

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

AMERICOLD LOGISTICS, LLC,

Employer,

and

Case No. 25-RD-102210

KAREN COX,

Petitioner,

and

RETAIL, WHOLESALE AND DEPARTMENT  
STORE UNION, UFCW, LOCAL 578,

Intervenor.

**PETITIONER'S REQUEST FOR REVIEW<sup>1</sup>**

On April 8, 2013, a petition for a decertification election was filed with Subregion thirty-three of the National Labor Relations Board (“NLRB”), by petitioner Karen Cox. The petition requests that an election be conducted at the Americold Logistics, LLC (“Employer”) facilities in Rochelle, Illinois, to determine if the Retail, Wholesale and Department Store Union, Local 578 (“UFCW” or “Union”) has the support of a majority of employees. On May 24, 2013, Regional

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<sup>1</sup> By filing this Request for Review, Petitioner does not concede that the NLRB, as currently constituted, has a lawful quorum to decide this case. To the contrary, Petitioner specifically asserts that the current Board has no lawful quorum and therefore no statutory or constitutional power to rule on this Request for Review, and that Members Block and Griffin must step aside and recuse themselves from ruling on this case. This is so because President Obama’s January 4, 2012 “recess appointments” of three NLRB Members were unconstitutional, *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013), and the NLRB has lacked a lawful and valid quorum of Members since August 27, 2011. *NLRB v. New Vista Nursing & Rehab.*, \_\_\_ F.3d \_\_\_, 2013 WL 2099742 (3d Cir. May 16, 2013). See also *New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635 (2010); 29 U.S.C. § 153(b) (establishing the three member quorum requirement).

Director Rik Lineback dismissed the election petition pursuant to the “voluntary recognition bar,” finding the Union had not been given a reasonable opportunity to bargain. Pursuant to §102.67 of the NLRB Rules and Regulations, Petitioner hereby submits this Request for Review. The Region erred in dismissing the petition and in denying employees their free choice under Sections 7 and 9 of the Act because the record clearly demonstrates the Union has been given sufficient time to bargain.

### **INTRODUCTION**

The sole issue in this case is whether the Union has met its burden of proof to demonstrate that employee free choice should be set aside in favor of extending the Union’s incumbency via the voluntary recognition bar.

In *Lee Lumber and Building Material Corp.*, 334 NLRB 399 (2001), the Board announced a five factor test the Union must demonstrate as to whether the recognition bar should be extended after an employer withdraws recognition on the basis of an employee petition indicating the Union has lost majority support. The Board extended this multifactor test to decertification elections following voluntary recognitions in *Lamons Gasket Co.*, 357 NLRB No. 72, \*14 (2011).

The five factors are: (1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated of the parties’ bargaining process; (3) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at an impasse. *Lee Lumber*, 334 NLRB at 402. These factors seek to answer the question of whether the Union has had an opportunity to “prove its mettle in negotiations, so that when its representative status is questioned, the employees can make an

informed choice.” *Id.* at \*9. While the Region found the issues and procedures presented in bargaining were not complex, the Region erred in finding the Union had met its burden of proof that the other four *Lee Lumber* factors weighed in favor of extending the recognition bar. Specifically, the Region erred in considering: (1) the amount of time elapsed since voluntary recognition and the number of bargaining sessions; and (2) the amount of progress made in negotiations. The Board should find a reasonable time period has passed and immediately direct an election due to the large amount of time since voluntary recognition, the number of bargaining sessions, and the fact that the parties are not close to an agreement.

### **STATEMENT OF FACTS**

The Employer owns and operates two facilities in Rochelle, Illinois. The bargaining unit contains 109 employees. The two facilities are located roughly a half-mile apart on Americold Drive (“Americold Drive Facility”) and Caron Road (“Caron Road Facility”). Each facility is engaged in the warehousing and distribution of refrigerated and non-refrigerated products. The Employer employs more than sixty workers at the Caron Road Facility and more than forty workers at the Americold Drive Facility. The Caron Road Facility has six different shifts for workers, while the Americold Drive Facility has three different shifts. Tr. 36:24-25.

On June 7, 2012, the Employer and Union held a “card count” to determine if the union represented a majority of employees in the two facilities. The Employer and the Union signed a recognition agreement voluntarily recognizing the Union as the bargaining representative on June 15 and June 18, 2012.

At this point in bargaining an obligation attaches to the employer to bargain and normally the parties would begin negotiating a contract. However, post-recognition, the Union began a lengthy, drawn-out process of organizing and collecting information. First, the Union attempted

to elect stewards. However, due to poor organization and communication, and despite having access to employee addresses and bulletin boards in the workplace, it took the Union two separate meetings to elect stewards. Tr. 40:15-21-41:14-19. Over the course of four months, the Union held four meetings with employees in order to seek input on what should be in the contract. Tr. 106:4-8. Mr. Williams, the Union's witness, could not identify when these meetings took place over the course of four months and did not discuss the content of the meetings. Tr. 106:9-25. Given the size of the bargaining unit, and its familiarity with the bargaining process, the Union could have accomplished this pre-negotiation planning with one meeting or two at most. But it took the Union until July 30, 2012, more than seven weeks post-card check, to request information in preparation for contract negotiations with the Employer. Even after the Employer provided a timely response to this request on August 16, 2012, the Union did not feel ready to go to the bargaining table until "mid-September." Tr. 48:9-10. As the record demonstrates, there was no refusal of the Employer to meet with the Union prior to October 9, 2012. Tr. 99:2-5; 157:21-23.

Since October 9, 2012, the Employer and the Union have met a total of fourteen times. Tr. 71:10-25. On the first day of bargaining, the Employer presented the Union with a model agreement to serve as a "guidance and guidelines to get the bargaining process going." Tr. 141:16-17. The model agreement has served as the foundation for the negotiations, with both Union and Employer witnesses acknowledging that only "tweaks" have been made to the agreement. Tr. 77:23; 157:13. Between October 9, 2012 and March 6, 2013, the parties came to agreement on a number of different proposals in the negotiations. Union Ex. 5. Currently, the parties have several issues pending for negotiations. Union Ex. 5. These remaining issues are

significant economic issues, including: wages, health insurance, benefits, and production incentives.

For the first two-months negotiations progressed, with the parties meeting six times in October and November. The Union's Business Agent and witness testified that during this period negotiations were concerned with issues regarding seniority in layoffs, recall, overtime, and grievance and arbitration, as well as the management rights provision of the contract. However, these provisions do not seem to have been heavily modified from the model agreement, but only "tweaked" by the parties. The Union claimed the "management rights clause," complicated negotiations and that the employer fell on its sword over this provision. Tr. 77:22-78:13. However, the Employer provided testimony the management rights provision remained unchanged from its initial proposal. Tr. 156:14-157:2; 164:25-165:6.

The parties did not meet in December, January, and February. The Employer testified the parties had agreed not to meet in December due to the holidays, scheduling conflicts, and mutual unavailability. *See* Tr. 147:5-8; 153:2-8. Due to a family medical situation, the Employer's negotiators were unable to meet at planned dates in January and February. Tr. 152:2-6.

After this period, the Employer brought in Mr. Hutchison to try and "wrap-up" negotiations. Tr. 154:3-4. Accordingly, parties met six times in March and two times in April. By the end of the negotiations on March 13, the parties had agreed on almost all of the non-economic terms of the contract and had started negotiations on economic terms. It was at this time that the Union requested additional information from the Employer concerning its employee plus-one health insurance policy, which the Union "overlooked" in receiving. The Union did not review the information provided by the Employer until April 16, 2013.

Other than the 401(k) provision, all of the other economic provisions of the contract are still being considered, including wages, vacation, medical insurance, dental insurance, short and long term disability insurance, and life insurance. Additionally, the Union has raised the issue of having a defined benefit plan in verbal conversations with the Employer. Tr. 144:8-17. At the hearing, the Union's witness alleged that the Union gave the Employer a wage proposal during the April 16, 2013 bargaining session. However, on cross examination, the Union's witness admitted that the "wage proposal" was, in essence, a blank sheet of paper, providing no percentage increases or new proposed wage scales. Tr. 68:19-21; 86:1-16; *see also* Tr. 145:6-10.

On April 8, 2013, the Petitioner filed the petition in this case. Since the first negotiation meeting occurred on October 9, 2012, the petition was filed one day short of six months after negotiations commenced. However, Petitioner originally filed a decertification petition in Case 25-RD-093419 on November 19, 2012. In its dismissal, the Region stated the parties began bargaining on October 8, 2012. Based on that information, Petitioner filed her decertification petition six months from the date she believed bargaining began.

### **ARGUMENT**

In *Lee Lumber*, the Board announced after a voluntary recognition the union and the employer are subject to a six-month insulated bargaining period. *Lee Lumber*, 334 NLRB at 405. A party looking to extend the recognition bar beyond the initial six-months has the burden of proof to demonstrate there has not been a reasonable time to bargain. *Lamons Gasket*, at \*14 ("In determining whether a reasonable period has elapsed in a given case, we will... impose the burden of proof on the General Counsel to show that further bargaining should be required.").

The Board should be cautious in upholding any extensions of the recognition bar. This is because extending the recognition bar directly contravenes the Act's express provisions in Section 7 protecting employee free choice as to whether to be represented. "One of the

fundamental rights under the Act which the Board is charged with protecting is employees' right to choose their bargaining representative, as well as the 'right to refrain' from collective bargaining." *Peoples Gas Sys., Inc. v. NLRB*, 629 F.2d 35, 45 (D.C. Cir. 1980). Thus, requests to extend the recognition bar warrant restraint and deliberation. Extension of the recognition bar forecloses, for a significant period, the employees' exercise of their Section 7 right to have an election in order to reject Union representation.

The party looking to extend the six-month bargaining period must demonstrate the union and employer have not been given a reasonable time period under a five-factor test. These factors are: (1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated and of the parties' bargaining processes; (3) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at impasse. *Lee Lumber*, 334 NLRB at 402. These five factors must be considered together, and none is dispositive individually or necessarily entitled to special weight. *Id.* at 405. Ultimately, the "issue is whether the Union has had enough time to prove its mettle in negotiations, so that when its representative status is questioned, the employees can make an informed choice." *Id.* Here, the Region found that while the issues being discussed by the parties were not complex, the other factors weighed in favor of extending the voluntary recognition bar. *See* Regional Director Decision and Order, \*7.

Considering the factors together, the Board should not uphold the Region's decision to extend the voluntary recognition bar. Ten months have passed since voluntary recognition and six months from the start of bargaining. The parties have held a large number of bargaining sessions, and while the parties have reached agreement on a vast number of issues, the parties are

not close to agreement on the heart of the contract: wages, health-insurance, benefits, and incentives.

The Region placed undue weight on the fact that the parties did not meet for three months and attributed this delay to the Employer. The Region overlooked conflicting testimony provided by the Employer's witness that the parties had agreed not to meet in December as well as the fact that bargaining did not commence until four months after voluntary recognition. This four-month delay in beginning negotiations, brought about by the Union's foot-dragging, suggests the Board should consider this to be a petition filed closer to the twelve-month bar. Finally, the Region misapplied the *Lee Lumber* proximity standard, ignoring that the parties were not close to an agreement. Accordingly, the Union has not met its burden of proof to extend the voluntary recognition bar and an election should be held.

**I. THE LARGE NUMBER OF BARGAINING SESSIONS AND TIME PASSED SINCE VOLUNTARY RECOGNITION WEIGH IN FAVOR OF THE BOARD DIRECTING AN ELECTION.**

*Lee Lumber* states that the “more time that has elapsed since the parties began to bargain, and the more negotiating sessions they have engaged in, the more opportunity they have to reach a contract, and vice-versa.” *Lee Lumber*, 334 NLRB at 404.

In *Lee Lumber*, the Board found that five bargaining sessions over the course of two months were not a sufficient number of negotiations. *Id.* at 406. Additionally, the Board has found three meetings over the period of five months insufficient. *Town & Country Plumbing & Heating, Inc.*, 352 NLRB 1212 (2008). In *Am. Golf Corp.*, 355 NLRB No. 42, \*3 (2010), the Board found six to eight meetings over a six-month period weighed in favor of extending the recognition bar. In contrast, the Board has found that sixteen bargaining sessions over a little

less than six months weighed in favor of holding an election. *Lagrasso Bros., Inc.*, 2012 NLRB Reg. Dir. Dec., Case No. 07-RD-087446, at \*3 (Sept. 26, 2012).

**A. THE SUBSTANTIAL NUMBER OF BARGAINING SESSIONS WEIGHS IN FAVOR OF HOLDING AN ELECTION.**

The parties have meet in negotiations fourteen separate times. Over the course of bargaining the parties met on October 9, 10, 11; November 27, 28, and 29; March 4, 5, 6, 11, 12, 13; April 9 and 16. These bargaining sessions were all-day affairs, with the parties meeting in the morning and not adjourning until early afternoon or evening. The Region even noted the amount of meetings was not “inconsequential.” Regional Director, Decision and Order, \*7. The number and depth of the bargaining sessions here weigh in favor of holding the election.

**B. THE BOARD SHOULD ORDER AN ELECTION BECAUSE THE REGION DID NOT PROPERLY CONSIDER THE FOUR-MONTH DELAY FROM VOLUNTARY RECOGNITION TO BARGAINING.**

In its dismissal of the election petition, the Region found that despite fourteen bargaining sessions between the parties: (1) the four months between voluntary recognition and the start of negotiations weighed in favor of extending the recognition bar; and (2) the hiatus in negotiations meant that a reasonable time period had not passed. Regional Director, Decision and Order, \*7. In reliance on this conclusion, the Region cites *Lamons Gasket* admonition of *Dana Corp.*, 351 NLRB 434 (2007), that a delay in bargaining “undermines the ‘nascent relationship between the employer and the lawfully recognized union.’” *Lamons Gasket*, at slip op. \*13 (citing *Smith’s Food & Drug Centers, Inc.*, 320 NLRB 844, 845-846 (1996)).

The Region’s reasoning borders on the absurd because the Board in *Lamons Gasket* was specifically referring to delays at the start of bargaining post-voluntary recognition. The Board in *Lamons Gasket* was overruling *Dana* in order to bring the parties to the table immediately

after voluntary recognition. The Board in *Dana* modified the recognition bar in order to balance free choice and stability in bargaining relationships. *Id.* at \*13. This balance allowed employees a 45-day “window period” after voluntary recognition during which employees could file a decertification petition supported by a 30-percent showing of interest. In order to start the running of the 45-day window period after voluntary recognition, an employer had to post an official Board notice informing employees of their right to seek an election. *Id.* at \*1. The Board subsequently reversed course and overruled *Dana*, in part, because the likelihood that such a period would cause at least a two-month delay in beginning negotiations. *Id.* at \*13. Indeed, the whole quote in context shows the Board was uniquely concerned about delaying bargaining immediately after voluntary recognition – the precise kind of delay engaged in by the Union here:

Yet *Dana* virtually guarantees such a delay in serious bargaining and the resulting undermining of the “nascent relationship between the employer and the lawfully recognized union.” *Smith's Food*, supra, 320 NLRB at 845-846. The lengthy period of uncertainty created by *Dana* thus unnecessarily interferes with the bargaining process, rendering successful collective bargaining less likely.

*Id.* Additionally, the Board noted these post-voluntary recognition delays would undermine employee free choice, as employees who support the Union do so because they want “meaningful representation as soon as practicable.” *Id.* It is an odd result to overrule *Dana* on the basis that a possible sixty-day delay in bargaining undermines representation, while allowing the Union to drag its feet to the bargaining table for four months on the basis that such a delay actually enhances the Union’s representative abilities.

Given the context of *Lamons Gasket* seeking to encourage serious bargaining immediately after voluntary recognition, the Board should take into consideration the four months between the voluntary recognition and the start of bargaining, and the reasons for the

delay, i.e., union foot dragging. *See also Am. Golf Corp.*, 350 NLRB 264 (2007) (finding earlier negotiations relevant to determining whether recognition bar should be extended), *rev'd*, *Laborers Int'l. Union of North Am., Local 872 v. NLRB*, 323 F. App'x 523 (9th Cir. 2009) (reversed Board on the basis that proof of prior bargaining lacked evidentiary support). The bargaining unit was voluntarily recognized ten months prior to the petition. The four-month period between recognition and bargaining were supposedly used by the Union to collect information, elect stewards, and engage employees in the bargaining unit. Through its own disorganization and inability to contact members of the bargaining unit, it took the Union multiple efforts to elect stewards, extending the time period between recognition and negotiations. The Region claims the Union held six meetings with employees to gather input, but this may be factually incorrect. While the Union's witness initially claimed to have held six meetings, he later stated the Union only held four such meetings. Tr. 42:11-13; 106:6-8. In addition, the evidence presented on these meetings was vague and the Union's witness was evasive and would not definitively state when these meetings were actually held. Tr. 106:9-25-107:1-2. Moreover, given the relatively small size and uncomplicated issues in the bargaining unit, one meeting with employees, or two different meetings within the same week, would have sufficed.

The Region states the record shows the Union first requested to bargain sometime in August or September, and the Employer rejected these proposed dates and stated it was not available until October. Regional Director, Decision and Order, \*7. However, the Union's witness gave conflicting and inconsistent testimony on this point. First, the Union's witness claimed there were no bargaining dates set in September because the Employer could not be scheduled until October. Tr. 48:11-15. The Union's witness later admitted that he did not recall

when the Union first requested to begin negotiations, and the Employer never rejected a first request to bargain, nor stated it was unavailable to begin negotiations until October. Tr. 98:23; 99:2-5; *see also* Tr. 157:21-23.

Despite the enormous and excessive amount of pre-planning for negotiations, the Union appears to have been unprepared. After six months of bargaining, it still has not presented proposals on items such as wages, short-term disability, long-term disability, and it took the Union almost five months to even begin discussing health care. The Union should not be able to extend the recognition bar by dragging its feet and putting off negotiations under the guise of “better planning” and then claim it has not had a reasonable time to negotiate when, deep into negotiations, it have not even begun to offer proposals on key contract terms.

Even seen in the best light, if the Union were using this time period for extensive planning, it would suggest the recognition bar should not be extended. Four months of planning should weigh in favor of holding the election, even at the six-month mark, as negotiations should have progressed at a quicker pace due to this planning. Since the Union presumably would have had more than enough time to understand concerns and collect information to develop extensive proposals for the bargaining table, the Region should find this factor weighing in favor of holding the election.

**C. THE BOARD SHOULD ORDER THE ELECTION  
BECAUSE THE REGION MISCHARACTERIZED THE  
LENGTH AND EFFECT OF THE HIATUS IN  
BARGAINING.**

The Region also found the hiatus in negotiations negatively affected the parties’ ability to make progress and warranted an extension of the recognition bar. Regional Director Decision and Order, \*7. However, the Region mischaracterizes the length and the significance of the delay in bargaining. First, the record is conflicted on why the parties did not meet during

December. While the Union claims the parties did not meet during the month of December because of the Employer's unavailability, the record contains conflicting testimony showing the parties mutually agreed not to meet. Tr. 147:5-8. Despite the Union's insistence that it was available "any day" in December, the conflicting testimony shows the Employer offered bargaining dates to the Union in December, but the Union was unavailable to meet during the proposed times. Tr. 48:20-22; 61:7; 102:25-103:2; 151:1-4.

While the Employer did cancel bargaining sessions in January and February due to a family illness, the parties met six times in the month of March, with the Employer's intention to wrap up negotiations. There is no evidence that it took the parties additional time to resume bargaining smoothly because of this delay. Based on the document created by the Union, the parties in March agreed to forty-seven different individual proposals on March 5, 6, and 13. Union Ex. 5. The amount of agreement during this time on a number of different individual proposals suggests the canceled sessions in January and February did not have a significant negative impact on the parties' bargaining.

As evidence of the significance of this gap, the Region claims the bargaining process suffered further delays because: (1) the Employer failed to provide the Union with information about the employee-plus-one insurance policy, and (2) the Union overlooked receiving the information, causing an additional delay. Regional Director Decision and Order, \*7. Again, the Region is mischaracterizing the record.

There is nothing in the record suggesting the Employer failed to provide the Union with adequate information. The record reflects that the Union made a request for information on July 30, 2012 and the Employer gave a timely response on August 16, 2012. The Union's witness did not know the content of the response, nor was the actual response to the request put into the

record. Tr. 85:16-22. At some point in March during the negotiations, additional information was requested by the Union and it appears there was significant correspondence between the parties. Tr. 64:17-25-65:1-14. The Union claimed there was a “lag” in receiving information from the Employer, but the testimony does not state that this was in any way a failure by the Employer to provide the Union with information about the employer-plus-one insurance policy. Tr. 65:21-25-66:1-18. It appears the “lag” turned out to be the Union’s own mistake, as it overlooked information provided by the Employer. The Union’s own mistakes should not serve as a valid reason to extend the recognition bar.

### **III. THE REGION SHOULD DECLINE TO EXTEND THE RECOGNITION BAR, AS THE PARTIES ARE NOT CLOSE TO A FINAL AGREEMENT.**

The Board has found progress in negotiations is a factor that can either weigh for or against holding an election. *Lee Lumber*, 334 NLRB at 404 (“Which way the factor cuts depends on the context.”). When the parties are on the verge of agreement and there is a strong possibility they will come to an agreement in the near future, that progress is evidence the recognition bar should be extended. *Id.* However, when the parties have made “substantial progress,” towards an agreement, but are not near reaching agreement, the Board has said that a reasonable time period has passed. The Board stated: “if the parties are still not close to reaching a contract after bargaining for 6 months or more (whether or not they have made progress), giving them *a bit* [emphasis added] more time for negotiations is unlikely to enable them to conclude an agreement.”

In finding this standard weighed in favor of extending the recognition bar, the Region claims: “although the parties are not close to an agreement, additional time in the context of this case may still facilitate an agreement.” Regional Director Decision and Order, \*8. The Region is misapplying the *Lee Lumber* standard. The standard is not whether additional time may

facilitate an agreement,<sup>2</sup> but whether the parties have made such substantial progress so as to be on the verge of agreement. Without evidence the parties have “almost” reached agreement, or that there is a “strong probability that they will do so in the near future” this factor weights in favor of holding the election.

Moreover, the cases cited in *Lee Lumber* show this factor is based how close the parties are to agreement, not whether more time may somehow facilitate an agreement. *Lee Lumber* cites *MacDonald, N. J. & Sons, Inc.*, 155 NLRB 67, 71 (1965), as an example where the parties had not been afforded a reasonable period to bargain. In *MacDonald*, the parties had agreed on all portions of the contract except wages and a union security provision, with a wage proposal being imminent. *Id.* The Board also pointed to *MGM Grand Hotel*, 329 NLRB at 465, where the recognition bar was extended because parties had reached a final agreement only days after the petition was filed. In *Top Job Building Maintenance Co.*, the Board found a reasonable time had not elapsed because the parties would likely have an agreement “in the near future.” 304 NLRB 902, 908 (1991).

Applying the standard properly in the present case, the parties have not “almost” reached an agreement, nor is there a “strong probability they will do so in the near future.” *Lee Lumber*, 334 NLRB at 404. The Region even admits that the record reflects the parties are not close to an agreement. Based on the document created by the Union’s representative, the parties have agreed upon 102 separate proposals in the contract, with eight outstanding issues to resolve.

Union Ex. 5. The pending issues the parties still need to resolve are:

1. Wages

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<sup>2</sup> If the standard was whether additional time may facilitate an agreement it would be no different than another *Lee Lumber* standard: the presence or absence of an impasse. Indeed, absent impasse, additional time may always facilitate an agreement. This is why the Board specifically confines the “proximity to agreement” standard to negotiations that are on the verge of agreement.

2. Health Insurance
3. Short-Term Disability, Long-Term Disability,
4. Dental Insurance
5. Vacations (3 sections; 3 sections have been resolved, not tentatively agreed to)
6. Term of Agreement
7. Production Standards & Incentives
8. Miscellaneous Proposals

On these critically important issues, the parties are not close to agreement, and either only beginning to exchange information, or have not made serious proposals. The Record demonstrates other than the initial model agreement, neither side has produced any proposals that actually contain a wage rate for the workers in Rochelle. Tr. 68:19-21; 86:1-16; *see also* Tr. 145:6-10. The parties did not begin discussing health insurance provisions until March, five months into the bargaining sessions. Tr. 88:12-13. The Union has not made proposals dealing with either short-term disability or long-term disability. Additionally, the parties have not reached an agreement on production standards and incentives, and have only traded separate proposals. Tr. 158:11-18. Recently, the Union has raised the issue of having a defined benefit plan in verbal conversations with the Employer; further suggesting the parties may still be bringing issues to the table and thus are not close to an agreement. Tr. 144:8-17.

While the Union representative testified he believed these issues should not take “long” to resolve, the only possible way they will be resolved is for one of the sides to capitulate its bargaining position. Tr. 124:2-11. As the Employer’s witness testified, even after proposals are exchanged, the Employer will run economic models to determine cost impact, and if the Union decides to negotiate over a defined pension benefit, the Employer believes that provision could

take add an extensive amount of time to the bargaining process. Accordingly, the record reflects negotiations could go on for an “extended amount of time” depending on the Union’s bargaining positions in subsequent meetings. Tr. 149: 22-25.

The Region itself admits in its decision that the parties are “not close to an agreement,” but wrongly states this factor weighs in favor of holding the election because additional time may help facilitate an agreement. Regional Director Decision and Order, \*8. Due to this misapplication, the Board should find the Region misapplied this standard, and hold this factor strongly weighs in favor of holding an election.

### CONCLUSION

Three of the *Lee Lumber* factors weigh strongly in favor of holding the election. Ten months after voluntary recognition, the parties have met face-to-face fourteen times for lengthy bargaining sessions, the negotiations have not dealt with complex issues or involved complex procedures, and the parties are not on the verge of agreement. With the free choice of the employees at stake, the Union has not met its burden of proving the recognition bar should be extended. For these reasons, the Petition should be processed and an election promptly scheduled amongst the Americold employees.

/s/ Aaron B. Solem

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document, described as the Petitioner's Post-Hearing Brief, was served on the parties via e-mail to:

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/S/ Aaron B. Solem

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# EXHIBIT A

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE  
SUBREGION THIRTY-THREE

AMERICOLD LOGISTICS, LLC.  
Employer,

and

25-RD-102210

KAREN COX  
Petitioner,

and

RETAIL, WHOLESALE AND DEPARTMENT  
STORE UNION, UFCW, LOCAL 578  
Intervenor

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on April 19 and 23, 2013, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine if a recognition bar precludes the processing of the petition.<sup>1</sup>

I. ISSUE

The Petitioner seeks a decertification election within a unit comprised of the approximately 109 individuals employed by the Employer in its two warehouse facilities in Rochelle, Illinois. The Petitioner and the Employer contend that a reasonable time to bargain has passed since the Employer voluntarily recognized the Intervenor, hereinafter called the Union, as the collective bargaining representative of the employees, and therefore, no recognition bar to an election exists. The Union contends that the petition should be dismissed because a reasonable

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<sup>1</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. No question affecting commerce exists concerning the representation of certain employees of the employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

time to bargain has not passed since the Employer voluntarily recognized it as the exclusive collective-bargaining agent of the employees based upon the factors set forth by the Board in *Lamons Gasket Company, a Division of Trimas Corporation*, 357 NLRB No. 72 (August 26, 2011) (citing *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001)).

## II. DECISION

For the reasons discussed in detail below, including the application of the *Lee Lumber* reasonable time for bargaining standard applied to voluntary recognition situations in *Lamons Gasket*, I find that a recognition bar to an election exists precluding the processing of the petition. First, the petition violated the bright-line rule that petitions will not be processed if filed within the six months following the first negotiation session. *Lamons Gasket* 357 NLRB at slip op. 10. The petition in this case was filed on April 8, 2013, one day before the expiration of the six month insulated period which began October 9, 2012. Furthermore, application of the *Lee Lumber* multifactor standard demonstrates in these circumstances that the Union was not given a reasonable time to bargain. The time for bargaining was significantly abbreviated by the Employer's unavailability for bargaining for a full three month period within those six months. The parties are negotiating for an initial contract with somewhat complex issues such as seniority rights in the two-facility unit and health care provisions. Both parties agreed that they were not at impasse. The parties made significant progress towards an agreement considering the absence of three months of negotiation time. The totality of these factors reveals that a reasonable time for bargaining following the Employer's voluntary recognition has not elapsed at the time the instant petition was filed. Therefore, I find that a recognition bar to an election existed at the time the petition was filed and it is dismissed.

## III. STATEMENT OF FACTS

The Employer operates over 100 food storage warehouses nation-wide including two located in Rochelle, Illinois. The Rochelle, Illinois warehouses are separated by approximately a half mile with one being located on Americold Drive and the other Caron Road. The Employer has operated the Americold Drive warehouse since at least 1993 and purchased the Caron Road warehouse in 2009. The Americold Drive warehouse is a perishable/cold food storage facility, and the Caron Road warehouse is a dry goods storage facility. Initially, the Caron Road employees received a higher hourly wage than the Americold Drive employees. At some point prior to 2012, the Employer increased the Americold Drive employees' wages to match that received by the Caron Road employees.

The Employer is party to approximately 60 collective-bargaining agreements but none with the Union. The Americold Drive warehouse employees were represented by the Teamsters for some period ending in 2004. The Union attempted to organize those employees in 2007 but lost the election. The Union attempted to organize both of the facilities in 2009 and again lost the election. The Union conducted another organizing drive during the first half of 2012 and filed a petition for election in May. The Employer agreed to a card check by a neutral party who found that the Union had valid authorization cards from 70 out of the 123 employees. The

parties signed a recognition agreement that went into effect on June 18, 2012 for the following bargaining unit (“Unit”):

All full-time and regular part-time warehouse employees, including warehouse employees, janitorial employees, and porter employees employed by the Employer, at its Rochelle, Illinois warehouses; but excluding office clerical employees, maintenance employees, customer service representatives, foremen, temporary employees, guards, and supervisors as defined in the Act.

As a result of the Employer’s voluntary recognition, the Union withdrew its petition for election.

The Union’s practice is to elect Union stewards and meet with the employees to determine their goals in collective-bargaining before initiating bargaining. This process was somewhat more difficult in this situation because the Americold Drive warehouse operates on three shifts while the Caron Road facility operates on six shifts. As a result of these various shifts and communication problems, the Union held two meetings to elect Union stewards and approximately six meetings to discuss collective-bargaining issues.

Thereafter, the Union submitted a lengthy information request to the Employer on July 30, 2012. The Employer fully responded on August 16, 2012, with the exception of a near 6 month delay in providing information concerning the employee-plus-one health insurance policy it offers employees. The Union’s Business Agent testified that the Union requested to bargain with the Employer in September 2012, but his testimony was vague and the record is unclear when that request was made. The Employer responded that it had no dates available in September to initiate bargaining.

The Employer and Union met for bargaining for the first time on October 9, 2012. During this first meeting the Employer presented a “model” contract proposal with wage rates set at the employees’ current rates. This model formed the foundation for bargaining. The parties met again on October 10 and 11, 2012. Because some participants were traveling significant distances, they usually scheduled bargaining for three consecutive days from about 9:00 A.M. to about 4:00 P.M. the first two days and then 9:00 A.M. to midday on the third day. The parties made some progress in reaching tentative agreements on non-economic language during their October meetings.

The parties met again on November 27, 28, and 29, 2012 and were able to tentatively agree on language provisions. The Union’s Business Agent testified that the Employer’s proposed clause regarding management rights was significantly different than such clauses in the Union’s other contracts, therefore, taking longer than usual to negotiate that provision. The Union’s Business Agent also testified that issues regarding seniority in layoffs, recall, overtime, etc. and the scheduling of employees to interchange between the two facilities took longer to negotiate than with one facility units, partially due to the vast differences in workloads between the two warehouses. The Employer representative involved in negotiations beginning in March characterized the negotiations as routine and not involving complex issues. However, he was not present during much of the negotiations on the issues described above.

After the November bargaining sessions, negotiations came to a halt for three months due to the Employer's unavailability. The Union requested to bargain in December and early January 2013 however, the Employer was unavailable until dates in the week of January 21, 2013. Thereafter, the Employer cancelled those bargaining dates due to the serious illness of a family member of the Employer's lead negotiator. The parties attempted to reschedule the negotiations for February 4-6, 2013, but the Employer informed the Union that it was unavailable for the entire month of February. Finally, the Employer brought in another person to act as lead negotiator due to the unavailability of their original lead negotiator. According to the Union, this change of negotiators slowed bargaining during the first few negotiation sessions in March, because the new negotiator lacked familiarity with the Rochelle warehouses and it took time for him to become familiar with the facilities and bargaining issues. The Employer does not indicate that the change in negotiators created any additional impediment to bargaining. The Employer switched back-and-forth between its two lead negotiators during the following negotiation sessions, but there is no evidence in the record that this hampered bargaining.

The parties' conducted bargaining sessions on March 4, 5, 6, 11, 12, 13, and 16, 2013. By the end of negotiations on March 16, the parties had tentatively agreed on virtually all the non-economic terms of the contract and started negotiations on economic terms. With regards to economic terms, the Union requested that the Employer consider its health and welfare benefits. The negotiations over the health and welfare benefits, were somewhat hampered by the fact that the Employer did not provide the Union with information about its employee-plus-one health insurance policy until March 2013. However, the Union overlooked receiving the information attached to the March email. As a result the Union did not review that information until the Employer provided it again on April 16, 2013. At the time of the hearing, the Employer was waiting for the Union to respond with cost information concerning the employee-plus-one health insurance Union provided benefit plan.

During the April 9 and 16, 2013 bargaining meetings, only one additional contract provision, the 401(k) provision, was orally agreed upon and needed to be signed off in writing at the next negotiation meeting. Other than the 401(k) provision all of the other economic provisions of the contract are still at issue including wage rates, vacation, medical insurance, dental insurance, short and long term disability insurance, and life insurance. The Union provided the Employer with a proposal informing the Employer that its wage proposal is dependent upon the health and welfare package offered by the Employer. The parties agreed to meet again for three days of bargaining during the week of May 6, 2013. Neither party asserts that they are at impasse and both the Union's negotiator and the Employer's negotiators testified that bargaining had progressed in a fairly smooth fashion.

On April 8, 2013, the Petitioner filed the petition in this case. Since the first negotiation meeting occurred on October 9, 2012, the petition was filed one day short of six months after negotiations commenced. This was the second decertification petition filed by the Petitioner. That petition in Case 25-RD-093419 was filed on November 19 and dismissed on November 31, 2012.<sup>2</sup>

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<sup>2</sup> Administrative notice is taken of the date the first RD petition was filed.

## IV. DISCUSSION

### A. The Law

As the Supreme Court recognized in *Franks Bros. Co. v. NLRB*, 321 U.S. 702, 705 (1944), “a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed.” Underlying that principal is the recognition that “a union should be given ample time for carrying out its mandate on behalf of its members, and should not be under exigent pressure to produce hot-house results or be turned out.” In *Lamons Gasket Co.*, 357 NLRB No. 72 (Aug. 26, 2011), the Board relied upon this rationale in holding that an Employer’s voluntary recognition bars an election for a reasonable period of time. The Board defined a reasonable period of bargaining to be “no less than 6 months after the parties’ first bargaining session and no more than 1 year.” *Lamons Gasket*, 357 NLRB at slip op. 10.<sup>3</sup>

In determining whether a reasonable period has elapsed, the Board applies a multifactor test that considers: (1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated and of the parties’ bargaining processes; (3) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at impasse. *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001). The Board held that these safeguards were necessary in order to allow the union to “test its mettle” in representing the employees.

The burden of proving that a reasonable period of time for bargaining has not elapsed rests with the Union because it is the party asserting the recognition bar. *See, e.g. UGL-UNICCO Service Company*, 357 NLRB No. 76, fn 31 (August 26, 2011) (the burden of proof will be on the party who invokes the “successor bar” to establish that a reasonable period of bargaining has not elapsed); *In re Coca-Cola Enterprises, Inc.*, 352 NLRB 1044, 1045 (2008) (citing *Roosevelt Memorial Park*, 187 NLRB 517 (1970)) (the burden of proving the existence of a contract bar rests upon the party asserting the doctrine).

### B. Application of the “Reasonable Period of Bargaining” Factors to this Case

The petition in this matter was filed one day short of the six months after bargaining was initiated. Although the petition does not meet the bright-line rule of being “no less than 6 months after the parties’ first bargaining session,” it was filed only one day short of that time frame. Therefore, the Board’s multifactor test to determine if a reasonable period of time for bargaining has elapsed will also be considered.

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<sup>3</sup> The Board notes in *Lamons Gasket* that it was not making “changes to established law regarding secret-ballot elections” and that “an election remains the only way for a union to obtain Board certification and its attendant benefits” including a 12-month bar to election petitions under Section 9(c)(3). *Id.* at slip op. 10.

## 1. Bargaining for an Initial Contract

As noted above, this is a voluntary recognition case; therefore, the parties are bargaining an initial contract. This factor often weighs against a finding that a reasonable period of time has elapsed because bargaining for an initial contract often involves “special problems,” including establishing basic bargaining procedures and difficulties in “hammering out fundamental procedures, rights, wage scales, and benefit plans in the absence of previously established practices.” *Lee Lumber*, 334 NLRB at 403.

The Union presented evidence to support a finding that the parties’ new relationship had impacted bargaining. The Union’s Business Agent testified that the Union’s unfamiliarity with the type of management rights clause that the Employer contends is “model” language from its other contracts resulted in a significant amount of time spent negotiating over this language. Also, the Union noted that the practice of having six shifts in one facility and three in the other facility caused difficulty in negotiating issues such as how seniority would affect selection for layoffs, overtime, etc. There is also evidence that additional time has been taken to negotiate benefit plans because the Union is presenting its benefit plans to the Employer for the first time. This process was delayed first by the Employer inadvertently failing to provide the Union with information about its employee-plus-one dependent insurance plan for at least seven months. Once the Employer provided the information, the Union apparently overlooked receiving this information that was attached to an email for nearly a month. These delays in negotiation, caused mostly by lack of familiarity between the parties, serve as examples of the kind of difficulties the Board was attempting to account for in considering whether the parties were negotiating for a first contract. Even though the Union’s evidence is not overwhelming, it does tip slightly in favor of the Union’s position as to this factor.

## 2. Complexity of the Issues and Bargaining Process

The Employer and Petitioner characterize the bargaining in the instant case as involving traditional issues and bargaining procedures. In contrast, both parties point to *MGM Grand Hotel*, 329 NLRB 464(1999) as an example of what the Board considers to be complex issues and processes. In that case the Board found that a reasonable period had not elapsed in part due to the innovative, complex and time-consuming approach to bargaining. The union in that case formed committees and subcommittees of both union representatives and employees to study and evaluate each aspect of the contract. Additionally, the unit was comprised of 3100 employees in over 53 classifications at a hotel, casino and several restaurants.

The Union, however, argues to the contrary and presented some evidence that negotiations dealt with complex issues. These issues included how to deal with interaction of seniority rights between the two facilities and how those rights affected employees’ layoff, recall, and overtime rights under the contract proposals. The Union also contended that the Employer’s proposed clause regarding management rights consumed a considerable amount of bargaining time because the Union was unfamiliar with the language proposed by the Employer. Finally, the Union contends that the health and welfare provisions are complex because the Union is attempting to compare what it can offer to what the Employer offers. Additionally, the effects of the Affordable Care Act on the Employer are not fully understood by the parties. The

Union's evidence concerning how the complexity of these issues extended bargaining, however, was vague.

It does not appear that the parties were facing unusually complex issues or had adopted complicated approaches to bargaining. However, this factor is outweighed by the other factors, including the actual time spent bargaining and availability of the parties, discussed below.

### 3. Passage of Time and Number of Bargaining Sessions

The Employer and Petitioner contend that the nearly four months between when the Employer recognized the Union and the first day of negotiations should be counted against the Union in determining if a reasonable period of time for negotiations has passed. The Union presented evidence that it took longer than usual for the Union to establish its bargaining committee and strategies because the Unit involves two facilities where one facility works on six shifts and the other on three shifts. This caused communication problems which resulted in the Union having to hold two meetings to elect Union stewards. Also, it is the Union's practice to meet with the employees to gather their input on contract negotiations. Because of the different shifts at the two facilities, the Union conducted six meetings to gather that input. The Union then submitted a comprehensive request for information to the Employer on July 30, 2012, and received a timely response from the Employer on August 16, 2012. Shortly thereafter the Union requested bargaining dates in September but the Employer was not available until October. Therefore, the evidence reveals that it was only a little over two months between recognition and the Union's request to bargain. Because of the new relationship between the Union and the employees as well as between the Union and the Employer, the time the Union took to initiate bargaining should not alter the standard applied in *Lamons Gasket* extending the recognition bar for "no less than 6 months after the parties' first bargaining session."

The Union points to the Employer's unavailability to meet for three months during the six month period initiated by the first negotiating meeting as a substantial factor in preventing the parties from having a reasonable time to bargain. The parties negotiated only six times prior to the three-month hiatus. After the hiatus they only met for six more bargaining sessions before the petition was filed on April 8, 2013. The parties bargained on two more occasions prior to the hearing. Although the number of times that the parties bargained is not inconsequential, the three-month gap in negotiations negatively affected the parties' ability to make progress in negotiations. For example, it was not until sometime during the March meetings that the parties realized that the Employer failed to provide the Union with information about the employee-plus-one insurance policy. That information was necessary for the Union to present a complete proposal on health benefits. The Union then overlooked receiving the information causing some additional delay. Such inadvertent delays could have been better absorbed if three months had not passed without a single bargaining session.

In *Lamons Gasket*, the Board noted that lengthy delays in bargaining results in the "undermining of the 'nascent relationship between the employer and the lawfully recognized union.'" *Supra*, at slip op. 10 (citing *Smith's Food & Drug Centers, Inc.*, 320 NLRB 844, 845-846 (1996)). Thus, the Employers unavailability for more than 90 days had, in these circumstances, a significant negative impact on the parties' bargaining. This lengthy

unavailability during a critical time for bargaining supports the Union's position that a reasonable time to bargain has not elapsed.

#### 4. Extent of Progress Made in Negotiations

In weighing the extent of progress in negotiations, the context of the parties' negotiations must be considered. *Lee Lumber*, 334 NLRB at 404. Thus, if the parties have engaged in a significant amount of bargaining over a six month period and are still not close to an agreement, additional time is unlikely to allow them to reach an agreement. Conversely, the closer the parties are to reaching a contract the more likely additional time will allow them to do so. *Id.* In the instant case, the parties agreed to most of the non-economic terms during their negotiations in March. The parties had just turned their full attention to economic proposals when the petition was filed on April 8, 2013. It is impossible to tell what would have occurred had the parties negotiated during the three months the Employer was unavailable. Although the parties are not close to an agreement, additional time in the context of this case still may facilitate an agreement.

#### 5. Presence or Absence of Impasse

The Employer and Union both assert that there is no impasse. The absence of impasse generally weighs against a finding that a reasonable time has elapsed because "there is still hope that [the parties] can reach agreement." *Lee Lumber*, 334 NLRB at 404.

#### C. Conclusion

No one factor in the *Lee Lumber* standard is dispositive or entitled to special weight. Ultimately, "the issue is whether the union has had enough time to prove its mettle in negotiations, so that when its representative status is questioned, the employees can make an informed choice." *Lee Lumber*, 334 NLRB at 405. Based on the evidence in the record and as explained above, I find that overall the factors weigh in favor of finding that the Union did not have a reasonable period of time to "prove its mettle" such that the employees could make an informed choice. Therefore, based on the *Lee Lumber* factors and the fact that the petition was technically filed within the six month period from the initiation of bargaining, I conclude that the recognition bar doctrine, as defined in *Lamons Gasket*, bars an election in this proceeding.

#### V. ORDER

Accordingly, the petition for an election amongst the employees represented by the Union and employed by the Employer at its Rochelle, Illinois warehouse facilities, is barred by the Employer's voluntary recognition of the Union and therefore, the petition is hereby dismissed.

## VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001.

*Procedures for Filing a Request for Review:* Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business **June 6, 2013**, at 5:00 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.<sup>4</sup> A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other

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<sup>4</sup> A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

reason, absent a determination of technical failure of the site, with notice of such posted on the website.

SIGNED IN Indianapolis, Indiana, this 23<sup>rd</sup> day of May 2013.

A handwritten signature in black ink that reads "Rik Lineback". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Rik Lineback  
Regional Director  
National Labor Relations Board  
Region 25, Subregion 33  
300 Hamilton Boulevard, Suite 200  
Peoria, IL 61602-1246

## EXHIBIT B

AMERICOLD/RWDSU Negotiations

Rochelle IL

PROGRESS REPORT

PROPOSAL	TA DATE
AGREEMENT	11/29/2012
UNION RECOGNITION - 1	3/5/2013
UNION RECOGNITION - 2	3/5/2013
NO DISCRIMINATION - 1	11/29/2012
NO DISCRIMINATION - 2	11/29/2012
NO DISCRIMINATION - 3	11/29/2012
NO DISCRIMINATION - 4	11/29/2012
NOTIFICATION - 1	11/29/2012
NOTIFICATION - 2	11/29/2012
NOTIFICATION - 3	11/29/2012
MANAGEMENT RIGHTS - 1	3/6/2013
MANAGEMENT RIGHTS - 2	3/6/2013
MANAGEMENT RIGHTS - 3	3/6/2013
MANAGEMENT RIGHTS - 4	3/6/2013
MANAGEMENT RIGHTS - 5	3/6/2013
MANAGEMENT RIGHTS - 6	3/6/2013
MANAGEMENT RIGHTS - 7	3/6/2013
MANAGEMENT RIGHTS - 8	3/6/2013
UNION CHECK-OFF - 1	11/29/2012
UNION CHECK-OFF - 2	11/29/2012
UNIONCHECK-OFF - 3	11/29/2012
UNIONCHECK-OFF - 4	11/29/2012
GRIEVANCES AND ARBITRATIONS - 1	11/29/2012
GRIEVANCES AND ARBITRATIONS - 1 - Step 1	11/29/2012
GRIEVANCES AND ARBITRATIONS - 1 - Step 2	11/29/2012
GRIEVANCES AND ARBITRATIONS - 1 - Step 3	11/29/2012
GRIEVANCES AND ARBITRATIONS - 2	11/29/2012
GRIEVANCES AND ARBITRATIONS - 3	11/29/2012
GRIEVANCES AND ARBITRATIONS - 4	11/29/2012
GRIEVANCES AND ARBITRATIONS - 5	11/29/2012
GRIEVANCES AND ARBITRATIONS - 6	11/29/2012
GRIEVANCES AND ARBITRATIONS - 7	11/29/2012
GRIEVANCES AND ARBITRATIONS - 8	11/29/2012
PROBATIONARY PERIOD/DEFIN. OF EE - 1	11/29/2012
PROBATIONARY PERIOD/DEFIN. OF EE - 2	11/29/2012
PROBATIONARY PERIOD/DEFIN. OF EE - 3	11/29/2012
PROBATIONARY PERIOD/DEFIN. OF EE - 4	11/29/2012

PROBATIONARY PERIOD/DEFIN. OF EE - 5 11/29/2012  
 ASSOCIATE CLASSIFICATIONS - 1 11/29/2012  
 ASSOCIATE CLASSIFICATIONS - 2 11/29/2012  
 ASSOCIATE CLASSIFICATIONS - 3 11/29/2012  
 ASSOCIATE CLASSIFICATIONS - 4 11/29/2012  
 SENIORITY - 1 11/29/2012  
 SENIORITY - 1A 11/29/2012  
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 SENIORITY - 2A 11/29/2012  
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 SENIORITY - 2F 11/29/2012  
 SENIORITY - 2G 11/29/2012  
 SENIORITY - 2H 11/29/2012  
 SENIORITY - 3 11/29/2012  
 LAY OFF/RECALL -1 11/29/2012  
 LAY OFF/RECALL -2 11/29/2012  
 LAY OFF/RECALL -3 11/29/2012  
 LAY OFF/RECALL -4 11/29/2012  
 JOB POSTINGS - 1 11/29/2012  
 JOB POSTINGS - 2 11/29/2012  
 HOURS OF WORK - 1 3/6/2013  
 HOURS OF WORK - 2 3/6/2013  
 HOURS OF WORK - 3 3/6/2013  
 MEALS AND BREAK PERIODS - 1 3/13/2013  
 MEALS AND BREAK PERIODS - 2 3/13/2013  
 MEALS AND BREAK PERIODS - 3 3/13/2013  
 MEALS AND BREAK PERIODS - 4 3/13/2013  
 OVERTIME - 1 3/5/2013  
 OVERTIME - 2 3/13/2013  
 EMPLOYER RULES AND DISCIPLINE - 1 3/6/2013  
 EMPLOYER RULES AND DISCIPLINE - 2 3/6/2013  
 EMPLOYER RULES AND DISCIPLINE - 3 3/6/2013  
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 EMPLOYER RULES AND DISCIPLINE - 5 3/6/2013  
 EMPLOYER RULES AND DISCIPLINE - 6 3/6/2013  
 HOLIDAYS - 1 3/13/2013  
 HOLIDAYS - 2 3/13/2013

RENUMBER SECTIONS

HOLIDAYS - 3	3/13/2013
HOLIDAYS - 4	3/13/2013
LEAVES OF ABSENCES - 1	3/6/2013
LEAVES OF ABSENCES - 2	3/6/2013
LEAVES OF ABSENCES - 3	3/6/2013
LEAVES OF ABSENCES - 4	3/6/2013
LEAVES OF ABSENCES - 5	3/6/2013
LEAVES OF ABSENCES - 6	3/6/2013
BULLETIN BOARDS	11/29/2012
UNION STEWARDS	3/5/2013
PLANT VISITS	11/29/2012
BARGAINING UNIT WORK	3/6/2013
NO STRIKE - NO LOCKOUT - 1	3/6/2013
NO STRIKE - NO LOCKOUT - 2	3/6/2013
NO STRIKE - NO LOCKOUT - 3	3/6/2013
NO STRIKE - NO LOCKOUT - 4	3/6/2013
NO STRIKE - NO LOCKOUT - 4	3/6/2013
SEPARABILITY & SAVINGS AGREEMENT - 1	3/5/2013
SEPARABILITY & SAVINGS AGREEMENT - 2	3/5/2013
SEPARABILITY & SAVINGS AGREEMENT - 3	3/5/2013
PAST PRACTICE	3/5/2013
UNIIFORMS	11/29/2012
DURATION OF AGREEMENT	11/29/2013
SAFETY AND LABOR MANAGEMENT COMM.	3/6/2013
WAGES	PENDING
HEALTH INSURANCE	PENDING
STD,LTD,LIFE, ETC	PENDING
DENTAL	PENDING
VACATIONS	3 SECTIONS RESOLVED - NOT TA'D
	3 SECTIONS PENDING
401K	RESOLVED - NOT TA'D
TERM OF AGREEMENT	PENDING
PRODUCTION STANDARDS - INCENTIVES	PENDING
MISC. PROPOSAL	PENDING

## EXHIBIT C

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

AMERICOLD LOGISTICS, LLC,

Employer,

and

KAREN COX,

Petitioner,

and

RETAIL, WHOLESALE AND DEPARTMENT  
STORE UNION, UFCW, LOCAL 578,

Intervenor.

Case No. 25-RD-102210

The above-entitled matter came on for hearing, pursuant to Notice, before **ALEXANDER M. HAJDUK, Hearing Officer**, at the National Labor Relations Board, 300 Hamilton Boulevard, Peoria, Illinois, on Friday, April 19, 2013, 11:00 a.m.

A P P E A R A N C E S

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**On Behalf of the Employer:**

**SHELDON KLINE, ESQ.**

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>	<u>CRT EXAM</u>
Dennis Williams	25 72	80 104	117	120	71	121

OPENING STATEMENTS

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Mr. Kline	8
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EXHIBITSEXHIBITS

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<b>Board</b>		
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P R O C E E D I N G S

(11:00 a.m.)

1  
2  
3           **HEARING OFFICER ALEXANDER M. HAJDUK: The hearing will be**  
4 **in order.**

5           This is a formal hearing in the matter of Americold  
6 Logistics, LLC, Case No. 25-RD-102210, before the National  
7 Labor Relations Board. The hearing officer appearing for the  
8 National Labor Relations Board is Alexander M. Hajduk.

9           All parties have been informed of the procedures at formal  
10 hearing before the Board by service of a Statement of Standard  
11 Procedures with the notice of hearing. I have additional  
12 copies of this statement for distribution if any party wants  
13 more.

14           Will counsel please state their appearances for the  
15 record? For the Petitioner?

16           MR. SOLEM: Aaron Solem.

17           HEARING OFFICER HAJDUK: Okay. And for the Employer?

18           MR. KLINE: Sheldon Kline.

19           HEARING OFFICER HAJDUK: Okay. And for the Intervenor?

20           MS. VLADECK: Liz Vladeck.

21           HEARING OFFICER HAJDUK: Okay. Are there any other  
22 appearances?

23           **(No response)**

24           HEARING OFFICER HAJDUK: Let the record show no further  
25 response.

1           Are there any other persons, parties or labor  
2 organizations in the hearing room at this time who claim an  
3 interest in this proceeding?

4           **(No response)**

5           HEARING OFFICER HAJDUK: Let the record show no further  
6 response.

7           I now propose to receive the formal papers. They have  
8 been marked for identification as Board's Exhibit 1(a) through  
9 1(d), inclusive, Exhibit 1(d) being an index and description of  
10 the entire exhibit. This exhibit has already been shown to all  
11 the parties. Are there any objections to the receipt of these  
12 exhibits into the record?

13           **(Board Exhibit 1(a) through 1(d) marked for identification)**

14           MS. VLADECK: No objection.

15           MR. KLINE: No objection.

16           MR. SOLEM: No objection.

17           HEARING OFFICER HAJDUK: Hearing no objections, the  
18 formal papers are received into evidence.

19           **(Board Exhibit 1(a) through 1(d) received into evidence)**

20           HEARING OFFICER HAJDUK: The parties to this proceeding  
21 have executed and I have approved a document, which is marked  
22 as Board Exhibit 2. That exhibit contains a series of  
23 stipulations including, among other items, that the Petitioner  
24 is a labor organization within the meaning of the Act, there is  
25 no contract bar and the Employer meets the jurisdictional

1 standards of the Board. Are there any objections to the  
2 receipt of Board Exhibit 2?

3 **(Board Exhibit 2 marked for identification)**

4 MR. SOLEM: No objection.

5 MS. VLADECK: No objection.

6 MR. KLINE: No objection.

7 HEARING OFFICER HAJDUK: Hearing no objection, Board  
8 Exhibit 2 is received into evidence.

9 **(Board Exhibit 2 received into evidence)**

10 HEARING OFFICER HAJDUK: Are there any prehearing motions  
11 made by any party that need to be addressed at this time?

12 MR. KLINE: There are none.

13 HEARING OFFICER HAJDUK: None?

14 MS. VLADECK: No.

15 MR. SOLEM: No.

16 HEARING OFFICER HAJDUK: Are there any motions to  
17 intervene in these proceedings to be submitted by (sic) the  
18 hearing officer at this time? And are the parties aware of any  
19 other employers or labor organizations that have an interest in  
20 this proceeding?

21 MS. VLADECK: Local 578 is already denoted as the  
22 Intervenor. We are not aware of any other parties with an  
23 interest in this proceeding.

24 HEARING OFFICER HAJDUK: Okay.

25 MR. KLINE: Neither are we.

1 HEARING OFFICER HAJDUK: Okay.

2 MR. SOLEM: Neither are we.

3 HEARING OFFICER HAJDUK: Okay, great. So that's that. So  
4 based on off-the-record conversation with the parties, before  
5 we actually got on the record, the principle issue at hearing  
6 today is the existence or the question of the existence of a  
7 recognition bar extending beyond the initial six months. So  
8 it's my understanding that this will be the issue to be  
9 litigated here today. Are there any other issues for hearing  
10 that I should be made aware of at this time?

11 MR. KLINE: Not from us, Your Honor (sic).

12 HEARING OFFICER HAJDUK: Okay.

13 MS. VLADECK: Not by the Union.

14 MR. SOLEM: We have none.

15 HEARING OFFICER HAJDUK: Okay. That being said, let us --  
16 will the parties please identify the issues for hearing and  
17 their positions on each issue? So in essence, your opening  
18 statement. We'll start with the Employer.

19 MR. KLINE: Thank you.

20 **OPENING STATEMENT**

21 BY MR. KLINE: Again, on the record, Sheldon Kline with  
22 the law firm of Sheppard Mullin in Washington, D.C. I  
23 represent Americold Logistics, LLC.

24 Due to the narrowness of the issues before us, I think we  
25 merely need to look at the standards that the Board has

1 articulated in the past to determination whether the  
2 recognition bar should be extended. The case law that I've  
3 looked at and cited in the past is a case by the name of Lee  
4 Lumber, which articulated five standards, five issues that the  
5 Board would then look at based on the facts that are being  
6 presented to it.

7 As I see this proceeding, it's a factual hearing. It's --  
8 we're not to discuss the quality or the quantity really of the  
9 collective bargaining that's already gone on between the  
10 parties, which began in October of 2012, nor because there have  
11 been no unfair labor practice charges filed against -- by  
12 either party based on the quality and the quantity of those  
13 negotiations. So this would be the wrong forum to raise those  
14 types of issues.

15 The five standards that -- I'll try to recite them off the  
16 top of my head. I know I won't state them quite as clearly or  
17 cogently as they do in the case law. But the first thing is,  
18 it's a first contract. It is. The Union was recognized based  
19 on a showing of interest in, I think, June of 2012.

20 Are the parties at impasse in the negotiations? Clearly,  
21 they're not. These parties are scheduled to meet again on May  
22 8th and May 9th to continue the -- to continue discussions.

23 The number of meetings that have been held thus far  
24 between October 9 and the present, we count thirteen formal  
25 negotiation sessions in that timeframe, but there have been

1 frequent emails and telephone calls between the negotiators, as  
2 to -- not just on scheduling matters, but on matters of  
3 substance as well. There have been questions asked of the  
4 company to provide information, say, on health insurance, and  
5 the company has done that. The Union has taken that  
6 information and analyzed it.

7       So from one perspective, is thirteen sessions --  
8 bargaining sessions -- I think there were at least five in the  
9 month of -- six in the month of March as things started to  
10 begin to roll in the negotiations. Is that a significant  
11 number? I think the Board has extended the time on the  
12 recognition bar, there have been fewer meetings. So, you know,  
13 the Board will have to assess that the way the Board will do  
14 so.

15       With respect to the complexity of the issues, from  
16 Americold's perspective, this has not been a complex  
17 negotiation. It's -- and the reason is this, about five years  
18 ago, Americold developed what we call a model agreement. That  
19 model agreement was based on agreements that had been reached  
20 with the Teamsters Union, with the United Food and Commercial  
21 Workers, with the United Steelworkers. We took the provisions  
22 that had been reached by these negotiating parties over the  
23 years and put them all in a model agreement. We didn't pick  
24 and choose. I mean, we tried to do a very balanced approach.  
25 Over the five years that the model agreement has been in place,

1 it has been a very successful too, particularly in a first  
2 contract negotiation to get things done and get them done very,  
3 very fast. I mean, we've had some negotiations that have taken  
4 two months, and it's all based on a model agreement, typically  
5 first contract.

6 The advantages, obviously, for both -- there are  
7 advantages for both parties when you do have a model agreement.  
8 First of all, it's past the test of time. Unions that -- even  
9 the retail workers are affiliated with, a union that they're  
10 affiliated with has signed model agreements. We've taken those  
11 model agreements -- or taken even those agreements and  
12 presented them to other parties and say, Look, you're a fellow  
13 local of your -- the same union has accepted these provisions.  
14 I mean, do we really want to spend our time and our effort in  
15 trying to recreate the wheel?

16 Obviously, there's a stake in it for Americold when you  
17 have a model agreement and you attempt to apply it. We have  
18 about a hundred collective bargaining agreements at Americold.  
19 To the extent that we make major shifts from a model agreement,  
20 that tends to undermine the agreements that have been reached  
21 at other properties. They want to know, Why did you give A  
22 this, and we accepted B here? So there's advantages to both  
23 parties when you give a model.

24 On October 9, we provided our model agreement to the  
25 Union. We hoped -- when we do that, we hope it becomes the

1 basis for an agreement. We leave open such things as wages.  
2 In the model that we used there, we put in a wage rate for  
3 January 2012, but we recognize that there'll be discussions on  
4 that.

5 So to the extent there was anything peculiar about these  
6 negotiations, I'd have to say in our perspective, no. It's  
7 been typical negotiations with that as a model. Are there  
8 tweaks in it? Of course. We've made tweaks in almost every  
9 agreement to meet local needs. But the substance, the  
10 language, you know, the intent of the provisions, you know,  
11 they tend to stay the same, as you go across all the spectrum  
12 of these hundred contracts.

13 Are there issues still that need to be resolved? The  
14 answer is yes, and they're major issues. Without criticizing  
15 anyone, particularly the Union, I know unions like to wait  
16 towards the very end before you see a wage proposal. Americold  
17 is still waiting for a wage proposal, you know, in these  
18 negotiations.

19 Health insurance, obviously, it's a big issue everywhere  
20 in America, and it's a big issue on these properties -- on this  
21 property. Again, this is just typical negotiations, but would  
22 it be fair to say that we're close to a settlement based on  
23 what's open? Nobody can predict that if we're close. But  
24 these are major issues that still need to be thrashed out. As  
25 I say, the company's prepared to do it, as well as Intervenor.

1 And as I say, we have negotiations schedules in the next two  
2 weeks.

3 That's about all I have. I think I -- hopefully, I  
4 covered the standards. If not, somebody will point it out to  
5 me and I'll try to address it at another time.

6 HEARING OFFICER HAJDUK: Thank you, counsel. For the  
7 Petitioner?

8 **OPENING STATEMENT**

9 BY MR. SOLEM: Aaron Solem. I represent Petitioner with  
10 the National Right to Work Legal Defense Foundation. I  
11 believe that the Petitioner, as well as the employees who  
12 signed the petition deserve an election because there has  
13 been a reasonable time period to bargain.

14 Now, what we know is that ten months ago in June of  
15 2012, the Employer voluntarily recognized the Union. Now, at  
16 that point, an obligation to bargain hatches to the Employer.  
17 For whatever reason, I'm not aware, bargaining did not  
18 commence for an additional four months. So it has been six  
19 months since bargaining has began, but ten months since  
20 voluntary recognition. Within this context, I believe, that  
21 is a reasonable time if you -- considering the Lee Lumber  
22 factors.

23 Now, the overriding issue in Lee Lumber is whether the  
24 Union has had enough time to "test its metal" in negotiations  
25 so that employees can make an informed and, I would say, free

1 choice. If you look at the majority of the factors in Lee  
2 Lumber, I believe that they will show there has been enough  
3 time for them -- for the Union to have its metal tested in  
4 negotiations, as Lee Lumber says.

5 We do -- I do admit that upfront two of the factors do  
6 not play in favor of holding an election: Initial contract  
7 and, two, the parties do not appear to be at an impasse, from  
8 what I understand, although my client is not involved in any  
9 of these negotiations.

10 However, the burden of proof is on the Union to show  
11 that the presumption that the election should continue.  
12 There three factors essentially that play in favor of holding  
13 the election. One is, I don't believe these issues are  
14 overly complex, substantively. This is a relatively small  
15 unit. It's only 110 people. It does not appear from the  
16 face that I believe any of the bargaining process has been  
17 complex or deals with complex issues relative to any other  
18 kinds of bargaining.

19 The six months has passed, so the presumption is that  
20 reasonable time period has passed. Furthermore, it sounds  
21 like there's been a substantial number of bargaining  
22 sessions. There's been thirteen, according to the Employer's  
23 opening statement. This is not a situation in other Board  
24 Law where they found that reasonable time period had not  
25 passed because there have been two or three, or a minimum



1 and evidence as to what's happened at the table, and that's  
2 my client and our witness, Dennis Williams.

3 Now, it is true that sessions over time is an important  
4 factor. We disagree with how the sessions are characterized.  
5 The parties have sat down at the table on a certain number of  
6 days, but those days have composed set sessions, we believe  
7 there've been five to six because certainly those of us with  
8 bargaining experience know, when you go away from the table  
9 for certain period of time, there's some work you're doing  
10 when you come back to get back to where you were.

11 A relevant factor we believe there is the fact that  
12 after the sessions that were held in November, after the  
13 three-day session, the parties were not at the table again  
14 for over three months. Now, we'll go into that. I agree  
15 with my colleague from the Employer that we're not going to  
16 be talking about an unfair labor practice. We're not  
17 alleging any activity by the Employer in violation of  
18 8(a)(5), but we are going to talk about the fact that it took  
19 the Employer a really long time to get back to the table.  
20 That was a real problem for the Union. Yes, we did consider  
21 filing charges, which we will discuss because it's important  
22 to understand the process since, as I said, only my client  
23 has been at the table and can speak on the process.

24 Now, as for the standard model agreement that my  
25 colleague discussed, that's great for the company to

1 standardize something across its operations, but the whole  
2 point of having a union in every shop is that it's going to  
3 be different everywhere. Certainly, we would argue the fact  
4 that the Employer began bargaining with a set of proposals  
5 that seems to want to standardize across all their operations  
6 was an issue. It was a problem.

7 We'll talk about several kinds of provisions that my  
8 client viewed as something that would really implicate  
9 significant rollbacks, not only for this workforce, but also  
10 for the larger area of Rochelle, where my client represents  
11 other unions. There's an area standard that's relevant here.

12 So we disagree as to what the number of sessions means,  
13 how to characterize them over time. We disagree as to the  
14 complexity of the issues that are on the table, and we  
15 disagree as to how close we are to an agreement. Part of the  
16 answer to that question depends on whether we are indeed able  
17 to get back to the table with enough time over the next few  
18 months, the next few sessions, to finish. But we agree  
19 healthcare is the major issue and that much of the remaining  
20 economics depends on how healthcare is resolved. The parties  
21 have made significant progress. They would be closer if we  
22 received from the Employer all that the Employer can tell us  
23 about their plan at once, instead of in drips and drabs as we  
24 go back and forth on the specifics.

25 We agree, obviously, progress cuts both ways, but I

1 think the parties -- I think the Union feels that they've  
2 made substantial progress. There's 80% of the contract  
3 that's been worked out. We'll go over some of those  
4 tentative agreements.

5 We are not to discuss here -- with the exception of a  
6 few narrow examples to illustrate complexity, we are not  
7 going to go into the content of what is being discussed at  
8 the table. But we are going to talk about, here's why some  
9 things took some time; here is what is unique about this  
10 facility, and here's where that leaves us.

11 Now, it is true that this is a small -- relatively  
12 small unit. I mean, we represent units of six, seven, eight  
13 people. So to us, this is not so small, but we also  
14 represent units with thousands of workers, so we can assess  
15 relative size. But that general description masks the fact  
16 that until 2009, these two facilities, which are a half mile  
17 apart from one another, were owned and operated by two  
18 entirely different companies, and that after Americold  
19 acquired the facility on Caron Road, there continued to be  
20 significant disparities simply in how those locations, how  
21 those operations, are run.

22 If for no other reason, then the Caron Road facility is  
23 simply physically equipped to handle a much higher volume of  
24 turnover in cargo than Americold. This leads to disparate  
25 scheduling issues, a very significant difference in the kind

1 of overtime that people work. Other things that mean that,  
2 in a certain sense, the parties at the table are almost  
3 negotiating for two separate units. It's one integrated unit  
4 with two distinct sets of issues, and that has added to the  
5 complexity of the bargaining.

6 So, the Union's position is that they should have until  
7 this coming October to finish a contract. They are confident  
8 they will be done well before that time, but they don't think  
9 they're going to be done in the first hour of the next  
10 session because there is still important and significant work  
11 to do. They've made a great deal of progress up to now on an  
12 initial contract that has brought with it all kinds  
13 complexities, due to the nature of the business and of the  
14 Union in the workplace.

15 We are certainly not at impasse. I think that's maybe  
16 the only thing we'll all agree about today. The Union needs  
17 to be allowed time to -- having its metal tested is not a  
18 question of showing up and talking. It's a question of  
19 having the opportunity to demonstrate to the workers what it  
20 can accomplish for them as its representative. Now, that has  
21 also been complicated by the uncertainty and insecurity  
22 that's been in the air since at least November because the  
23 specter of a decertification has been there since after the  
24 first session of bargaining.

25 Part of the Union's efforts to understand what's going

1 on has to do with, well, is it possible the company's waiting  
2 for an election? We don't know. But it has colored the  
3 ability of the parties to reach a final agreement in ways  
4 that are regrettable.

5 That's our opening.

6 HEARING OFFICER HAJDUK: Okay. So as the parties are  
7 all well-aware at this point, the question before us today is  
8 the question of whether or not the recognition bar should be  
9 extended beyond the initial six months. As we've noted thus  
10 far in opening statements, the relevant cases here are going  
11 to be Lamens Gasket, which was decided in 2011, specifically  
12 Footnote (34) of that decision, which discusses and, in a  
13 way, almost remands the question of the extension of the  
14 recognition bar back to the standards of events in Lee  
15 Lumber, which is of course the 2001 decision.

16 So with that in mind, I think we are aware that the  
17 burden is going to be on the party who's advancing the  
18 position that the recognition bar should be extended, in  
19 which case that would be you, counselor. Just as we all  
20 know, by the way, the formal documents that we have now  
21 before us refer to the Union as the Intervenor. We'll be  
22 using Union and Intervenor interchangeably, so just so the  
23 reader of the record is clear on that.

24 As is the standard practice in all these questions, the  
25 question of this extension of the recognition bar, the burden

1 lies with you. It is going to be your responsibility to  
2 present specific and detailed evidence in support of your  
3 position. General conclusionary statements by witnesses will  
4 not be sufficient.

5 That being said, we'll go into some of the following  
6 questions here: Are there any other petitions pending in other  
7 Regional offices involving other facilities of the Employer?

8 MR. KLINE: Of the Employer?

9 HEARING OFFICER HAJDUK: Are there any other petitions  
10 involving -- pending in other Regional offices involving other  
11 facilities of the Employer?

12 MR. KLINE: Other representation petitions?

13 HEARING OFFICER HAJDUK: Yes.

14 MR. KLINE: Not that I'm aware of.

15 HEARING OFFICER HAJDUK: Okay.

16 MS. VLADECK: We are not aware of any.

17 MR. SOLEM: We are not aware of any.

18 HEARING OFFICER HAJDUK: Okay, all right. We don't have  
19 a question of the contract bar in this case. We do have the  
20 Board Exhibit 2, which was discussed, which kind of  
21 formalizes and stipulates to the appropriate bargaining unit.  
22 So that is all good to go there.

23 Let me get some things done on the record before we  
24 actually go into the Union's first witness. That being said,  
25 how many employees do we have employed at the facility, Mr.

1 Kline?

2 MR. KLINE: I think it's 107 to 109.

3 MS. VLADECK: I think that's the unit employees.

4 HEARING OFFICER HAJDUK: Okay.

5 MS. VLADECK: Are you asking about total employees?

6 HEARING OFFICER HAJDUK: No, the unit is fine, just the  
7 unit involved that we have now is between 107 and 109?

8 MR. KLINE: I think that's right.

9 HEARING OFFICER HAJDUK: Okay.

10 MR. SOLEM: That's right.

11 HEARING OFFICER HAJDUK: So the record is clear, we are  
12 dealing with approximately 107 to 109 employees. We already  
13 have the classifications in the bargaining unit, so that's  
14 good to go there.

15 The Employer is involved in the business of cold storage  
16 facility, right?

17 MR. KLINE: Yes, cold and dry.

18 HEARING OFFICER HAJDUK: Cold and dry, sir?

19 MR. KLINE: Right. If I could just --

20 HEARING OFFICER HAJDUK: Yes.

21 MR. KLINE: -- elaborate?

22 HEARING OFFICER HAJDUK: Of course, please.

23 MR. KLINE: Yeah, there's nothing unique about Rochelle  
24 because that's how we operate. We have one facility that's  
25 dry and we have one that's refrigerated. We managed to reach

1 agreements with numerous other unions and they all face the  
2 same kind of issues. One of the things that the model  
3 agreement did was accommodate those differences, like how you  
4 deal with overtime, for example. You have people at two  
5 different facilities. You have people run up -- I don't know  
6 how far they are apart, a mile, quarter mile apart, or do you  
7 just give overtime to the -- you know, the person who is on  
8 the job versus the most junior or the most senior, depending  
9 on if you're doing it voluntary or in reverse order. I mean,  
10 I -- it's just the way we operate.

11 HEARING OFFICER HAJDUK: Okay. My next question is  
12 this, we've talked about two facilities that are involved up  
13 in Rochelle. We have the 1010 Americold Drive facility and  
14 the 915 Caron Road facility. Approximately how many  
15 employees -- unit employees are each one of those facilities?  
16 Anyone can answer, we'll start with Mr. Kline.

17 MR. KLINE: Yeah, I don't know the answer.

18 MS. VLADECK: It's my understanding there are about 65  
19 people at the Caron Road facility and about 45 at the  
20 Americold Drive facility.

21 HEARING OFFICER HAJDUK: Okay. Mr. Solem?

22 MR. SOLEM: That's correct.

23 HEARING OFFICER HAJDUK: Okay, outstanding. In terms of  
24 non-unit employees, supervisory/managerial employees, a  
25 general overview is -- I presume there's a plant manager.

1 How does the operations work there?

2 MR. KLINE: There is an operations manager.

3 HEARING OFFICER HAJDUK: Okay.

4 MR. KLINE: And supervisors.

5 HEARING OFFICER HAJDUK: Okay.

6 MR. KLINE: And then there are some other categories of  
7 employees, office employees, that would not be -- that are  
8 not part of the unit.

9 HEARING OFFICER HAJDUK: Okay. Are both of these  
10 facilities -- I mean, I don't want to get into an exact  
11 physical reference because this is not a unit question.  
12 We're not trying to ascertain that, but are they both -- are  
13 they kind of -- are both of these facilities -- do they do  
14 essentially the same work? Or what are we dealing with in  
15 this circumstance?

16 MR. KLINE: Well, the environment would be considerably  
17 different.

18 HEARING OFFICER HAJDUK: Okay.

19 MR. KLINE: When you're in a cold storage facility, that  
20 environment is much more difficult --

21 HEARING OFFICER HAJDUK: Okay.

22 MR. KLINE: -- than in a dry.

23 HEARING OFFICER HAJDUK: And approximately how far is  
24 the distance between the Americold Drive facility and the  
25 Caron Road facility?

1 MS. VLADECK: About a half mile.

2 HEARING OFFICER HAJDUK: Half mile? Okay. All right,  
3 now that we have framed the issues appropriately and we have  
4 discussed our procedural matters before us, does anyone have  
5 any questions for me before we proceed?

6 **(No response)**

7 HEARING OFFICER HAJDUK: Okay. That being said, Ms.  
8 Vladeck, you may call your first witness.

9 MS. VLADECK: Dennis Williams please to the stand.  
10 Whereupon,

11 **DENNIS WILLIAMS**

12 was called as a witness, by and on behalf of the Intervenor,  
13 and having been duly sworn, was examined and testified as  
14 follows:

15 HEARING OFFICER HAJDUK: Okay, please be seated. State  
16 and spell your name for the record.

17 WITNESS: Dennis Williams, D-e-n-n-i-s, W-i-l-l-i-a-m-s.

18 HEARING OFFICER HAJDUK: Ms. Vladeck, you may proceed.

19 MS. VLADECK: Okay.

20 **DIRECT EXAMINATION**

21 Q BY MS. VLADECK: Mr. Williams, can you tell us what your  
22 job title is?

23 A I'm the business agent for the Central States Council of  
24 the RDWSU.

25 Q What region exactly does the Central States Council cover?

1 A It covers Illinois, Iowa, Kansas, Missouri, Nebraska.

2 Q Can you describe, what do you do in your role as the  
3 business agent for the council?

4 A As a business agent, the role is inclusive of generating  
5 and helping with new contracts. We would go over grievances,  
6 go through the grievance procedure, and then help each of the  
7 locals -- local representatives with everyday issues, problems.

8 Q How many locals are there in the council?

9 A We have -- the total locals would be six.

10 Q In those six locals, how many employers do they have  
11 collective bargaining relationships with?

12 A Ten.

13 Q How long have you held this position?

14 A Thirteen years.

15 Q What was your position before then?

16 A Prior to that, I worked at Del Monte Foods in Rochelle.

17 Q Okay. How long were you there?

18 A About 28 and a half years.

19 Q Now, did you have a role with the Union when you worked at  
20 Del Monte?

21 A Yes, I held various positions, but the latter piece was  
22 probably president for over 20 years.

23 Q So is it fair to say you've had a role with the Union for  
24 the last 10, 20, 30 years, or more?

25 A 35 years, at least, probably.

1 Q Okay. During that period of time, have you been  
2 involved in the negotiating contracts?

3 A Yes.

4 Q How many?

5 A Dozens, probably 40 to 50.

6 Q New and renewed?

7 A Yes.

8 Q All right. Can you tell me about what role you've had  
9 to play with respect to Americold?

10 A As --

11 Q What's your involvement been?

12 A As co-chair for the Union.

13 Q What has that entailed? What have you done involved  
14 with Americold?

15 A Okay, involved with Americold, we would've sit down with  
16 the members to try to -- number one, we had to get stewards  
17 elected --

18 Q Well, hold on a second. So how long has the Union been  
19 trying to -- been engaging with the workers at Americold?  
20 How far back does that go?

21 A I think it goes back to 2007.

22 Q 2007? So we've heard on the record this morning that  
23 there's a recognition from last year.

24 A Yes.

25 Q But you're saying that well-before then the Union was

1 talking to Americold workers?

2 A Yes, we actually had two other elections.

3 Q When was the first election, do you remember?

4 A 2007.

5 Q At that time, was Americold these two facilities we've  
6 talked about?

7 A Just one facility on Americold Drive.

8 Q On Americold Drive. So do you remember roughly how many  
9 workers were involved back then?

10 A It right around 40 workers.

11 Q Okay. What was the -- and the Union filed a petition  
12 for an election?

13 A Yes.

14 Q What was the result of that election?

15 A We lost by six votes.

16 Q Okay. All right, you said there was a second effort  
17 after that.

18 A Yes.

19 Q Can you describe what happened there?

20 A That effort entailed -- it was shortly after Americold  
21 had bought out the Caron Road facility, which was ConAgra at  
22 the time.

23 Q Okay. Did the Union file a petition?

24 A Yes.

25 Q Any issues come up with the Board after the petition was

1 filed?

2 A We found that we would have to take both units, and this  
3 was after initially giving time and effort into just the one  
4 building on Americold Drive.

5 Q Okay. So now that you had to take both units, both  
6 groups, how were the Caron Road employees?

7 A They were -- well, number one, they were very uneducated.  
8 When I say uneducated, from the process that we hadn't had a  
9 chance to talk to them, so they were naturally scared to know  
10 what to expect either way.

11 Q Were there -- would you -- were there different levels of  
12 support in the two different facilities?

13 A Yes.

14 Q Can you describe that?

15 A Yes, the support at the Americold Drive facility was 95%  
16 in favor of the Union probably at that time, and very narrow  
17 support again from the Caron Road facility. Again, we hadn't  
18 had a chance to talk to the folks in there to build up any type  
19 of rapport.

20 Q Okay. An election was held?

21 A Yes.

22 Q What was the result?

23 A The exact numbers, I don't remember, but we lost  
24 substantially.

25 Q Okay. When was that, do you remember?

1 A That was approximately 2009.

2 Q So there was then a third effort, a third time.

3 A Right.

4 Q How did that come about?

5 A Well, actually, it came about very similar to the first  
6 two, the contacts were -- approached to us. The difference was  
7 this time we were approached by both buildings, both facilities  
8 had interest. We went through the process this time with being  
9 able to talk to the folks on both facilities.

10 Q Okay. Did you get to a point where -- and were you  
11 soliciting support for the Union?

12 A Yes.

13 Q And you got to a point where you had majority support?

14 A Yes.

15 Q Did the Union file a petition with the Labor Board?

16 A Yes.

17 Q What happened after that?

18 A We asked for recognition, and the company recognized the  
19 Union through card check.

20 Q Were you expecting that?

21 A Not really.

22 Q Was there a decision to withdraw the petition?

23 A Yes.

24 Q Why was that decision made?

25 A Well, the company was going to recognize us by card check,

1 so there was no need for the petition at that time.

2 Q Wouldn't a petition be just as effective at reaching the  
3 same result?

4 MR. KLINE: Objection, I think she's arguing with her own  
5 witness.

6 HEARING OFFICER HAJDUK: Yeah.

7 MS. VLADECK: Okay.

8 Q Did you see a benefit to one way to proceed versus the  
9 other? Did you see advantages to recognition or a petition?

10 A Yes. Again, all the havoc that goes through with a  
11 petition for a drive, it cuts all that out. It gives employees  
12 -- it's a lot less of a drama, if you will, to try to put  
13 together a contract and to talk to the folks.

14 Q Okay.

15 **(Long pause)**

16 MS. VLADECK: May I approach the witness?

17 HEARING OFFICER HAJDUK: You may.

18 Q Mr. Williams, do you recognize this document?

19 A Yes.

20 Q Can you describe what it is?

21 A This was the day we did card check at the Comfort Inn in  
22 Rochelle. The Reverend Catherine Jones actually counted our  
23 cards that day.

24 Q Okay. Does this document indicate the results?

25 A Yes.

1 Q Which were?

2 A Which were that 72 cards had been signed out of the 123  
3 employees and only two cards in dispute.

4 Q Okay. Were you present for this card check?

5 A Yes.

6 Q Does this confirm your recollection of what happened?

7 A Yes.

8 Q Okay.

9 MS. VLADECK: The Union moves Exhibit 1 into the record.

10 **(Union Exhibit 1 marked for identification)**

11 HEARING OFFICER HAJDUK: Union 1 is identified as  
12 certification of election, just to be clear. Any objection  
13 to the introduction of Union 1?

14 MR. SOLEM: No objection.

15 MR. KLINE: No objection.

16 HEARING OFFICER HAJDUK: Hearing no objection, Union 1  
17 is received into evidence.

18 **(Union Exhibit 1 received into evidence)**

19 MS. VLADECK: Okay.

20 Q Do you recall what followed this card count? What was the  
21 next procedural step?

22 A Well, we had to be -- sign off on the local company and  
23 the union, so there's a process there of a couple weeks to  
24 formalize all that. Then we go about the process of electing  
25 stewards.

1 Q All right, so just one moment, just for a second there.

2 You said it took a couple weeks --

3 A Yes.

4 Q -- to formalize an agreement?

5 HEARING OFFICER HAJDUK: Just to be clear, what kind of an  
6 agreement are we talking about here?

7 WITNESS: The agreement would've been a formal agreement  
8 between the company and the Union as recognition.

9 HEARING OFFICER HAJDUK: All right, to formalize the  
10 certification election?

11 WITNESS: Yes.

12 HEARING OFFICER HAJDUK: Thank you. Were you involved in  
13 those discussions regarding that agreement?

14 WITNESS: Yes.

15 HEARING OFFICER HAJDUK: That process took a couple weeks,  
16 you said. Who are you discussing?

17 MS. VLADECK: Can I proceed? I've got --

18 HEARING OFFICER HAJDUK: Okay, I'm sorry. I didn't mean  
19 to cut you off.

20 MS. VLADECK: That's okay.

21 HEARING OFFICER HAJDUK: Go ahead.

22 MS. VLADECK: Can I approach Mr. Williams again?

23 HEARING OFFICER HAJDUK: Sure.

24 **(Long pause)**

25 Q BY MS. VLADECK: Can you take a moment, Mr. Williams, and

1 just review those documents?

2 **(Long pause)**

3 Q What's the last page of those documents? Can you describe  
4 what it says at the time?

5 A Recognition Agreement.

6 Q Okay. Do you recognize that document?

7 A Yes.

8 Q What does that document accomplish?

9 A It accomplishes that the company and Union are formally  
10 agreeing to begin the negotiation process.

11 Q Recognizing the Union?

12 A Recognizing the Union, yes.

13 Q Okay.

14 MS. VLADECK: I'm going to mark that as Union 2.

15 **(Union Exhibit 2 marked for identification)**

16 HEARING OFFICER HAJDUK: Okay.

17 Q Preceding that agreement is correspondence.

18 A Yes.

19 Q Who is the correspondence between?

20 A Roger Grobstich, our international representative with  
21 the RWDSU, and Mr. Michael Nelson, vice president of labor  
22 relations for Americold.

23 Q Do you know Mr. Grobstich?

24 A Yes.

25 Q Do you work with him?

1 A Yes.

2 Q Can you describe your relationship with him through  
3 Americold and the Americold effort?

4 A Yes, he, again, is our international representative for  
5 this whole entire region. Roger and I worked close together  
6 on all of our contracts and all of our organizing efforts.  
7 So he would be the contact or the main contact person again  
8 through RWDSU for any kind of correspondence that's going  
9 back and forth.

10 Q Where is he today?

11 A He, today, is in Saint Joe, Missouri.

12 Q Is he in bargaining?

13 A Yes.

14 Q Okay. Remind us -- I don't believe I've asked you this,  
15 where do you live, Mr. Williams?

16 A In Ashton, Illinois, Rochelle area.

17 Q So where does Mr. Grobstich live?

18 A He lives in Cedar Rapids, Iowa.

19 Q Is that farther away?

20 A It's farther away.

21 Q Okay. All right.

22 MS. VLADECK: I'd like to move Union 2 into evidence.

23 HEARING OFFICER HAJDUK: Any objection?

24 MR. SOLEM: No objection.

25 MR. KLINE: No objection.

1 HEARING OFFICER HAJDUK: Hearing no objection, Union 2,  
2 the three pages of documents here, including the two pages of  
3 correspondence and the recognition agreement, is received  
4 into evidence.

5 **(Union Exhibit 2 received into evidence)**

6 Q Now, we heard some information in Mr. Kline's opening  
7 about Americold, but that constitutes his opening, and not  
8 evidence for the record. So I'm going to ask you some  
9 questions. To your knowledge, when you were -- let's put it  
10 this way, when you were involved in working to develop a union  
11 at Americold, did you come to learn information about the  
12 company?

13 A Yes.

14 Q Can you describe what you learned about the company?

15 A Describe? Okay, the employees had several different  
16 issues that, of course, they felt important to them. I think  
17 was already spoken to here, seniority and favoritism, and a lot  
18 of differences between the two facilities as far as the  
19 operations actually -- that was going on and how it worked at  
20 one facility compared the other one.

21 Q Can you describe some of those differences?

22 A Some of the differences would be -- one of the major  
23 differences, the operations are different from a scheduling  
24 standpoint. The Caron Road facility has six different  
25 schedules for their workers. It's basically a three-shift

1 operation at Americold Drive.

2 The different shifts, the different days the shifts run  
3 creates a lot of different discussion and makes it harder for  
4 things to actually come to attrition, you know, working  
5 together to try to find out what's going on.

6 The seniority was handled different. Caron Road really  
7 didn't honor the seniority like they do at Americold Drive. We  
8 had an older -- when I say older, more senior workforce at  
9 Americold Drive and they seemed to work better as far as the  
10 seniority piece.

11 Q How was the relationship between employees and management  
12 in the two different facilities?

13 A The relationship between the two facilities, at  
14 Americold Drive, they would at least recognize if the folks  
15 get upset, but they wouldn't recognize their seniority there.  
16 At Caron Road, it wasn't the same way.

17 Q Now, to your knowledge -- I think we heard that -- you  
18 mentioned that Americold bought what had been a ConAgra  
19 facility on Caron Road.

20 A Yes.

21 Q Do you know anything about the wage rates in the two  
22 different facilities at the time of that acquisition?

23 A Yes, the rates were different between the two facilities,  
24 as we learned. To my knowledge, it was like a dollar an hour  
25 difference. Folks at Americold Drive were putting up the

1 argument, I guess several times from I've been told, as to why  
2 they wouldn't be making the same thing. They're both the same  
3 facility, right? So finally, the company decided to raise the  
4 rate at Americold Drive to be comparable to Caron Road.

5 Q Okay. Now, do you know anything about the history of  
6 these two facilities? Was either represented by a union in the  
7 past?

8 A Yes, the one on Americold Drive was formerly represented  
9 by the Teamsters.

10 Q When did that end?

11 A 2004.

12 Q Do you know why?

13 A Do I know why?

14 Q Well, do you know what happened?

15 A Yes, there was decertification there. The folks -- well,  
16 for -- there was a maintenance employee that wanted to work for  
17 the company.

18 Q Do you know what caused the workers to vote against the  
19 Union in 2004?

20 A They actually --

21 MR. KLINE: Objection, calls for speculation.

22 HEARING OFFICER HAJDUK: Yeah, you need to clarify,  
23 counsel.

24 Q Now, we've been talking for a moment or two about the two  
25 facilities. Do you know anything about the company more

1 broadly, nationally, internationally?

2 MR. SOLEM: Objection.

3 MS. VLADECK: On what basis?

4 MR. SOLEM: Narrow the question, it's broad.

5 HEARING OFFICER HAJDUK: No, I think it's okay. I'm going  
6 allow it. Go ahead.

7 A It's a very large company. They have over 100 facilities  
8 nationwide and represented by 60 contracts.

9 Q Different unions?

10 A Different unions.

11 Q Does the RWDSU represent any other Americold facilities,  
12 to your knowledge?

13 A Not to my knowledge.

14 Q Okay. Now, when we're talking about the Union here, we're  
15 talking about a local of the RWDSU?

16 A Yes.

17 Q Which local is that?

18 A 578.

19 Q Does the local represent other employers in the Rochelle  
20 area?

21 A Yes, Del Monte Foods.

22 Q Okay. So there's a contract in place there?

23 A Yes.

24 Q All right. Now, we were looking a few minutes ago at an  
25 executed recognition agreement that was -- the execution date

1 -- I'm sorry to testify. I don't think you have -- I don't  
2 mean to, but on the exhibit, which you no longer have --

3 A Right.

4 MS. VLADECK: Thank you.

5 Q What's the date by which both parties had signed the  
6 agreement?

7 A It was signed by Mr. Grobstich on June 18th of 2012,  
8 then by Mr. Nelson on June 15th of 2013.

9 Q Okay. What are the next steps that the Union took after  
10 recognition?

11 A After recognition, we went about the process of trying  
12 to have meetings to gather other ideas for a first contract  
13 that folks were interested in.

14 Q Can you say what you mean by meetings?

15 A Yes, we had several meetings -- tried to have several  
16 meetings. Again, with all the various shifts, it was hard to  
17 try to get an abundance of people together at the same time.  
18 But we tried to have meetings, and number one, to try to  
19 elect stewards for each facility.

20 Q Was that an easy thing to do?

21 A No, it was very difficult.

22 Q Say more please.

23 A To try to get to the folks in a -- you know, in a  
24 broader sense at an established facility, we -- you know, if  
25 we have a board that we can post things on, so at this time,

1 we didn't -- at that time, I'm sorry, we didn't have a board  
2 that we could specifically go to. We didn't really have a  
3 relationship with the company when -- a local manager with  
4 the company to go and say, okay, we'd like to do this, and  
5 have some communication there. It was kind of a little bit  
6 of a free-for-all for us to try to get somebody to -- number  
7 one, that was an elected official to try to get something  
8 posted so the folks could all know that we would help.

9 Q So were you able to elect stewards for the two  
10 facilities?

11 A Yes.

12 Q Did it -- were you able to do it on your first effort,  
13 on your first attempt?

14 A No, we had to have a couple of slices at that, and  
15 reason being, not everybody got the right message the first  
16 time as far as the attendance piece for the meeting. Again,  
17 there were so many different schedules. So in an effort to  
18 make sure that we had given everybody a chance to have a  
19 voice, we had another meeting after that.

20 Q How many meetings did you hold -- well, you said you wer  
21 electing stewards. What else were you trying to do through  
22 these meetings?

23 A Well, we had -- those were actually separate meetings  
24 for just the stewards and stuff. We'd have one meeting where  
25 we elected stewards and then hatch the process of talking

1 about what the contract needs were of the employees. Then we  
2 had separate meetings for contract issues that people would  
3 want to see.

4 Q Was it easy to set up meetings to talk about that?

5 A Difficult again.

6 HEARING OFFICER HAJDUK: Can we --

7 MS. VLADECK: Sorry.

8 HEARING OFFICER HAJDUK: That's okay.

9 MS. VLADECK: Withdrawn.

10 HEARING OFFICER HAJDUK: Okay.

11 Q How many meetings did you have to hold to talk about  
12 contract proposals?

13 A We had a total of probably six meetings.

14 Q Over what period of time?

15 A Between this time period here and -- of June 18th until  
16 actually just before we started negotiations in October.

17 Q Okay. Did the Union take other steps to prepare for  
18 bargaining?

19 A Yes.

20 Q What?

21 A We would do what we could to try to help the folks  
22 offline through emails to try to gather information. We  
23 asked the company for any information that we could from them  
24 to try to facilitate what we wanted to accomplish through the  
25 contract.

1 MS. VLADECK: Just a moment please.

2 HEARING OFFICER HAJDUK: Okay.

3 **(Long pause)**

4 MS. VLADECK: My apologies, my access to technology here  
5 does not include a stapler.

6 HEARING OFFICER HAJDUK: Do you want us to get one for  
7 you, counsel?

8 MS. VLADECK: It's up to the parties, I'm giving you the  
9 documents.

10 HEARING OFFICER HAJDUK: Let's go off the record for a  
11 second so we can get a stapler.

12 **(Off record)**

13 HEARING OFFICER HAJDUK: Back on the record.

14 MS. VLADECK: Okay, thank you. Thanks everyone for your  
15 patience with my stapler deficiencies. All right, I'm going to  
16 approach Mr. Williams and ask him to take a look at this  
17 document, which I've marked as Union 3.

18 **(Union Exhibit 3 marked for identification)**

19 Q Mr. Williams, what do you recognize this letter to be --  
20 this document, excuse me?

21 A It's a request for information from the company.

22 Q Who is it from?

23 A From Mr. Grobstich.

24 Q Who is it to?

25 A To Mr. Robert Hutchison.

1 Q Now, I thought a little while ago, you mentioned Mike  
2 Nelson.

3 A Yes.

4 Q Is this a different person?

5 A Yes.

6 Q Do you know why this wasn't sent to Mr. Nelson?

7 A Well, at the time, Mr. Hutchison's role was different,  
8 so Mr. Nelson actually took this piece of it after maybe a  
9 month into the process.

10 Q Okay. All right, and now I'm -- when was that letter  
11 sent?

12 A This letter was sent July 30th, 2012.

13 Q Okay. Did the Union receive a response?

14 A Yes.

15 Q When?

16 A Received it on August 16th, 2012.

17 Q That document I've marked as Union 4, is that the  
18 response?

19 **(Union Exhibit 4 marked for identification)**

20 A Yes.

21 Q Who is it addressed to?

22 A Mr. Grobstich.

23 Q And who is it from?

24 A It is from Mr. Michael Nelson.

25 Q Do you know whether it was accompanied by any additional

1 documents?

2 A Question --

3 Q Do you know whether this letter was sent -- when it was  
4 sent to the Union --

5 A When it was sent to the Union?

6 Q When it was, was it accompanied by other documents?

7 A Yes, yes, quite extensive documents, probably hundreds  
8 of pages.

9 Q Okay. Whose job was it to deal with those hundreds of  
10 pages?

11 A Mr. Grobstich was going through those.

12 Q Okay. Did he have any help, to your knowledge?

13 A Not to my knowledge, no.

14 Q Okay.

15 MS. VLADECK: We would move Union Exhibit 3 and 4 into  
16 the record.

17 HEARING OFFICER HAJDUK: Any objection?

18 MR. KLINE: No objection.

19 MR. SOLEM: No objection.

20 HEARING OFFICER HAJDUK: Hearing no objection, Union 3  
21 and Union 4, the information request and then the response,  
22 is received into evidence.

23 **(Union Exhibits 3 and 4 received into evidence)**

24 Q Now, that Union Exhibit 4, the response to the information  
25 request, when was it -- what's the date of that letter?

1 A August 16th, 2012.

2 Q Okay. You talked a few minutes ago about meetings with  
3 workers soliciting their views about proposals.

4 A Yes.

5 Q What did you do after holding those meetings, those six  
6 meetings?

7 A Well, we actually tried to compare notes with the  
8 materials that we had gotten from the company so that we see  
9 that, you know, they were driving for those policies that the  
10 company were doing in the facilities at the time and compared  
11 them to what Americold's actual standards were.

12 Q What did you do after that?

13 A Then we would go back and talk with the employees again  
14 and some of our representatives at the time -- we had stewards  
15 elected at that time to try to formulate ideas into contract  
16 negotiation form.

17 Q Did you do that?

18 A Yes.

19 Q What exactly did you do? Can you describe?

20 A It ranged from language to what the policies were to  
21 changes in -- talking about policies with the company, wages to  
22 benefits to seniority between the two buildings.

23 Q What were some of the key issues? I think you mentioned  
24 this already, but I want to ask you to review again. What were  
25 some of the key issues that workers were concerned about?

1 A Some of those key issues were -- at the time, were the  
2 schedules, the amount of schedules that were held at the Caron  
3 facility, and then seniority and the ability to try to move  
4 back and forth between the two facilities. Caron had extensive  
5 overtime that they work over there, and not so much on  
6 Americold Drive. Actually, some of the folks there have a hard  
7 time getting 40 hours at times. So there was discussion on how  
8 that might work out between the two facilities.

9 Q What's the difference that some workers want? What did  
10 they want to accomplish in bargaining?

11 A Actually, they wanted to stay within their own building, I  
12 heard that loud and clear from both facilities that they really  
13 didn't want to go to the other buildings unless there was an  
14 opportunity maybe to pick up some additional hours to at least  
15 get their 40 from Americold Drive. So that was probably one of  
16 the bigger issues to try to work through that we were hearing  
17 from the folks.

18 Q You said scheduling was an issue. What specifically about  
19 scheduling?

20 A Well, in specific to the hours that they were having to  
21 work.

22 Q Can you be more specific?

23 A There was an abundance of overtime being on the Caron Road  
24 that was being -- they felt like pushed on. So they wanted to  
25 try to rectify that to some degree, so we went about the

1 process of trying to see what would work between the two  
2 facilities and with Americold being a business partner at the  
3 same time.

4 Q Okay. Now, can you remind us again, when did the Union  
5 feel it was ready to go to the table?

6 A When did we feel we were ready to go to the table? Again,  
7 there was correspondence going back and forth between Mr.  
8 Grobstich and Mr. Nelson as far as trying to get dates and  
9 schedules set up. We were probably set together in September,  
10 mid-September for sure.

11 Q Okay. Did you have bargaining dates in September?

12 A No.

13 Q Why not?

14 A The company wasn't prepared to -- or couldn't be scheduled  
15 until October.

16 Q So what dates did the company offer?

17 A Finally in October, we were offered October 9, 10, 11.

18 Q Okay. Did the Union agree?

19 A Yes.

20 Q Just for the record, at any point, did the Union say no to  
21 any dates the company proposed?

22 A No.

23 Q Okay. All right, did bargaining begin in October?

24 A Yes.

25 Q Can you tell us again which dates that you met in October?

1 A October 9, 10, 11.

2 Q Did you view each day as a separate session?

3 MR. KLINE: Objection.

4 HEARING OFFICER HAJDUK: Yeah, can you rephrase?

5 MS. VLADECK: Okay.

6 Q Can you describe for us what happened those first few  
7 days?

8 A Well, the first two days for sure were trying to get to  
9 know each other, for one thing. We had to work together as a  
10 team. When I say team, Union and the company, to know who each  
11 other were because there were telephone conferences that seemed  
12 like everything was going -- you know, go well, at least, and  
13 they had been. But to try to absorb and, again, when the  
14 company gave their exhibit for their draft of the contract, it  
15 was a lot to take in at one time, especially for the folks  
16 being new to this on our committee. It was a lot for them to  
17 have to try to absorb and for us to try to answer to or try to  
18 counter with a proposal.

19 Q Can you say who was on the committee?

20 A For the Union side?

21 Q Um hum.

22 A For the Union side, it was myself, Roger Grobstich; Dan  
23 Williams, local president; Al Thornton, the recorder for the  
24 local at Del Monte; and then Joe Contreras from Caron Road; and  
25 then Ron McBride from the Americold facility on Americold

1 Drive.

2 Q When you say they were from those facilities, what do you  
3 mean exactly?

4 A They were workers inside the facility, employees, members  
5 of our -- and they were the elected officials that the members  
6 voted for to represent them locally.

7 Q They were stewards?

8 A Stewards, yes.

9 Q Who was representing the company?

10 A Mr. Nelson was there as their chief spokesman. They had  
11 Steve Mitzel, which was -- I guess his official title was like  
12 an operation manager at several facilities for Americold, and  
13 his -- part of his job entailed the Rochelle area, encompassed  
14 those areas. Then we have operation managers from each  
15 facility there as well.

16 Q Say again, who was the lead negotiator for the company?

17 A Mike Nelson.

18 Q Where is he based?

19 A In Atlanta, Georgia.

20 Q What was lead negotiator for the Union?

21 A Roger Grobstich and myself as co-chair.

22 Q Okay. You mentioned the company had a proposal.

23 A Yes.

24 Q Did the Union -- what did the Union do when they received  
25 the proposal?

1 A We took it and gave it consideration. Again, I was -- it  
2 was a full contract, which I think was spoken to earlier, in  
3 draft form. So there was a lot for us to go through to try to  
4 absorb and discussion back with the company and questions on  
5 what they exactly were trying to -- you know, what they really  
6 wanted to obtain through some of their proposals.

7 Q How long did it take the Union to go through that first  
8 proposal?

9 A It took most -- all of first day and probably half of the  
10 second day.

11 Q After digesting the proposal, what did the Union do next  
12 at the -- in bargaining?

13 A We gave a counterproposal to that.

14 Q Was it long, short?

15 A It was trying to cover as many as the sections as we  
16 could, so it wasn't in full detail as they had given us, no.

17 Q By the end of those first few days, 9th, 10th, 11th, was  
18 there agreement about any specific issues?

19 A We had come to at least a verbal agreement that we had --  
20 we had two or three items that we felt like we could certainly  
21 get through on dates and recognition and those type of things  
22 and sign off on those when got back together again.

23 Q Now, did anything stand out to you from that first  
24 proposal the Employer made?

25 A Yes, in particular, it would've been the management rights

1 clause. It was quite extensive that may be common to those  
2 folks, but not common in our area. So there was a lot of  
3 discussion on what the reasoning was of the company to have  
4 that extensive management rights clause. A lot of the stuff  
5 was covered in other areas in the contract anyway, in our  
6 opinion I guess.

7 Q Okay. Other issues that struck the Union?

8 MR. KLINE: I'm sorry, I don't know means the strike the -  
9 -

10 Q Other issues where you felt the company's proposal was far  
11 from what you'd expected?

12 MR. KLINE: I'm going to object to that.

13 HEARING OFFICER HAJDUK: How about rephrasing it to just  
14 making it a very compact question? Like, anything of  
15 exceptional note, how about that?

16 Q Anything of exceptional note?

17 A It would've been the seniority and how the work got  
18 between especially the two facilities and how that was going to  
19 work out. The company actually wasn't objectionary (sic) to  
20 it, but again, to try to build something that worked for both  
21 the Union and the company was quite a large task.

22 Q Can you remind us what the workers' issue was with  
23 seniority?

24 A Yes. Seniority, number one, with the scheduling issues,  
25 and then, number two, the -- again, the opportunity for

1 movement between the two facilities if folks wanted.

2 MR. KLINE: I don't like to file motions to strike, but I  
3 thought his answer was unresponsive to the question, at least  
4 in my ears. I thought the question was, was there something  
5 else exceptional in the agreement. But then I thought you were  
6 referring to a proposal that the Union had made regarding  
7 seniority in the two buildings.

8 MS. VLADECK: My objection to that is that I asked a  
9 follow-up question to refresh us as to what the workers were  
10 looking for as a way to contrast it with Mr. Williams'  
11 characterization of the Union's view of the company's  
12 proposal.

13 HEARING OFFICER HAJDUK: Right, and then he went into  
14 the issue about seniority after that because that was,  
15 according to his testimony, one of the premier issues at  
16 play. So I think that's what led to that line of -- his  
17 response.

18 MR. KLINE: I just want to know if it was -- was it the  
19 company's proposal on seniority that he found exceptional?

20 WITNESS: No, again, the company -- actually, the  
21 seniority, they were working with us to try to base, you know,  
22 something would work for both sides. It was an extensive  
23 issues, I guess, for both sides.

24 HEARING OFFICER HAJDUK: Is it sufficiently clear? I  
25 mean, we can get to more in cross, but --

1 MR. KLINE: No, no, that's fine.

2 HEARING OFFICER HAJDUK: Okay, all right.

3 Q BY MS. VLADECK: Let me go back, though, to the original  
4 question, just a few steps back. Anything else in the  
5 Employer's initial proposal that seemed exceptional?

6 A We had a discussion on the layoff and recall process, the  
7 grievance procedure and how that worked or how the company  
8 envision it work and then how we felt like it should work.

9 Q How did the company -- what was the company's proposal  
10 that you were reacting to?

11 A Well, their proposal, part of it was just the fact that on  
12 the steps they would talk about days, and we felt more like  
13 calendar days worked because of the different schedules. We  
14 wanted to make sure the employees would have a chance to be  
15 there, as well as the company, to the supervision or whoever  
16 might need to be around.

17 One of the pieces of it was the ability for the -- at the  
18 end of the day, if we had to file an arbitration case that the  
19 company was pretty insistent that the cost go to the loser, if  
20 you will, of the arbitration. That's not the way we normally  
21 do business.

22 Q Had you seen --

23 A So we had a lot of --

24 Q Had you seen a proposal like that before?

25 A No. I have seen contracts with that stuff in there, but

1 nothing that we have.

2 Q What was the Union's view of that proposal?

3 A At the end of the day, it was -- you know, we couldn't  
4 live with that type of language in there for an arbitration  
5 process.

6 Q Okay. When was the next set of bargaining dates?

7 A The next set would've been November 27, 28, 29.

8 Q Okay. Can you give us a broad sense of what happened on  
9 those dates?

10 A On those dates, we were able to sign off on some of the  
11 stuff, again, that we had talked about verbally during the  
12 prior session, and then go back over again and talk about some  
13 of the proposals out of the contract.

14 Q Okay.

15 MS. VLADECK: I think I've got to ask for one more  
16 stapling pause.

17 HEARING OFFICER HAJDUK: Sure, we'll go off the record.

18 MS. VLADECK: No, no, I got to those, forgive me.

19 HEARING OFFICER HAJDUK: You do?

20 MS. VLADECK: I do.

21 HEARING OFFICER HAJDUK: Then we'll stay on the record.

22 MS. VLADECK: Yes. All right. On the record still?

23 HEARING OFFICER HAJDUK: Um hum.

24 Q So, Mr. Williams, are you saying -- well, tell us where  
25 the parties were by the end of the November dates in the

1 bargaining.

2 A We felt like we were making substantial movement --

3 Q Okay.

4 A -- in the negotiation process.

5 Q Do you recognize this document, which I've marked as  
6 Union 5?

7 **(Union Exhibit 5 marked for identification)**

8 A Yes.

9 Q What is it?

10 A It's a progress report that the company put together with  
11 us as far as where we were at on the contract, where we stood  
12 on various dates there.

13 Q I'm sorry, did you say the company put this together?

14 A The company and the Union put it together.

15 Q Who created this document?

16 A This document was created by Mr. Grobstich, to my  
17 knowledge.

18 Q Okay. So is this a joint company/union document?

19 A Yes, we would review and --

20 Q Let me clarify. I'm not talking about what's in the  
21 document.

22 A Okay.

23 Q I'm talking about this list.

24 A Right.

25 Q Is this something that's shared between the Union and the

1 company?

2 A Yes.

3 Q It's not the Union's document?

4 A Right.

5 Q Okay.

6 MR. KLINE: I'm sorry, it's not the Union's document? I'm  
7 just having trouble again because we had these multiple  
8 questions that appears that she's again arguing with her own  
9 witness, trying to get him to say something that she's  
10 anticipating him to say.

11 HEARING OFFICER HAJDUK: How about we do this? Let's have  
12 you enter it right now and then we can do voir dire on this.  
13 Would that be fine?

14 MS. VLADECK: Sure.

15 HEARING OFFICER HAJDUK: Do you want to move for --

16 MS. VLADECK: Yes, I'm just thinking.

17 **(Long pause)**

18 MS. VLADECK: All right --

19 WITNESS: I can maybe clarify if --

20 HEARING OFFICER HAJDUK: If you want to do that, we can  
21 do that too.

22 WITNESS: Okay. This document was probably created by  
23 Roger Grobstich, our international rep. When I say that the  
24 company and the Union worked together, they would give us a  
25 list of what they felt like was still outstanding and we

1 would either agree or disagree. Normally, we were on page  
2 with it so that we knew where we were at as far as what we  
3 had signed off on.

4 Q BY MS. VLADECK: Okay. So this look like a list.

5 A Right.

6 Q What is it a list of?

7 A It's a list showing the agreements that we have reached  
8 and the date that they were signed.

9 Q Okay. At the top of the first page on the right, the  
10 right column, it says TA date.

11 A Yes.

12 Q What does that mean?

13 A Tentative agreement date.

14 Q All right.

15 MS. VLADECK: I'm going to move this into evidence.

16 HEARING OFFICER HAJDUK: Any objection?

17 MR. KLINE: No objection.

18 MR. SOLEM: No objection.

19 HEARING OFFICER HAJDUK: Okay. Hearing no objection,  
20 Union 5 is received into evidence.

21 **(Union Exhibit 5 received into evidence)**

22 Q Mr. Williams, do you see proposals here that were agreed  
23 to in November?

24 A Yes.

25 Q Can you give us some examples?

1 A Okay. The agreement piece there, of course, on top,  
2 nondiscrimination, the management rights -- I'm sorry, those  
3 still hanging out there again. That was a large issue. The  
4 grievance and arbitration process, which again took a lot of  
5 time to iron out to make it work for both parties, was in  
6 November. Then the seniority issue again and how that was  
7 going to work between the two buildings.

8 I'm trying to ascertain something that -- when the  
9 company -- when Mr. Nelson would come to town, I think he was  
10 kind of learning on the fly on some of the stuff, what local  
11 management was actually doing in the process. So he would  
12 actually hear stuff from his local op managers that was news  
13 to him. So then they kind of had to update him on what the  
14 process here was in Rochelle.

15 Some of the stuff was working with the op managers, made  
16 sense, and -- but then when he would question it, it of  
17 course would be a caucus and they would have to have  
18 extensive discussion about it. At the end of the day, again,  
19 a lot of discussion around that to make that thing work, but  
20 there was a lot of time involved in that.

21 Q When you talk about Mike Nelson, I think you said,  
22 "learning on the fly" --

23 A Yes.

24 Q -- what his local manager was doing.

25 A Right.

1 Q Can you give us an example?

2 A An example would be the seniority and how it worked. An  
3 example would be they would -- one op manager would talk to  
4 the other op manager at the other building and say, "Hey, I  
5 need some bodies down here, can you send some up?" They  
6 would put up a list of volunteers to try to get the  
7 volunteers first. That didn't make sense in Mike Nelson's  
8 world, I guess from some of the other contracts he had. So  
9 he had legitimate questions on how that was working, but  
10 actually it was a process that was already ongoing and would  
11 work at sites.

12 Q Okay.

13 A But he had to get information from them on how it  
14 actually works.

15 Q So he had to get information from them on how it  
16 actually worked. Any other things that made --

17 MR. KLINE: Is there a question?

18 MS. VLADECK: Yes, there is.

19 Q Other complications in the process?

20 A Other complications of the process to this time period?  
21 As far as the November time period, again, this was extensively  
22 talking about seniority, the grievance procedure and, again, we  
23 had a lot of discussion about management rights in the  
24 November timeframe.

25 Q Okay. Were -- was a next session scheduled?

1 A We attempted to schedule as much as we could. Again,  
2 the Union's -- at least our interpretation or our view at the  
3 time was that we were making some good progress, that we felt  
4 like we could get through quite a bit more. So we were  
5 actually anxious to try to get back, even if we could've  
6 before December or in December.

7 The company wasn't available during December. We tried  
8 to set up dates at the end of January. I think it was  
9 January 22nd, or the week of the 22nd that we were -- had  
10 tentatively agreed to. At the same time, we had hoped and  
11 talked to the company about getting back to the table the  
12 first of the year, the first two weeks of January, if at all  
13 possible. At the end of the day, those all got thrown out  
14 the window and we didn't wind up getting back until March.

15 Q Okay. I want to ask you about that.

16 **(Long pause)**

17 Q I'm going to represent that Donna James -- I'm giving you  
18 a document marked Union 6, and I'm representing that Donna  
19 James is my assistant. Do you recognize this?

20 **(Union Exhibit 6 marked for identification)**

21 A Yes.

22 Q What is it?

23 A It's correspondence back and forth with the company, as  
24 far as dates that we were trying to get back to the table.

25 Q Okay, specifically?

1 A And specifically, it addresses Mr. Nelson's  
2 unavailability due to all this -- his wife's illness. His  
3 wife has a serious illness, so we had to -- the company  
4 cancelled our dates in January.

5 Q Okay.

6 MS. VLADECK: I'd like to move this into evidence as  
7 Union 6.

8 HEARING OFFICER HAJDUK: Any objection?

9 MR. KLINE: No objection.

10 MR. SOLEM: No objection.

11 HEARING OFFICER HAJDUK: Hearing no objection, Union 6  
12 is received into evidence.

13 **(Union Exhibit 6 received into evidence)**

14 Q So then we see from this document, we were cancelled in  
15 January. What was next?

16 A Some dates were set up in February.

17 Q Do you remember which days?

18 A I can't recall the exact date, I want to say February 8th  
19 or the week of the 20th of February.

20 Q Okay.

21 A Again, our goal was to try to get back to the table as  
22 soon as we could.

23 **(Long pause)**

24 Q Would you look at this please? I've marked it as Union 7.  
25 Mr. Williams, what's this?

1 (Union Exhibit 7 marked for identification)

2 A This is more correspondence between the company and the  
3 Union.

4 Q Can you look down at the bottom message?

5 A Yes.

6 Q What is that message?

7 A It's a response to a telephone call and Local 578 was  
8 confirming to meet February 4th through 6th for negotiations.

9 Q Okay. And then farther up on this document, responding  
10 message was what?

11 A Yeah, that the company would not be available to meet in  
12 February for those dates.

13 Q Okay. The proposal instead was?

14 A Was to get back in March 4th, 5th and 6th, and then the  
15 11th, 12th and 13th.

16 Q How did the Union respond to this?

17 A Well, our initial response was, this is a long time.  
18 We're at the table at the end of November and now we're looking  
19 at almost four months later. I mean, this is -- actually, in  
20 our mind, it's ludicrous and we had considered ULP at the time,  
21 but with the -- you know, I'm trying to be understanding of the  
22 situation with Mr. Nelson's wife. We worked with him to try to  
23 get some dates out in March, but there was a lot of discussion  
24 going on back in our world as to why we're having to go this  
25 long. We have other folks -- myself, I was out on an illness

1 the whole month of January, actually February too, but there  
2 are people that step in for us that -- to keep the ball  
3 rolling, so it was kind of confusing on our end as to why the  
4 company couldn't do the same thing.

5 Q Okay. When did you get back to the table?

6 A On March 4th.

7 Q Okay. How many days did you meet for at that time?

8 A Three days.

9 Q Can you tell us what was discussed?

10 A We were, again, going back through the -- finishing up -  
11 - trying to finish up working on the language issues that  
12 were still out there. So there was discussion on trying to  
13 close that off between that week and the following week,  
14 March 11th so we could hopefully get back and start talking  
15 about the benefit and wage piece of it.

16 Q Did you?

17 A Yes, yes. Yeah, we -- actually had some correspondence  
18 even before that where we were talking about the insurance,  
19 which is a big issue for all of us. But the company was  
20 interested in the RWDSU insurance benefit medical plan that  
21 we were trying to convince the company. The reason they  
22 would be interested was hopefully that might even save the  
23 company money, as well as our employees there. So there was  
24 a lot of discussion, and there was stuff I wasn't involved  
25 in, but a lot correspondence between Roger and the company to

1 try to get the information each other needed to be able to  
2 make a good observation, a good comparison between the two  
3 plans.

4 HEARING OFFICER HAJDUK: Can we hold on for one second?  
5 Did you catch that part?

6 COURT REPORTER: If he's coughing, I can't get it.

7 HEARING OFFICER HAJDUK: Can you repeat that last  
8 sentence? You were just talking about you and Roger.

9 WITNESS: Yeah.

10 A There was a lot of correspondence between Roger and the  
11 RWDSU benefit folks and then the company to try to correlate  
12 what the difference in the plans were so that we could make,  
13 you know, good decisions on what we were going to do with  
14 medical.

15 Q Have you learned some of the differences between the  
16 company's plan and the Union's plan?

17 A Yes, there's several differences, especially on the  
18 benefit end as far as what's offered from the Union side with -  
19 - be able to -- you know, co-pays and the prescription drug  
20 plan was a lot better. So there's a lot of difference of --  
21 it's an 85/15 plan versus 80/20 plan. So again, for our  
22 benefit folks to be able to put a package together to make --  
23 to offer to the company, we had to have correspondence,  
24 naturally, back from the company's benefit people. Some of  
25 that didn't happen for some reason. It was a lag from the

1 company's standpoint to be able to get that information back.

2 That held that piece of it up for a good period of time.

3 Q Are there other structural differences in how the plans  
4 work?

5 A Yes, our plan is either single or family. Theirs includes  
6 an employee plus one. So to make a fair comparison, we've gone  
7 back to our benefit people now to try to get some numbers that  
8 correlate with employee plus one.

9 Q Okay.

10 A And the other piece of that would be that we didn't even  
11 have the numbers from 2012 of what the cost would be to the  
12 employees, or what the cost is to the company. So there's no  
13 way, you know, we could make a fair comparison between the two  
14 without that information.

15 Q Do you have the numbers now?

16 A Just now.

17 Q Just now means what?

18 A Just now, April the 16th.

19 Q Anything else that goes into healthcare discussions?

20 A Yes, it all ties back in with the benefit piece, what we  
21 call a pie in our world that the company, you know, naturally  
22 has so much that they're going to work with us on as far as  
23 wages and benefits and whatnot. And the insurance piece of it  
24 is probably the driving piece, if you will, to lead into the  
25 wages and what is fair and equitable to the people for what

1 they got paid versus what their new wages are going to be.

2 Q How easy is it to predict -- for the company -- well,  
3 withdrawn.

4 **(Long pause)**

5 Q Are there issues outside just the bargaining relationship  
6 that impact on getting an agreement about healthcare?

7 A Yes, actually, the elephant in all our rooms probably  
8 would be Obama Care and the unknown of what the effects that go  
9 into place in 2014 mean to the company.

10 Q Okay. Where do things stand right now with the discussion  
11 about healthcare?

12 A With healthcare, we have gone back again to our benefit  
13 people to try to get the employee plus one piece in there.  
14 Again, now that we just got on April 16th what the cost was --  
15 or would be -- would've been for this year, for 2013, to be  
16 able to make a good analysis and get that hopefully compiled  
17 here shortly.

18 Q Okay. When were the most -- I'm sorry. You talked about  
19 dates in March of bargaining. Can you remind us what those  
20 are?

21 A What the dates were? March 4, 5, 6 and 11, 12, 13.

22 Q Okay. Were those the most recent bargaining dates?

23 A The most recent to --

24 Q Dates that you were at the table?

25 A March, and then we did two dates in April here, 16th and

1 the 8th.

2 Q And is there another sessions scheduled?

3 A For May, we have -- I believe it's the 10th, 11th and the  
4 12th of May scheduled, and then 20th, 21st, 22nd and 23rd of  
5 May.

6 Q Okay. Now, can we go back to Union Exhibit 5? That's the  
7 list of proposals.

8 A Yes.

9 Q Looking at that list, can you tell what remains to be  
10 discussed?

11 A Yes, wages, health insurance, as we just talked about, and  
12 along with the health insurance, the STD, LTD life, some of  
13 those types of plans that go with the Americold health  
14 insurance piece of that, a separate pie, if you will, and then  
15 the dental along with the medical and health insurance.

16 Q Has the Union made a wage proposal yet?

17 A Yes, we have.

18 Q Okay. Can you say more about that?

19 A We put a wage proposal out actually this last session  
20 hinging on, again, where we wind up with the health  
21 insurance.

22 Q Did the Employer make a proposal as to wages?

23 A No.

24 Q Did the Employer respond to the Union's proposal?

25 A No.

1 MS. VLADECK: Now I do need a stapling break. Can we go  
2 off the record for a moment?

3 HEARING OFFICER HAJDUK: Yeah, let's go off the record.

4 **(Off record)**

5 Q Mr. Williams, I only have a few more questions. First I'm  
6 going to ask you to look at this document. I've marked it as  
7 Union 8. Can you describe this document for us?

8 **(Union Exhibit 8 marked for identification)**

9 A Yes, it's the sign-in sheet, if you will, that we and the  
10 company signed at each session.

11 Q Can you look through? How many pages are there? How many  
12 -- let me rephrase. How many separate dates?

13 **(Long pause)**

14 A I count eleven.

15 Q Do you know if there's a sheet for every day that the  
16 parties were at the bargaining table?

17 A I don't think so.

18 **(Long pause)**

19 A It looks like March -- I don't see nothing for March 11th  
20 and 12th.

21 MR. KLINE: They are not in order.

22 MS. VLADECK: They're not in order?

23 MR. KLINE: No.

24 MS. VLADECK: Are you sure?

25 MR. KLINE: At least the one I got is not. March 16th is

1 last.

2 MS. VLADECK: Yes, I was going to get to that.

3 MS. VLADECK: Other than that --

4 MR. KLINE: Yes.

5 Q I'm sorry, Mr. Williams, you were saying there are some  
6 dates that are not represented here?

7 A Evidently, they didn't have sign-in sheets for the 12th  
8 and 13th, although I see that --

9 Q Of which month, I'm sorry?

10 A Of -- I'm sorry, of March of this year.

11 Q Okay. Can you turn to the last page?

12 A I don't see October 11 as well.

13 Q Okay.

14 A Last page?

15 Q Yes please.

16 A Okay.

17 Q Do you recognize that?

18 A Yes.

19 Q Do you see your signature?

20 A Yes.

21 Q Where is it?

22 A It's next to the bottom -- or it's right in the middle,  
23 third one down on the Union side.

24 Q Okay. What's the date written on this page?

25 A It says 3/16/2013.

1 Q Was there bargaining on 3/16?

2 A No, this was just this week.

3 Q Okay. So what date should --

4 A It should say 4/16/2013.

5 MS. VLADECK: I'd like to move Union Exhibit 8 into  
6 evidence.

7 HEARING OFFICER HAJDUK: Any objection?

8 MR. KLINE: There was -- the only objection I have is --

9 **VOIR DIRE**

10 Q BY MR. KLINE: You counted eleven to begin with and  
11 that's part of your testimony.

12 A When I just now counted?

13 Q Can you count it again?

14 A Yeah, sure.

15 **(Long pause)**

16 A Thirteen if we're talking about the one that had the two  
17 days at the bottom. I didn't see it the first time.

18 Q Then you also testified that there was negotiations on  
19 October 11th, but there's no sign-in sheet.

20 A I didn't see one when I flashed through the first time.  
21 It looks like they're out of order. October 10th, I don't  
22 see October 11th.

23 Q If there were negotiations on October 11th, would it be  
24 fourteen days?

25 A Yes.

1 Q Okay, fourteen negotiation sessions. Okay.

2 HEARING OFFICER HAJDUK: Are you satisfied?

3 MR. KLINE: I am. No objection.

4 HEARING OFFICER HAJDUK: Any objection?

5 MR. SOLEM: No objection.

6 HEARING OFFICER HAJDUK: Okay. Hearing no objection,  
7 Union 8 is received into evidence.

8 **(Union Exhibit 8 received into evidence)**

9 HEARING OFFICER HAJDUK: Hang on a second. Did we get  
10 Union 7 in, just to clarify? Okay. Did you want to move for  
11 entering Union 7 in as well?

12 MS. VLADECK: Yes, I'd like to enter Union 7.

13 HEARING OFFICER HAJDUK: Union 7 was the second email  
14 regarding setting up negotiations from March 4th to the 6th.  
15 Any objections?

16 **(Long pause)**

17 MR. KLINE: No objection.

18 HEARING OFFICER HAJDUK: Okay.

19 MR. SOLEM: No objection.

20 HEARING OFFICER HAJDUK: Okay. Hearing no objection,  
21 Union 7 is also received into evidence.

22 **(Union Exhibit 7 received into evidence)**

23 **CONTINUED DIRECT EXAMINATION**

24 Q BY MS. VLADECK: Now, Mr. Williams, why haven't we  
25 introduced any of the proposals you've talked about?

1 A Common practice for us, anyway for the Union side, that  
2 we don't divulge those -- that material until they're set in  
3 stone, if you will. There's too many rumors that can go out  
4 there with it. Along with the process here now and the  
5 things that have happened since November, it's put a real  
6 bind for stuff to get out there to common folk to try to  
7 interpret where we're at. So we just don't that, that's not  
8 the way we do business. It doesn't make sense. It wouldn't  
9 behoove me to tell you I'm buying you a new GM and I'll give  
10 it to you tomorrow and then you go up there tomorrow and, no,  
11 I guess I don't have it. That's the way we try to make sure  
12 for our integrity on top of that to make sure we know what  
13 we're talking about when we do get together.

14 Q What do you tell workers about what's happening in  
15 bargaining?

16 A We try to tell them so that they can understand as  
17 broadly as we can that sessions are still ongoing, making  
18 progress, and that when we get a full package put together,  
19 we'll definitely get everybody together so we can present the  
20 whole thing.

21 Q So you wait to present the full package?

22 A Yes, once we get -- between the company and Union, get a  
23 final acknowledgement on what the package is going to look  
24 like.

25 Q You know why we're here today?

1 A Yes.

2 Q Why?

3 A Someone has put out a petition to decertify the Union,  
4 and again, that would be the elephant in the room. In our  
5 world, I guess that has put a burden on and real questions  
6 out there with our membership as to what's going on. Do we  
7 have a contract? Is a contract going on? Has it stopped  
8 now? There's rumors that they pick up what's going on here,  
9 and we try to acknowledge those as much as we can. But  
10 really, it has put a burden on the process since before the  
11 first of the year.

12 Q Why before the first of the year? This is a petition  
13 from April 8th.

14 A Yeah, before the first of the year, there was another  
15 one filed and --

16 Q Do you remember when?

17 A That was -- I want to say November, December, in that  
18 timeframe.

19 Q Okay. Did that impact bargaining?

20 A I can't say that it impacted bargaining. It impacted it  
21 from the standpoint, again, that we know we're trying to get  
22 dates together. We're trying meet with the company to try to  
23 ascertain a contract that works for both sides. We've had,  
24 you know, difficulties of -- with the company to get back to  
25 the table finally in March, understanding Mr. Nelson's issues

1 with his wife, but at the same time -- you know, we met the  
2 first three days in March and then finally the company sent  
3 in Mr. Hutchison the second week of March because Mr. Nelson  
4 couldn't make it.

5 Now, again, this puts another wringer in there because  
6 Mr. Hutchison actually had to be uploaded on where we were at  
7 in the process. I mean, I know they have communications back  
8 and forth between Mr. Nelson and Mr. Hutchison. But at the  
9 same time, it's different being right at the table and  
10 hearing the discussions and the ifs and why nots and  
11 discussions going on in the process.

12 He actually had to get himself up to speed between not  
13 only us but his own, you know, folks that he works with  
14 locally. So that process, you know, wasn't real -- we didn't  
15 get a lot done through some of that, not because of anybody's  
16 fault, but to get everybody up to speed. Then we do it again  
17 this month. I appreciate the fact that they're trying to  
18 send somebody out, but it kind of seems like there's nobody  
19 with a real definitive answer to be able to help us get the  
20 ball rolling, to keep it rolling.

21 Q Okay.

22 A So it's put a burden -- and again, we worked through my  
23 illness. Actually, Roger Grobstich's wife is very ill, so I  
24 know there's issues, but we've always had somebody. We have  
25 Randy Belliel, our regional director, which actually stepped

1 in to try to help to make sure that we kept everything up-to-  
2 date and the ball rolling so that we could get through the  
3 process here.

4 Q Okay.

5 A That's different from what would normally happen, but we  
6 pulled that in to make sure we at least on our side kept  
7 things running as smooth as we could.

8 Q Okay. Just a last question, comparing the company's  
9 initial proposal to where things stand today, all those TAs,  
10 the tentative agreements, are the two very different? Is  
11 there a lot of distance between them?

12 MR. KLINE: I'm going to object, there's no way -- do  
13 you have some specifics? There's no way he can --

14 HEARING OFFICER HAJDUK: We are talking about the things  
15 that are pending on this list, right?

16 MS. VLADECK: No, we're talking about the agreements --  
17 well, we're talking about both. We're talking about the  
18 agreements that have been reached on specific articles, as  
19 well as the state of the discussions on those articles that  
20 are pending.

21 HEARING OFFICER HAJDUK: Okay, so just a general  
22 characterization of --

23 MS. VLADECK: Yes, I'm asking the Union's chief  
24 negotiator to compare where things began to where they are  
25 now.

1 HEARING OFFICER HAJDUK: Okay, I think that's fine.

2 A From where we began to where we are at now, substantial  
3 ground covered and we've -- you know, if we got ourselves  
4 into a position where we can get this thing wrapped up,  
5 health insurance is still out there.

6 One of the things that has held us up here too is the  
7 company is going through another production. They're  
8 changing their warehouse management system. So the incentive  
9 base piece of what they do now is being actually held out of  
10 Caron Road while they're trying to go through this process.

11 That again, brings up a lot of questions with the folks,  
12 you know, doing that stuff for everybody to be talking about  
13 and to educate ourselves on what all that means. So I mean,  
14 that's been, you know, some discussion point, but as far as  
15 where we're at, we've gone a long way here. We've got the  
16 health insurance that we should be able to get back to and  
17 then the benefit/wage piece of it will -- the rest of it will  
18 follow in line. It just naturally does in any contract. It  
19 goes pretty quick after that.

20 Q In terms of the proposals that there's agreement about,  
21 did the Union in the end just agree to everything in the  
22 company's original proposal?

23 A No, no, no, no, we tweaked -- I believe that was the  
24 word earlier -- back and forth, working with the company on  
25 all these issues. Probably the one that the company stood

1 behind until it fell on its sword was the management rights  
2 clause. But the rest of the process, as we work back and  
3 forth to try to get some agreement to vacation, which the  
4 company wanted. It was a company proposal to change it from  
5 anniversary dates to calendar year dates. Very hard thing to  
6 understand, even for us, small committee, much less for us to  
7 be able to go out and tell a hundred folks, okay, here's what  
8 -- you know, you're not losing anything, but it doesn't look  
9 like you're not losing anything.

10 So we -- but we worked through all that stuff and  
11 there's been -- you know, we -- there's -- it looks nothing -  
12 - in their world, it looks nothing like the original proposal  
13 from the company, in my estimation.

14 Q Any issues where grandfathering has been discussed?

15 A Yes. Yes, we have thirteen individuals at the Caron  
16 Road facility that are carrying -- I think it's Caron Road  
17 facility, I'm sorry. Carrying extra vacation days that --  
18 I'm sorry, I'll correct myself, it's Americold facility.  
19 Sorry about that.

20 They're carrying from back in the day when the merger  
21 took place, they let the -- I think it was 2004, maybe after  
22 that that -- 2009. That these folks that were working at  
23 that time were enjoying an extra three days, and they let the  
24 folks keep those days. They've been using them. So we're  
25 looking at trying to grandfather those folks and let them

1 keep those days, of course.

2 Then there's one other individual that is making like  
3 \$1.25 more of a shift differential on Americold -- or Caron  
4 Road facility that we're looking to grandfather as well so  
5 that he can, you know, enjoy that \$1.25 that he's been  
6 getting.

7 Q You said that the Caron Road and Americold employees  
8 have different lengths of service?

9 A Yes.

10 Q Can you say what you mean?

11 A Well, the Americold dry facility has been around, you  
12 know, for awhile. The Caron Road facility actually came into  
13 existence after the buyout with ConAgra. So the length of  
14 service there is, at the top, like seven years compared to  
15 twenty-year employees, plus on Americold.

16 Q Has that impacted any of the Union's positions in  
17 bargaining?

18 A Impact it in which way?

19 Q Do you have to develop language specific to account for  
20 that -- those differences?

21 A Yes, yes. When we talk about layoffs between the two --  
22 movement between the two buildings if there are layoffs,  
23 understanding that we've come up with language to keep -- for  
24 the employees to be able to enjoy the building they work in  
25 now, which is a major issue to both the buildings. At the

1 same time when it comes to layoff, especially long term  
2 layoff, it doesn't make sense that people that have been  
3 around for awhile, twenty years or whatever, would have the  
4 first opportunity to be able to keep their job compared to  
5 somebody that's only got four or five years. So that would  
6 be probably the biggest piece of where the seniority would  
7 crawl in.

8 Q All right.

9 MS. VLADECK: All right, no more questions at this time.

10 HEARING OFFICER HAJDUK: Did we want to take a break  
11 before we start cross-examination?

12 MR. KLINE: It's up to the witness. Do you need a  
13 break?

14 HEARING OFFICER HAJDUK: Do you want a break?

15 WITNESS: No, I'm good.

16 HEARING OFFICER HAJDUK: Okay. Mr. Kline?

17 MR. KLINE: Thank you.

18 **CROSS-EXAMINATION**

19 Q BY MR. KLINE: This is cross-examination for purposes of  
20 developing the factual record that you've testified to on  
21 your direct testimony. Do you have a complete set of the  
22 documents that the Union has introduced?

23 A Do I a complete set?

24 Q In front of you --

25 HEARING OFFICER HAJDUK: He's asking if you have -- do

1 you have copies of all the Union exhibits in front of you  
2 right now?

3 WITNESS: Yes, yes.

4 HEARING OFFICER HAJDUK: Okay.

5 Q Because we're going to be bouncing around.

6 A Okay.

7 Q I just want to make sure you have --

8 MS. VLADECK: Can I step in for a second? I don't think  
9 he has --

10 HEARING OFFICER HAJDUK: I don't think he has Union 2.

11 MS. VLADECK: -- Union Exhibit 2.

12 HEARING OFFICER HAJDUK: You can have the rest of mine.

13 MR. KLINE: Can we just make a copy quickly of Union 2?

14 HEARING OFFICER HAJDUK: Okay.

15 MR. KLINE: So he can have a complete set?

16 HEARING OFFICER HAJDUK: Yeah, sure, let's do that.

17 Let's go off the record for a second.

18 **(Off record)**

19 HEARING OFFICER HAJDUK: Mr. Kline?

20 MR. KLINE: Yes, thank you.

21 Q Mr. Williams, if you don't mind, will you look at Union  
22 5?

23 A Okay.

24 Q You mentioned that there were two bargaining sessions in  
25 April, one on April 9, I believe, and one on April 16.

1 A Right, correct.

2 Q I see nothing TA-ed on either of those dates. Am I  
3 correct on that?

4 A Yes.

5 Q Now, with respect to what appears on the left hand  
6 column, are these all the items that are in negotiations  
7 right now?

8 A So --

9 Q Is this the complete laundry list of everything that the  
10 parties --

11 A Of what we have left?

12 Q Left and already done.

13 A Yes, yes.

14 Q Okay. Now, are you aware -- and you mentioned his name  
15 a minute ago. You know Randy Belliel?

16 A Yes.

17 Q Do you know if in March of 2013, Mr. Belliel raised the  
18 issue of a pension plan with Mike Nelson?

19 A Pension plan or a 401?

20 Q No, actually, a defined benefit plan.

21 A Okay. Not that I'm aware of, that I recall.

22 Q Could that have been done in a telephone conversation  
23 between Mr. Belliel and Mr. Nelson?

24 A It's speculative (sic), could've been.

25 Q Could -- but you're not aware that the Union has

1 proposed a pension plan?

2 A Not that I recall.

3 Q Now, are you aware that Mr. Belliel may've had telephone  
4 conversations with either Mr. Hutchison or Mr. Nelson during  
5 the pendency of these negotiations?

6 A That he may've had telephone -- sure.

7 Q Okay. Do you know if during those telephone  
8 conversations, the topics of negotiations would've been  
9 discussed?

10 A Possibly.

11 Q Who is Mr. Belliel?

12 A He's a regional director of the RWDSU.

13 Q Is he -- among the people at the bargaining table, is he  
14 the highest official in the Retail Workers?

15 A Yes.

16 Q So if he was to propose something, it would carry the  
17 weight of the Union, would it not?

18 A Yes.

19 Q I'd like to talk to you about health insurance.

20 A Okay.

21 Q You made a point during your testimony that the Union  
22 just recently received information from the company. You  
23 mentioned the employee plus one as a type of thing that the  
24 company provide information.

25 A Right.

1 Q Did I characterize your testimony correctly?

2 A Yes, we talked about the difference between the two  
3 plans, and employee plus one was probably one of them.

4 Q Isn't it true that the company provided the Union that  
5 information months before that?

6 A Not to my knowledge.

7 Q Isn't it also true that at the bargaining table, Randy  
8 apologized to Mr. Nelson for asking for that information  
9 again?

10 A Not that I recall.

11 Q In the information that you had described earlier with  
12 respect to the information request, you had mentioned that  
13 you had received hundreds of pages of information from the  
14 company. Do you recall that?

15 A Yes.

16 Q Did any of those pages contain information that the  
17 Union had sought on the health insurance plan?

18 A I didn't specifically see all the documents.

19 Q So you don't know what the company provided in response  
20 to that information request?

21 A In specific to everything that they provided, no, I  
22 haven't seen every document.

23 Q All right, so there's a possibility, is there not, that  
24 the company did provide information on the health insurance  
25 plan in response to the information request?

1 A Well, at that time, it was specific comparing the plan  
2 to the RWDSU plan, I'd say no.

3 Q Did the company ever say -- or not negotiate over the  
4 health insurance plan?

5 A No.

6 Q In fact, the company engaged the Union in that  
7 discussion, haven't they?

8 A Yes, they've been a piece of it.

9 Q Isn't it a fact that right now the information that's  
10 holding up any further discussion on health insurance is in  
11 the Union's hands?

12 A I believe, from my knowledge, there was one question  
13 that the company was trying to get back to us on, then the  
14 ball's in our court to answer another question on our end  
15 with the employee plus one.

16 Q Isn't the issue the cost?

17 A Yes.

18 Q Of the plans?

19 A Yes.

20 Q And the company is awaiting the Union's response to the  
21 cost of the Union plan. Isn't that correct?

22 A Inclusive of the employee plus one, yes.

23 Q The wage proposal that you've described in your  
24 testimony as being offered on April 16, did -- without,  
25 obviously, being specific as to the nature of the proposal,

1 did the Union's wage proposal contain percentage increases in  
2 the current pay?

3 A No, we didn't talk about that structure.

4 Q Isn't it a fact that the wage proposal that you referred  
5 to is a blank sheet?

6 A When you say a blank sheet, I'd say it's in relevance  
7 with the insurance where the health insurance is.

8 Q Okay, so let's be fair to each other. The Union didn't  
9 provide a wage proposal to the company on April 16, did it?

10 A Not a number.

11 Q Okay. I mean -- and in wage proposal, we're dealing  
12 with numbers, aren't we?

13 A Right, and it was explained by Mr. Belliel at the same  
14 time the reason why there was no number there. Again, in  
15 relevance to health insurance, it assumes we can get  
16 something there.

17 Q So when you said that the company didn't respond to the  
18 Union wage proposal, that was a little misleading, wasn't it?

19 A You could call it that, I guess. They haven't had a  
20 chance to respond, number one, to get back to the table.  
21 Number two, with the opportunity to try to find out these  
22 health insurance costs.

23 Q Now, I believe your testimony was that health insurance  
24 and the monetary -- the pie that you referred to, when did  
25 serious discussions begin with respect to the pie?

1 A Probably at the March sessions when we were finishing up  
2 most of the language issues.

3 Q Okay, so March 27, 26, in that timeframe? Is that fair?

4 MS. VLADECK: Objection, not on the record. There were  
5 no dates at the end of March.

6 HEARING OFFICER HAJDUK: There are no dates for the  
7 negotiations -- for the discussion of the pie issue, the  
8 overall interpretation of the pie?

9 MR. KLINE: I'm just trying to get an idea of when the  
10 pie became an issue.

11 HEARING OFFICER HAJDUK: Okay. So when did -- when you  
12 talked about a division of a pie, when did that take place?

13 WITNESS: Well, actually, the pie is always out there.  
14 I mean, that's the term -- a broad term that we all -- both  
15 sides use.

16 Q But that's why I ask, when did really meaningful  
17 negotiations begin?

18 A Meaningful?

19 Q Yeah, when did the Union -- let me even rephrase. When  
20 did the Union request information from the company on health  
21 insurance?

22 A The specific date, I can't be --

23 Q Is it March?

24 A No, it was before March.

25 Q Isn't it also a fact that the company responded within

1 two weeks to the Union's request for health insurance  
2 information?

3 A To my knowledge, no. To my knowledge, no, they didn't  
4 because we tried to start looking at that information as  
5 early as before the first of the year.

6 Q So could that information have been included in the  
7 information that had previously been provided to the Union  
8 that you're not fully familiar with?

9 A Not that I'm aware of that we received anything.

10 Q Okay. When did you receive information on health  
11 insurance from the company?

12 A We started talking about the health insurance actually  
13 in March, and then April dates here.

14 Q Given the complexity of the health insurance issue, as  
15 you testified because of Obama Care, is it your opinion that  
16 the company has been dragging its feet with respect to that  
17 issue?

18 A Is it my opinion?

19 Q Yes.

20 A No.

21 **(Long pause)**

22 Q Now, in terms of the pending issues, I just want to make  
23 sure I have them all clear in everyone's mind. It's on page  
24 3 of Union 5.

25 A Yes.

1 Q They are -- wages is still open?

2 A Yes.

3 Q There's been no -- based on your testimony on cross-  
4 exam, neither side has produced any numbers to the other on  
5 that topic.

6 A Specific to wages, no, we haven't.

7 Q Okay. And health insurance, another -- you'd  
8 characterize that as big issue, wouldn't you?

9 A Yes.

10 Q In fact, you said it's probably the biggest issue.

11 A Yes.

12 Q Okay. Now, we're still -- there's still information  
13 that needs to be exchanged?

14 A Yes.

15 Q Nobody has said yes, nobody has said no at this point.  
16 Is that correct?

17 A Correct.

18 Q Okay. Has the Union promised the company a specific  
19 date as to when it will be providing the cost information  
20 that the company requested?

21 A A specific date, not in general. It was hopefully to  
22 get it back within the week, probably as we're speaking now,  
23 hopefully.

24 Q Okay, so by the week, you mean this week, right?

25 A Yes, by this week.

1 Q Okay.

2 MS. VLADECK: I just want to object, I think he said a  
3 week, not this week.

4 HEARING OFFICER HAJDUK: A week? Well, you guys met on  
5 the 16th?

6 WITNESS: Right.

7 HEARING OFFICER HAJDUK: So you mean a week from the  
8 16th?

9 WITNESS: Right, to give a week to try to -- again,  
10 that's -- you know, by the time we get a hold of our benefit  
11 people and get back.

12 Q So it's really not in the Union's hands, is it? It's in  
13 the benefits people's hands?

14 A Yes.

15 Q Okay. So it would be hard to predict exactly --

16 A Yeah, that's what I'm getting at.

17 Q Now, the other issues, and they were put together on  
18 your list. Right under health insurance, there's short term  
19 disability.

20 A Right.

21 Q That's the STD?

22 A Yes.

23 Q Right. Where do things stand with respect to those  
24 discussions?

25 A Again, those are not with the health insurance.

1 Q Has there even been a proposal -- has the Union provided  
2 the company a proposal on short term disability?

3 A No.

4 Q LTD, I assume, is long term disability?

5 A Yes.

6 Q Has the Union provided the company a proposal with  
7 respect to long term disability?

8 A No.

9 Q Life insurance, has the Union provided the company a  
10 proposal with respect to life insurance?

11 A No.

12 Q The global, etc., any idea what's meant by --

13 A There's several items that encompasses the STD. They  
14 had mentioned another small policy that I recall, some -- I  
15 don't want to speculate, but there's been several other  
16 issues that came -- these are all lumped in with the health  
17 insurance that the company provides to the employees  
18 presently and we want to make sure that those are captured in  
19 negotiations.

20 HEARING OFFICER HAJDUK: Let me stop for a second, so  
21 just to clarify, you don't know specifically what etc. refers  
22 to, but they're all kind of related to the --

23 WITNESS: Right.

24 HEARING OFFICER HAJDUK: -- short term disability?

25 WITNESS: Right.

1 HEARING OFFICER HAJDUK: Okay.

2 WITNESS: Those type of items.

3 HEARING OFFICER HAJDUK: Okay.

4 Q But it's your understanding the etc. does not include  
5 any defined benefit plan. Is that correct?

6 A Yes.

7 Q Dental insurance, has there been a proposal exchange  
8 between the Union and the company on dental insurance?

9 A There hasn't been a proposal exchange, there's been  
10 information exchange.

11 Q Okay. Now, vacations, as I read it, three sections were  
12 resolved and three sections are pending.

13 A Yes.

14 Q Is that correct?

15 A Yes.

16 Q Could -- recognizing that this is difficult, can you  
17 give us just a general description of what's still pending?

18 A Of what's still pending?

19 Q Yes, just a general description.

20 A General description would be basically the benefit  
21 package, if you will, of the negotiation process.

22 HEARING OFFICER HAJDUK: I'm unclear about that.

23 There's six things, it would seem by this document, that  
24 would be --

25 WITNESS: Yes.

1 HEARING OFFICER HAJDUK: -- it'd be encapsulated by  
2 vacations. What are these three -- to the extent that you  
3 know, what are these three things that are pending?

4 WITNESS: For example, one would be -- the top of my  
5 head is one I already mentioned about the folks that are  
6 enjoying three extra days of vacation at the one facility.

7 HEARING OFFICER HAJDUK: Okay.

8 Q There are similar things that are also pending?

9 A Yes, nothing major, but that would be one item.

10 Q Okay. So the parties then have agreed to the number of  
11 hours of vacation of an employee who has twenty years of  
12 service or more?

13 A No, I believe we still have one pending proposal out  
14 there for 25-year employees to enjoy an extra week of -- so  
15 that would be --

16 Q So that's still pending?

17 A Right.

18 Q Okay, okay. The -- now, you mentioned the 401K as  
19 resolved but not TA-ed.

20 A Yes.

21 Q Can you tell us why it has not yet been TA-ed?

22 A We just had discussion on it this past session, the  
23 company's agreed with us to -- where we're going with that so  
24 we can finish that off the next time we get together.

25 Q Okay, good. Now, the term of agreement, has that been

1 discussed?

2 A Just in general.

3 Q Has anyone proposed a one-year agreement?

4 A No.

5 Q Has anyone proposed a three-year agreement?

6 A No.

7 Q Has anyone proposed a five-year agreement?

8 A No.

9 Q Okay. Now, you're going to have to help me on this, the  
10 next one. It's called production standards/incentives.

11 A Yes.

12 Q Now, what is pending? Is it the production standards or  
13 is it the incentives that would be paid for meeting  
14 production standards?

15 A Actually what's pending is just something that the  
16 company finalizes on their end is what the system's going to  
17 be and what the incentive is going to be for that. They're  
18 trying to standardize the system between the two facilities  
19 and it's still hanging out there, if you will.

20 Q Okay. What is the Union's -- again, we're not trying to  
21 get into positional, but what proposal has the Union -- has  
22 the Union made a proposal --

23 A There are still proposals, just clarification on what is  
24 actually going to be happening with the standards.

25 Q Okay.

1 Q At one point, you were asked to talk about the  
2 exceptional issues that the company's initial proposal has it  
3 in, and you were asked for your opinion on that, so I'm going  
4 to do the same thing.

5 A Okay.

6 Q With respect to production standards/incentives, is that  
7 an important issue for the Union?

8 A It absolutely is.

9 Q Has the company offered a proposal with respect to  
10 incentives?

11 A No.

12 Q There's been no proposal with respect to --

13 A No.

14 Q -- incentives? Okay. Now, perhaps this miscellaneous  
15 proposal is a hidden defined benefit plan. Is that possible?

16 A That's possible.

17 Q Do you know what the miscellaneous proposal is?

18 A No, I don't.

19 Q But it's pending?

20 A Yes, it's pending and we have the right to withdraw.

21 Q I just have a couple of other questions that --

22 **(Long pause)**

23 Q On one of the documents for the -- just use Union 3 for  
24 the sake of -- this was not done -- what I'm going to talk  
25 about was not done intentionally, but there was a Xeroxing

1 problem, and at the very bottom -- because I think this is --  
2 what it says, it says affiliated with the United Food and  
3 Commercial Workers. Is that correct?

4 A Correct.

5 Q What is the nature of the affiliation?

6 MS. VLADECK: Objection, relevance.

7 MR. KLINE: Well, I think it is relevant because at one  
8 point he testified this was the only RWDSU contract. Based  
9 on the relationship between the United Food and Commercial  
10 Workers, they have a number of contracts with Americold. So  
11 I'm just trying to figure it all out.

12 MS. VLADECK: The Union's internal structure isn't  
13 relevant. I'm happy to make a representation for the record  
14 that the RW is an international union that is a council of  
15 the United Food and Commercial Workers, but it is an  
16 independent, free-standing international union.

17 HEARING OFFICER HAJDUK: Such that its proposals at  
18 bargaining with Americold, hypothetically, would be  
19 substantially different from, say, the UFCW?

20 MS. VLADECK: They could be.

21 HEARING OFFICER HAJDUK: Okay.

22 MS. VLADECK: I mean, I'm not going to speak to and I'm  
23 going to object to questions asking my witness to speak to  
24 any discussion that happens among and between unions, not  
25 just unions with affiliations or without affiliations.

1 MR. KLINE: No, I would agree.

2 HEARING OFFICER HAJDUK: Counsel, I don't he was talking  
3 about that.

4 MR. KLINE: Okay.

5 HEARING OFFICER HAJDUK: But in --

6 Q BY MR. KLINE: Based on the relationship that the RWDSU  
7 has with the United Food and Commercial Workers, were -- did  
8 you ask to see the collective bargaining agreement that RW --  
9 I'm sorry, that the UFCW had negotiated with Americold?

10 A No, I didn't.

11 MS. VLADECK: I'm sorry, don't answer so fast because I  
12 want to object to the question insofar as it --

13 MR. KLINE: I know, it's too late.

14 MS. VLADECK: But I'm getting on the record for any  
15 further questioning as to the relevance of the relationship  
16 between the RW and the UFCW.

17 MR. KLINE: The only relevance is the fact that we heard  
18 a lot of testimony about this period between June 9th and  
19 October as to the reasons why it took so long to get  
20 bargaining started. I'm just trying to figure out if there  
21 was some shortcuts that the Union had at its disposal and  
22 decided not to undertake.

23 HEARING OFFICER HAJDUK: Well, I think it's pretty clear  
24 that all unions -- generally speaking, union talk to one  
25 another about these kinds of things, especially if they're in

1 a related industry like that. So how about we just limit the  
2 question to, did the RWDSU obtain any sort of information  
3 from the UFCW in preparing for bargaining? Is that  
4 sufficient, counsel?

5 MR. KLINE: Can he answer that?

6 MS. VLADECK: I'm okay with that.

7 HEARING OFFICER HAJDUK: Okay, let's do that.

8 Q BY MR. KLINE: You've heard the question.

9 A No, I didn't.

10 Q With respect to that timeframe between -- and I'm trying  
11 to figure out the dates again. It was June 15, 2012 and  
12 October 9, 2012. Am I correct that during that timeframe,  
13 the Union never requested a date to begin negotiations, and  
14 that date was rejected by Americold?

15 A I'm sorry, could you ask --

16 Q I know, it's kind of a convoluted question, isn't it?  
17 I'm only looking at that period between June 15 and October  
18 9. So you achieved recognition and then negotiations began.  
19 There was some -- during the opening statement, it was  
20 mentioned that that's a four-month gap. I'm just trying to  
21 figure out if in that four-month gap did the Union -- when  
22 did the Union make a request to begin negotiations?

23 A When did -- I don't recall.

24 Q Okay. When the Union first made that request -- it had  
25 to happen at some point, would you agree, right?

1 A Right.

2 Q Did the company ever reject that request and say, "We're  
3 not ready to begin on October" -- or whatever date the Union  
4 requested?

5 A Not that I'm -- not to my knowledge.

6 Q Okay. There was an information request. It must be  
7 Union 3.

8 **(Long pause)**

9 Q It went to Robert Hutchison, but it didn't go to Robert  
10 Hutchison at Americold. Do you see that?

11 A Yes.

12 Q Okay. It went to Robert Hutchison as a senior vice  
13 president at Allied System Holdings.

14 A Yes.

15 Q Do you know what Mr. Hutchison's position was with  
16 Americold?

17 A To my knowledge at the time, he was holding the same  
18 position with Americold.

19 Q Did the -- were you ever told that during that  
20 timeframe, Mr. Hutchison was a contractor with Americold?

21 A I wasn't.

22 Q You didn't send this letter either?

23 A No.

24 Q Did you see the letter before it went out?

25 A Before it went out?

1 Q Yes.

2 A No.

3 Q When was the first time you saw this letter?

4 A I was copied on it after it was sent out.

5 Q Okay. So you're not aware of Mr. Hutchison's position  
6 with Americold at the time -- that the July 30, 2012 --

7 A Correct, correct.

8 Q Now, did there come a point in your knowledge that Mr.  
9 Hutchison left Americold?

10 A Yes, probably in -- yes.

11 Q Do you recall when?

12 A I probably didn't get wind until September, maybe  
13 August.

14 Q Okay.

15 A I can't be --

16 Q So -- and obviously, because he was there on October  
17 16th, he's back. Do you know when he came back?

18 A Mr. Hutchison?

19 Q Mr. Hutchison came back to Americold.

20 A No.

21 Q Did he come back in February, to your knowledge?

22 A To my knowledge, no.

23 Q Did you have any contact with him in March of 2013?

24 A Yes, he was at one of our sessions, yes.

25 Q In March?

1 A Right.

2 Q Okay, so is it possible that the period of time that Mr.  
3 Hutchison was not part of Americold could've been between  
4 August/September and March of 2013?

5 A I wouldn't know that, no.

6 Q Based on the -- I mean, based on the last time you saw  
7 him and the time you saw him after that, is that the right  
8 amount of time that he was away from Americold?

9 A I don't know.

10 Q At the very least, you didn't hear from him prior to,  
11 again, in March of 2013?

12 A From him, no.

13 Q Okay. Just some --

14 **(Long pause)**

15 Q Looking at Union 6 and Union 7, would you turn to those  
16 please?

17 A Okay.

18 Q Union 6 -- Union 6 refers to dates in the end of January  
19 of 2013. Do you see that?

20 A Yes.

21 Q Okay. To your knowledge, did -- at the time that Mr.  
22 Nelson sent the email on January 20th, is that the first time  
23 that you had learned of his wife's illness?

24 A To my knowledge.

25 Q The -- had the parties discussed any other dates in

1 January prior to that week?

2 A Yes.

3 Q Did the company simply say they couldn't be available?

4 A Yes.

5 Q But we don't have any emails on those?

6 A Right, it was -- right, correct.

7 Q Do you recall what dates the Union had requested and the  
8 company said they were unavailable?

9 A The first two weeks in January.

10 Q So anytime in the first two weeks of January?

11 A Yes.

12 Q Is that right? Is it a fact that Mr. -- when the Union  
13 made that request, Mr. Nelson had already committed himself to  
14 other Americold facilities? Is that true?

15 A His response was it was a possibility.

16 Q I'm sorry?

17 A He said it was a possibility.

18 Q Okay. When did the Union make that request for dates for  
19 the first two weeks in January?

20 A In November, November 29th probably.

21 Q Okay. Were any dates requested by the Union to meet in  
22 December?

23 A Yes.

24 Q And --

25 A Well, I shouldn't say there was dates. We made ourselves

1 available at anytime during the month of December, January,  
2 February, March.

3 Q Okay, but the parties, as I understand it, have been  
4 agreeing to when they would meet. There's been email traffic  
5 between the parties as to when both parties would be  
6 available to meet. Is that correct?

7 A Correct, but Mr. Nelson made it clear in November that  
8 he was not going to be available at all during the month of  
9 December.

10 Q But the Union wasn't available during Christmas week,  
11 was it?

12 A If we needed to negotiate, we would've been.

13 Q Okay. But that wasn't necessary because Mr. Nelson said  
14 he was unavailable the whole month of December?

15 A Correct.

16 Q Had he explained that he had vacation in December?

17 A I don't recall.

18 Q You had mentioned your own illness as occurring during  
19 these negotiations. Did you ever miss negotiations as a  
20 result of an illness?

21 A No.

22 Q So you came to the negotiations ill?

23 A Yes.

24 **(Long pause)**

25 MR. KLINE: I have nothing else.

1 HEARING OFFICER HAJDUK: Would you like proceed  
2 immediately or would you like --

3 MR. SOLEM: Do you need a break?

4 WITNESS: Fire away.

5 MR. SOLEM: Okay.

6 **CROSS-EXAMINATION**

7 Q BY MR. SOLEM: In your testimony, you spoke about taking  
8 a couple of times to elect a steward.

9 A Yes.

10 Q What was the date when you first attempted to elect a  
11 steward?

12 A I don't recall, it was -- I don't recall.

13 Q Do you recall if it was a date in June?

14 A No.

15 Q Do you recall if it was a date in July?

16 A No.

17 Q Was it sometime in August?

18 A Again, I'm not going to speculate as to the exact date  
19 when I don't have that in front of me.

20 Q You said that there were two attempts to elect a  
21 steward.

22 A Yes.

23 Q How far apart were those attempts?

24 A A couple of weeks.

25 Q A couple of weeks?

1 A Um hum.

2 Q Was it a couple of weeks from the date of voluntary  
3 recognition?

4 A No.

5 Q No?

6 A No.

7 Q So it was longer than a couple weeks?

8 MS. VLADECK: Objection, I think he's mischaracterizing  
9 the testimony. First you asked about the time between the  
10 two attempts, and then you pegged it back to the date of  
11 recognition.

12 HEARING OFFICER HAJDUK: Yeah, let's try to clarify for  
13 the witness again.

14 MR. SOLEM: Okay.

15 HEARING OFFICER HAJDUK: We're talking about things -- I  
16 want to make sure that the specifics --

17 Q So the attempts to elect a steward were a couple of  
18 weeks apart?

19 A To finalize.

20 Q To finalize?

21 A Right.

22 Q Okay. Could you characterize how far the first attempt  
23 to elect a steward was from voluntary recognition?

24 A No, I don't have that date in front of me.

25 Q That date in front of you? Okay. You also testified to

1 there were several meetings with employees to talk about --  
2 in preparation for bargaining.

3 A Yes.

4 Q How many sessions did you have?

5 A With the employees themselves?

6 Q With the employees to discuss preparations for  
7 bargaining?

8 A Four, I want to say four.

9 Q You want to say four? When was the first date?

10 A I don't have that in front of me.

11 Q Okay. When was the second date?

12 A I don't have that either.

13 Q When was the third date?

14 A I don't have that either.

15 Q When was the fourth date?

16 A I don't have that either.

17 Q Okay. Can you characterize how far the first date was  
18 from the date of voluntary recognition?

19 A No.

20 Q No? Can you characterize how far the second date was?

21 A No.

22 Q Can you characterize how far the third date was from  
23 voluntary recognition?

24 A No.

25 Q Can you characterize how far the fourth meeting was from

1 the date of voluntary recognition?

2 A No.

3 Q You also testified that it was difficult to contact  
4 employees in the bargaining unit to get them -- to hear  
5 their thoughts.

6 A Yes.

7 Q Do you have a list of employees in the -- excuse me.  
8 After voluntary recognition, did you receive a list of  
9 employees who were in the bargaining unit?

10 A Yes.

11 Q Did you receive that from the Employer?

12 A I don't recall.

13 Q You don't recall? Does this list contain employee  
14 addresses?

15 A Yes.

16 Q Does it contain employee phone numbers?

17 A Not that I recall.

18 Q It contains employee names, though?

19 A Yes.

20 Q Yeah. Does it contain employee email addresses?

21 A No.

22 Q No? Does the local have a Facebook page or a Twitter  
23 account?

24 A No.

25 Q No? Does the local have access to a bulletin board at

1 Americold's facility?

2 A We do now.

3 Q You do now? When were you granted access to a bulletin  
4 board?

5 A October.

6 Q October?

7 A Yes. Yes, October when we officially were --

8 Q When you contacted employees to get them prepared -- or  
9 to hear their thoughts on bargaining, how did you go about it  
10 for the employees?

11 A We had meetings that we just referred to.

12 Q Okay. How did you contact employees to alert them of  
13 these meetings?

14 A Via posting.

15 Q Posting? Where did you post it?

16 A And via word of mouth from the stewards.

17 Q Okay. Where did you post?

18 A I didn't.

19 Q Okay. Do you know where the Union posted?

20 A No.

21 Q Did the -- do you have any idea if the posted anything  
22 in the workplace?

23 A Yes.

24 Q You don't know where in the workplace?

25 A I haven't been in the facility, so I couldn't tell you.

1 Q Okay. The first bargaining session was on October 9th?

2 A Yes.

3 Q How long did bargaining last that day?

4 A That I recall -- well, 3:00 because the company had to  
5 leave everyday at 3:00.

6 Q Okay, when did the bargaining session begin? That  
7 morning?

8 A That morning.

9 Q Probably around like 8:00 or 9:00, would you say?

10 A Probably.

11 Q Okay. You take breaks during the day of the bargaining  
12 session?

13 A Lunch.

14 Q Lunch, okay. You otherwise bargained all day?

15 A Yes.

16 Q Yes?

17 A Well, when you say bargain all day, we weren't sitting  
18 in front of the company all day, no.

19 Q When you weren't sitting in front of the company, would  
20 you go back and discuss the issues yourselves?

21 A Yes.

22 Q Okay. On October 10th, did you meet in the morning as  
23 well?

24 A Yes.

25 Q What time did you bargain to?

1 A I don't recall. Again, the company I know had to leave  
2 everyday at 3:00.

3 Q At 3:00? Okay. Did you take a break for lunch?

4 A Yes.

5 Q Any other breaks?

6 A Not -- potty break maybe.

7 Q Sure.

8 A Get a drink of water.

9 Q Other than lunch, no extended breaks? You were  
10 generally engaged in negotiations all day?

11 A Yes, again, whether it was a caucus, whether we were  
12 discussing items ourselves or preparing counterproposals. So  
13 if you're talking that we were in front of the company all  
14 day, no, we were not.

15 Q Okay. But you were discussing -- engaged in the  
16 activity with yourselves otherwise?

17 A In respect to negotiations, yes.

18 Q Yeah. You also met October 11th?

19 A Yes.

20 Q Did you meet until 3:00 that day as well?

21 A I don't recall. As I recall, it might've only been a  
22 half day for flight arrangements maybe for the company, as I  
23 recall anyway.

24 Q Okay. So you met in the morning and then it was a half  
25 day session?

- 1 A Again, as I recall.
- 2 Q Okay. Next meeting was on November 27th?
- 3 A Yes.
- 4 Q Did you meet in the morning as well? It says -- can I
- 5 direct you to U-8?
- 6 A Okay.
- 7 Q Take a look at the date where it says November 27, 2012.
- 8 A Okay.
- 9 Q What time did you start?
- 10 A It says 9:00 a.m.
- 11 Q Is that the time you guys started?
- 12 A I don't recall.
- 13 Q You don't recall, okay. What time did you bargain to on
- 14 the 27th?
- 15 A I don't recall.
- 16 Q You don't recall? Was it into the afternoon?
- 17 A Yes.
- 18 Q Yes? Okay. Was it into the evening?
- 19 A No.
- 20 Q No? On November 28th, what was the start time listed
- 21 there?
- 22 A It's listed as 9:00 a.m.
- 23 Q Did you bargain into the afternoon?
- 24 A As I recall, we did.
- 25 Q As you recall? Did you bargain into the evening?

1 A No.

2 Q No? Okay. On November 29th, 2012, what's the start  
3 time?

4 A It's listed as 8:30.

5 Q 8:30. Is that a.m., as you recall?

6 A It's got to be a.m.

7 Q Okay. Did you bargain --

8 A We could do p.m., if you'd like -- or would like --

9 Q I want to know what time it started at.

10 A We're accustomed to going to until -- 8:30 in the  
11 morning until 8:30 at night, whatever we need.

12 Q Okay. Did you bargain until the afternoon on November  
13 29th?

14 A Yeah, and that could've been a short date for the  
15 company, I don't know. I don't recall.

16 Q You don't recall what time you bargained to?

17 A Right.

18 Q Okay. On March 4th, you had a bargaining session?

19 A Yes.

20 Q Did you start in the morning?

21 A Yes.

22 Q Did the bargaining session go to the afternoon on that  
23 day?

24 A I don't recall.

25 Q You don't recall? Did it go into the evening?

1 A No.

2 Q No? On On March 5th, did you start in the morning?

3 A Yes.

4 Q It went all the way into the evening?

5 A We've met in the evening, period.

6 Q Okay. Did it go all the way into the afternoon?

7 A I would -- most days we had met into the afternoon,  
8 yeah.

9 Q Is there any point during the bargaining sessions at  
10 which you didn't bargain into the afternoon, where you only  
11 met for a short time, two hours?

12 A I don't recall the two-hour session.

13 Q You don't recall a two-hour session?

14 A No.

15 Q Would you characterize most of them as longer than two  
16 hours?

17 A Most. Again, some of the travel dates for the company  
18 were probably shorter.

19 Q Okay. On --

20 **(Long pause)**

21 Q Would you look at Union 5?

22 **(Long pause)**

23 Q Previously, you testified that this was prepared by Mr.  
24 Grobstich.

25 A Yes.

1 Q Is that correct?

2 A Yes, it was either Mr. Grobstich or Mr. Belliel.

3 Q It was prepared by someone in the Union?

4 A This document was, yes.

5 Q This document was. Do all of the -- now, this is a --  
6 this document encompasses all of the agreed upon and  
7 outstanding issues.

8 A Yes.

9 Q So you've come to agreement on issues during the  
10 November 29th session --

11 A Yes.

12 Q -- according to this document?

13 A Yes.

14 Q As well as the March 5th session? March 6th session?

15 A I don't see a March 5th. Did you say March 5th?

16 Q On the very first page --

17 A Okay.

18 Q -- union recognition.

19 A Yes.

20 Q March 6th and March 13th?

21 A Yes.

22 Q Now, there were additional bargaining sessions in April?

23 A Yes.

24 Q Did you come to an agreement during any of the  
25 bargaining sessions in April on any of these items?

1 A The 401K.

2 Q 401K? So that was resolved at the 4/16 meeting?

3 A Yes.

4 Q Okay.

5 **(Long pause)**

6 Q There's correspondence between the Union representatives  
7 and the company between the days listed -- between the  
8 bargaining dates, correct?

9 A Yes.

10 Q There's email between the company and there's telephone  
11 calls?

12 A I don't know which way -- I haven't --

13 Q You're not --

14 A Again, I was out of whack for two months in my illness.

15 Q Okay. Which two months were you out of whack?

16 A January and February.

17 Q Okay. Outside of those months, you're aware of emails  
18 between the company (sic) and the Employer?

19 A No. I'm not saying it didn't happen --

20 Q Between the Union -- you're not aware of any emails  
21 between the Union and the Employer related to bargaining?

22 A Very well could've been, to my recollection.

23 Q Can I direct you to Union 7 real quick?

24 A Okay.

25 Q That's -- this is an email between the Union and the

1 company, correct?

2 A Yes, I agree.

3 Q You agree? So earlier when you testified, there are  
4 emails between the company and the Union regarding  
5 negotiations?

6 A There is correspondence that goes on. If you're asking  
7 me the specific date -- you asked me to look at No. 7, I  
8 could've said, hey, yeah, that's when it was.

9 Q Okay.

10 A But specific to the date off the top of my head, I -- I  
11 know that email correspondence goes on between the Union and  
12 the company.

13 Q Okay. Telephone conversations go on between the Union  
14 and the company?

15 A Sure.

16 Q Do these conversations involve terms and conditions of  
17 the contract?

18 A Not that I'm aware of.

19 Q Is it possible they could've involved terms and  
20 conditions of the contract, the negotiations?

21 A Is it possible? I don't know, I don't -- I couldn't  
22 tell you. I wasn't involved in the conversations if there  
23 was.

24 Q You're the Union's lead negotiator?

25 A Co-leader, yes.

1 Q Co-leader? Who's the other leader?

2 A Roger Grobstich.

3 Q Grobstich? Earlier you testified you negotiate  
4 contracts for six different locals.

5 A Yes.

6 Q That's with ten employers?

7 A Yes.

8 Q What is your largest bargaining unit among those ten  
9 employers?

10 A Kellogg's.

11 Q Kellogg's? Where's Kellogg's located?

12 A In Kansas City, Kansas.

13 Q Kansas City, Kansas? How many employees in the  
14 bargaining unit?

15 A 450 almost.

16 Q 450?

17 MR. SOLEM: I have no further questions.

18 HEARING OFFICER HAJDUK: I think procedurally we're  
19 going to go back to Liz for a second.

20 MS. VLADECK: Yeah, I just have a few brief follow-ups.

21 **REDIRECT EXAMINATION**

22 Q BY MS. VLADECK: Mr. Williams, can you talk for a moment  
23 about the division of labor between yourself and Mr.  
24 Grobstich as chief negotiators?

25 A Yes, Mr. Grobstich works directly for the RWDSU as a

1 fulltime position. I'm an elected official through the  
2 Central States Council, so there's a vast difference in our  
3 duties and what our responsibilities are and who we report  
4 to.

5 Q So can you describe how that plays out with respect to  
6 Americold?

7 A With Americold, the -- I'd be more local than -- since  
8 I'm from the area in Rochelle, than Roger would be in Cedar  
9 Rapids.

10 Q What does in terms of what you do or what he does?

11 A Okay. In terms of what I do, my position would involve  
12 more of the day-to-day -- when I say day-to-day, the  
13 grievance procedures and grievances to handle. The time that  
14 -- generally, Roger and I are in the same negotiation piece  
15 for contracts and stuff like that.

16 Q But specifically regarding Americold and all the  
17 activities you testified about, which parts are you  
18 responsible for and which parts is he responsible for?

19 A I'm responsible for the -- as far as the negotiations  
20 themselves, Roger -- his responsibility would be more to  
21 relate to our contact, if you will, with Mr. Nelson from the  
22 company or Mr. Hutchison and the correspondence that might go  
23 on between them.

24 Q Okay. Looking at Union 6 and 7, who is the  
25 correspondence to and an from for the Union?

1 A It's from Mr. Mitzel to Mr. Grobstich, and from Mr.  
2 Grobstich to Mr. Mitzel and Mr. Nelson, and from Mr. Nelson  
3 to Mr. Grobstich, and from Mr. Grobstich to Stuart Applebaum.

4 Q Who is Stuart Applebaum?

5 A The international president for the RWDSU.

6 Q Are you cc-ed on these emails?

7 A Yes.

8 Q Just to be clear, do these emails deal with substantive  
9 terms of the contract?

10 A No.

11 Q What do they deal with?

12 A Just dates for negotiations.

13 Q Okay. Now, jumping around a bit, I want to just ask you  
14 very briefly about wages. Prior to the Union making a  
15 proposal, regardless of what was in it, recently, had the  
16 Employer at any point made a wage proposal?

17 A No.

18 Q The Employer started bargaining with the first exhibit,  
19 a model contract. Was there a wage proposal in it?

20 A No.

21 Q Okay.

22 **(Long pause)**

23 MS. VLADECK: That's all.

24 HEARING OFFICER HAJDUK: Mr. Kline?

25 MR. KLINE: Yes.

1 RE-CROSS-EXAMINATION

2 Q BY MR. KLINE: Mr. Williams, it wasn't entered into  
3 evidence, but there was a wage schedule in the company's  
4 initial proposal, was there not?

5 A There was a rate schedule in there, yes, the current  
6 rate schedule.

7 Q There was an indication, if you can recall that far  
8 back, that it was something to be discussed?

9 A Yes.

10 Q Isn't that correct? Okay. In your experience as a top  
11 negotiator, who's the onus on to make a wage proposal in a  
12 negotiation? Is it generally the -- based on your  
13 experience, is it generally the Union that makes the first  
14 wage proposal?

15 A No.

16 Q So your experience is that the company makes the first  
17 wage proposal?

18 A It goes both ways.

19 Q Okay, so one not more than the other?

20 A No.

21 Q Okay.

22 **(Long pause)**

23 MR. KLINE: That's all I have.

24 HEARING OFFICER HAJDUK: Mr. Solem?

25 MR. SOLEM: Nothing.

1 HEARING OFFICER HAJDUK: I have a couple of things I'd  
2 like to ask about.

3 **COURT EXAMINATION**

4 Q BY HEARING OFFICER HAJDUK: Turning back in time to when  
5 we started your testimony, you talked about the Caron Road  
6 facility that used to be owned by ConAgra, and then there was  
7 an second NLRB election there, correct?

8 A Yes.

9 Q When did that second NLRB election take place?

10 A 2009.

11 Q Okay.

12 A Around there, yeah.

13 Q Okay. Let's see here. So we -- there's been a lot of  
14 talk about the time period from recognition by the Employer  
15 to the date of the first bargaining. My question is, in your  
16 experience negotiating these contracts, is it typical or is  
17 it atypical for your Union in particular to gather this  
18 instruction, assemble this information from the employees --  
19 is this a typical process?

20 A Yes.

21 Q Okay. How long, typically, does that take? I mean, is  
22 there a general -- give me a garden variety timeframe how  
23 long that usually takes.

24 A It can vary, but the timeframe -- because it's a first  
25 contract and because of the experience level that we didn't

1 have with the -- again, with the multiple schedules, is what  
2 caused, you know, some -- in how we put it all together.

3 Q Okay. How many first contract bargaining negotiations  
4 have you been in the process?

5 A Three.

6 Q Three? As best as you can recall, how long have those  
7 processes taken from either an NLRB certification or  
8 recognition to ratification?

9 A Not long, but they were just very small units, like  
10 eight people.

11 Q Okay. All right. Back before August 16th, the Employer  
12 provided a response to the Union's information request. You  
13 testified that the Union compared those responses to the  
14 meeting notes and other information that you had already  
15 gathered from the employees.

16 A Yes.

17 Q Is this a common practice?

18 A Yes, for first contracts, yes.

19 Q All right. We talked a little bit about what happened  
20 in November, but you go from October 9th until November 27th,  
21 28th, 29th to meet again. To the extent that this is  
22 answered already in the record, I apologize, but for my own  
23 edification to make sure I've completed it, what was the  
24 cause between -- why was there a delay between October and  
25 late November, other than, say, Thanksgiving?

1 A The company wasn't available.

2 Q All right. But the Union was available at --

3 A Yes.

4 Q -- all those -- okay. You said there was some delay in  
5 getting information from the Employer's benefit person.

6 A Yes.

7 Q What is the name of that person?

8 A I'm not privy to that, I don't --

9 Q Who's dealing with the Employer's benefit person from  
10 the Union?

11 A From the Union?

12 Q Yeah.

13 A Mark Davis.

14 Q Okay. And in your experience -- let me go back. So in  
15 Union 5, we see that there are these issues at the end that  
16 are pending.

17 A Yes.

18 Q Health insurance, short term disability, etc., etc.

19 A Correct.

20 Q I want to know -- generally speaking, you know, overall,  
21 I realize those are usually big issues, but for you at your  
22 negotiations with Americold, how would you -- would you  
23 characterize these as -- are these going to be really  
24 difficult to come to any agreement on? Or are these things  
25 that are just going to have to be naturally hammered through

1 the bargaining process?

2 A It shouldn't take long. Is that your question?

3 Q Yeah. And what are you basing that on?

4 A Just my experience.

5 Q Your experience?

6 A Yes.

7 Q Okay. So the bargaining unit of this size, topics of  
8 wages, health insurance, that kind of stuff, how long do  
9 those usually go on?

10 A Once we get to the wages piece of it, generally a couple  
11 of days.

12 Q All right.

13 HEARING OFFICER HAJDUK: I'm good. Anyone have anything  
14 else?

15 MS. VLADECK: No.

16 HEARING OFFICER HAJDUK: Okay. You're excused.

17 WITNESS: Thank you.

18 **(Witness excused)**

19 HEARING OFFICER HAJDUK: Judging by the emptiness in the  
20 room, I presume you don't have anyone else, Ms. Vladeck. Is  
21 that correct?

22 MS. VLADECK: We do not.

23 HEARING OFFICER HAJDUK: Okay. Mr. Kline?

24 MR. KLINE: No.

25 HEARING OFFICER HAJDUK: Okay. Mr. Solem?

1 MR. SOLEM: I'm going to put this on the record.

2 HEARING OFFICER HAJDUK: Yeah, sure.

3 MR. SOLEM: Since the Employer hasn't brought any  
4 witnesses, and we've only heard from one side of the  
5 bargaining table, I'm just going to ask for a continuance.

6 HEARING OFFICER HAJDUK: Okay.

7 MR. SOLEM: And then ask that we can have Subpoena Duces  
8 Tecum in order to bring someone from the Employer here to  
9 testify since we've only heard from one side.

10 HEARING OFFICER HAJDUK: Okay.

11 MS. VLADECK: Objection.

12 HEARING OFFICER HAJDUK: Before we go off the record to  
13 talk about that, let's hear everyone out.

14 MR. SOLEM: My client is not involved in the bargaining  
15 sessions. She has no information pertaining to them. We've  
16 only heard from one side. In order to protect my client's  
17 election, I think it's best that we hear from the other side  
18 of the table as well. I think it would benefit the NLRB to  
19 hear the Employer's characterization of the bargaining  
20 process, not only this individually, but in their experience  
21 as well. You can't really make a determination without that.

22 Since the company has not brought a witness or  
23 documents, I would like to get a Subpoena Duces Tecum to  
24 bring them here.

25 HEARING OFFICER HAJDUK: Okay. Ms. Vladeck, let's hear

1 from you.

2 MS. VLADECK: We object. We've had a notice of this  
3 hearing for over a week. This matter has been pending for  
4 six months, five months. Everybody knows how to request a  
5 subpoena beforehand. The Petitioner and her attorney have  
6 certainly had ample time and could've easily anticipated that  
7 the Union's presentation of bargaining might not work to  
8 their favor, and had the opportunity to subpoena anyone they  
9 want, including whoever from the Employer they wanted to  
10 subpoena, and including subpoenaing the officer who manages  
11 the records if they didn't have specific names so that it was  
12 clear to them who they should call.

13 So there's been ample time to do this. It is a hardship  
14 for the parties to get here, as we know, because we had to  
15 start late this morning. There's no reason for this and it's  
16 wasteful.

17 HEARING OFFICER HAJDUK: Mr. Kline?

18 MR. KLINE: We don't have a position.

19 HEARING OFFICER HAJDUK: Okay.

20 MR. SOLEM: I did not hear of this hearing until after  
21 the close of business last Friday.

22 HEARING OFFICER HAJDUK: Okay.

23 MR. SOLEM: I had not even put in a notice of  
24 representation until after the petition was filed. So yet, I  
25 did not do anything on the previous decertification petition.

1 HEARING OFFICER HAJDUK: Okay.

2 MR. SOLEM: At that time, after hearing about the  
3 hearing on the close of business Friday, if I served a  
4 subpoena, it wouldn't even be valid. It has to be five days  
5 before a petition to revoke. So if I had served it on  
6 Monday, it would've been invalid.

7 MS. VLADECK: Can I respond?

8 HEARING OFFICER HAJDUK: Sure.

9 MS. VLADECK: So you did nothing?

10 MR. SOLEM: I was under the impression that the company  
11 was going to come here to give evidence.

12 HEARING OFFICER HAJDUK: Okay.

13 MS. VLADECK: I mean, I just -- you know, I think it's  
14 worth noting that it's a little bit disingenuous to suggest  
15 that Mr. Solem and his organization only last Friday became  
16 aware of this matter. I believe they're counsel to Ms. Cox  
17 on other charges against the company. There's a relationship  
18 here. This wasn't a gotcha moment. As we all are well-  
19 aware, the issues we're addressing here have much larger  
20 implications than just what's happening at this one shop. So  
21 in my mind, under those circumstances, there's no excuse for  
22 failure to act at all to put on one's case.

23 Now, addressing the issue of whether a subpoena would've  
24 been valid, certainly in order to put one's case together,  
25 one may raise the issue that there's not enough time between

1 that day and the hearing, for example, because a subpoena is  
2 required. One may ask for a continuance. We have never been  
3 contacted by Mr. Solem. We were never asked our position  
4 about extending or delaying this session today. We would've  
5 entertained it, but regardless, it never came up.

6 HEARING OFFICER HAJDUK: Okay. All right, I'm going to  
7 go consult with the Region on this. So we'll go off the  
8 record and I'll be right back.

9 **(Off record)**

10 HEARING OFFICER HAJDUK: We're back on the record. We  
11 had a series of off-the-record conversations about the  
12 potential for a continuation of this hearing due to the  
13 Petitioner's request for an Employer witness to discuss the  
14 status of bargaining. Based on those off-the-record  
15 conversations, there are -- we are going to proceed with  
16 that. I would make note before adjourn here how we're going  
17 to do that procedurally.

18 Before that, there were these sort of caveats that were  
19 made in this off-the-record conversation, and I'm going  
20 submit these orally right now, the first of which is that the  
21 parties will agree -- once this continuance is approved here,  
22 the parties agree that there will be no further documents  
23 submitted or entered into evidence. Is that correct, Mr.  
24 Kline?

25 MR. KLINE: Yes, that's correct.

1 HEARING OFFICER HAJDUK: Ms. Vladeck?

2 MS. VLADECK: Yes.

3 HEARING OFFICER HAJDUK: Mr. Solem?

4 MR. SOLEM: Yes.

5 HEARING OFFICER HAJDUK: Okay. The second is that this  
6 continuation is -- or this continuance is only for testimony  
7 from one person, and this person's name is?

8 MR. KLINE: Robert Hutchison.

9 HEARING OFFICER HAJDUK: Robert Hutchison. So we can  
10 all agree to that as well, correct, Mr. Kline?

11 MR. KLINE: Yes.

12 HEARING OFFICER HAJDUK: Ms. Vladeck?

13 MS. VLADECK: Yes, with the exception that obviously if  
14 we need to call rebuttal witnesses, we will do so.

15 HEARING OFFICER HAJDUK: That was my third one. Mr.  
16 Solem?

17 MR. SOLEM: Yes.

18 HEARING OFFICER HAJDUK: Okay. The third one is that  
19 the parties will agree that there will be no further  
20 witnesses or continuations, subject to the Union's right to  
21 rebuttal witnesses on this point.

22 MR. KLINE: We agree.

23 HEARING OFFICER HAJDUK: Okay. Ms. Vladeck?

24 MS. VLADECK: Yes.

25 HEARING OFFICER HAJDUK: Mr. Solem?

1 MR. SOLEM: Yes.

2 HEARING OFFICER HAJDUK: Okay, so all three of those  
3 have now been entered into the record. Now, that being said,  
4 we are -- the parties will next meet telephonically at a time  
5 that I will arrange with all of them after this point, but no  
6 later than Monday. We will adjourn until Tuesday, April 23rd  
7 at 11:00 Central Time, and that's 12:00 p.m. Eastern Time,  
8 for the purposes of securing testimony of the Employer's  
9 witness, Robert Hutchison.

10 So, are there any other matters that need to be brought  
11 to my attention before we adjourn the hearing until that  
12 point?

13 MS. VLADECK: Just the Union would restate its objection  
14 to the granting of the continuance, both on the grounds that  
15 we believe the Petitioner had ample time to request a  
16 subpoena earlier and be able to go on the record today, and  
17 because of what we discussed in our off-the-record  
18 conversations about the odd posture of having a Petitioner  
19 probing into bargaining that is ongoing and confidential.

20 HEARING OFFICER HAJDUK: All right. We noted that, but  
21 if the unit pursues or decides to take an action to appeal  
22 that decision, that they will do so.

23 MS. VLADECK: Thank you.

24 HEARING OFFICER HAJDUK: So that having been said, if  
25 there's nothing further today, the hearing will be adjourned

1 until Tuesday, April 23rd, 11:00 a.m. Central, 12:00 p.m.  
2 Eastern Time via telephone. We are adjourned.

3

**(4:00 p.m.)**

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**(Whereupon, the hearing in the above entitled matter was  
5 adjourned until Tuesday, April 23, 2013, at 11:00 a.m.)**

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**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

AMERICOLD LOGISTICS, LLC,

Employer,

and

KAREN COX,

Petitioner,

and

RETAIL, WHOLESALE AND DEPARTMENT  
STORE UNION, UFCW, LOCAL 578,

Intervenor.

Case No. 25-RD-102210

The above-entitled matter came on for further hearing, pursuant to adjournment, before **ALEXANDER M. HAJDUK, Hearing Officer**, via telephonically, on Tuesday, April 23, 2013, 11:03 a.m.

A P P E A R A N C E S

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**On Behalf of the Employer:****SHELDON KLINE, ESQ.**

Sheppard Mullin Richter & Hampton, LLP  
1300 I Street, Northwest, 11th Floor East  
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**On Behalf of the Petitioner:****AARON B. SOLEM, ESQ.**

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**On Behalf of the Intervenor:****LIZ C. VLADECK, ESQ.**

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Fax: 646-599-9577

I N D E X

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>	<u>CRT EXAM</u>
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EXHIBIT

IDENTIFIED

IN EVIDENCE

(None)

P R O C E E D I N G S

(11:03 a.m.)

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3           **HEARING OFFICER ALEXANDER M. HAJDUK:**   **The hearing will be**  
4 **in order.**

5           This is the second half, the continuation of the hearing  
6 in Americold Logistics, LLC, Case No. 25-RD-102210. Picking up  
7 from where we were last Friday, we're going to turn over to --  
8 and the stipulations that the parties entered into at the close  
9 -- at the adjournment of the hearing on Friday to interview the  
10 last witness that we have, subject to any rebuttal witnesses  
11 that we talked about then for the Union.

12           So now, with that being said, I'm going to go over to the  
13 Petitioner -- counsel for the Petitioner, Aaron Solem. Aaron,  
14 you may, I guess, call your witness, even though Bob is on the  
15 telephone. So go ahead.

16           MR. SOLEM: Mr. Hutchison, are you on the phone?

17           WITNESS: Yes, I am.

18           MR. SOLEM: This is Aaron Solem. Would you please state  
19 your name?

20           HEARING OFFICER HAJDUK: Well, before we do that, though,  
21 let me swear him in telephonically.

22           MR. SOLEM: Okay, sorry.

23 Whereupon,

**ROBERT HUTCHISON**

24  
25 was called as a witness, by and on behalf of the Petitioner,

**ARGIE REPORTING SERVICE**  
5900 Nieman Road, Suite 200  
Shawnee, KS 66203  
(913) 422-5198

1 and having been duly sworn, was examined and testified as  
2 follows:

3 HEARING OFFICER HAJDUK: Okay. Now would you please state  
4 and spell your name for the record?

5 WITNESS: Robert Lewis Hutchison, R-o-b-e-r-t, L-e-w-i-s,  
6 H-u-t-c-h-i-s-o-n.

7 HEARING OFFICER HAJDUK: Okay. Mr. Solem, you may  
8 proceed.

9 **DIRECT EXAMINATION**

10 Q BY MR. SOLEM: This is Aaron Solem. Mr. Hutchison, where  
11 do you work?

12 A My corporate office is in Atlanta, Georgia. I work for  
13 Americold.

14 Q What's your title at Americold?

15 A I'm the vice president of labor relations.

16 Q How long have you been vice president of labor  
17 relations?

18 A February 4, 2013.

19 Q Previously, before you were vice president of labor  
20 relations, were you associated with Americold?

21 A Yes, I served as a consultant to them for their labor  
22 department.

23 Q Could you describe your background in labor relations?

24 A I have spent the last 35 years involved in the practice of  
25 labor relations with a series of companies involved in the

1 transportation distribution logistics industry.

2 Q How long were you a consultant for Americold?

3 A From February of 2012 through August the 26th of 2012.

4 Q As a consultant, what were your job responsibilities?

5 A Provide guidance to their labor relations department,  
6 their labor practitioners and their operators.

7 Q As a vice president now, what are your job  
8 responsibilities?

9 A I now direct the department in the administration of all  
10 the labor contracts and labor relations matters.

11 Q Over the course of your career, do you know how many labor  
12 negotiations that you've been involved in?

13 A Hundreds.

14 Q I'm sorry, the phone actually cut out. Did you say  
15 hundreds?

16 A Hundreds, multiple.

17 Q Have you ever dealt before with multi-facility  
18 bargaining units?

19 A Yes, sir.

20 Q Generally, how large were the bargaining units that  
21 you've dealt with?

22 A I've dealt with units that were as small as two to ones  
23 that went up to several hundred employees.

24 Q While you've been at Americold, both as a consultant and  
25 now as vice president, how many labor negotiations have you

1 been involved in?

2 A Approximately a dozen.

3 Q Have you ever been involved in any negotiations with the  
4 RWSDU?

5 A Only the one here in Rochelle.

6 Q Okay. When did you become aware that the RWSDU, or the  
7 Union in this case, was looking to unionize facilities at  
8 Americold?

9 A Sometime in the spring of 2012.

10 Q When were you aware that employees had conducted a card  
11 check?

12 A In June of 2012.

13 Q In general, after either employees conducted a card  
14 check or had an election, in your experience, what's the  
15 general process after that experience between the Union and  
16 the Employer?

17 A The parties will meet and exchange proposals and  
18 negotiate and bargain.

19 Q About how soon after do the parties begin to meet and  
20 exchange proposals and bargain?

21 A Normally, it's -- you know, it's within a few weeks.  
22 After the parties have -- after recognition has been granted  
23 or affirmed, the parties will attempt to start the process.

24 Q With the Americold and Caron Road facilities in  
25 Rochelle, can you explain what happened after the card check

1 was completed?

2 A It's my understanding, my recollection, that -- I  
3 believe it was sometime in July, we received an information  
4 request from the Union, put in an extensive information  
5 request, and the company began the process of collecting that  
6 information. Then I recall it was submitted to the Union  
7 sometime in August.

8 Q Okay. Can I direct you to Union Exhibit 3?

9 A I have it.

10 Q You have it? Do you recognize this letter?

11 A Yes.

12 Q Is this the letter that you were just speaking about?

13 A Yes, this was the information request that we received  
14 from the Union.

15 Q Generally, how soon do you normally receive a letter  
16 like this after recognition or an election?

17 A Normally, it's fairly quickly after the recognition.

18 Q About how long did it take for you to receive this  
19 letter after recognition?

20 A Approximately a month.

21 Q Beyond receiving this letter, have you been involved in  
22 bargaining sessions on behalf of Americold with this local?

23 A Yes, sir.

24 Q Which bargaining sessions have you been involved with?

25 A I was involved in the month of March and in the month of

1 April.

2 Q Okay. Were you involved in planning for bargaining  
3 sessions, as a consultant?

4 A Only from the standpoint of providing guidance while I  
5 was consultant as they were -- the company was in the process  
6 of developing their -- the information request. In August --  
7 again, I stopped being consultant in August and did not get  
8 back involved until February of 2013.

9 Q Going into negotiations, can you describe what the  
10 general approach is that Americold takes to labor  
11 negotiations?

12 A Yes, Americold has what we refer to as a model agreement  
13 that the company uses as a template in their bargaining  
14 process. It's my understanding that the first time they met,  
15 the company presented that template to the Union, offered it  
16 as a guidance and guidelines to get the bargaining process  
17 going.

18 Q Are you familiar with the two facilities in the  
19 bargaining unit at Americold Drive and South Caron Road?

20 A Yes, sir, I've visited both of them.

21 Q Could you explain if there's anything exceptional about  
22 these bargaining units compared to other Americold  
23 facilities?

24 A No, there's no real difference.

25 Q Are there any complexities that would've presented

1 themselves that would've been an impediment to bargaining?

2 A Not that I know of.

3 Q How would you describe these two facilities?

4 A Both are storage warehouses. The difference would be in  
5 the temperature within the facilities. Product comes in,  
6 products may be sorted, and product goes back out.

7 Q When bargaining -- over the course of bargaining when  
8 you were helping to prepare Americold in August and collect  
9 information, as well as now again, what did you see as the  
10 most difficult issues to be negotiated?

11 A Well, issues related to the economics, as well as the  
12 performance and productivity are the most critical issues.

13 Q When you say the economics, can you describe what you  
14 mean by the economics?

15 A Your wages, your benefits, your fringe benefits.

16 Q Why would those be the most difficult issues?

17 A I didn't say -- you didn't ask me if they were the most  
18 difficult.

19 Q Okay.

20 A I believe you asked me if they were the most important.

21 Q Okay. Why would those be the most important issues?

22 A Because they have a direct relation to the economics of  
23 our operations that are already place in this facility. We  
24 have customer contracts in place and we don't want to be --  
25 as a result of negotiations, we don't want to be in a

1 position where we have to go back to our customers because  
2 we've increased our costs of operations, seek additional  
3 revenues from them and potentially lose business.

4 Q Okay. Could I direct you to Exhibit 5, Union Exhibit 5?

5 A Yes, sir, I have it.

6 Q Are you familiar with this document?

7 A No, I'm not familiar with it, but I -- I mean, it  
8 appears to me to be a list of the various proposals in  
9 numeric matter and the date that there was a tentative  
10 agreement on each.

11 Q Could you take a moment to look over the document and  
12 tell me if it is a complete list of all proposals and/or  
13 agreements made?

14 **(Long pause)**

15 A I would -- without actually having the -- all the  
16 signoff sheets or having the actual proposals in front of me,  
17 it appears to be most of the issues that the parties have  
18 discussed and is either pending or signed off. I don't  
19 believe it's exclusive.

20 Q Could you explain if there are any issues being  
21 negotiated that aren't contained in the document on -- while  
22 you're looking over it?

23 A Just briefly, one issue that the Union has raised in  
24 conversation with us is a defined pension --

25 MS. VLADECK: Excuse me. Hi, this is Liz. I have to

1 apologize, I got cut off. Could I please impose on you guys  
2 to repeat what you've been saying? The last thing I heard  
3 was Mr. Solem's question to Mr. Hutchison whether Union  
4 Exhibit 5 is a complete list. I apologize.

5 HEARING OFFICER HAJDUK: Go ahead and just restate the  
6 question and we'll pick up from there again.

7 MR. SOLEM: Okay.

8 Q Mr. Hutchison, could you explain if there are any issues  
9 that are being negotiated that aren't contained within this  
10 document?

11 A The one that I identified for you was that there has  
12 been discussion between the company and the Union regarding  
13 the Union's desire to have a defined pension plan. It has  
14 been verbal discussion, we have not received a formal  
15 proposal from them, but neither have they come back to us to  
16 advise us that they no longer wanted us to consider a defined  
17 pension. That's not listed in this list.

18 Q Are there any other issues?

19 A Unless it falls under this miscellaneous proposal.  
20 Since I didn't develop this list, I can't tell you what that  
21 miscellaneous proposal --

22 Q Okay. Other than the pension plan, is there anything  
23 that isn't specifically listed that you're aware of?

24 A Not that I'm aware of.

25 Q Okay. Could I direct you to the remaining issues on the

1 last page where it says pending?

2 A Yes, sir.

3 Q For wages, it says pending. Can you explain if any  
4 proposals concerning wages have been made by either the Union  
5 or Americold?

6 A Americold has not submitted any wage proposal. On April  
7 the 16th in a meeting, in bargaining session, the Union  
8 submitted to us what they listed as union proposals in which  
9 they just simply said they proposed increases each year of  
10 the agreement. No numbers have been exchanged.

11 Q Okay. Are you aware of any current wage differences  
12 between the Americold facility and the Caron Road facility?

13 A No.

14 Q In your experience, which side generally makes the first  
15 proposal concerning wages?

16 A In my experience, the Employer doesn't bargain against  
17 himself, so the Union makes the economic proposals.

18 Q Could you explain if any proposals have been made  
19 concerning health insurance?

20 A The company in October submitted a proposal to the  
21 Union. I believe sometime in February or March, the Union  
22 made a proposal to go with a different health plan.

23 Q Are there issues at either facility that make  
24 negotiating an agreement on health insurance complex or more  
25 difficult than normal for Americold?

1 A Not in my opinion.

2 Q Does this document list the number of dates where the  
3 parties agreed to come to a tentative agreement? Can you  
4 describe any negotiations that have taken place outside of  
5 face-to-face meetings?

6 A There have been primarily discussions and clarification  
7 of positions, you know, further explanation beyond what may  
8 have been discussed at the bargaining table --

9 Q Okay.

10 A -- questions that have been asked and responded to.

11 Q How have these discussions occurred? Through email,  
12 through telephone?

13 A I would say the bulk of them have been, you know, either  
14 face-to-face discussions, you know, between the parties  
15 either before sitting down at the table in caucuses or, you  
16 know, later in the day after the conclusion of negotiations.  
17 There have also been some phone calls. I am not aware myself  
18 of too much email communication, but I believe that there  
19 has been some during -- you know, since last -- the  
20 negotiations started.

21 Q Could I direct you to Union Exhibit 8?

22 A Yes, sir.

23 Q Are you familiar with any of these documents in Union  
24 Exhibit 8?

25 A Yes, these are the sign-in sheets from the bargaining

1 meetings.

2 Q I notice there's a break in negotiations between  
3 November 29 and March 4. Could you describe why there was  
4 such a break in negotiations?

5 A It's my understanding that when they completed  
6 negotiations in November, the parties were not able to come -  
7 - you know, find dates in the month of December where they  
8 were both available. There were dates finally agreed in  
9 January. Unfortunately, because of Americold's bargainer,  
10 Mike Nelson's wife was diagnosed with cervical cancer. Mike  
11 had -- and was having appointments and treatments. He had to  
12 cancel those dates in January.

13 Q Okay. On the days that you've been present for  
14 bargaining, could you describe the general process of the  
15 meetings?

16 A Well, I mean, there's been various methodologies, I  
17 guess is the best way to describe it. There have been times  
18 when the company has presented proposals, Union would caucus,  
19 come back, questions back and forth, maybe some  
20 counterproposals, caucuses, collection of information. I  
21 wouldn't call these negotiations to have been contentious and  
22 -- at all. Maybe slow would be a better way to describe it,  
23 but it's all part of the bargaining process.

24 Q In the bargaining sessions you've been involved in, how  
25 long generally would you meet for?

1 A Again, it would vary.

2 Q What's an example of like the longest that you would  
3 meet during the day?

4 A Probably 5:00, 6:00, in the evening.

5 Q Okay. Do you know how many hours total Americold and  
6 the Union have been involved in negotiations between all  
7 these dates?

8 A I'm sorry, I never sat down and tried to calculate that.

9 Q Okay. Do you know why we're having this discussion  
10 today?

11 A It's my understanding this is all in relation to a  
12 decertification petition that's been filed.

13 Q In your general experience, do you think this has been a  
14 complex negotiating process?

15 A No, sir.

16 Q How close do you believe that the parties are to an  
17 agreement?

18 A Until we get into the economics, I don't dare to  
19 speculate.

20 Q Okay.

21 **(Long pause)**

22 MR. SOLEM: Just one moment, just let me check my notes  
23 here.

24 **(Long pause)**

25 Q In your experience, Mr. Hutchison, how long does the

1 economic portion take for bargaining?

2 A Again, it's going to depend on how extensive the  
3 proposals are. How long it's going to take the company to  
4 run our economic models to determine the cost impact, whether  
5 or not the Union is looking for defined pension benefit, that  
6 can take an extensive amount of time as the parties try to  
7 work through, you know, those issues and what the funding  
8 requirements are, any potential -- whether it's going to be a  
9 single employer or multi-employer bargaining unit.

10 When it comes into the level of medical benefits that  
11 you bargain over, again, the costing of that; how extensive  
12 they're looking for, you know, other issues, insurance,  
13 temporary, partial disability -- I mean, there's -- it all  
14 depends on how many of these issues the Union demands to  
15 bargain over.

16 Q Do you have like an average estimate that you could  
17 give?

18 A For the amount of time?

19 Q For the amount of time it would take, yeah.

20 A Again, I hesitate to even predict.

21 Q Okay.

22 A If they went with the proposals we submitted last  
23 October and any economics, we work through just the hours, it  
24 could be relatively short. If not, it could go on an  
25 extended amount of time, how much research we have to do.

1 Q I want to go back very briefly to seniority between the  
2 two different facilities at Americold and at Caron Road. Are  
3 you aware of any seniority issues between the two facilities  
4 that added any kind of complexities to the bargaining  
5 process?

6 A No, I didn't see anything that was any more complex than  
7 any number of locations we have.

8 Q Okay.

9 MR. SOLEM: I don't have any further questions right  
10 now. Thank you. Thank you, Mr. Hutchison.

11 WITNESS: Thank you.

12 HEARING OFFICER HAJDUK: Okay. Now we'll turn it over  
13 to Sheldon first, and then we'll go to Liz to wrap it up  
14 then. So Sheldon?

15 MR. KLINE: Yes, thanks, Alex. For the record, this is  
16 Sheldon Kline and I'm sitting in a hotel room with Mr.  
17 Hutchison. As you probably have gathered, he has the  
18 exhibits that were entered last Friday before him. Just a  
19 few questions in follow-up.

20 **DIRECT EXAMINATION**

21 Q BY MR. KLINE: You were asked questions about the gap in  
22 time between the November negotiations and the March 2013  
23 resumption. Do you recall being asked questions on that gap?

24 A Yes, sir.

25 Q Let's break down the gap a little bit, if we could. In

1 the month of December, did the company -- in your -- is it  
2 your understanding that the company offered dates to the  
3 Union to negotiate in December but the Union was unavailable?

4 A That's my understanding.

5 Q And is it --

6 UNIDENTIFIED SPEAKER: Not true.

7 Q -- your understanding that in January, the first date  
8 that the parties were available were on or about January 20?

9 A That's my understanding.

10 UNIDENTIFIED SPEAKER: Not true. Not true.

11 MR. KLINE: I'm sorry, did we hit something on the  
12 record?

13 HEARING OFFICER HAJDUK: Yeah, we're going to have to  
14 keep the line free of any extraneous comments, or anything  
15 like that. We just need to keep it to just counsel, the  
16 witness and myself at this point.

17 MR. KLINE: For the reader of the record, I would move  
18 to strike any extraneous comments that were made in response  
19 to a question that I made -- that I offered to the witness?

20 HEARING OFFICER HAJDUK: Any objections, Ms. Vladeck or  
21 Mr. Solem?

22 MS. VLADECK: No objection.

23 MR. SOLEM: No objection. This is Aaron Solem. No  
24 objection.

25 HEARING OFFICER HAJDUK: Hearing no objections, that

1 last extraneous comment is stricken from the record.

2 Q BY MR. KLINE: With respect to the January meeting, is  
3 it your knowledge -- is it your understanding that when Mr.  
4 Nelson had to cancel the negotiations then that was the first  
5 time they had learned about the illness of his wife?

6 A Yes, that's my understanding.

7 **(Long pause)**

8 Q Is it fair to say that the month of December and that  
9 period up to January 20, the parties had agreed not to meet,  
10 in any event?

11 **(No response)**

12 MR. KLINE: Let me rephrase, the witness doesn't  
13 understand my question.

14 Q Mr. Hutchison, is it fair to say that the gap in the  
15 negotiations between December -- the month of December and  
16 ending on January 20th, the parties had agreed that they  
17 would not meet during that period under any event?

18 MS. VLADECK: This is Liz Vladeck. I'm going to object  
19 to that leading question.

20 HEARING OFFICER HAJDUK: Well, we are kind of on cross  
21 here, but if it's possible, could we -- Sheldon, could we  
22 rephrase that one just a little bit better?

23 MR. KLINE: Yes. I just wanted to -- so that I  
24 understood the witness' testimony, that's all. I apologize  
25 if that was leading. I thought it was more of a summary

1 question. I'm just trying to make sure I understand.

2 Q You've already testified, I believe, that during the  
3 month of December, the parties had agreed not to meet. Is  
4 that true?

5 A They had not agreed to any dates to meet.

6 Q To meet, okay. The -- prior to the scheduled meeting on  
7 January 20, the parties had not agreed to meet?

8 A Yes, that's my understanding.

9 Q Okay. There was a meeting scheduled in February, I  
10 understand. Is that correct?

11 A That's my understanding, yes.

12 Q Okay. Do you know when in February the parties had  
13 planned to meet?

14 A I believe it was in the early part of the month.

15 Q Could we look at Union Exhibit 7?

16 A Yes, sir.

17 Q Does that refresh your memory as to when the parties  
18 were scheduled to meet in February?

19 A Looking at 7, it appears the day we were going to meet,  
20 February 4th through the 6th.

21 Q Do you know why the parties did not meet that -- during  
22 that timeframe?

23 A Yes, Mr. Nelson's wife was going to be starting chemo  
24 treatment. He was not able to travel in that period of time.

25 Q Now, in March, it's my understanding that you entered

1 the negotiations.

2 A Yes, sir.

3 Q Was it your intent to pick up the pace of negotiations?

4 A It was my intention to try to get this thing wrapped up.

5 Q How many times did the parties meet in March?

6 A In the month of March, I believe there were six days  
7 that we met.

8 Q If you look at Union 5 --

9 MR. KLINE: I'm going to turn the witness' attention to  
10 Union 5.

11 Q Mr. Hutchison, in Union 5, does it indicate that the  
12 parties have reached any agreement in the month of April?

13 A No.

14 Q What was the nature of the negotiations in April, to the  
15 best of your understanding?

16 A The bulk of the time in the month of April has been  
17 spent dealing with the issue of health insurance, healthcare  
18 coverage.

19 Q In what sense was -- what were the parties doing in  
20 terms of those negotiations?

21 A It's my understanding that in the first meeting in  
22 April, they basically spent a day doing a side-by-side  
23 analysis of the proposal and the existing medical coverage  
24 that Americold provides the employees versus an alternative  
25 plan that the Union was asking us to adopt.

1 MS. VLADECK: This is Liz Vladeck. I just want to  
2 interject for a point of clarification. Mr. Hutchison said  
3 it was his understanding, can he please clarify if he is  
4 talking about sessions he attended or not?

5 WITNESS: I'm addressing the first session, which I did  
6 not attend.

7 MS. VLADECK: In April, the first session?

8 WITNESS: Yes, ma'am.

9 MS. VLADECK: Thank you.

10 Q And the basis of your understanding is what, Mr.  
11 Hutchison?

12 A My follow-up discussions with Mr. Nelson.

13 Q The second session in April, what were the parties doing  
14 then?

15 A When we arrived for the second session, the Union, the  
16 first day, was asking for some additional information so that  
17 they could -- indicated they needed it for their insurance  
18 carrier to do some pricing for them; advised me what they  
19 needed, I provided some supplemental information for them;  
20 came back and wanted, again, some additional information, and  
21 I provided that for them.

22 Q When was that?

23 A That was April the 16th, I believe.

24 Q There was testimony, and I know you weren't here for  
25 that, Mr. Hutchison, from the Union witness that important

1 data that the Union needed to parse out the health insurance  
2 plan, particularly the employee plus one benefit, were only  
3 provided to the Union at the April 16 negotiations. Is that  
4 true?

5 A No, it's not true.

6 Q Why is that?

7 A The information had been requested and had previously  
8 been submitted sometime in March following one of the March  
9 bargaining sessions. It had been sent via email to the  
10 Union.

11 Q Did the Union acknowledge that they had previously  
12 received that information?

13 A Yes, they indicated they may've overlooked it.

14 Q There was also testimony -- and again, I know that you  
15 weren't available at that hearing -- related to the  
16 management rights clause in the model agreement that the  
17 company provided to the Union. The -- was the management  
18 rights clause that was agreed to by the Union the same as the  
19 management rights clause that was proposed to the Union on  
20 October 9 --

21 A Yes.

22 Q -- in the model agreement?

23 A Yes, it was.

24 Q So if there was testimony that there were significant  
25 changes to the management rights clause made by the Union in

1 negotiations, would that be wrong?

2 A Yes, it would be.

3 Q In your opinion, with respect to the provisions that  
4 have been agreed to on Union 5, what role did the model  
5 agreement play in reaching -- in terms of reaching those  
6 agreements?

7 A It served as the foundation for almost all of these  
8 provisions.

9 Q Was the model agreement, in your opinion, heavily  
10 modified by the Union in negotiations?

11 A Not heavily, no.

12 Q How would you characterize it?

13 A Some tweaking maybe.

14 **(Long pause)**

15 Q Am I correct that the Union was recognized in June of  
16 2012?

17 A Yes, sir.

18 Q Based on your understanding, was the first meeting with  
19 the Union in negotiations on October 9?

20 A That's my understanding, yes.

21 Q Did the company ever refuse to meet with the Union in  
22 negotiations prior to October 9?

23 A I don't know of any refusal to meet.

24 Q Looking again at Union 5, the last page, if you could,  
25 was the potential addition of a defined benefit plan, are

1 those the -- at the bottom of that page, are those the issues  
2 that are pending?

3 A Yes, but again, I can't speculate what miscellaneous  
4 proposal means.

5 Q But notwithstanding the miscellaneous proposal, the rest  
6 of the issues, is it your understanding that those are the  
7 pending issues at this time?

8 A Yes, sir.

9 Q How important are those issues?

10 A Very.

11 Q Does the model agreement provide for a provision that  
12 deals with production standards and incentives?

13 A Yes, it does.

14 Q Without getting into the specifics of any proposal which  
15 we've agreed to, does the Union -- is the Union seeking to  
16 negotiate over that proposal?

17 A They've submitted a proposal to us. It's not in line  
18 with the proposal we have submitted to them.

19 Q How important is that issue?

20 A Extremely important to the company.

21 Q Why is that?

22 A Well, clearly, your performance and your productivity  
23 and the ability of the company to incentivize employees to gain  
24 increased productivity is very important to the company. The  
25 more efficient we can operate, the more competitive we can

1 be.

2 Q What's the incentive side of the productivity question?

3 A Meaning? I'm sorry, I don't understand your question.

4 Q Does the company provide incentives?

5 A Yes, the company has the ability in their proposals to  
6 offer and implement incentives over and above whatever your  
7 negotiated base rate would be to provide additional  
8 compensation to employees that are able to perform at  
9 performance levels in excess of what the standards would be.

10 Q Is the Union seeking to negotiate the productivity  
11 standard or the incentive?

12 A The incentives.

13 Q Is that a difficult issue?

14 A Yes, it is.

15 Q Is it an important issue for the company?

16 A It's absolutely important.

17 MR. KLINE: I have nothing further.

18 HEARING OFFICER HAJDUK: Okay. Liz, we'll turn it over  
19 to you now.

20 MS. VLADECK: Okay.

21 **CROSS-EXAMINATION**

22 Q BY MS. VLADECK: Hi, Mr. Hutchison. My name is Liz  
23 Vladeck and I'm counsel for the Union. I'm going to be going  
24 back over much of what you've already discussed with the  
25 other attorneys this morning.

1 MR. KLINE: Liz, this is Sheldon. Could I interrupt for  
2 one quick second before you start?

3 MS. VLADECK: Yeah.

4 MR. KLINE: Do you need a drink of water?

5 WITNESS: No, I'm fine.

6 MR. KLINE: Perfect.

7 MS. VLADECK: Okay.

8 Q Mr. Hutchison, can you remind us, what were the dates  
9 when you were not employed by or doing work for Americold?

10 A From approximately August the 25th, 2012 until February  
11 the 4th, 2013.

12 Q So after August 25th, 2012, did you participate in  
13 setting up any bargaining sessions?

14 A No, ma'am.

15 Q Until February of 2013? Okay. Did you --

16 A Until February the 4th.

17 Q Until February the 4th, thank you. and you didn't  
18 attend any bargaining sessions?

19 A No, ma'am.

20 Q Or arrange those sessions?

21 A No, ma'am.

22 Q Now, a few minutes ago, you spoke about information,  
23 data, relating to the Employer's current healthcare policies  
24 that the Union requested after the Employer had already  
25 provided them in March. Was that your testimony?

1 A Yes, ma'am.

2 Q Can I turn your attention to Union Exhibit -- I believe  
3 it will be Union Exhibit 4. Now, were you involved in  
4 preparing the package of information that was sent to the  
5 Union in response to their information request?

6 A I had involvement.

7 Q Can you see this letter dated August 16th? It's Item  
8 No. 4, asserting that medical, dental, vision insurance  
9 policies are enclosed.

10 A Yes, ma'am.

11 Q Do you have any knowledge as to why the information  
12 provided twice in March and April was not originally provided  
13 in August?

14 A No, ma'am.

15 Q Okay.

16 A I wasn't aware of that.

17 Q Now, another question is, if you look at Union Exhibit 3  
18 -- do you have that in front of you?

19 A Union Exhibit 3?

20 Q Yes.

21 A Yes, ma'am.

22 Q Now, I see that this letter is addressed to you. Is  
23 that correct?

24 A Yes, ma'am.

25 Q And here it's noted that you are the senior vice

1 president of Allied System Holdings.

2 A Yes, ma'am.

3 Q Can you explain the relationship of Allied System  
4 Holdings to Americold?

5 A They are both primarily owned by the same organization.

6 Q Well -- so are they parallel to each other? Is one a  
7 subsidiary of another?

8 A No, ma'am, they have no formal relationship, one to the  
9 other, other than through having primary ownership by the  
10 same venture capital group.

11 Q Why would an information request be directed to someone  
12 at Allied System Holdings instead of Americold?

13 A I was operating as a consultant during this period of  
14 time, and that was the only business card that I had to give  
15 to the representatives of the RWSDU.

16 Q Okay. Did you receive this letter?

17 A Yes, ma'am.

18 Q What did you do with it once you received it?

19 A I reviewed it with representatives of Americold and with  
20 their counsel to begin the collection process.

21 Q Did you review it with Mike Nelson?

22 A Yes.

23 Q What is Mike Nelson's position, do you know?

24 A Mike carries the title also of vice president of labor  
25 relations.

1 Q So it's the same title as yours?

2 A At that time, it was, yes.

3 Q Okay. So he was then and is now still a VP for labor  
4 relations?

5 A Yes.

6 Q Okay. Now, I'm really sorry, I don't mean to keep  
7 mixing up the dates, but I think you said August 26th, 2012  
8 was your last day at Americold as a consultant at that time.

9 A That was the date that they stopped the agreement, yes.

10 Q Now please look back at the letter dated August 16th,  
11 Union Exhibit 4.

12 A Yes, ma'am.

13 Q This is a letter responding to the July 30th information  
14 request.

15 A That's my understanding.

16 Q This is signed by Mike Nelson.

17 A Yes.

18 Q Now, you were still working for Americold at that time.  
19 Is that right?

20 A Still consulting to them.

21 Q Still consulting. Is there a reason this letter is from  
22 Mr. Nelson and not from you?

23 A Yes, because Mr. Nelson, at the time being the direct  
24 employee of Americold, seemed to be more important for him to  
25 respond to it than for me as a consultant.

1 Q Okay. Who made that decision?

2 A Discussion internally in the company. I made a  
3 recommendation to it.

4 Q You made a recommendation that Mr. Nelson answer the  
5 letter?

6 A Yes.

7 Q Okay. To your knowledge, was Mr. Nelson appointed to be  
8 chief negotiator for this bargaining with the RWDSU?

9 A Yes.

10 Q Now, you spoke about being involved in hundreds of  
11 negotiations. You did say you're not aware of any other  
12 bargaining that Americold has had with the RWDSU  
13 specifically?

14 A Yes, ma'am.

15 Q Okay. Do you have knowledge of what the RWDSU does to  
16 develop bargaining proposals?

17 A No, ma'am.

18 Q Do you have knowledge of the kinds of discussions that  
19 the Union holds with workers in preparation for bargaining?

20 A No, ma'am.

21 Q Do you have knowledge of the Union's internal governance  
22 rules and practices with respect to worker involvement in  
23 running the Union?

24 A No, ma'am.

25 Q Okay. Now, you spoke about your understanding that the

1 management rights clause that's been agreed to is the same as  
2 the company's original proposal. Am I getting that right?

3 A Yes, ma'am.

4 Q What is your basis for making that assertion?

5 A Comparison between the initial proposal that was  
6 submitted and the tentative agreement that signed off of.

7 Q Okay. Can you please look at Union 5, again, the list  
8 of agreements?

9 A Yes, ma'am.

10 Q Rather, let me ask you this instead. Can you remind us  
11 which dates in March you were present for bargaining?

12 A From the 4th through the 6th and the 11th through the  
13 13th.

14 Q Can I turn your attention to Union Exhibit 8, the sign-  
15 in sheets?

16 A Yes, ma'am.

17 Q Can you please turn to the page that is the March 4th  
18 sign-in sheet?

19 A Yes, ma'am.

20 Q Can you point us to your signature please?

21 A Bottom one on the left hand side.

22 Q Okay. What about on March 5th?

23 A No, ma'am, I don't appear on the sign-in sheet.

24 Q Is that because you weren't there?

25 A I'd have to go back to my calendar to check, but I would

1 take it that that means I went someplace else.

2 Q All right. Would that be the same for March 6th?

3 A Yes, ma'am.

4 Q All right. On Union 5, the management rights clause  
5 appears to have been agreed upon on March 6th. As far as you  
6 know, is that correct?

7 A That's that this document appears to reflect, yes.

8 Q Okay. Now, do you know how much the management rights  
9 clause was discussed at the October and November sessions?

10 A No, ma'am.

11 Q All right. Now, in your experience bargaining hundreds  
12 of contracts, is there a difference between proposals that a  
13 party feels completely committed to and will not change from  
14 versus proposals that they may present that way but where  
15 they ultimately do have some flexibility to move?

16 A Yes.

17 Q All right. Would you say that the parties generally  
18 don't disclose to one another which proposals are which?

19 A That all depends on the relationship between the  
20 parties.

21 Q Where it's a new relationship and the parties don't know  
22 each other, do you think they're inclined to disclose how  
23 strong their views are about their different proposals from  
24 the beginning?

25 A I have been in some that, yes, the parties have done

1 that.

2 Q But you weren't there for the beginning of this  
3 bargaining relationship. Is that correct?

4 A You're correct.

5 Q Okay.

6 A Excuse me, when you say the beginning of the bargaining  
7 relationship, do you mean the beginning of negotiations?

8 Q Yes, I mean the beginning of negotiations.

9 A Okay. Then the answer would be yes.

10 Q Okay, thank you. All right, now I want to go back to  
11 the gap in negotiations that started after the November  
12 bargaining. Now, you said that the company and the Union had  
13 not agreed to any dates in December. Is that correct?

14 A That was my understanding, yes, ma'am.

15 Q Do you know what dates the company offered that the  
16 Union turned down?

17 A No, ma'am.

18 Q Do you know if the company, in fact, said it wasn't  
19 available at all in December?

20 A No.

21 Q Okay. Now, let me ask you a question. Am I  
22 understanding correctly that you -- is your role now the lead  
23 negotiator for Americold?

24 A I'm the vice president of the labor relations  
25 department. The assignment of who may the lead may vary from

1 time-to-time, case-by-case, day-by-day.

2 Q All right. Well, let's take the Americold bargaining in  
3 Rochelle. Who has been the lead negotiator? Has the company  
4 designated one?

5 A Mr. Nelson has handled that on the majority of the dates  
6 of bargaining. There have been dates that he's not been  
7 available that I've gone and served as the lead.

8 Q Okay. Which dates were those?

9 A Well, most recent was April the 16th.

10 Q So you were the lead that day?

11 A Yes.

12 Q Now, does this change from session to session who is the  
13 lead?

14 A Only based on availability of people from our side.

15 Q So is the answer yes?

16 A It could, yes.

17 Q Okay. Now, I want to ask a question about seniority.  
18 You stated that there were not any major issues with  
19 seniority, there was nothing complex. Is that correct?

20 A Nothing that I saw, that I was aware of.

21 Q Were you present when the parties bargained over  
22 seniority?

23 A Seniority has been raised at various meetings that I was  
24 in attendance.

25 Q Well, I'll tell you what, let's look at Union Exhibit 5.

1 If you could look at the second page?

2 A Yes, ma'am.

3 Q So it appears that seniority was agreed to, as was  
4 layoff and recall, which seniority is most closely impacted  
5 by, on November 29th.

6 A That's what this appears to say, yes, ma'am.

7 Q To that date, you had not participated in any of the  
8 bargaining?

9 A Correct.

10 Q So you would not be able to say how much time the  
11 parties had to spend trying to analyze and understand the  
12 issue at the table?

13 A No, ma'am.

14 Q Okay. You said that most of the bargaining has occurred  
15 in face-to-face meetings between the parties or in asides  
16 that happened before or during sessions, but in person, and  
17 the caucuses later in the day. You said there have been some  
18 phone calls. Is that right?

19 A Yes, ma'am.

20 Q What is your personal knowledge of any phone calls?  
21 Have you had phone calls?

22 A I've been involved with phone calls.

23 Q Can you describe what phone calls you've had?

24 A Phone calls having to do with scheduling, phone calls  
25 having to do with the issue of the medical -- related to

1 medical coverage.

2 Q Can you tell us exactly what phone calls you've had  
3 relating to medical coverage?

4 A There have been requests for information so that the  
5 Union could try to price. There have been questions -- you  
6 know, conversations about the whole issue of the company  
7 needing a pricing model from the Union.

8 Q How many phone calls have you had?

9 A I would say just a couple that I've been involved in.  
10 I'd be purely speculative trying to give you a specific  
11 number.

12 Q Who have those phone calls be with?

13 A I would say primarily Mr. Belliel.

14 Q Okay. When did those calls take place?

15 A They've taken place, I'd say, the March/April timeframe.

16 Q Okay. Now, when exactly did the parties begin  
17 bargaining over healthcare?

18 A Well, the company presented a proposal last October  
19 involving healthcare.

20 Q Yes, but when did the discussions at the table begin  
21 about healthcare?

22 A I can't speak to whether they had any discussion about  
23 the healthcare prior to February. When I got involved in  
24 March, we started having, I would say, more specific  
25 discussions about it.

1 Q What's the status of those discussions?

2 A When negotiations completed on April the 16th, the Union  
3 had indicated that they would get back to me the following  
4 day with some pricing, but I've not gotten anything to date.

5 Q Are you saying the Union up to that point had not  
6 presented any price specs?

7 A They had. They had given us a speculative -- well,  
8 actually, the insurance carrier had submitted a speculative  
9 price analysis to us.

10 Q Okay. What was the Union's response -- I'm sorry, what  
11 was the Employer's response to that analysis?

12 A Our review that they -- offering of the Union offered no  
13 advantage to the Employer and we didn't believe that it was a  
14 better package than what the company already was providing to  
15 its employees.

16 Q But you asked the Union to cost something out and the  
17 Union asked you for more information, didn't they?

18 A They came back to us because the initial submission from  
19 the Union only provided for two classifications, family and  
20 single, whereas the company's had an employee plus  
21 dependents.

22 Q So they were going to revamp that in light of the  
23 company's current offering?

24 A It's my understanding they wanted to go back to see if  
25 they could be competitive with what the company already

1 offered.

2 Q Okay. What information was the company supposed to get  
3 back to on the Union with?

4 A They asked us for a list of what classification each of  
5 the employees fell into. They --

6 Q You mean --

7 A The numbers of people in each classification.

8 Q Okay. Has the company provided that information yet?

9 A Yes, it's been provided twice.

10 Q I'm sorry, is that information that you agreed to  
11 provide after April 16th, within a week? Are we talking  
12 about the --

13 A No, ma'am.

14 Q -- same thing?

15 A I never committed to providing anything April 16th. On  
16 April the 16th, in the course of negotiations, they asked me  
17 for some pricing information on what Americold's 2013 prices  
18 were. I provided that to them on the 16th. The Union  
19 indicated to me that they would get with their insurance  
20 provider and get back to me the following day with pricing.

21 Q Understood. Now, in your experience negotiating  
22 hundreds of contracts, is healthcare usually an issue that  
23 you tackle front and center?

24 A Absolutely.

25 Q The first issue of everything else?

1 A No, not necessarily.

2 Q Am I remembering correctly, you said it was one of the  
3 most important issues in the contract?

4 A I believe it's a key element of the collective  
5 bargaining agreement.

6 Q Is it among the more complicated elements?

7 A It can be.

8 Q To what extent do the other economic issues in the  
9 contract depend on agreement about healthcare?

10 A From the standpoint of the cost of the healthcare and  
11 how that weighs on the other economics.

12 Q So can you set wages if you don't know what you're doing  
13 on healthcare? I'm talking about in any context, not just  
14 the bargaining context.

15 A You can. It's not -- I don't believe it's a sound  
16 business practice, but you could.

17 Q Is it a more sound business practice to set healthcare  
18 and then determine wages?

19 A In my opinion.

20 Q Okay. All right, give me a moment please -- actually,  
21 let me turn your attention to Union 5 once again. If you  
22 could look at the third page?

23 A Yes, ma'am.

24 Q Now, towards the bottom, there's a section that says  
25 401K.

1 A Yes, ma'am.

2 Q What does it say about that section?

3 A Resolved, not TA-ed.

4 Q Do you know what that means?

5 A Since I didn't write it, I couldn't give you specifics.

6 Q Okay. All right, just a moment please.

7 **(Long pause)**

8 Q Mr. Hutchison, could you tell me -- you talked about the  
9 company reviewing certain production standards. Is that  
10 something that's happening right now?

11 A The company -- again, going back to October, the company  
12 had submitted language dealing with production standards and  
13 incentives. The parties had discussion about it at the  
14 bargaining table.

15 Q I'm sorry, Mr. Hutchison, let me rephrase. I wasn't  
16 asking about bargaining. I'm asking about whether the  
17 company has engaged in a review and revisions to its  
18 production standards.

19 A The company is in the process of implementing a new  
20 engineered system into -- throughout various locations in the  
21 company. The Caron Road and Americold Drive facilities will  
22 eventually get those systems in place.

23 Q How will those systems change the way operations work at  
24 Caron Road and Americold Drive?

25 A Hopefully, it'll improve the performance. That's the

1 intention of it.

2 Q What exactly do these new systems do?

3 A It will be engineered processes that will -- a third  
4 party will come in and perform their analysis, their whole  
5 process that they do to put everything into a standardized  
6 performance model, taking into consideration all the  
7 variables that would implement -- or impact a warehousing  
8 operation. In the end, it'll develop and implement a  
9 computerized and standardized operating method.

10 Q Okay. Does that require changes to actual production  
11 methods in the facilities?

12 A It potentially could.

13 Q When are those changes anticipated for Caron Road and  
14 Americold Drive?

15 A They're still up in the air.

16 Q So is there any real time impact of this process on  
17 operations from day-to-day on Americold Drive and Caron Road  
18 at the moment?

19 A Not today.

20 Q Okay. Now, Mr. Hutchison, are you aware of Americold's  
21 purchase of the Caron Road facility back in 2009?

22 A I'm aware that they made that acquisition.

23 Q Okay. When did --

24 A I don't know any details.

25 Q Okay. When did you begin consulting for Americold, can

1 you remind me?

2 A Yes, ma'am, that was in February of 2012.

3 Q Okay. So you wouldn't have been in place when the Caron  
4 Road facility became part of Americold, and you wouldn't have  
5 been part of any review of discrepancies in policies or  
6 practices there between the two facilities.

7 A No, ma'am.

8 Q Okay. Now, you said that the two facilities were the  
9 same in terms of their operations, but isn't it true that the  
10 Caron Road facility has many more dock doors for trucks than  
11 Americold Drive?

12 A Yes.

13 Q Doesn't that result in greater turnover of cargo in the  
14 Caron Road facility such that there's more overtime and more  
15 difficulty scheduling?

16 A The number of doors doesn't determine the amount of  
17 overtime.

18 Q But the ability of the facility to process cargo would  
19 impact it, wouldn't it?

20 A Based on the volume that's moving through the facility,  
21 that's going to determine the issue of overtime.

22 Q But isn't the Caron Road facility equipped to handle  
23 more cargo and greater turnover?

24 A It can, yes.

25 Q Okay. All right, bear with me for a moment please.

1    **(Long pause)**

2    Q     Mr. Hutchison, do you have any knowledge as to why after  
3    the January dates were postponed there were no dates agreed  
4    on to bargain in February?

5    A     My understanding that they had tentatively agreed to  
6    meet, I believe, the first week of February.  Because of Mr.  
7    Nelson's inability to be there because of his wife beginning  
8    her medical treatments, that had to be cancelled.

9    Q     Okay.  Now, are you aware of any example where the Union  
10   said to no to any dates that were proposed by the company?

11   A     When the parties would sit -- when I was involved, the  
12   parties would sit and go through schedules to try to  
13   establish the next dates.  Dates will be thrown up and  
14   various people would say yes or no, and there were times that  
15   because of other issues or conflicts, the Union was unable to  
16   agree to dates.

17   Q     Are you saying that Union officials have said, "No, we  
18   cannot meet" on specific dates?

19   A     People have said, "I'm not available those dates."

20   Q     You're saying representatives of the Union have said,  
21   "I'm not available."  Has the Union --

22   A     Yes, yes.

23   Q     -- said -- has the Union said it's not available?

24   A     Representatives of the Union have said, "I'm not  
25   available."

1 Q Okay. And that's only -- your knowledge of that extends  
2 to March and April. Is that correct?

3 A Yes, ma'am.

4 Q When are your next bargaining dates scheduled?

5 A I believe we're scheduled in May. I believe it's a  
6 Tuesday, Wednesday, Thursday. I don't have a calendar in  
7 front of me, somewhere in the 6th, 7th, 8th or 5th, 6th, 7th.  
8 I'm not 100% certain on the exact dates, but I believe it's  
9 that week in May.

10 Q All right. Now, speaking of schedules, can you tell me,  
11 how many schedules are there for the Americold Drive  
12 facility? How many shifts?

13 A How many shifts are they operating?

14 Q That's right.

15 A I'm not 100% certain.

16 Q Are you also not certain how many shifts there are at  
17 the Caron Road facility?

18 A Yes, ma'am.

19 Q Okay.

20 MS. VLADECK: All right, I think that's all I have at  
21 the moment. Thank you.

22 HEARING OFFICER HAJDUK: Okay, we'll go over to Aaron.  
23 Aaron, do you have any questions?

24 MR. SOLEM: Yeah, I do.

25 HEARING OFFICER HAJDUK: Okay.

**REDIRECT EXAMINATION**

1

2 Q BY MR. SOLEM: Mr. Hutchison, does the amount of doors  
3 at a facility make collective bargaining more difficult?

4 A No, sir.

5 Q You talked about engineer processing, or this new  
6 engineer process. Has that change affected collective  
7 bargaining?

8 A No.

9 Q Has it created additional issues in collective  
10 bargaining?

11 A It has raised questions as to what the impact would be.  
12 We had some specific discussions. The company has indicated  
13 they have absolutely no problem or issue, and even encourage  
14 if the Union wants to challenge or question any of these  
15 standards that would be developed that they could certainly  
16 bring in their own industrial engineers to validate them.

17 Q Okay.

18 MR. SOLEM: I don't have any additional questions.

19 Thank you.

20 HEARING OFFICER HAJDUK: Mr. Kline?

21 MR. KLINE: Yes, one or two questions for the sake of  
22 clarification because I got lost somewhere in the testimony  
23 regarding information requests.

24

**REDIRECT EXAMINATION**

25 Q BY MR. KLINE: Mr. Hutchison, could you take a look at

1 Union Exhibit 3 again?

2 A Yes, sir.

3 Q Would you take a look at the fourth bullet down and just  
4 read it?

5 A "All current insurance policies, benefits granted to the  
6 described bargaining unit (i.e. insurance premiums, health,  
7 dental, vision, pension, 401K, etc.).

8 Q Okay. Now will you look at Union 4? Now it's numbered,  
9 No. 4, what does the company provide with respect to the  
10 Union request at Bullet No. 4?

11 A "Current medical, dental and vision insurance policies  
12 enclosed with associate premiums are enclosed."

13 Q In your opinion, did you comply with what the Union had  
14 requested with respect to their information requests on these  
15 policies?

16 A My opinion, yes.

17 **(Long pause)**

18 MR. KLINE: That's all I have.

19 HEARING OFFICER HAJDUK: Okay. Liz, any follow-up?

20 MS. VLADECK: Yeah, just one question.

21 **RE-CROSS-EXAMINATION**

22 Q BY MS. VLADECK: Mr. Hutchison, the information about  
23 the health plan, the employee plus one, that the Employer  
24 provided to the Union in March and April, is it correct that  
25 that information was not previously provided?

1 A No, the company had provided a list of all the  
2 associates with their current classification of insurance  
3 that had previously been sent by the company, and then it was  
4 sent a second time.

5 Q I'm sorry, I think earlier, you said you sent it in  
6 March and you sent it again in April. Is that right?

7 A I don't recall which dates I said, but it's my  
8 understanding, March is when it first came up and then arose  
9 again, I believe, the first meeting they had in April.

10 Q Right. So my question was simply that it wasn't --  
11 regardless of whether -- I'm not addressing the issue of  
12 whether the Employer complied with the Union's information  
13 request. I'm just asking that that information was not  
14 provided back in August, if I understand correctly, as far as  
15 you know?

16 A To my knowledge, no.

17 Q Okay, thanks.

18 HEARING OFFICER HAJDUK: Okay. Are there any other  
19 questions from anyone else?

20 **(No response)**

21 HEARING OFFICER HAJDUK: Okay, I'll take that as a no  
22 from everyone. So let's -- so, Mr. Hutchison, you're  
23 excused. Thank you for your testimony.

24 WITNESS: Thank you.

25 **(Witness excused)**

1 HEARING OFFICER HAJDUK: So let's proceed here. Mr.  
2 Solem, do you have any other further witnesses that you'd  
3 like to call at this time?

4 MR. SOLEM: No, I don't.

5 HEARING OFFICER HAJDUK: Okay. Mr. Kline?

6 MR. KLINE: No, I have none.

7 HEARING OFFICER HAJDUK: Ms. Vladeck?

8 MS. VLADECK: I think I need to recall Mr. Williams just  
9 on the narrow -- on one narrow issue.

10 HEARING OFFICER HAJDUK: What issue would that be?

11 MS. VLADECK: That's the issue of the 401K and the  
12 pension plan.

13 HEARING OFFICER HAJDUK: Is he available right now?

14 MS. VLADECK: Yes.

15 HEARING OFFICER HAJDUK: How limited are we going to be  
16 talking about here, Liz?

17 MS. VLADECK: Pretty limited, I have three or four  
18 questions.

19 HEARING OFFICER HAJDUK: Okay. Well, then -- are there  
20 any objections to recalling this witness briefly?

21 MR. KLINE: This is Sheldon. None from me.

22 MR. SOLEM: No objection.

23 HEARING OFFICER HAJDUK: Okay.

24 Whereupon,

25

**DENNIS WILLIAMS**

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1 was recalled as a witness, by and on behalf of the Intervenor,  
2 and having previously been duly sworn, was examined and  
3 testified as follows:

4 HEARING OFFICER HAJDUK: Ms. Vladeck, go ahead. Mr.  
5 Williams, I'm going to remind you of the oath that you took in  
6 the hearing room last Friday and that you still continue to be  
7 under oath during this testimony, okay?

8 WITNESS: Yes.

9 HEARING OFFICER HAJDUK: Okay. Ms. Vladeck, go ahead.

10 MS. VLADECK: All right. Just so everyone knows, Mr.  
11 Williams and I are not in the same location. All right.

12 **DIRECT EXAMINATION**

13 Q BY MS. VLADECK: Mr. Williams, can you -- do you have  
14 those exhibits handy from Friday?

15 A Yes.

16 Q Can you look at that Union Exhibit 5, the tentative  
17 agreements?

18 A Yes.

19 Q Now, can you look towards the bottom of page 3 where it  
20 says 401K?

21 A Yes.

22 Q It says, "resolved, not TA-ed." Is that right?

23 A Yes.

24 Q Can you explain what that means, what that -- why that  
25 notation was made?

1 A Yes, we had verbally agreed that the 401K would be at  
2 least acknowledged in the contract.

3 Q All right.

4 A Again, that was verbal. We haven't been back to the table  
5 to sign off on it.

6 Q Do you know with whom the agreement was made?

7 A Yes, we -- Mr. Nelson, I believe, we had talked to --  
8 well, actually, I think we talked to Mr. Nelson and Mr.  
9 Hutchison both.

10 Q All right.

11 A Two different one-day sessions.

12 Q Does this mean that -- does the Union anticipate further  
13 discussions about a 401K or a defined benefit pension plan?

14 A To my knowledge, no.

15 Q Okay. So resolved -- the word "resolved" here means  
16 what?

17 A That it was verbally committed across the table that  
18 each party understood each other and that the Union's request  
19 to have it indicated in the contract would be acknowledged.  
20 Again, we didn't sign off on it that day.

21 Q So you're saying what would be in the contract about a  
22 pension would simply be acknowledgement of the status quo  
23 401K?

24 A Correct.

25 Q Okay.

1 MS. VLADECK: All right, that's all I have.

2 HEARING OFFICER HAJDUK: Mr. Kline?

3 **CROSS-EXAMINATION**

4 Q BY MR. KLINE: Mr. Williams, good afternoon again.

5 A Hi.

6 Q Your testimony troubles me. I spent five minutes asking  
7 you questions about a defined benefit plan. Do you recall me  
8 doing so?

9 A Yes.

10 Q Do you recall your -- that you answered that you were  
11 unaware that the Union had even proposed a defined benefit  
12 plan. Isn't that correct?

13 A Correct, as far as a defined pension plan, yes.

14 Q But today's testimony is that we should interpret on  
15 Exhibit 5, this 401K, is also resolving a proposal that you  
16 were unaware of?

17 A Two different things. We're talking about -- we're  
18 talking about their savings investment plan.

19 Q Is that an employee contribution plan?

20 A Yes.

21 Q You take a defined benefit plan to also include a 401K?

22 A No.

23 MR. KLINE: No further questions.

24 HEARING OFFICER HAJDUK: Mr. Solem?

25 MR. SOLEM: No additional questions.

1 HEARING OFFICER HAJDUK: Ms. Vladeck, anything else?

2 MS. VLADECK: No.

3 HEARING OFFICER HAJDUK: Okay. Mr. Williams, you're  
4 excused once more.

5 WITNESS: Okay.

6 **(Witness excused)**

7 HEARING OFFICER HAJDUK: All right. Are there any further  
8 witnesses from any of the parties?

9 MR. SOLEM: No.

10 MS. VLADECK: No.

11 HEARING OFFICER HAJDUK: I'll take that as every party  
12 saying no, okay. Let me do some belt and suspenders work here  
13 before I officially close up the record. I think it's been  
14 discussed -- I think it was discussed in the hearing room on  
15 Friday, but I just wanted to clarify, that it's my  
16 understanding that neither the Union nor the Employer would  
17 assert that impasse currently exists at the bargaining table.  
18 Is that correct?

19 MS. VLADECK: Correct.

20 MR. KLINE: This is Sheldon Kline. That's correct.

21 HEARING OFFICER HAJDUK: Okay. All right, I just wanted  
22 to clarify that. So the reader of the record knows, over the  
23 course of two days of testimony now, we have adduced evidence  
24 regarding the status of bargaining, especially as it relates to  
25 the issue of the extension of the certificate bar. So that's

1 what we've discussed here over the last two days.

2 The employees in the unit, I think we clarified, was 109,  
3 on Friday. So I think that cleans that up.

4 It also appears that -- I was reading through the  
5 preliminary transcript from day one, and it appears that that  
6 was 131 pages. I just wanted to see if we have an estimate,  
7 Jen, for today's transcript length.

8 COURT REPORTER: I'd say approximately 40.

9 HEARING OFFICER HAJDUK: Okay. So we have in total, maybe  
10 around 170 or so pages for the total transcript then.

11 So, I don't think over the telephone would be the best  
12 place to have all the parties engage in oral argument. So I'm  
13 -- will it be sufficient that -- will all the parties waive the  
14 opportunity for oral argument here over the telephone?

15 MS. VLADECK: Yes, the Union waives.

16 MR. KLINE: This is Sheldon for the Employer. The company  
17 waives.

18 MR. SOLEM: This is Aaron Solem for the Petitioner, we  
19 waive as well.

20 HEARING OFFICER HAJDUK: Okay. So that being said, I'm  
21 going to set the time for briefs seven days from the close of  
22 the record, which will be today. The seventh day will be  
23 Tuesday, April 30th, 2013.

24 MS. VLADECK: This is Liz for the Union, and we'd like to  
25 request an extension. These are complicated issues and they're

1 issues of first impression, so we would ask for an additional  
2 seven days.

3 HEARING OFFICER HAJDUK: An additional seven days beyond  
4 what we already have?

5 MS. VLADECK: Correct.

6 HEARING OFFICER HAJDUK: Okay, then you'll need -- I think  
7 we'll need -- you'll need to make that request in writing to  
8 the Regional Director as well.

9 MS. VLADECK: Okay.

10 HEARING OFFICER HAJDUK: I'm just going to set it  
11 initially at seven, and if he decides to overrule me to go to  
12 fourteen, that will be his call.

13 MR. SOLEM: This is Mr. Solem, Aaron Solem. We have no  
14 issue with that.

15 HEARING OFFICER HAJDUK: Okay.

16 MS. VLADECK: Mr. Kline, Mr. Solem, if I write that  
17 letter, may I represent that you would agree to the extension?

18 MR. KLINE: The Employer agrees.

19 MR. SOLEM: This is Aaron Solem. We agree as well.

20 HEARING OFFICER HAJDUK: Okay.

21 MS. VLADECK: Thank you.

22 HEARING OFFICER HAJDUK: So that's great, Liz. Just go  
23 ahead and put that in writing then, okay?

24 MS. VLADECK: Yep.

25 HEARING OFFICER HAJDUK: Okay. So that being said, the

1 parties are also reminded that they should request an expedited  
2 copy of the transcript from the court reporter. If you fail to  
3 do so, late receipt of the transcript will not be grounds for  
4 an extension of the time to file briefs.

5 So if that is that -- if there is nothing further, this  
6 hearing will be closed.

7 MR. KLINE: Alex, could I just make one question of the  
8 court reporter?

9 HEARING OFFICER HAJDUK: Sure, of course.

10 MR. KLINE: Madam Court Reporter, you provided me today a  
11 copy by email of the transcript from last Friday. Could I also  
12 request that you provide me a copy by email of today's  
13 transcript?

14 COURT REPORTER: Sure.

15 MR. KLINE: Thank you.

16 MS. VLADECK: This is Liz from the Union. I'd like to  
17 second that request for the Union please.

18 COURT REPORTER: Absolutely.

19 HEARING OFFICER HAJDUK: Okay. So if there is nothing  
20 further, the hearing will be closed. The hearing is now  
21 closed, so we'll go off the record.

22 (12:25 p.m.)

23 (Whereupon, the hearing in the above entitled matter was  
24 closed.)

25