor CBA. Although some of the Employer's proposed language had been

accepted by the Union in those earlier negotiations, an arbitrator later ruled that the accepted language had not changed the free dependent coverage for more senior employees. The Employer put the topic on the table again in these latest negotiations. It has been the most contentious topic throughout the 2010 -2011 negotiations. Indeed, the Union's emotional display at the table on this issue was frequent. Jerry Ienuso, the Union's spokesman, angrily rejected the Employer's dependent medical premium proposal throughout the negotiations, claiming that the Employer's proposal was "retaliation" for the Union's arbitration victory.

The Employer's initial proposal on this topic was that bargaining unit employees would pay the same portion of medical premiums as non-unit employees, which would mean an end to free dependent coverage available to the seven unit employees. As explained on p. 6 of an affidavit taken by your office from Don Leffler on July 14, the bulk of the savings the Employer sought to realize from its medical proposal was tied to the heretofore free dependent coverage for the seven employees.

On March 1, the Employer made an offer that accepted the Union's position on all open issues except for medical premiums and asked the Union to submit it for ratification. On March 15, the Union membership rejected that proposal.

Thereafter, Leffler met with Ienuso and the FMCS mediator and suggested that increases in employees' share of medical premium be phased in over three years. No other topic was discussed at that meeting.

The Union, on March 29, 2011, proposed an additional 10 cent wage increase, and some changes to holidays and COBRA insurance. It also adopted the Employer's concept of a three-year phase-in on medical premiums, but for single employee coverage only, and not for dependent coverage premiums. The Union was still insisting upon free dependent coverage for more senior employees.

On April 11, the Employer offered a package proposal, which adopted the Union positions on all open issues, and phased-in the increase in dependent medical premiums over the three-year life of the next contract. The Union responded with a pre-prepared request for information, much of which had already been provided to it. Nevertheless, the Employer provided the requested information to the Union.

On April 28, the Employer made an offer accepting the Union's position on all open issues except dependent medical premium sharing. The Employer asked the Union to submit the offer to the membership for ratification.

Key to the employer's later declaration of impasse was a May 9 meeting called by the Union's Secretary Treasurer, Andy Marshall,<sup>1</sup> between his spokesman Jerry Ienuso and Redburn's two owners, J.D. Chastain and Don Leffler, at the Union hall. After nearly six months of absolutely no progress on this key issue and rejection of the Employer's proposal at a March 15 ratification meeting, Marshall called the meeting at his office prior to the second ratification attempt scheduled for May 20. He attempted to persuade Chastain and Leffler to drop their dependent coverage premium-sharing proposal. When they declined, he told them the Union would never agree to the Employer's proposal because it would reduce the take-home pay of some of the unit employees.<sup>2</sup> Ratification was turned down a second time on May 20.

Given the failure of the parties to make meaningful progress on the dependent medical premium topic over the many months of bargaining, the rejection of the Employer's proposal of this issue at two ratification meetings, and Andy Marshall's admonition that the Employer's dependent medical premium proposal would never be accepted, the Employer was justified in its conclusion that the parties had reached impasse on the only remaining open issue.

Therefore, the Union will not "likely succeed" on the merits of its allegation that impasse had not been reached. Indeed, this is not a close case on the merits. The other factors identified by the Ninth Circuit for a Section 10(j) analysis, which are set forth on page two of your letter, also would not weigh in favor of an injunction in this case for obvious reasons under the circumstances.<sup>3</sup>

## II. 28-CA-061437

The Employer did not anticipate a strike and, only once the strike commenced, did it advertise for applications. The advertisements did not refer to the strike or striker replacements. In an effort to convince the striking employees to return to work so that replacements would not have to be hired, the Employer posted a sign on its property near the picket line which stated,

---

<sup>1</sup> Marshall is the Union's highest ranking officer.

<sup>2</sup> The Employer had accepted the Union's wage increase proposal. As explained in Leffler's affidavit and associated exhibits, five of the eleven unit employees would have greater take home compensation under the Employer's proposal and six would have less, ranging up to only a 1.56 % decrease.

<sup>3</sup> Following the Employer's implementation of its proposal, the Union "compromised" its position by proposing that free dependent coverage be available to employees who attained twelve years or more of service. That proposal was rejected by the Employer since it would have had no impact during the term of the anticipated 3-year contract because all of the unit employees with more than 10 years of service also had more than 12 years of service. This proposal was further evidence of the impasse.

Cornele Overstreet, Esq.  
August 9, 2011  
Page 4

"Striker Replacement Applications Received 125+." The sign was posted on part of one day, only. The posting of the sign was clearly lawful, as explained in the Employer's July 27, 2011, position letter and the lead case cited therein. It is noted that there could have been no threat to permanently replace the strikers, in an unlawful attempt to dissuade them from exercising their Section 7 right to strike, because the employees here were already on strike. Furthermore, the sign made no reference to permanent replacement, although that also would have been lawful under long-standing case law.

The sign did not have its intended effect, i.e., no striker offered to return to work and, therefore, the Employer proceeded thereafter to hire permanent replacements. At the suggestion of the FMCS, the Employer notified the Union that it had permanently replaced the strikers by email dated July 15. At no time has the Employer communicated directly to the striking employees in that regard.

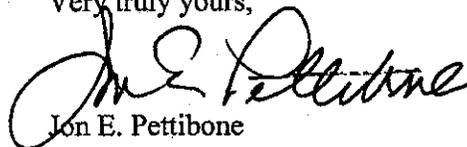
At no time has the Union offered to return to work unconditionally. At no time has the Employer discharged the striking employees or communicated any intent to do so.

As with the allegations in 28-CA-023527, the allegations in 28-CA-061437 are utterly and completely without merit. There is nothing even close to a *prima facie* showing of an unfair labor practice and, therefore, there is no likelihood of success by the Union on the merits of the allegations in 28-CA-061437.

All factual statements in this letter are taken from affidavit or documentary evidence submitted to your office in these cases.

Finally, for the reasons stated above, both of these charges should be dismissed, absent withdrawal.

Very truly yours,



Jon E. Pettibone

JEP:glc

# **Exhibit E**



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Two North Central Avenue  
Phoenix, Arizona 85004-2391  
Tel 602.229.5200  
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E-Mail: jon.pettibone@quarles.com

July 27, 2011

**BY HAND DELIVERY**

Mary Davidson, Esq.  
National Labor Relations Board  
Region 28  
2600 North Central Avenue, Suite 1800  
Phoenix, Arizona 85004-3099

RE: Teamsters Local 104  
28-CB-\_\_\_\_\_

Redburn Tire Co.  
28-CA-061437

Dear Ms. Davidson:

Some brief comments about the two cases referenced above follow:

**I. 28-CB-\_\_\_\_\_**

Enclosed are an original and four copies of the CB charge Redburn is filing against Local 104.

The Union has blocked ingress and egress repeatedly since the strike began on or about June 21, 2011. Not only will we present witnesses for affidavits but we will also provide video tapes from the security cameras which have been operating at that location continuously for many years.

**II. 28-CA-061437**

Your July 26, 2011 letter advises that there are these five allegations:

1. A sign was posted on June 28 advising that striker replacement applications had been received. The allegation does not allege an unfair labor practice. It is well-

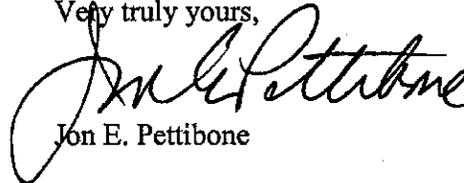
established that an employer lawfully may advise striking employees that it is considering hiring replacements. See, e.g., *River's Bend Health & Rehabilitation Svcs.*, 350 NLRB 184 (2007). Note that the employees were already on strike and, although it would have been lawful to do so, it is not alleged that the sign advised of potential permanent replacement.

2. The employer wrote in a July 15, 2011, email advising that permanent replacements were reporting for work. Not only does that allegation, like the one above, not begin to even allege a *prima facie* violation, but the email was directed to the Union's business agent and not any employee. The email was written at the suggestion of the FMCS mediator, Ron Collatta. A copy of the email is enclosed.
3. The employer has allegedly refused to release striking employees' 401(k) funds. On the contrary, the employer, in response to an inquiry from Union Agent Jerry Ienuso, advised him in writing of the procedure by which employees could request withdrawal of 401(k) funds. A copy of that email is enclosed. As of yesterday, only two employees have requested withdrawal forms, those forms were provided to those employees and they have yet to be returned. At no time has Redburn refused any 401(k) withdrawal request.
4. On July 20, 2011, a trailer was parked on a sidewalk where employees were picketing, allegedly forcing pickets to walk in the street. For a few hours on one day, as on several prior occasions prior to the strike, a trailer was parked outside the Redburn gate because other trailers had taken up available space within the gate. Pickets were not forced to walk in the street and, indeed, a police officer on duty at the site advised Redburn that the trailer would not interfere with normal picketing and would not require that pickets walk in the street. Once room in the Redburn yard became available, the trailer was immediately moved inside the yard.
5. The allegation that Redburn directed trucks to drive through areas where employees were picketing, insofar as it suggests that trucks were directed to drive other than through the normal ingress and egress gates, is false. In reality, the pickets blocked ingress and egress of many trucks entering and attempting to enter and exit the main gate. The CB charge we are filing today addresses the conduct at issue which the Union cannot be heard to claim is an employer unfair labor practice.

Mary Davidson, Esq.  
July 27, 2011  
Page 3

In short, there is not the faintest evidence to support any allegation in 28-CA-061437 that, on its face, would allege an unfair labor practice. By contrast, the Union has repeatedly violated 8(b)(1)(A) by blocking normal ingress and egress to the Redburn facility by vendors, suppliers, and others. We look forward to presenting witnesses for interviews and affidavits in both of these cases. You are scheduled to interview J.D. Chastain at 9:00 a.m. on Thursday, August 4, and Don Leffler at 9:00 a.m. on Friday, August 5.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jon E. Pettibone".

Jon E. Pettibone

JEP:jmf  
Enclosure

**Don Leffler**

---

**From:** Don Leffler [donl@rtco.net]  
**Sent:** Wednesday, July 20, 2011 12:44 PM  
**To:** 'Jerry Ienuso'  
**Subject:** RE:

**The main number - 602-272-7601 or her direct number is 602-288-0608.**

**-----Original Message-----**

**From:** Jerry Ienuso [mailto:jerry.ienuso@teamsterslocal104.com]  
**Sent:** Wednesday, July 20, 2011 12:40 PM  
**To:** 'Don Leffler'  
**Subject:** RE:

**How do employees contact her? Is there a phone number?**

**-----Original Message-----**

**From:** Don Leffler [mailto:donl@rtco.net]  
**Sent:** Wednesday, July 20, 2011 11:40 AM  
**To:** jerry.ienuso@teamsterslocal104.com  
**Cc:** 'J D Chastain'  
**Subject:**

**Jerry,**

**You asked me this morning about forms for our employee's 401(k) accounts.**

**There's different forms for different situations.**

**Our procedure has been that the employee contacts Tina Quihuis. She will then prepare the appropriate form and send it to the employee. When the completed form is returned to her, she submits it for processing.**

**Please contact me if you have any further questions.**

**Don Leffler**

**Pettibone, Jon E.**

---

**From:** Don Leffler [donl@rtco.net]  
**Sent:** Friday, July 15, 2011 11:33 AM  
**To:** jerry.ienuso@teamsterslocal104.com  
**Cc:** 'J D Chastain'; 'Collotta Ron'

Jerry,

As you know, after Local 104 initiated the strike on June 21, Redburn took some initiatives to enable us to satisfy customer demands and one of those was the hiring of striker replacements. Please be advised that, as of Tuesday, July 5, a full complement of permanent replacement workers was reporting to work.

We will respond to your verbal proposed compromise, which you made yesterday morning, on the remaining open issue early next week after JD returns to Phoenix.

Don Leffler

## **Exhibit F**

(2-08)

County of Maricopa )  
 : ss  
 State of Arizona )

Cases: 28-CA-23527, 28-CA-061437, 28-CB-061795

DUPLICATE

**Confidential Witness Affidavit**

I, James Donald (J.D.) Chastain, hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

1. I previously provided an affidavit in Case 28-CA-023527 and incorporate that affidavit by reference.
2. I am present in the office of Board Agent Mary Davidson along with Jon Pettibone, attorney for Redburn Tire Company (the Employer).
3. The charge filed on behalf of the Employer states that "Since on or about June 21, 2011, Teamsters Local 104 has blocked ingress and egress while picketing at the Employer's facility in Phoenix, Arizona." In support of this charge, I have provided the Board Agent with a computer flash drive that contains video taken from the Employer's security cameras showing eight separate incidents where people picketing on behalf of Teamsters Local 104 are blocking entrances to the Employer's facility. My best recollection is that we have had these security cameras at least three or four years. I have also provided a written summary identifying what happened in each of the eight incidents. That summary is attached as Exhibit 1. The summary was written by the Employer's Comptroller, Jason Smith.
4. I have identified the Employer's facility on a map, attached as Exhibit 2. The picketers have a shade tent set up toward the east end of the map, next to Clarendon Avenue. I have noted on the map the Employer's two driveways, both of which open onto Clarendon Avenue. Those driveways have gates opening onto the Employer's property, and the gates are open during normal business hours from 7 a.m. to 5 p.m. The picketers generally walk in a circle from near their tent to the east end of the building I have identified as "office." In doing so, the picketers walk past the two driveways that open onto Clarendon Avenue. On occasion, I have

- 1 -

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JDC Initials

(2-08)

seen a vehicle coming in one of the driveways or trying to leave and the picketers would tighten up their circle by getting real close together. Usually the picketers would leave 5 or 6 feet between them, but when a vehicle would try to enter or exit one of the Employer's driveways, the picketers would bunch up and form a smaller circle and walk much more slowly right in front of the driveway. On at least one occasion, I personally saw Jerry Ienuso stand in front of one of our driveways and not allow a truck to enter our premises from Clarendon Avenue. I was either in the office watching from the window or standing outside when this incident occurred. The truck was either making a delivery or coming in for service. As I recall, Ienuso was walking with his picket sign in the circle and then he stopped in front of the truck for several minutes which prevented the truck from entering the Employer's property while he was standing there.

5. There have been police officers at the Employer's facility during the picketing and they have gotten involved in several incidents. The officers are visible in some of the videos I have presented; however, they are in plain clothes. I saw one incident, I believe it was incident 8 listed on Exhibit 1, where a semi truck was attempting to exit the Employer's facility at the west gate and he was blocked for 30 or 40 minutes by the picketers. This was not one of the Employer's trucks but was someone either delivering or picking up tires from the Employer's facility. The picketers had formed a very tight circle and were walking slowly right in that driveway so that the truck could not leave. The truck driver was very agitated and I went over to talk to him to try to settle him down. One of the police officers also talked to the truck driver, and the truck driver was very unhappy about not being able to leave and so he asked to talk to the officer's supervisor. That supervisor was not on the scene but eventually arrived. The supervisor talked briefly to me, and I believe Don Leffler was also there. We told the officer that we were the owners of the property and that the truck driver was not being allowed to leave the premises through our exit. It was a brief conversation. I saw the supervisor go and talk to the other officer on the scene. Then the supervisor went and talked to the truck driver. During this whole process the picketers continued to walk in front of that semi truck in a tight circle preventing the truck from leaving. I don't recall what led up to the strikers finally making an opening so that the semi truck could leave.

2

## PRIVACY ACT STATEMENT

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 Initials

(2-08)

6. There was another incident I witnessed where a semi truck was attempting to enter one of the Employer's driveways from Clarendon Avenue. I do not recall the date of that incident or how long it lasted. The picketers formed a tight circle in front of the driveway, preventing the truck from entering. Eventually, one of the Employer's managers directed the truck to the back of the property so that it could enter off of Whitton Avenue. The manager who directed the truck was one of three people--either our Retail Manager, David Gutierrez, our Service Manager, Robert Schulte, or our Corporate Service Manager, Bobby Johnson.

7. Another incident occurred when a semi truck with a trailer was attempting to exit from our west driveway onto Clarendon Avenue. The picketers tightened up their circle at that driveway and the truck could not leave through that exit. I don't recall who directed the truck, but the driver ended up having to back the truck around in a very tight space in front of the Cap Shop and then drive through the Employer's property to the exit onto Whitton Street.

8. On occasion the area directly in front of the Cap Shop and Warehouse is full of tires or vehicles, and we will park a trailer of tires out near Clarendon Avenue. One spot where we have parked a trailer of tires is between the two driveways on Clarendon Avenue, which I believe is an easement. We have parked a trailer on that spot a number of times prior to the start of the strike. After we received the allegation by the Teamsters that on or about July 20, 2011 the Employer used a trailer to block the area where they were picketing, we recreated the scene and took photos to show where we park the trailer. Those photos taken on July 31, 2011 are attached as Exhibit 3. They show that the picketers had room to walk with their pickets on the sidewalk next to Clarendon Avenue and around to the other side of the trailer between the trailer and the utility pole depicted there. Prior to taking those photos, on or about July 20, 2011, I and Don Leffler spoke to the police officer who was at the scene that day. That officer's name is Rick Flum, #6686. I believe we talked to Flum outside near the trailer of tires parked between our two driveways. Flum asked us about the trailer of tires and the reason it was parked there. He said he thought it might have been a safety issue, but then assessed the situation and determined there was no safety issue. I pointed out to Flum that the congestion in our yard prevented us from parking the trailer

3

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 Initials

(2-08)

elsewhere for at least an hour or so, but that we would move it as soon as we possibly could. We moved the trailer an hour or two later to a location where it would be out of the way. The trailer was parked on the easement between the two driveways when I arrived at work that day around 7:30 a.m. until 11 a.m. or noon.

9. I have not communicated with the striking employees about being permanently replaced. I am not aware of anyone from management trying to distribute a letter or memo to striking employees at any time during the strike. I am not aware of anyone from management communicating with striking employees at all during the strike.

*I WAS TOLD FOR*  
10. On or about June 28, 2011 the Employer did hang a sign outside, in an area that I believe was visible to the strikers, which said "Striker Replacement Applications Received 150+." I have provided a photo of the sign; however the photo was taken inside an office area and not where it was displayed outside. I was not there on the day the sign was hung outside, and I don't recall who decided to put up the sign. I believe the sign stayed up one or two days altogether. I believe we hung the sign to let the strikers know there were people who would like to have that job and maybe they would like to come back to work.

11. The Employer has hired approximately fourteen employees to replace the striking employees. These employees are permanent replacements for the striking employees. I did not inform the striking employees that they had been permanently replaced. I know that Don Leffler sent an email to Jerry Ienuso on July 15 informing him that as of July 5, "a full complement of permanent replacement workers was reporting to work." Leffler sent that email because the federal mediator, Ron Collotta, told me at our last impromptu bargaining session, on or about July 14 or 15, that if we had hired permanent replacements, we needed to inform the Union. I mentioned that conversation to Leffler, and he then sent the email to Ienuso.

12. The striking employees have not been terminated and the Employer has not communicated to the striking employees that they have been terminated. At the impromptu bargaining session on July 14 or 15, 2011, the Union made a slight change to its last offer ~~and Ienuso~~<sup>for</sup>, which the Employer rejected. As I recall, Ienuso said if

4

## PRIVACY ACT STATEMENT

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*AI* Initials

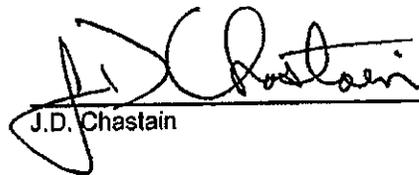
(2-08)

we accept the Union's offer, the striking employees will return to work. The Union has never made an unconditional offer to return to work.

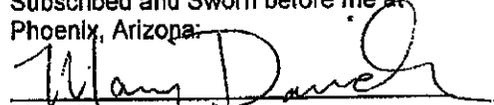
I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this statement consisting of 5 pages, including this page, I fully understand its contents, and I certify that it is true and correct to the best of my knowledge and belief.

Dated this 4th day of August 2011.

  
\_\_\_\_\_  
J.D. Chastain

Subscribed and Sworn before me at  
Phoenix, Arizona:

  
\_\_\_\_\_  
Mary G. Davidson  
Field Attorney,  
National Labor Relations Board

PRIVACY ACT STATEMENT

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 initials

# **Exhibit G**

DUPLICATE

(2-08)

County of Maricopa )  
: ss  
State of Arizona )

Cases: 28-CA-23527, 28-CA-061437, 28-CB-061795

**Confidential Witness Affidavit**

I, Donald Leffler, hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

1. I previously provided an affidavit in Case 28-CA-023527 and incorporate that affidavit by reference.

2. I am present in the office of Board Agent Mary Davidson along with Jon Pettibone, attorney for Redburn Tire Company (the Employer).

3. The charge filed on behalf of the Employer states that "Since on or about June 21, 2011, Teamsters Local 104 has blocked ingress and egress while picketing at the Employer's facility in Phoenix, Arizona." In support of this charge, the Employer has provided the Board Agent with a computer flash drive that contains video taken from the Employer's security cameras showing eight separate incidents where people picketing on behalf of Teamsters Local 104 are blocking the west entrance to the Employer's facility. The flash drive <sup>at some of</sup> contains the highlights of what was recorded on our security cameras since the picketing started on June 21, 2011 and does not show <sup>or all</sup> contain all of the incidents recorded by the cameras or the numerous other incidents that I observed or was informed about where picketers were blocking the ingress and egress. My best recollection is that we have had security cameras at least five to eight years. We have a dozen cameras and one camera points out toward Clarendon Avenue and the Employer's west gate off of Clarendon Avenue. That is the camera that took the videos the Employer has provided to the Board Agent. The west gate is the main entrance gate to the Employer's facility, and we try to direct all traffic through there, but sometimes the east gate is used to exit. One incident I observed that is on the flash drive occurred on or about June 28, 2011. A tractor trailer was attempting to enter the Employer's driveway at the west gate. The picketers were walking in the west driveway in

**PRIVACY ACT STATEMENT**

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*DL* Initials

front of the west gate and blocked that truck from entering. Since the picketers were congregated in front of the west gate and not making their normal loop past the east gate, one of our yard guys opened up the east gate and directed the truck driver to pull in there. To my recollection, the picketers saw the truck moving and tried to move in front of the east gate but the trucker was too quick and got through the east gate before the picketers arrived.

4. Another incident I observed occurred on or about July 14, 2011. I was in my office and a guy came in to my office and told me a truck was blocked by the picketers and could not exit the Employer's property. I went outside and saw a tractor trailer trying to exit the west gate onto Clarendon Avenue. The truck belonged to a customer of the Employer and it was blocked from exiting by the picketers. The picketers usually walked in a loop from just east of the east gate to just west of the west gate. The number of picketers has ranged from a half dozen to approximately thirty at a time. I'm not sure how many picketers were walking with pickets that day. The truck had gone to the gate and as the truck approached, the picketers congregated in front of the driveway he was trying to exit and blocked the truck from exiting. The truck tried to ease forward and when the driver saw the picketers were not going to move, he stopped and got out of his truck. The driver, whose name I do not know, worked for Shannon Auction and the phone number he provided to the Employer is 928.667.1148. One of our employees told me later that the driver told him that he lost a load that he was scheduled to pick up that day and he was filing some sort of claim against the Teamsters for missing that load. The driver spoke to a police officer, Detective Flum, who was on the scene that day, and I understand that the driver eventually asked to talk to the officer's supervisor. I assume he asked to speak to the supervisor because the officer on site was not clearing the driveway so he could exit his truck from the yard. The officer's supervisor, a sergeant, did show up and spoke with Detective Flum but they did not take any action to move the picketers out of the truck's way. During this time, the picketers were fairly close together in the driveway and there were no gaps between them large enough to allow the truck to exit. The truck was prevented from exiting for about 40 minutes and I was there for <sup>approximately</sup> at least 20 minutes of that. I did not see the driver talking to the picketers directly. Prior to this incident, Jerry Ienuso had asked to meet with the Employer's bargaining committee that day to present a bargaining proposal. So, I went

PRIVACY ACT STATEMENT

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over and spoke to Ienuso and told him we're supposed to meet today and I asked him to stop the picketers from walking in front of the truck and to let the guy out. Ienuso then went and spoke to the picketers and they moved out of the driveway so that the truck could pass through. I heard the truck driver say to the sergeant, "I'm not done with you yet," or something to that effect. The supervisor told the driver to pull in across the street and they would talk there. I went back inside the Employer's building and met with the Union's bargaining committee in one of the Employer's conference room. J.D. Chastain and Ron Collotta, the federal mediator, also met with us that day.

5. There was another incident I witnessed that is not on a security camera video because this incident occurred at the east gate where there is no security camera. I am not sure of the date of this incident or if it was before or after the July 14 incident. I was in my office and someone came in and told me that a truck was blocked from leaving by the picketers. So I went outside to the yard to see what was going on. The truck belonged to a customer of the Employer. When I arrived outside I saw the picketers blocking the truck from exiting. Then, suddenly the picketers spread out which allowed the truck to leave. Immediately after that I saw a police SUV pull up, and an officer said he was responding to a call and asked if we knew who had made the call. The Employer had not made the call and the officer said it was a trucker who called and so I assume it was the trucker who was blocked from exiting who had called the police.

6. There was another incident I witnessed where a trucker was trying to enter the Employer's driveway and was blocked by the picketers from even turning off Clarendon Avenue into the driveway. The truck was stuck in the street and the police were directing eastbound traffic to go around the truck. I heard one of the drivers of a car stuck behind the truck say to a police officer that he needed to get to work, and the officer told him to get back in his car and he would direct the cars around the truck. I had talked to the police numerous times since the strike started and they told me that they would only get involved when there is a safety issue. I asked about this truck blocking the traffic on Clarendon and whether that is a safety issue and the officer didn't seem to think so and just directed the traffic around the truck stopped in the street. There have been very few occasions

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AL Initials

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DL

since the strike started when the police have intervned and actually cleared picketers from the Employer's driveway. There was one occasion where a truck was trying to turn left off of Clarendon Avenue into our driveway and was blocked from entering by the picketers. This truck was blocking the intersection of Clarendon and 38<sup>th</sup> Avenue, and so the police did clear the picketers from the driveway so the truck could turn into the Employer's property.

7. Since the strike started, we have told some of the truckers who make recurring deliveries to our facility not to use the main entrance off of Clarendon Avenue but instead to drive down to 39<sup>th</sup> Avenue and come around to the back side of our facility off of Whitton Avenue. This is a problem, especially for trucks who come in for tire service at the <sup>service bay DL</sup> warehouse off of Clarendon Avenue and would normally exit the Employer's property via Whitton Avenue without ever having to turn around. By entering on Whitton Avenue, the trucks then have to try to turn around in the yard, a very tight space, so that they can exit onto Whitton Avenue.

8. On July 28, 2011, I sent Ienuso an email about a problem caused by picketers parking a vehicle right at the edge of the Employer's driveway, which I wrote, "cause a significant safety issue" both for trucks trying to enter the Employer's yard and for vehicles exiting the yard because the driver's view is obstructed by the picketer's vehicles. My email to Ienuso is attached as Exhibit 1. I attached a City of Phoenix form "Parking in a No Parking Zone" which shows that individuals are prohibited from parking within 15 feet of driveways. Ienuso has not responded to my email.

9. I have not communicated with the striking employees about being permanently replaced. I am not aware of anyone from management communicating with striking employees at all during the strike. I am not aware of anyone from management trying to distribute a letter or memo to striking employees at any time during the strike. I do know that the Employer's Comptroller, Jason Smith, did take a pay stub out to one of the striking employees, Ruben Martinez, Jr., at Martinez's request. Martinez had talked with our HR person, Tina Quihuis, who also does payroll checks, and said he had lost his pay stub and asked if someone could bring him a copy of

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DL Initials

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AZ

his pay stub, rather than mailing it. So, Smith took the pay stub out to Martinez who was outside the Employer's facility with the striking employees.

10. I wanted to let the striking employees know that we were getting a lot of applications for their job, and we made a sign that said "Striker Replacement Applications Received 125+." The Employer's service manager hung the sign on one of the Employer's metal poles and it stayed up for about two hours before it fell down. We considered hanging an updated sign that said "Striker Replacement Applications Received 150+" but we decided not to hang that sign. I wanted to encourage the striking employees to think about coming back to work. The retread shop where the striking employees worked was down for about two weeks and we incurred extra expense by having to send the tire casings (worn out tires) to one of our other shops. The strike also caused a problem with our turn around time, which was longer due to the strike, and a lot of our customers need the casings back very quickly.

11. ~~A day or two~~ After the strike started on June 21, 2011, we began to think about our options for hiring employees to work in the retread shop. ~~Later~~ that same week, we placed an ad on the internet and in the newspaper. Those advertisements for employees to work in our Bandag Retread Facility are attached as Exhibit 3. We received applications almost as soon as the ad hit the internet, almost 250 altogether. We did not advertise for retread shop employees before the strike started because we did not think we would need new employees because we did not think the employees would go out on strike.

12. The Employer has hired fourteen employees to replace the striking employees. These employees are now permanent replacements for the striking employees. I did not inform the striking employees that they had been permanently replaced. I sent an email to Jerry Ienuso on July 15 informing him that as of July 5, "a full complement of permanent replacement workers was reporting to work." I sent that email because the federal mediator, Ron Collotta, told Chastain at our July 14 bargaining session that if we hired permanent replacements, we should inform the Union.

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AZ Initials

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(2-08)

13. On July 20, 2011, I sent Ienuso an email in response to his question to me earlier that day about how striking employees could get their 401K funds. That email is attached as Exhibit 2. I wrote that the employees should contact Tina Quihuis and she will prepare the appropriate form and send it to the employee for completion. When the employee returns the form to Quihuis, she will submit it for processing. Quihuis told me that one of the striking employees, I believe it was Ruben Martinez, Jr., asked her to deliver his 401K form to him on the picket line. So, she took the form to him and while she was delivering the form to Martinez, another employee asked if he could have his 401K form. So, I believe Quihuis went back inside and prepared the form and delivered it to the other employee. I do not know the date when Quihuis delivered the forms to the employees. Quihuis has told me that neither striking employee has returned the completed form to her.

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*DL* Initials

*Leffler*

14. The striking employees have not been terminated and the Employer has not communicated to the striking employees that they have been terminated. Our outside health insurance administrator has sent striking employees information about their rights under COBRA. We had to notify the administrator of the reduction in the striking employees' hours and the administrator sent me copies of what it had sent to the striking employees. At the last bargaining session on July 14, 2011, the Union made an offer, which the Employer rejected. Ienuso said if the Employer accepts the Union's offer, then the striking employees will come back to work. That is the only time the Union has offered to return to work and it was conditioned on the Employer accepting the Union's last offer.

I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this statement consisting of 7 pages, including this page, I fully understand its contents, and I certify that it is true and correct to the best of my knowledge and belief.

Dated this 5th day of August 2011.

*Donald Leffler*  
 \_\_\_\_\_  
 Donald Leffler

Subscribed and Sworn before me at  
 Phoenix, Arizona:

*Mary G. Davidson*  
 \_\_\_\_\_  
 Mary G. Davidson  
 Field Attorney,  
 National Labor Relations Board

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*XL* Initials

## **Exhibit H**

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
08/25/11	Email from M. Davidson regarding 401(k) document.	JEP	0.10
08/26/11	Email to D. Leffler and J.D. Chastain regarding 401(k) plan (.1); email from D. Leffler with 401(k) summary sheet (.1); email to him regarding same (.1); emails from and to D. Leffler regarding same (.1); email from D. Leffler with 401(k) summary plan description (.1); review summary plan description (.1); email excerpt of same to M. Davidson (.1).	JEP	0.70
08/29/11	Telephone call from M. Davidson regarding complaint (.7); email to D. Leffler and J. D. Chastain regarding same (.1).	JEP	0.80
08/30/11	Email from D. Leffler regarding NLRB procedure (.1); telephone call to D. Leffler regarding same (.2); email from M. Davidson with proposed settlement (.2).	JEP	0.50
08/31/11	Telephone call to D. Leffler regarding NLRB complaint (.1); telephone call from M. Davidson regarding same, settlement and 10(j) (.3); emails from and to D. Leffler regarding same (.2); confer with J. D. Chastain and D. Leffler regarding same (.3).	JEP	0.90

**FEE SUMMARY:**

ID	Name	Hours	Rate	Amount
JEP	Jon E. Pettibone	3.00	465.00	1,395.00
<b>Total</b>		<b>3.00</b>		<b>1,395.00</b>

Total Fees: \$ 1,395.00

**DISBURSEMENTS:**

08/04/11	IntelliQuick Delivery Nlrb - 7/14/11	\$	56.25
08/08/11	Pettibone, Jon 4 Aug 2011 NLRB parking - Redburn Tire		6.00
Total Disbursements:		\$	<u>62.25</u>
Total Fees and Disbursements:		\$	<u>1,457.25</u>

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
09/01/11	Emails from and to D. Leffler regarding hearing and new allegations (.2); review complaint (.2) ;confer with D. Leffler regarding same (.4); meet with R. Robertson regarding research for NLRB trial purposes and for possible 10(j) hearing (.3).	JEP	1.10
09/01/11	Confer with Jon Pettibone regarding NLRB Complaint allegations against Redburn Tire (.4); review Complaint and send e-mail to client regarding same (.5); begin researching issues related to NLRB Complaint for possible injunction hearing (.4).	RROBERTS	1.30
09/02/11	Confer with M. Davidson regarding recent 10(j) experience (.1); multiple emails from and to D. Leffler regarding 401(k) (.3); draft answer to complaint (.9); email same to J.D. and Don (.1).	JEP	1.40
09/06/11	Email from D. Leffler regarding changes to draft answer (.1); amend draft answer (.4); confer with J. Williams and B. Howie regarding allegations of complaint and possible 10(j) (.5); review rules for time to respond (.2).	JEP	1.20
09/07/11	Review NLRB letters and client affidavits; review and supplement list of documents to be gathered for potential response to preliminary injunction and for December hearing; telephone conferences with D. Leffler regarding document collection.	SSMITH	2.80
09/07/11	Confer with S. Smith regarding gathering documents (.1); emails from and to S. Smith regarding same (.1).	JEP	0.20
09/09/11	Research issues related to NLRB complaint and possible injunction, including whether heated discussions and/or alleged threats at bargaining table are an unfair labor practice.	RROBERTS	1.50
09/12/11	Research issues related to NLRB complaint, including elements necessary for Section 10(j) injunctive relief and whether heated statements at bargaining table constitute unfair labor practices.	RROBERTS	3.80
09/13/11	Continue researching elements necessary for Section 10(j) injunctive relief.	RROBERTS	0.40
09/16/11	Review all documents generated in matter and begin compilation of those relating to exhibits mentioned within D. Leffler and J.D. Chastain' s affidavits submitted to NLRB.	SSMITH	5.70
09/19/11	Continue researching Ninth Circuit law regarding standard for Section 10(j) relief and board decisions regarding heated statements at bargaining table.	RROBERTS	2.70

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
09/20/11	Confer with D. Leffler regarding status, picketing, documents, etc.	JEP	0.40
09/23/11	Continue researching elements necessary for impasse in the Ninth Circuit.	RROBERTS	0.70
09/24/11	Continue researching elements necessary for impasse in the Ninth Circuit.	RROBERTS	0.50
09/25/11	Continue researching elements necessary for impasse in the Ninth Circuit.	RROBERTS	1.00
09/26/11	Research Board decisions regarding striking employees ability to withdraw from 401(k) plans and employer's statements to striking employees regarding replacement.	RROBERTS	6.50
09/26/11	Telephone call to D. Leffler regarding response to union's offer to return to work and regarding NLRB procedure (.3); confer with J. D. Chastain and D. Leffler regarding same (.6); review memo from R. Robertson regarding cases for trial brief (.2).	JEP	1.10
09/27/11	Confer with M. Davidson regarding status of 10(j) authorization (.1); emails to client regarding same (.1).	JEP	0.20
09/28/11	Confer with Jon Pettibone regarding additional research necessary to respond to NLRB Complaint.	RROBERTS	0.20
09/28/11	Conference with R. Robertson about cases she found for possible 10 (j) (.2); email memo to client regarding same (.1); conference with J. D. and Don regarding meeting with union today (.3); email D. Leffler regarding exhibits (.1).	JEP	0.70

**FEE SUMMARY:**

ID	Name	Hours	Rate	Amount
JEP	Jon E. Pettibone	6.30	465.00	2,929.50
RROBERTS	Rachel L. Robertson	18.60	230.00	4,278.00
SSMITH	Sandra Smith	8.50	210.00	1,785.00
Total		33.40		8,992.50

Total Fees: \$ 8,992.50

**DISBURSEMENTS:**

09/08/11	Clerk, U.S. District Court Certificate of Good Standing to file pro hac vice application for admission in Arizona - Judith Williams-Killackey	\$	15.00
09/12/11	Westlaw and Lexis charges		679.88
09/19/11	Westlaw and Lexis charges		281.75
09/26/11	Westlaw and Lexis charges		1,470.88
	Pacer research charges		1.68
	Total Disbursements:	\$	<u>2,449.19</u>
	Total Fees and Disbursements:	\$	<u>11,441.69</u>

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
10/03/11	Consider and e-mail Mr. Pettibone regarding lockout and replacement issues.	DBK	0.10
10/03/11	Email to S. Smith regarding documents (.1); emails to and from D. Kern regarding backpay reduction strategy (.1).	JEP	0.20
10/04/11	Emails from and to S. Smith regarding documents from client.	JEP	0.10
10/17/11	Email to S. Smith with proposed organization of documents.	JEP	0.10
10/19/11	Continue review of client documents and begin preparation of hearing notebooks.	SSMITH	1.30
10/19/11	Confer with S. Smith regarding organization of potential exhibits.	JEP	0.10
10/21/11	Begin preparation of trial notebooks.	SSMITH	3.30
10/22/11	Continue to compile and organize documents and prepare notebooks for trial.	SSMITH	5.40
10/24/11	Telephone call to P. Irving regarding today's bargaining and regarding 10(j) (.1); email from S. Smith regarding additional documents needed (.1); email to J.D. and D. Leffler regarding same (.1); confer with P. Irving of NLRB regarding injunction (.1).	JEP	0.40
10/25/11	Finalize affidavit trial notebooks.	SSMITH	1.10

**FEE SUMMARY:**

ID	Name	Hours	Rate	Amount
DBK	David B. Kern	0.10	480.00	48.00
JEP	Jon E. Pettibone	0.90	475.00	427.50
SSMITH	Sandra Smith	11.10	215.00	2,386.50
<b>Total</b>		<b>12.10</b>		<b>2,862.00</b>

Total Fees: \$ 2,862.00

Redburn Tire Company  
RE: Local 104 Bargaining and 8(a)3 Charge  
Q & B Matter Number: 790608.00004

November 04, 2011  
Invoice Number: 1704925  
Page 5

**DISBURSEMENTS:**

10/21/11	Color Copy Charges	\$	1.60
	Copy charges		46.90
	Total Disbursements:	\$	<u>48.50</u>
	Total Fees and Disbursements:	\$	<u>2,910.50</u>

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
11/02/11	Review documents and some NLRB cases to begin trial preparation.	JEP	0.40
11/03/11	Email with subpoena from L. Elswick (NLRB) (.1); email to JD and Don regarding same (.1).	JEP	0.20
11/04/11	Review documents in preparation for trial (1.3); email from J.D. regarding subpoenas (.1).	JEP	1.40
11/07/11	Email from and to J. D. Chastain regarding union communication to D. Leffler (.1); email from and to D. Leffler regarding same (.1).	JEP	0.20
11/09/11	Review prior arbitration award; email correspondence between company and union and complaint and answer (.6); review affidavits and develop chronology (.8).	JEP	1.40
11/11/11	Email to J. D. Chastain and D. Leffler regarding preparation schedule (.3); email to J.D. and Don regarding subpoena to union (.1).	JEP	0.40
11/13/11	Email from D. Leffler regarding preparation schedule (.1); email from D. Leffler regarding subpoena to union (.1).	JEP	0.20
11/14/11	Letter to NLRB requesting subpoena (.1); email to D. Leffler and J.D. Chastain regarding preparation schedule (.1); email from J.D. regarding same (.1); email to J.D. and Don confirming preparation times (.1); review and identify missing documents (.7).	JEP	1.10
11/15/11	Email from D. Leffler regarding prep schedule.	JEP	0.10
11/16/11	Telephone call from V. Lee at NLRB (.1); emails from and to her regarding conference with judge (.1); email from M. Davidson regarding same (.1); email to J.D. and Don regarding same (.1).	JEP	0.40
11/18/11	Prepare subpoena to union (1.1); draft cover letter to Local 104 (.1); email to Union attorney regarding same (.1)	JEP	1.30
11/21/11	Confer with Judge Clifford Anderson and Mary Davidson regarding hearing, settlement, subpoena (.4); email to J.D. and Don regarding same (.2); telephone call from M. Davidson regarding settlement possibilities (.2); review wage proposal history and medical premium history (.9).	JEP	1.70
11/22/11	Meet with witnesses (5.0); telephone call to M. Davidson regarding settlement (.1).	JEP	5.10

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
11/23/11	Email from J. Ienuso regarding objections to subpoena (.1); email from M. Davidson regarding 10(j) relief (.1); email from NLRB referring union objections to ALJ (.1); telephone call from M. Davidson regarding 10(j) (.1).	JEP	0.40
11/25/11	Emails from M. Davidson regarding subpoena (.1); review documents from D. Leffler and J.D. Chastain received 11-22-11 (.7); email from M. Davidson regarding additional investigation (.1); email to J.D. and Don regarding same (.1); review NLRB subpoena (.1); email to J.D. and Don regarding same (.1).	JEP	1.20
11/27/11	Review NLRB letter regarding possible preliminary injunction.	BHOWIE	0.20
11/28/11	Review petition to revoke filed by Union (.1); review subpoena (.1); review NLRB Bench Memo, rules and regulations, and case handling manual in preparation for drafting response to Order to Show Cause (.5); draft same (1.3); review case cited by Union and distinguish same (.6); review and revise response to order to show cause (1.4).	DVALDIVI	4.00
11/28/11	Draft answer to petition to revoke subpoena (.9); confer with B. Howie regarding 10(j) status (.1); confer with D. Valdivia regarding petition to revoke subpoena and 10(j) (.2); review order to show cause regarding petition to revoke (.1); emails to D. Valdivia regarding same (.1); research cases and draft response to NLRB 11-23-11 letter regarding 10(j) (.8); confer with J.D. and Don regarding various (.5); email from D. Leffler with Union flyer (.1); review NLRB's subpoena (.3).	JEP	3.10
11/28/11	Confer with J. Pettibone regarding possible preliminary injunction hearing.	BHOWIE	0.10
11/29/11	Confer with J.D. and Don regarding NLRB subpoena (1.6); emails from and to D. Leffler regarding email from J. Ienuso regarding searches for work (.1); emails to and from J.D. and Don regarding draft response to NLRB regarding injunction (.1); edit draft letter to NLRB regarding injunction (.5); begin draft response to order to show cause (.4); email to S. Smith regarding documents for subpoena (.1); fax letter to NLRB regarding 10(j) injunction (.2); email to M. Davidson regarding same (.1).	JEP	3.10
11/30/11	Review subpoena and conference with J. Pettibone regarding same (.7); begin compilation of documents and draft responses to subpoena (3.1).	SSMITH	4.40
11/30/11	Review revisions to response to Order to Show Cause by J. Pettibone and respond to email from same.	DVALDIVI	0.20

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
11/30/11	Redraft response to order to show cause (1.0); meet with S. Smith regarding organization of documents for subpoena compliance (.2); email to S. Smith regarding same (.1); telephone call to M. Davidson regarding her subpoena (.3); email to J.D. and Don regarding same (.1); prepare for trial (1.6); telephone call to M. Davidson regarding her request for additional evidence (.2); emails from and to M. Davidson regarding union strike notice (.1); telephone call from M. Davidson regarding her subpoena (.2); draft response to letter from M. Davidson requesting information on new allegations (.2); emails from and to D. Valdivia regarding case cites for response to order to show cause (.1).	JEP	4.10

**FEE SUMMARY:**

ID	Name	Hours	Rate	Amount
JEP	Jon E. Pettibone	25.80	475.00	12,255.00
BHOWIE	Brian A. Howie	0.30	420.00	126.00
DVALDIVI	Dawn Valdivia	4.20	345.00	1,449.00
SSMITH	Sandra Smith	4.40	215.00	946.00
Total		34.70		14,776.00

Total Fees: \$ 14,776.00

**DISBURSEMENTS:**

11/18/11	General Teamsters Local Union No. 104 Witness Fee and roundtrip mileage	\$	48.33
	Copy charges		0.70
	Total Disbursements:	\$	<u>49.03</u>
	Total Fees and Disbursements:	\$	<u>14,825.03</u>

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
12/01/11	Continue to compile documents pursuant to NRLB's document request subpoena.	SSMITH	3.60
12/01/11	Keycite legal citations in Response to Order to Show Cause.	MZAPATA	0.30
12/01/11	Email from D. Leffler regarding petition to revoke subpoena (.1); draft petition to revoke subpoena (.6); email to Don and J.D. regarding same (.1); preparation for trial (3.3); telephone call from D. Leffler regarding petition to revoke (.1); edit draft response to order to show cause (.2); forward two draft filings to J.D. and Don (.1); two confirmations from NRLB of filing (.1); confer with D. Leffler regarding Union request for seniority list (.2).	JEP	4.70
12/02/11	Preparation for trial (5.1); review NRLB's filing in support of Union's petition to revoke (.1).	JEP	5.20
12/02/11	Continue to compile documents for NRLB's document request subpoena and preparation of responses to same.	SSMITH	8.60
12/05/11	Review documents in general file for possible production to NRLB's request for documents subpoena and attend conference with D. Leffler and J. Pettibone.	SSMITH	8.20
12/05/11	Preparation for trial (.8); e-mails from and to F. Tsang regarding conference with judge (.2); telephone call to F. Tsang regarding same (.1); telephone call from M. Davidson regarding amendment of complaint (.1); meet with D. Leffler and S. Smith (3.8); conference with S. Smith regarding preparations and documents (.2).	JEP	5.20
12/06/11	Multiple emails from and to D. Leffler regarding additional possible exhibits (.2); email to S. Smith regarding 401(k) (.1); confer with S. Smith regarding inconsistencies in same (.1); confer with M. Davidson and J. Ienuso (.3); conference with judge and parties (.8); email to J.D. and Don regarding same (.1); meet with J.D. and prepare for hearing (2.2); other hearing prep (.2); email from D. Leffler regarding personal days (.1).	JEP	4.10
12/06/11	Continue draft response to NRLB subpoena and compile documents for same; update trial and affidavit notebooks.	SSMITH	6.30
12/07/11	Continue to draft responses to NRLB subpoena and compile documents responding to same.	SSMITH	7.60

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
12/07/11	Telephone call from M. Davidson regarding postponement, amended complaint and stipulations (.3); preparation for trial (.9); email from D. Leffler regarding additional notes and bargaining history (.1); email to D. Leffler regarding seniority list (.1); emails from and to D. Leffler regarding subpoenaed documents (.2); review ALJ's prior decision (.4).	JEP	2.00
12/08/11	Attend conference with J. Pettibone to review document compilation and subpoena responses to NRLB; supplement subpoena responses and finalize production with same; begin compilation of trial exhibits.	SSMITH	10.60
12/08/11	Meet with S. Smith and prepare document production in response to subpoena (1.9); other trial preparation (3.5); email from K. Stanley of NRLB (.1); review NRLB opposition to our petition to revoke (.2); draft answer to amended complaint (.5); edit cover letter for production of subpoenaed documents (.2); edit draft answer to amended complaint (.3); emails from and to S. Smith regarding two documents (.1).	JEP	6.70
12/09/11	Finalize production and subpoena responses and transmit same to NRLB.	SSMITH	5.30
12/09/11	Emails from S. Smith regarding documents.	JEP	0.20
12/10/11	Finalize answer to amended complaint (.1); email to D. Leffler regarding presence at counsel table (.1); preparation for trial (4.8).	JEP	5.00
12/11/11	Email to D. Valdivia regarding additional witness interviews (.3); emails from D. Leffler with additional info and documents and with timelines (.4); review timelines (.3); prepare for trial (3.5).	JEP	4.50
12/12/11	Continue to compile trial exhibits; prepare letter to M. Davidson producing supplementation to subpoena request number 19 and potential trial exhibits.	SSMITH	6.70
12/12/11	Meeting with witnesses and prepare for trial (8.8); review documents and prepare for trial (.9); emails to and from M. Davidson regarding subpoenaed witnesses and email to D. Leffler and J.D. Chastain regarding same (.1); email from S. Smith with letter to NRLB regarding additional documents (.1); email from NRLB regarding receipt of answer to amendment (.1).	JEP	10.00
12/13/11	Transport documents and assist at hearing.	SSMITH	1.70
12/13/11	Trial and trial preparation in the evening.	JEP	12.80

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
12/14/11	Prepare for trial (1.1); trial (7.9); prepare for opening of our case (.7).	JEP	9.70
12/15/11	Confer with D. Leffler and J.D. Chastain and prepare for trial (.8); trial and post-trial meeting with J.D., Don & Bobby (3.8).	JEP	4.60
12/21/11	Begin to draft brief.	JEP	0.90
12/22/11	Continue to draft brief.	JEP	4.30
12/27/11	Continue to work on brief.	JEP	1.90
12/29/11	Review 12-22-11 case involving a strike (.2); review and digest transcript (2.1).	JEP	2.30

**FEE SUMMARY:**

ID	Name	Hours	Rate	Amount
JEP	Jon E. Pettibone	84.10	475.00	39,947.50
MZAPATA	Marian M. Zapata-Rossa	0.30	260.00	78.00
SSMITH	Sandra Smith	58.60	215.00	12,599.00
Total		143.00		52,624.50

Total Fees: \$ 52,624.50

**DISBURSEMENTS:**

12/01/11	Color Copy Charges COPIES	\$	30.40
12/01/11	Color Copy Charges COPIES		1.60
12/08/11	Color Copy Charges COPIES		165.20
12/08/11	Color Copy Charges COPIES		5.60
12/22/11	Pettibone, Jon 14 Dec 2011 Ampco Parking		12.00
12/22/11	Pettibone, Jon 15 Dec 2011 Ampco Parking		4.00
	Copy charges		498.20

Redburn Tire Company  
RE: Local 104 Bargaining and 8(a)3 Charge  
Q & B Matter Number: 790608.00004

January 05, 2012  
Invoice Number: 1718483  
Page 6

Fax charges	14.40
Total Disbursements:	\$ <u>731.40</u>
Total Fees and Disbursements:	\$ <u>53,355.90</u>

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
01/03/12	Initial consideration of, and discussion with J. Pettibone regarding, research needed on five issues in order to support post-hearing brief.	NANDERSO	0.50
01/03/12	Confer with N. Anderson regarding research assignment for brief (.5); email to N. Anderson regarding same (.6); forward draft brief to N. Anderson (.1).	JEP	1.20
01/04/12	Continue to review and digest transcript.	JEP	1.30
01/05/12	Continue to review and digest transcript.	JEP	1.90
01/06/12	Research whether employers may communicate the possibility that strikers will be permanently replaced ; research whether employers may notify strikers who inquire about 401(k) withdrawals.	NANDERSO	3.20
01/06/12	Finish reviewing and digesting transcript.	JEP	1.00
01/09/12	Research NLRB opinions regarding impasse.	NANDERSO	2.80
01/09/12	Edit draft brief (2.6); email from N. Anderson with judge's prior case (.1); review California impasse case (.3).	JEP	3.00
01/10/12	Research NLRB cases on whether warnings violated the NLRA.	NANDERSO	2.30
01/10/12	Edit draft brief.	JEP	1.30
01/11/12	Research cases regarding impasse; research cases related to alleged 401(k) statement; research sign notifying employees of the number of replacement applications received; research cases addressing warnings given to employees.	NANDERSO	6.10
01/11/12	Discuss Board research regarding various ULP allegations with Mr. Anderson and follow up regarding same.	DBK	0.30
01/11/12	Continue work on brief.	JEP	0.70
01/12/12	Emails from and to N. Anderson regarding outcome of research effort (.2); review proposed addition to brief from N. Anderson (.1); research 401(k) issue (.3); continue work on brief (1.7).	JEP	2.30
01/12/12	Research NLRB cases turning on provision of benefits to striking workers.	NANDERSO	1.80
01/13/12	Finalize research regarding 401(k) statement.	NANDERSO	0.30
01/13/12	Continue work on brief (4.6); email from N. Anderson with results of additional research on 401(k) issue (.2).	JEP	4.80

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
01/16/12	Continue to work on brief including editing and adding citations to record.	JEP	7.20
01/17/12	Continue to work on brief, editing and inserting citations to the record.	JEP	4.10
01/18/12	Continue to edit brief (3.6); email to Don and J.D. with draft for their review and input (.1); emails from and to D. Leffler regarding more edits (.2).	JEP	3.90
01/19/12	Emails from and to D. Leffler regarding additional edits (.1); further edits to brief and confirmation of case cites (4.7); email to C. Overstreet, et al. with brief (.1).	JEP	4.90
01/20/12	Email from M. Davidson with brief (.1); review NLRB's brief (.6); email NLRB brief to Don and J.D. (.1 - no charge).	JEP	0.70

**FEE SUMMARY:**

ID	Name	Hours	Rate	Amount
DBK	David B. Kern	0.30	480.00	144.00
JEP	Jon E. Pettibone	38.30	475.00	18,192.50
NANDERSO	Nicholas O. Anderson	17.00	225.00	3,825.00
Total		55.60		22,161.50

Total Fees: \$ 22,161.50

**DISBURSEMENTS:**

01/05/12	IntelliQuick Delivery Don Leffler - 12/8/11	\$	56.25
01/05/12	IntelliQuick Delivery NLRB - 12/9/11		11.25
01/05/12	IntelliQuick Delivery Process Serve - Teamsters Local 104		67.00
01/10/12	IntelliQuick Delivery National Labor Board - 12/12/11		28.13
01/13/12	Pettibone, Jon 13-15 Dec 2011 Argie Reporting Service - Hearing Transcript - minuscrypt and disk		1,019.13

Redburn Tire Company  
RE: Local 104 Bargaining and 8(a)3 Charge  
Q & B Matter Number: 790608.00004

February 06, 2012  
Invoice Number: 1725620  
Page 4

Copy charges

1.20

Total Disbursements:

\$ 1,182.96

Total Fees and Disbursements:

\$ 23,344.46

Redburn Tire Company  
RE: Local 104 Bargaining and 8(a)3 Charge  
Q & B Matter Number: 790608.00004

April 06, 2012  
Invoice Number: 1739909  
Page 3

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
02/07/12	Email to D. Leffler and J. D. Chastain regarding new impasse case (.1); review new impasse case (.2).	JEP	0.30

**FEE SUMMARY:**

ID	Name	Hours	Rate	Amount
JEP	Jon E. Pettibone	0.30	475.00	142.50
Total		0.30		142.50

Total Fees: \$ 142.50

Redburn Tire Company  
RE: Local 104 Bargaining and 8(a)3 Charge  
Q & B Matter Number: 790608.00004

May 10, 2012  
Invoice Number: 1749310  
Page 2

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
04/12/12	Review rules for appeal (.1); email to D. Leffler and J.D. Chastain regarding same (.1).	JEP	0.20

**FEE SUMMARY:**

<u>ID</u>	<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
JEP	Jon E. Pettibone	0.20	475.00	95.00
Total		0.20		95.00

Total Fees: \$ 95.00

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
05/21/12	Emails from and to D. Leffler regarding appeal (.1); email from NLRB regarding appeal (.1); email to D. Leffler and J.D. Chastain regarding same (.1).	JEP	0.30
05/22/12	Review regulations for time to respond to NLRB appeal (.1); email to Don and J.D. regarding same (.1); review Region 28 appeal (.6).	JEP	0.80
05/23/12	Assemble materials for response to appeal.	JEP	0.20
05/24/12	Begin work on response to appeal.	JEP	1.10
05/25/12	Continue work on response to appeal.	JEP	0.90
05/28/12	Draft responsive brief.	JEP	6.00
05/29/12	Review some of the cases cited by Region 28 (.3); further work on response brief (2.1).	JEP	2.40
05/30/12	Review rules regarding electronic service of certain documents (.1); work on answering brief (1.3).	JEP	1.40
05/31/12	Search hearing transcripts for any references to worker receiving employee only medical benefits without check deductions.	SSMITH	0.90
05/31/12	Continue to edit answering brief (1.8); review more cases cited in Region 28's brief (.7).	JEP	2.50

**FEE SUMMARY:**

ID	Name	Hours	Rate	Amount
JEP	Jon E. Pettibone	15.60	475.00	7,410.00
SSMITH	Sandra Smith	0.90	215.00	193.50
Total		16.50		7,603.50

Total Fees: \$ 7,603.50

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
06/01/12	Edit draft brief (.8); email draft to Don & J. D. (.1); two emails from NLRB regarding our brief (.1).	JEP	0.90
06/18/12	Two emails from NLRB regarding its reply brief (.1); review reply brief (.3); email same to Redburn (.1).	JEP	0.50
06/19/12	Emails from and to D. Leffler regarding procedure on briefing.	JEP	0.10

**FEE SUMMARY:**

ID	Name	Hours	Rate	Amount
JEP	Jon E. Pettibone	1.50	475.00	712.50
Total		1.50		712.50

Total Fees: \$ 712.50

Redburn Tire Company  
RE: Local 104 Strike Misconduct Allegations ULP 28-CA-61437  
Q & B Matter Number: 790608.00005

September 07, 2012  
Invoice Number: 1778350  
Page 2

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
08/31/12	Review Board decision (.1); e-mail to D. Leffler and J. D. Chastain regarding same (.1); confer with D. Leffler regarding same (.2).	JEP	0.40

**FEE SUMMARY:**

ID	Name	Hours	Rate	Amount
JEP	Jon E. Pettibone	0.40	475.00	190.00
Total		0.40		190.00

Total Fees: \$ 190.00

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
09/04/12	Research procedural requirements under the Equal Access to Justice Act to determine strategy for filing Motion for Attorneys' fees.	RROBERTS	1.50
09/04/12	Emails to and from R. Robertson regarding attorneys fees application (.1); confer with R. Robertson regarding same (.2).	JEP	0.30
09/05/12	Continue researching procedural requirements under the Equal Access to Justice Act to determine strategy for filing Motion for Attorneys' fees.	RROBERTS	2.00
09/06/12	Continue researching procedural requirements under the Equal Access to Justice Act to determine strategy for filing Motion for Attorneys' fees.	RROBERTS	1.40
09/07/12	Continue researching procedural requirements of Equal Access to Justice Act to assist in determining strategy for filing Application for Fees (1.7); confer with Jon Pettibone regarding same (.2).	RROBERTS	1.90
09/07/12	Email from R. Robertson regarding application for attorneys' fees (.2); email to Don and J.D. regarding same (.2); multiple emails from and to D. Leffler regarding if Region contests fee application (.2); confer with R. Robertson regarding green light from client and structure of application (.1).	JEP	0.70
09/10/12	Confer with Jon Pettibone regarding strategy for Application for fees and costs under the Equal Access to Justice Act (.5); begin drafting same (.8).	RROBERTS	1.30
09/10/12	Meet with R. Robertson and discuss arguments to be made regarding key allegations of complaint (.4); email to V. Bucher regarding billing information for R. Robertson (.1).	JEP	0.50
09/11/12	Continue drafting Application for fees and costs pursuant to Equal Access to Justice Act.	RROBERTS	2.20
09/12/12	Continue preparing Application for Fees and Costs.	RROBERTS	5.20
09/13/12	Continue drafting Application for Attorneys' fees.	RROBERTS	3.30
09/14/12	Continue drafting Application for Attorneys' fees.	RROBERTS	3.00
09/14/12	Confer with R. Robertson regarding NLRB limitation on EAJA cap (.1); email to D. Leffler and J.D. Chastain regarding same (.1).	JEP	0.20
09/17/12	Continue drafting Application for fees.	RROBERTS	3.50

<i>Date</i>	<i>Description</i>	<i>Professional</i>	<i>Hours</i>
09/17/12	Email from R. Robertson regarding information needed for EAJA claim (.1); confer with R. Robertson regarding same and format, affidavits, filing requirements, etc. (.3); email to D. Leffler and J.D. Chastain regarding same (.1); telephone call from D. Leffler regarding submission under EAJA (.2).	JEP	0.70
09/18/12	Continue drafting Application for Attorneys' fees.	RROBERTS	5.70
09/19/12	Continue drafting Application for Attorneys' fees.	RROBERTS	5.90
09/19/12	Email from R. Robertson with draft application for fees.	JEP	0.10
09/20/12	Review and edit draft application for attorneys fees (.6); confer with R. Robertson regarding same (.1).	JEP	0.70
09/20/12	Review invoices to determine amount of attorneys' fees to request in Application.	RROBERTS	1.40
09/24/12	Revise Application for Attorneys Fees and continue reviewing invoices to determine amounts to include in Application.	RROBERTS	4.10
09/24/12	Email from R. Robertson regarding one evidentiary point (.1); confer with her regarding same (.1).	JEP	0.20
09/25/12	Finish drafting Application for Attorneys Fees and reviewing invoices to attach to same.	RROBERTS	5.00
09/26/12	Emails from D. Leffler and to R. Robertson regarding number of vacancies filled (.1).	JEP	0.10
09/26/12	Review NLRB regulations and style manual to assure exhibits are properly verified.	RROBERTS	0.70
09/27/12	Finish drafting Application for Attorneys' Fees and Expenses and verification to file with Application.	RROBERTS	2.00

**FEE SUMMARY:**

ID	Name	Hours	Rate	Amount
JEP	Jon E. Pettibone	3.50	475.00	1,662.50
RROBERTS	Rachel L. Robertson	50.10	250.00	12,525.00
Total		53.60		14,187.50

Total Fees: \$ 14,187.50

Redburn Tire Company  
RE: Local 104 Bargaining and 8(a)3 Charge  
Q & B Matter Number: 790608.00004

September 28, 2012  
Invoice Number: \*\*\*\*\*  
Page 4

**DISBURSEMENTS:**

09/12/12	Westlaw and Lexis charges	\$	277.20
	Copy charges		2.00
	Total Disbursements:	\$	<u>279.20</u>
	Total Fees and Disbursements:	\$	<u>14,466.70</u>