

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

ARLINGTON METALS CORPORATION,)	
)	
Respondent,)	
)	
and)	<u>CONSOLIDATED</u>
)	
UNITED STEEL, PAPER AND)	Case No. 13-CA-122273
FORESTRY, RUBBER,)	Case No. 13-CA-125255
MANUFACTURING, ENERGY,)	Case No. 13-CA-133055
ALLIED INDUSTRIAL AND SERVICE)	
WORKERS INTERNATIONAL UNION,)	
AFL-CIO (USW),)	
)	
Charging Party.)	

**ARLINGTON METALS CORPORATION’S MOTION TO REOPEN AND
SUPPLEMENT THE ADMINISTRATIVE RECORD**

Respondent, Arlington Metals Corporation (“AMC” or “the Company”), pursuant to Sections 102.24 and 102.48 of the Rules and Regulations of the National Labor Relations Board, 29 C.F.R. § 102.24 and § 102.48(b), respectfully moves the Board to reopen and supplement the administrative record with evidence AMC was deprived of presenting before Administrative Law Judge (“ALJ”) Carissimi and which renders untenable a central finding of the ALJ’s Recommended Decision and Order. The testimony and evidence AMC seeks to include was elicited and admitted into the record during a November 12 – 13, 2015 evidentiary hearing in the United States District Court for the Northern District of Illinois in connection with a Section 10(j) Petition filed by the Board in *Ohr ex rel. NLRB v. Arlington Metals Corp.*, 2015 WL 7731959, at *14 (N.D. Ill. Dec. 1, 2015).

Throughout the proceedings before the Administrative Law Judge, Counsel for the General Counsel maintained that the Amended Complaint in this matter does not allege, and the

General Counsel did not contend, that the July 10, 2014 employee petition seeking withdrawal of recognition of the Steelworkers Union (“Union”) was tainted, inauthentic, or otherwise invalid. Yet, the ALJ based his decision on a theory the General Counsel expressly disclaimed and found the employee petition invalid for AMC’s purported failure to authenticate all the signatures thereon. In light of the limited nature of the Amended Complaint allegations, as explained by the General Counsel’s pre-hearing and hearing concessions that the petition was valid, AMC did not present the employee petition-signers as witnesses to refute the ALJ’s fact-free conclusion on the validity of the petition.

This evidence gap was addressed, however, during the hearing on the Board’s Petition for a Section 10(j) injunction. At the preliminary injunction hearing on November 12 and 13, 2015, before United States District Judge Amy St. Eve, AMC called 11 of the 16 signers of the July 10, 2014 disaffection petition, among other witnesses.¹ This testimony, which AMC would have presented to the ALJ, had the General Counsel been challenging the validity of the petition (which, again, the Counsel for General Counsel maintained they were not), conclusively shows the ALJ erred in finding that (1) the petition was not authentic; and (2) the petition was “tainted” by any pending unfair labor practices or other alleged wrongdoing by AMC.

Notably, in denying the Board’s Section 10(j) Petition, the Court agreed with AMC that the Board’s previous admissions of the validity of the petition before the ALJ deprived AMC of the ability to present relevant evidence, which calls into doubt the ALJ’s ruling. *See Ohr ex rel.*

¹ A true and correct copy of the November 12 and 13, 2015 preliminary injunction hearing transcript is attached hereto as Exhibit B. References to portions of the preliminary injunction transcript are cited as “10(j) Tr. ___.” References to the portions of the transcript of hearings before the ALJ are cited as “Tr. ___.” Exhibits entered into the record at the preliminary injunction hearing are attached hereto as Exhibit C.

NLRB v. Arlington Metals Corp., 2015 WL 7731959, at *14 (N.D. Ill. Dec. 1, 2015).²

Accordingly, the administrative record should be reopened and supplementary evidence bearing directly on merits of General Counsel’s claims and ALJ’s findings concerning the employee disaffection petition’s validity should be received and considered as the Board reviews the pending Exceptions.

I. Standard.

The Board’s Rules and Regulations provide that “[u]pon the filing of timely and proper exceptions, and any cross-exceptions or answering briefs, . . . the Board may . . . reopen the record and receive further evidence before a Member of the Board or other Board agent or agency.” 29 C.F.R. § 102.48(b). The Board has reopened the administrative record where, as here, the supplementary evidence clarifies or corrects evidence in the record.

The reopening of the administrative record is appropriate to receive relevant evidence not presented to the ALJ and to clarify or correct previous evidence in the record. *See, e.g., Wal-Mart Stores, Inc.*, 348 NLRB 833, 833–35 (2006) (remanding proceeding to ALJ for purpose of reopening the record to receive relevant evidence, making findings, and taking further appropriate action); *Winkle Bus Co., Inc.*, 347 NLRB 1203, 1224 (2006) (granting motion to reopen administrative record where supplementary evidence clarified previous evidence in record); *see also Point Park Univ. v. NLRB*, 457 F.3d 42, 51–52 (D.C. Cir. 2006) (remanding case to Board, holding that findings underlying Board’s decision denying respondent’s motion to reopen and supplement the administrative record was not supported by substantial evidence where decision “did not ‘tak[e] into account contradictory evidence or evidence from which conflicting inferences could be drawn’”) (quotation omitted).

² A true and correct copy of the 30-page December 1, 2015, Memorandum Opinion and Order denying the 10(j) Petition is attached hereto as Exhibit A.

II. General Counsel’s Shifting Theories Deprived AMC the Ability to Present Relevant Evidence That Renders ALJ’s Conclusions Untenable.

On no fewer than three occasions before the ALJ and the Board, the Counsel for the General Counsel has asserted without ambiguity the *validity* of the employee disaffection petition, R. 1, was not challenged and, therefore, was not at issue. *First*, in opposition to an AMC employee’s attempt to intervene in the administrative proceedings, the General Counsel opposed the intervention on the grounds that “the Complaint does not allege any violation with regard to the ‘validity’ of the employee petition and, in particular any actions carried out by employees in preparing the petition or presenting it to Respondent.” GC 1(k) at 4. ALJ Carissimi’s predecessor in this matter—ALJ David Goldman—denied the petition to intervene, agreeing with the Counsel of the General Counsel’s argument that the employees’ interests were adequately protected by AMC. GC 1(t).

Second, at the hearing before ALJ Carissimi, the ALJ specifically asked, and the General Counsel conceded again, that the Complaint does *not* challenge the validity of the employee petition:

Judge Carissimi: I didn’t see anything in the complaint that directly challenged the petition.

Mr. Murphy: And I am not challenging the petition.

GC 1(t).

Third, in the General Counsel’s Answering Brief to Intervenor’s Exceptions, filed October 2, 2015, General Counsel again maintained: “[t]he Complaint does not allege any violation with regard to the ‘validity’ of the employee petition.” GC Ans. Br. to Intervenor’s Exceptions at 3.

Notwithstanding the foregoing, the ALJ found the petition represented a clear majority of the unit employees, yet ruled the petition was nevertheless invalid because: (a) AMC purportedly

failed to authenticate the admittedly authentic petition prior to withdrawing recognition, which invalidated the withdrawal; and (b) two pending unfair labor practices that purportedly occurred nearly eight months prior to the withdrawal of recognition, and of which there is no record evidence any petition signer had any knowledge of, “tainted” and thereby invalidated the withdrawal petition. ALJD 31–35.

In light of the General Counsel’s pre-hearing and trial concessions that the petition was valid, AMC was blind-sided by the attack on the petition and deprived of the opportunity to present the employees as witnesses to refute the ALJ’s presumptions. In denying the Board’s Petition for Section 10(j) relief, the U.S. District Court for the Northern District of Illinois agreed that AMC was prejudiced at the administrative hearing, holding that the ALJ’s finding that AMC failed to satisfy its burden of establishing that the loss of majority support was weakened because the General Counsel’s “shifting stance” toward the petition’s validity resulted in a lack of relevant evidence:

Given the NLRB’s position prior to the hearing, AMC was never notified that it would need to establish the petition’s validity at the April 2015 hearing. Had it been, AMC may have called as witnesses the myriad of employee signers who testified at the November 2015 Section 10(j) hearing to authenticate the petition and satisfy the burden, if any, the Act imposes. Instead, the NLRB’s shifting stance toward the petition’s validity resulted in a lack of relevant evidence before the ALJ and, accordingly, deprived AMC of the opportunity to present further evidence. The ALJ did not have the opportunity to examine the demeanor or review the testimony of any of the employees before ruling on the petition’s validity. Consequently, the ALJ’s likelihood of success suffers.

Ohr ex rel. NLRB v. Arlington Metals Corp., 2015 WL 7731959, at *14 (N.D. Ill. Dec. 1, 2015).

The employee testimony adduced at the Section 10(j) hearing thus bears directly and vitally on correctness of key findings in the ALJ’s Recommended Decision and Order.

III. The 10(j) Hearing Testimony Renders Untenable the ALJ's Conclusory Findings That the Petition Was Not Authentic.

During the Section 10(j) hearing, over objection of the Board's Counsel, the Court permitted the parties to supplement the testimony from the hearing before the ALJ. At the preliminary injunction hearing, AMC called 11 of the 16 signers of the July 10, 2014 petition to withdraw union recognition: Brandon DeLaCruz, Dallas Wright, Casimir "Casey" Waz, Chris Keiler, Anthony Menotti, Emil Stezeck, Stanley Landowski, Michael Krasinski, Steve Hill, Andres Coronel, and Brandon Trezzo. The Board had the opportunity to cross-examine each of the petition signers, and cross-examined all but one.

DeLaCruz testified without contradiction he initiated the preparing of the petition and collected each of the signatures on the petition off AMC premises. 10(j) Tr. 169–70. All of the petition signers were employees of AMC when they signed it in July 2014. *Id.* at 170. DeLaCruz personally presented the petition to each employee for them to consider to sign, and, in collecting the signatures, witnessed each person sign the document. *Id.* at 171. Further, DeLaCruz testified no member of AMC management had anything whatsoever to do with preparing or supporting the petition or offered DeLaCruz any benefit or reward for collecting the petition of signatures to decertify the Union. *Id.* at 171–72. To the contrary, DeLaCruz testified that he collected the signatures because he felt he did not need a union. *Id.* at 173–74.

Nine other petition signers testified they signed the disaffection petition on their own volition, free from AMC instruction, threats, or rewards. 10(j) Tr. 183–186, 195–97, 202–04, 209–11, 244–246, 259–60, 264–72, 277–79. Another petition signer—Brandon Trezzo—testified that he signed the disaffection petition because he wanted to, but that he did not recall the circumstances surrounding the petition. Tr. 280–84. Notably, each petition signer testified without contradiction that at the time they signed the petition, he did not want the Union to

represent him, a sentiment each witness still holds. 10(j) Tr. 171–74; 183–186, 266, 268, 270–72, 277–83.

AMC also called Zdzislaw “Ziggy” Banjo to testify. Banjo testified that he was employed by AMC as of July 2014, but was out of the country when the petition was circulated. 10(j) Tr. 193. However, he testified that in July 2014, when the petition was presented to AMC, he did not want the Union to represent him. 10(j) Tr. 194. Nor did he want union representation at the time of the Section 10(j) hearing. *Id.*

AMC also called three employees—Vincent Roldan, Joshua Arndt, and Joseph Carrisal—who were not employed at AMC in July 2014, but whom testified they currently do not want the Union to represent them. *Id.* at 216–17, 285, 286–87. The parties also stipulated to the testimony of the following witness employees: Daniel DeLaCruz, Pedro Garcia, Chris Jasinski, Samuel Medrano, and Jesus Reyes. Specifically, the parties stipulated that “if called to testify, each of these witnesses would testify that they did not work at the company in July of 2014 when the petition was signed; that they currently work there; and, they do not wish to be represented by the Union.” *Ohr ex rel. NLRB v. Arlington Metals Corp.*, 2015 WL 7731959, at *9 (N.D. Ill. Dec. 1, 2015) (citing 10(j) Tr. at 288–89).

Accordingly, even assuming (1) AMC was required to authenticate the admittedly valid petition, which we contend it was not under *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 725 n.49 (2001); *and* (2) Orlowski’s un rebutted testimony that he examined the petition and recognized each of the signatures, Tr. 101–02, 105–06, was insufficient to authenticate the petition, the record developed at the Section 10(j) hearing removes any doubt as to the authenticity of the petition.

IV. The ALJ’s Conclusory Finding That the Petition Was “Tainted” is Squarely Refuted by the 10(j) Hearing Testimony.

As addressed in AMC’s Brief in Support of its Exceptions to the ALJ’s Recommended Decision and Order, the General Counsel adduced and the ALJ found no evidence that *any* petition signer was aware of *any* pending unfair labor practice allegation at the time he signed the petition. In the absence of any evidence, the ALJ *assumed* the dated but still pending unfair labor practice charges motivated employees to sign the petition to withdraw.

The ALJ’s conjecture on this central issue is unsupported by any record evidence, and is affirmatively and definitively debunked by the testimony offered during the hearing on the Board’s Section 10(j) Petition. In testifying about the motivation for seeking withdrawal of union recognition, not a single petition signer testified they signed the petition because of the alleged unfair labor practices asserted against the Company, much less that they were even aware of such allegations. 10(j) Tr. 168–90, 195–215, 244–84. This testimony directly undercuts the ALJ’s fact-free finding that AMC’s conduct at the October and December, 2013, bargaining meetings at issue in the Complaint, which represented only 5 percent of the parties’ overall bargaining conduct, tainted a petition signed by employees who had zero knowledge of the bargaining. *See Champion Enters., Inc.*, 350 NLRB 788, 792 (2007) (reversing the ALJ’s finding that the employer violated Section 8(a)(5) by withdrawing recognition from the union where “there was no evidence that the unit employees knew of [an alleged unfair labor practice] violation at the time they signed the petition”); *Bunting Bearings Corp.*, 343 NLRB No. 64 (2004) (affirming ALJ’s finding that employee discharge did not cause employee disaffection sufficient to taint withdrawal where there was no evidence any other bargaining unit employee was aware of discharge at time of petition), *remanded on other grounds*, 179 F. App’x 61 (D.C. Cir. 2006).

V. The 10(j) Hearing Testimony Confirms the ALJ's Finding That AMC Provided Incomplete and Misleading Information to the Union Was Predicated On A Misapprehension of the Record Evidence.

In determining that AMC engaged in overall bad faith bargaining, the ALJ asserted as an important indicia of bad faith bargaining his erroneous determination that AMC's provision of tonnage and revenue data was "incomplete and misleading as it did not indicate any of the revenue generated by the 20 percent of the Respondent's operations that is comprised of metal sales." ALJD at 22, 28. The Section 10(j) testimony underscores that this finding, too, is erroneous.

At the hearing before the ALJ, Tim Orlowski, AMC's Executive Vice President testified without contradiction that 100 percent of the work performed by the bargaining unit at the Franklin Park facility is under the toll processing side of the business. Tr. 100. At the 10(j) hearing, Orlowski testified without contradiction that AMC's metal sales group is merely another customer of its toll processing group and, like any other customer, is charged the going rate for the processing of material. 10(j) Tr. 226–27. And, when called upon to produce information to the Union to back up its bargaining assertion that tonnage volume was and remained low, the Company produced accurate and complete information concerning volume and revenue of all of its metal processing. Tr. 360–64; R. 6; GC 12; CP 1.

VI. Conclusion.

For the reasons set forth herein, AMC respectfully requests that the Board (1) reopen and supplement the administrative record with (a) the Section 10(j) hearing transcript and exhibits; and (b) the December 1, 2015, Memorandum Opinion and Order in *Ohr ex rel. NLRB v. Arlington Metals Corp.*, 2015 WL 7731959 (N.D. Ill. Dec. 1, 2015); and (2) consider the supplementary evidence in ruling on AMC's Exceptions to the ALJ's Recommended Decision

and Order or, in the alternative, remand the proceeding to the ALJ to receive and consider supplementary evidence.

Date: December 11, 2015

Respectfully submitted,

ARLINGTON METALS CORPORATION

By: /s/ Benjamin M. Ostrander
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Respondent, hereby certifies that he has caused a true and correct copy of the foregoing Motion to Reopen and Supplement the Administrative Record be served upon:

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via electronic mail where indicated and U.S. Mail, first-class postage prepaid, this 11th day of December, 2015.

By: /s/ Benjamin M. Ostrander
Benjamin M. Ostrander

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

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**INDEX OF EXHIBITS TO
ARLINGTON METALS CORPORATION'S MOTION TO REOPEN AND
SUPPLEMENT THE ADMINISTRATIVE RECORD**

Exhibit	Description
A	<i>Ohr v. Arlington Metals Corp.</i> , No. 15-CV-8885, 2015 WL 7731959 (ND Ill. Dec. 1, 2015)
B	Preliminary Injunction Hearing Transcripts dated November 12 and 13, 2015
C	Petitioner's and Respondent's Exhibits Admitted at Preliminary Injunction Hearing

Exhibit A

2015 WL 7731959

Only the Westlaw citation is currently available.

United States District Court,
N.D. Illinois, Eastern Division.

Peter Sung Ohr, Regional Director,
of Region 13 of the National Labor
Relations Board, for and on Behalf of the
National Labor Relations Board, Plaintiff,
v.
Arlington Metals Corporation, Defendant.

No. 15-CV-8885 | 12/01/2015

MEMORANDUM OPINION AND ORDER

AMY J. ST. EVE, District Court Judge:

*1 The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (“Union”) filed unfair labor practice charges with the National Labor Relations Board (“NLRB”) against Defendant Arlington Metals Corporation (“AMC”). Plaintiff NLRB has filed a petition seeking interim injunctive relief pending the final disposition of the administrative proceeding under 29 U.S.C. § 160(j) (“Section 10(j)"). After considering the entire record, including the testimony and proceeding before the Administrative Law Judge (“ALJ”), the Court denies Plaintiff’s petition for the following reasons.

BACKGROUND

I. Events Leading To The Negotiations At Issue

AMC is an Illinois corporation engaged in the business of steel slitting and blanking. Specifically, AMC’s business involves two operations: toll processing and metal sales. (R. 20, Admin. Rec., at 47-58.) In toll processing, AMC buys steel coils from steel mills, cuts them according to the mills’ customer-specifications, and collects a “tolling fee.” (*Id.* at 58.) In metal sales, AMC buys steel from steel mills, cuts the metal according to AMC’s customer-specifications, and sells the metal to its customers. (*Id.* at 51-56.) Toll processing comprises about eighty percent of AMC’s business while metal sales comprise approximately twenty percent. (*Id.* at 85.)

On October 10, 2007, the Union won a certification election and became AMC employees’ exclusive collective-bargaining representative serving the following people:

All full-time and regular part-time production, maintenance, and shipping and receiving employees employed by the Employer [AMC] at its facility currently located at 11355 Franklin Avenue, Franklin Park, Illinois; but excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

(R. 20-1, Admin. Rec., at 173; R. 20, Admin. Rec., at 125-26.) The Union assigned the AMC employee representation to the United Steel Workers Amalgamated Local 7773 (“Union”) ¹. (R. 20, Admin. Rec., at 124.) At that time, the Union represented 52 unit employees. (*Id.* at 125.)

¹ The Court refers to the international and local unions collectively as the “Union.”

Soon afterward, AMC’s business began to suffer, in part, from the December 2007 national recession. (*Id.* at 397; R. 20-1, Admin. Rec., at 303.) In 2006, AMC processed 201,867 tons of steel with 52 unit employees, reaping a \$1,229 profit. (*Id.* at 535.) Each number would steadily decrease from 2007 to 2011. Indeed, in 2010, AMC only processed 126,912 tons of steel with 24 unit employees, losing \$452,170. (*Id.*) Ultimately, from 2007 to October 5, 2011, AMC lost \$3,399,024. (*Id.*)

AMC-Union negotiations began in November 2007. (*Id.* at 130.) Throughout 2007 and most of 2008, the parties reached a number of agreements regarding non-economic issues. (*Id.* at 130-31; 136.) In late 2008, however, the parties began negotiating economic issues. (*Id.* at 131-32.) In 2009, AMC, still suffering from the recession, withdrew a previous wage increase proposal. (*Id.* at 437-38; R. 20-1, Admin. Rec., at 303.) Instead, AMC proposed its “Last Best and Final Offer:” a wage cut and 180,000-ton-steel-processing benchmark for increasing the unit employees’ wages. (*Id.* at 438.) In May 2009, the Union rejected AMC’s offer. (*Id.* at 371.) In August 2009, however, AMC declared that the parties were at an impasse and unilaterally implemented its proposal. (*Id.* at 132, 369.) Specifically, AMC stated that,

*2 [t]he Company [AMC] will re-store [sic] the wage rates in effect immediately prior to the effective date of this Agreement if in the 12 month period immediately following the effective date of this Agreement the Company processes 180,000 tons of steel.

The Company [AMC] will pay each employee a lump sum bonus on or around the 30th month following the effective date of this Agreement, if during the second full year of this Agreement the Company [AMC] processes 180,000 tons of steel. Such lump sum payment will be equal to 1% of the employee's previous year's lowest base wage multiplied by 2080.

(R. 20-1, Admin. Rec., at 264, 371.)

The ALJ concluded that by January 2012, AMC and the Union had met at least thirty-five times to, in part, negotiate these economic issues. (R. 20-2, Admin. Rec., at 141.) Specifically, the parties met nine times between April 2011 and December 2011 to negotiate changes to AMC's 2009 unilateral wage implementation. (*Id.*) In December 2011, however, AMC again declared that the parties were at an impasse. (R. 20, Admin. Rec., at 363.) As a result, in January 2012, AMC again unilaterally implemented employment terms and conditions, in part, setting the same 180,000-steel-ton threshold for wage increases. (*Id.* at 132-33.) In March 2012, while the parties made some progress, they could not agree upon new wage terms and conditions. (*Id.* 455-58.) In June 2012, the Union attempted to meet and bargain with AMC, and AMC declined, declaring that the circumstances had not changed and the parties remained at an impasse. (*Id.* at 458-59.)

In July 2012, an AMC employee petitioned for an election to decertify the Union as the employee's exclusive bargaining representative. (*Id.* at 134, 459.) The Union won that election and was re-certified. (*Id.* at 135.) In September 2012, the Union requested to meet and bargain with AMC regarding the 2012 unilaterally implemented wage terms and conditions. AMC declined, restating that the parties were at an impasse. (*Id.* at 139, 459.)

Accordingly, the Union filed unfair labor practice charges against AMC in 2013. (*Id.* at 139-140.) Specifically, the Union alleged that AMC had refused to bargain in good faith and illegally sponsored a decertification petition. (*Id.* at 140.) The parties eventually signed an informal settlement agreement on July 8, 2013. (*Id.* at 140-41; R. 20-1, Admin.

Rec., at 229.) Without admitting to any National Labor Relations Act ("Act") violations, AMC agreed to meet and bargain with the Union in good faith and allow Union representatives access to its facilities to investigate health and safety concerns. (R. 20-1, Admin. Rec., at 229-32.) In addition, the settlement agreement extended the Union's certification for one year. (*Id.* at 229; R. 20, Admin. Rec., at 141.)

II. September and October 2013 Meetings

On September 2013, the parties met to discuss AMC's discharge of the Union's steward and two employees' insurance issues. The parties also established a collective bargaining negotiation schedule. (R. 20, Admin. Rec., at 144-48; 463-65.) The parties agreed to meet on October 31, 2013 to begin negotiating. (*Id.* at 144, 148.)

On October 31, 2013, the Union negotiated for a new employee contract. Before issuing a new proposal, the Union provided AMC economic evidence illustrating how the employees had suffered since the 2009 and 2012 unilaterally implemented wage terms at issue. (*Id.* at 162.) Specifically, the Union's "Economic Adverse Impact of AMC's Proposals on Employees" stated the following:

- *3 [1.] Likelihood that employees will not receive a wage increase in 8 years.
- [2.] Employees suffered an approximate 90 cents per hour pay cut in 2009.
- [3.] The economic impact on employees due to inflation-cost of living alone from 2006 to 2013 results in over a 13% loss in earning power.
- [4.] The projected estimated loss in earning due to inflation-cost-of-living will result in an additional 4% loss in earnings if the employees do not receive a wage increase.
- [5.] The combined economic impact due to the cost of living on employee's earnings and spendable income will equal an estimated loss of over 17% or over \$2.50 per hour.
- [6.] When the impact of the approximate 90 cent per hour pay cut is included the total earnings-income loss is over \$3.40 per hour or over \$7000 per employee per year on a straight time basis.

- [7.] When the economic adverse impacts of the group insurance premiums [set forth in the terms and conditions at issue] are considered there is an estimated loss of an average of over 30 cents per hour in premiums alone. This equals a combined loss of almost \$4.00 per hour.
- [8.] When the out-of-pocket cost of the changed Health Care plan (HSA) is considered the cost could exceed \$5000 per year or an additional \$2.40 cents per hour.
- [9.] The total potential adverse impact of the Company's [AMC] proposal could equal an estimated \$6.40 per hour loss to employees or over \$13,000 per year.
- [10.] The above numbers do not take into consideration that the Company [AMC] is experiencing an hourly labor cost savings of approximately \$3.67 per hour as a result of the elimination of the rest break periods [set forth in the terms and conditions at issue].

(R. 20-1, Admin. Rec., at 275, emphasis in original.)

The Union subsequently gave AMC its eleventh economic proposal. (R. 20, Admin. Rec., at 159-60.) Overall, this proposal suggested that AMC change its healthcare plan, overtime pay, vacation time, and wage calculations. (R. 20-1, Admin. Rec., at 277-78.) Particularly, with regard to wages, the Union's proposal recommended the following changes:

- a. Re-storing [sic] wages previously in effect: a mathematical formula to be establish [sic] to reflect production per employee that is equal to the 180,000 ton average per year based on the average per capita employee count over a more current 12 month period based on a representative employee head count. When the equivalent tonnage per employee is reached on the average over a consecutive (12) twelve month period the wages previously in effect before the Company [AMC] reduced such wage rates to be restored-reinstated and replace those currently in effect in addition to any wage increases provided herein...
- b. Effective upon ratification each bargaining unit employee will be given a \$1000 lump sum payment within seven (7) days following ratification.
- c. Effective 1/1/14: A general wage increase of 35 cents per hour.

- d. Effective 1/1/15: A general wage increase of 40 cents per hour.
- e. Effective 11/1/15: A general wage increase of 3%.

(*Id.*) The Union argued that AMC should base its wage increases on per capita steel production, rather than absolute production. The Union highlighted that AMC had processed 180,000 tons of steel in one year on only six occasions over a sixteen-year period. (*Id.* at 325, 408; R. 20, Admin. Rec. at 91-92.) In 2002 and 2006, the last two occasions in which AMC reached that benchmark, AMC employed 54 unit employees, meaning each employee produced about 3,333 tons of steel in a year's time. (*Id.*; R. 20, Admin. Rec., at 212-13.) Meanwhile, the Union argued, the most recent AMC production—116,208 tons of steel with 26 unit employees—showed that each employee processed 4,469 tons of steel, constituting a 40% per capita increase. (*Id.*) In sum, stressed the Union, the 180,000-ton absolute threshold was unrealistic and unfair. (R. 20, Admin. Rec., at 206-07, 397.)

*4 AMC disagreed. (*Id.*) Anchoring its response on the dour market conditions and increased competition, AMC argued that its steel volume was down; its costs and taxes, up; and its demand and prices, down. (*Id.* at 202-03, 226-27.) Further, AMC argued that its steel mill competitors were stripping AMC of its customers and moving business outside of Illinois. (*Id.* at 202-203) Despite these grim conditions, AMC contended, it continued to pay fixed wages and benefits, make payroll every week, and maintain positive employee morale and high employee retention. (*Id.* at 399-400.) Finally, AMC responded directly to the Union's arguments against the absolute threshold: the steel production was related to operating costs and business performance, not profits and losses, and the company's wage calculus differed from the Union's. (*Id.* at 201-02.)

Next, the parties debated AMC's ability to pay the wage increases at issue. The Union highlighted that AMC had cut labor costs nearly in half by decreasing the number of unit employees. (*Id.* at 205-06, 398-99.) Thus, the Union asked whether AMC was profitable and whether it could afford the wage increases. (*Id.* at 203.) In response, AMC continued to focus on the poor market conditions and explained to the Union that business had never recovered after dropping between 2010 and 2013. (*Id.* at 202-03.) Specifically, however, AMC stated that it was not claiming an inability to afford the Union's wage proposals. (*Id.* at 203,

398.) Instead, argued AMC, the company simply had a right to maintain its profit and loss information privately. (*Id.*)

The Union then attempted to compromise with AMC. Although the Union preferred an hourly wage increase, it offered to, instead, accept a \$1,000 lump sum payment for each unit employee along with the rest of the proposed changes. (*Id.* at 204.) The company agreed to take the Union's proposal under consideration, and the parties recessed from the meeting. (*Id.* at 204, 400.)

Upon returning to the meeting, AMC reported that the company's owners had rejected the Union's proposal. (*Id.* 205, 400-01.) AMC reiterated that the market fundamentals had not changed since 2009. (*Id.* at 433.) AMC stuck to its "Last Best and Final Offer." (*Id.* at 205-07, 400-01.) On November 11, 2013, AMC offered to compromise. AMC stated that it would accept one of the Union's unpaid time-off proposals on a limited basis but reject the remaining proposals, including the wage offers, as unacceptable. (*Id.* at 407; R. 20-1, Admin. Rec., at 279.) The unilaterally imposed AMC terms remained.² (R. 20-1, Admin. Rec., at 279.) The parties scheduled their next collective-bargaining meeting for December 11, 2013. (R. 20, Admin. Rec., at 403.)

² AMC's November 11, 2013 letter to the Union stated the following, in relevant part:

Arlington Metals has considered the proposal you presented at our meeting on October 31st.

The Company will accept your proposal for unpaid time off for union business, but with the following limitations: it would apply to only one person for a maximum of 20 hours per year.

The remaining proposals are not acceptable because they are not reasonable given the state of the business. Arlington Metals stands on the current Implemented Terms.

We are available to discuss at our next meeting or you can contact me sooner if you prefer.

(R. 20-1, Admin. Rec., at 279.)

III. December 11, 2013 Meeting And Information Production Request

At the December 11, 2013 meeting, the Union requested economic and financial data from AMC. (*Id.* at 171.) Specifically, the Union requested, in relevant part:

Based on the Company's position, representations and explanation as to why it cannot agree to the Union's economic proposals and why the Company cannot rescind

pay cuts and grant pay increases and other economic improvements to bargaining unit employees, the Union is requesting the following financial and economic information to be provided as soon as possible:...

*5 [1]] Audited financial statements for the past four years. These should include complete balance sheets, income statements, and statements of cash flow together with footnotes and detailed supporting schedules. Supporting schedules should include cost of goods sold, including breakdowns of material costs, manufacturing overhead/burden, labor costs and supervisory, management, Company officers and other non-labor wages and benefits; and selling, general and administrative expenses....

[2]] [T]he following financial reports: [d]etailed income statement; [d]etailed Balance Sheet; [s]tatement of Cash flows[.] These reports should cover Actuals for 2010, 2011, 2012 and financial reports year to date 2013....

[3]] Sales by customer for each of the last four years, [and] current and projected for the next 3 years....

[4]] A detailed explanation of the business conditions the Company is referring to and the specific changes that have occurred and the actual impact on the Company's financial condition. Provide specific data, reports and analyses....

[5]] Federal and State tax returns the Company filed for the last four years.

(R. 20-1, Admin. Rec., at 283-84.) AMC suggested that most of the information was irrelevant, as they had not claimed an inability to pay the wage increases. (R. 20, Admin. Rec., at 409, 412.) Subsequently, the Union attempted to find a more reasonable wage increase framework. In support of its request, the Union emphasized that unit employees were processing more steel per employee than the years when AMC processed 180,000 tons total. AMC countered that the unilaterally imposed terms and conditions were fair, as evidenced by the lack of employee turnover. (*Id.* at 228-29; 412.) AMC then underscored the weak market conditions and suggested that the Union sign AMC's final offer at issue. (*Id.* at 212-13.) At this point, the December 11, 2013 meeting ended. (*Id.* at 214-15; 409-10.) Instead of amending its proposed changes to AMC's final offer, the Union awaited AMC's response to the production request. (*Id.*) A back-and-forth email match ensued.

On December 16, 2013, AMC responded to the Union's production request. (*Id.* at 412-413; R. 20-1, Admin. Rec., at 285-86.) AMC denied the Union's first and second requests, refusing to produce its audited financial reports for the last four years and associated documents, its income statements, its balance sheets, and its statements of cash flow. (R. 20-1, Admin. Rec., at 285.) Specifically, AMC stated that “[t]he Union is not entitled to such information...because AMC has never asserted a financial inability to meet the Union's wage demands.”(*Id.*) AMC did, however, partially oblige the Union's third request for sales information, providing tonnage and revenue data from 2009 through November 2013.³ (*Id.*) This information only included tonnage and revenue data from AMC's toll processing and not its metal sales. (R. 20, Admin. Rec., at 96-97.) Additionally, AMC partially answered the Union's fourth request for a detailed explanation of the business conditions to which AMC had referred throughout negotiations. AMC asserted that “[t]he Union is not entitled to the detail and breadth of financial information requested,” and disclosed recent and projected steel tonnage processing figures, claiming it was responsive to the Union's request.⁴ (R. 20-1, Admin. Rec., at 286.) Finally, AMC denied the Union's fifth request for AMC's federal and state tax information, stating that “[t]he Union is not entitled to such information[.]” (*Id.*)

³ Specifically, the tonnage and revenue data illustrated that AMC processed 100,854 tons of steel and \$2,887,096 of revenue in 2009; 126,912 tons and \$3,437,535 in 2010; 121,008 tons and \$3,228,358 in 2011; 121,071 tons and \$3,311,920 in 2012; and 106,471 tons and \$3,007,027 by November 2013. (R. 20-1, Admin. Rec., at 285.)

⁴ Specifically, AMC processed 121,071 tons of steel in 2012; 106,469 tons through November 2013; and anticipated processing 113,011 tons by the end of 2013. (R. 20-1, Admin. Rec., at 286.)

*6 On January 7, 2014, the Union replied. (R. 20, Admin. Rec., at 414-15; R. 20-1, Admin. Rec., at 288-89.) Regarding AMC's refusal to accommodate the Union's first, second, fourth, and fifth requests, the Union stressed:

In effect AMC's consistent basis for pay cuts and its position for not being able to provided [sic] future economic improvements, including wage increases, are premised on what has been described by AMC as deteriorating business conditions and a reduction in sales and the margins of such sales. AMC has clearly expressed this position and reason for its position regarding economic

matters during negotiations, [sic] In effect, AMC is claiming a financial inability to pay or provide economic improvements for its employees. Therefore the Unions [sic] request for the Company's financial information is not only appropriate but necessary for the process of good faith negotiations to take place regarding economic matters.

...

[As for AMC's response for the Union's fourth request,] “[t]he Company's reply is not responsive and does not specifically provide the information requested.

(R. 20-1, Admin. Rec., at 288-89.) Further, the Union requested that AMC supplement its answer to the Union's third request for sales information. (*Id.*) Specifically, the Union asked AMC to provide “itemized costs (clearly broken down for each expense) of the sales revenues for each of the periods referred to” in its original request. (*Id.* at 289.)

On January 9, 2014, AMC countered. (R. 20, Admin. Rec., at 414-15; R. 20-1, Admin. Rec., at 287-88.) AMC reiterated that it has “never asserted an inability to pay as reason for any of its proposals or rejection of the Union's proposals.”(R. 20-1, Admin. Rec., at 287.) Instead, AMC declined to provide more information. (*Id.*) AMC echoed the dismal market conditions, concluded that its answers were responsive, and reasserted that the Union was not entitled to the extra information it requested. (*Id.*)

About three weeks later, on January 31, 2014, the Union restated its requests. (R. 20, Admin. Rec., at 414-15; R. 20-1, Admin. Rec., at 291-93.) In essence, the Union argued that the financial information was necessary and relevant, because “[t]he Company's position has and was actually based on ‘inability to pay.’ While the Company has not used those specific terms, the reason and basis for the Company's position as expressed during the bargaining and actions taken are the same— ‘inability to pay.’ +” (R. 20-1, Admin. Rec., at 292.)

On February 3, 2014, AMC retorted: “We have considered each of your requests, and we can detect no new justifications or plausible rationale that merit any different response that [sic] we provided to you January 9, 2014 and December 16, 2013. With all due respect, you are simply repeating yourself.”(R. 20, Admin. Rec., at 414-15; R. 20-1, Admin. Rec., at 291.) AMC again contended that the Union was not entitled to any financial information beyond what AMC had already produced. (R. 20-1, Admin. Rec., at 292.) In

the end, AMC concluded that the Union's "purpose [was] more about creating mischief than engaging in purposeful communication."(*Id.*)

The Union sent its last reply on February 5, 2014. (R. 20, Admin. Rec., at 414-15; R. 20-1, Admin. Rec., at 290.) Specifically, the Union claimed that AMC's February 3 response illustrated the company's effort to "ignore the facts and the statements made during our negotiation regarding Arlington Metals business performance and conditions and the statements expressed by you as the basis and premise for the Company's position regarding economic issues."(R. 20-1, Admin. Rec., at 290.) Finally, the Union reaffirmed that the financial information at issue was necessary "for the Union to carry out its performance and duties as the exclusive bargaining representative of the bargaining unit employees of Arlington Metals."(*Id.*)

*7 On the same day, AMC ended the extended email exchange. (*Id.*) According to AMC, the company had "never asserted an inability to pay for any position AMC has taken since 2007, it has never been inferred, despite [the Union's] effort to say otherwise."(*Id.*) AMC concluded that it had given the Union the information to which it was legally entitled and reminded the Union that AMC's offer was final. At this point, the parties' collective bargaining negotiations ended. (*Id.*)

IV. Withdrawal of Recognition Petition

On July 10, 2014, Timothy Orlowski, AMC's executive vice president, received a document from one of AMC's employees, entitled "Petition to Remove Union As Representative."(R. 20, Admin. Rec., at 104-106.) In relevant part, the document stated:

The undersigned employees of Arlington [M]etals do not want to be represented by united still worker 7773 [sic], hereafter referred to as "union."

Should the undersigned employees constitute 30% or more, but less than 50%, of the bargaining unit represented by the union, the undersigned employees hereby petition the National Labor Relations Board to hold a decertification election to determine whether the majority of employees also no longer wish to be represented by the union.

In addition, should the undersigned employees constitute 50% or more of the bargaining unit represented by the union, the undersigned employees hereby request that our employer immediately withdraw recognition from the

union, as it does not enjoy the support of a majority of the employees in the bargaining unit.

(R. 20-1, Admin. Rec., at 296-98, 340-42.) The petition at issue included 16 employees' handwritten names and signatures, dated July 9, 2014. (*Id.*) Mr. Orlowski recognized a number of the employee names and signatures in the petition, testifying at the April 2015 ALJ hearing that "I've known these guys for a long time. I've seen their signatures on a multitude of documents, and they looked good to me....Several of them...looked legit."(R. 20, Admin. Rec., at 109-10.) He was not familiar with a few signatures of employees who had started at AMC in 2013, and he did not verify them with AMC's on-file employee signatures. (*Id.* at 113-14.) According to Orlowski and an AMC employee census, AMC employed around 26 unit employees at the time of the petition. (R.20-1, Admin. Rec., at 383, 417.)

On July 10, 2014, AMC informed the Union about the petition, writing, in relevant part:

Please find enclosed a petition dated July 9, 2014, signed by 16 members of the Arlington Metals Corporation bargaining unit, advising they no longer wish to be represented by the United Steelworkers [the Union] as their exclusive bargaining agent. The petition was in no way, directly or indirectly, initiated, supported or encouraged by Arlington Metals management. These 16 employees constitute well more than 50% of the bargaining unit of 24 employees...Arlington Metals will respect the desire of a majority of the bargaining unit of all, and consistent with federal labor law it withdraws recognition of the United Steelworkers union as the exclusive bargaining agent of the employees located in its Franklin Park plant effective immediately.

(*Id.* at 295.)

V. Union Request To Conduct A Health And Safety Inspection

From September to December 2013, the Occupational Health and Safety Association (OSHA) issued between eighty and one hundred citations to AMC, directing AMC to rectify health and safety matters by Spring 2014. (R. 20, Admin. Rec., at 298-99.) In July 2014, a few unit employees informed the Union that various safety issues still existed in AMC's plant. (*Id.* at 291-93.) On July 10, 2014, before receiving AMC's email regarding the withdrawal of recognition petition, the Union emailed AMC to schedule a health and safety inspection to assess AMC's compliance with OSHA's citations. (*Id.* at 284-85.; R. 20-1, Admin. Rec., at 294.)

*8 AMC denied the Union's request. (R. 20-1, Admin. Rec., at 294.) Specifically, AMC resent AMC's July 10, 2014 email concerning the withdrawal of recognition petition and asserted that the Union had no right to conduct a health and safety inspection. (*Id.*)

VI. ALJ Decision

As a result of the events described above, the Union filed a number of unfair labor practice charges against AMC.⁵ (R. 20-2, Admin. Rec., at 138.) Originally, on September 30, 2014, the NLRB consolidated these charges and set an ALJ hearing for November 17, 2014. (Nov. 12 Hrg., Resp. Exh. 8.) On November 3, 2014, however, the NLRB indefinitely postponed the ALJ hearing to supplement the complaint with additional charges. (*Id.*) The review Board rejected the NLRB's attempt. (Nov. 13 Hrg. Tr. at 343-44.) Subsequently, the NLRB issued the First Amended Consolidated Complaint on March 12, 2015, and AMC responded. (R. 20-1, Admin. Rec., at 15.) Later, the ALJ denied one AMC employee, Brandon DeLaCruz, from intervening in the case. (R. 18-1 at 33-35.) On April 27 and 28, 2015, the ALJ held a hearing. (R. 20, Admin. Rec., at 231.)

⁵ Specifically, the Union filed charges on February 10, 2014 in 13-CA-122273, on March 26, 2014 in 13-CA-125255, and on July 18, 2014 in 13-CA-133055. (R. 20-2, Admin. Rec., 138.)

The ALJ issued a detailed opinion on July 23, 2015. (R. 20-2, Admin. Rec., at 138-76.) First, the ALJ concluded that AMC had violated Sections 8(a)(5) and (1) of the Act by constructively asserting an "inability to pay" and subsequently refusing to produce financial information to which the Union was legally entitled. (*Id.* at 156-64.) Second, the ALJ found that AMC had engaged in surface bargaining in 2013 with no intention of reaching an economic agreement with the Union, in violation of Sections 8(a)(5) and (1) of

the Act. (*Id.* at 164-68.) Third, the ALJ declared that AMC's withdrawal of recognition against the Union was violative of the same sections. Specifically, the ALJ found that a causal relationship existed between AMC's unfair labor practices above and the July 2014 employee withdrawal of recognition petition. (*Id.* at 168-70.) In addition, the ALJ held that AMC did not verify the signatures on the petition at the hearing, thus failing to satisfy its burden of establishing by a preponderance of the evidence that the Union had in fact lost majority support. (*Id.* at 170-72.) Finally, because AMC's withdrawal of recognition was invalid, concluded the ALJ, AMC's refusal to cooperate with the Union's health and safety inspections also violated Sections 8(a)(5) and (1) of the Act. As a result, the ALJ ordered AMC to, in part, re-recognize the Union, bargain with the employee representatives in good faith, produce the requested financial documents, and cooperate with the health and safety inspections. (*Id.* at 174-76.)

Throughout September and October 2015, the parties have filed their post-hearing exceptions and arguments in the underlying case before the Board. (*Id.* at 180-430.) The administrative appeals process is currently pending.

VII. Section 10(j) Preliminary Injunction Hearing

The NLRB initially inquired as to AMC's position on Section 10(j) interim relief on August 28, 2014, but did not file a petition seeking such relief at that time. (Nov. 12 Hrg., Resp. Exh. 8.) On July 28, 2015, the NLRB raised the Section 10(j) issue with AMC a second time, but again elected not to file a petition. On October 6, 2015, the NLRB filed a "Petition for Injunctive Relief" under 18 U.S.C. § 160(j). (R. 1.) Specifically, the NLRB seeks to enforce the ALJ's order pending the final disposition of the Board's underlying administrative complaint. (*Id.*) On October 29, 2015, AMC responded. (R. 22.)

*9 On November 12 and 13, 2015, the Court held a preliminary injunction hearing pursuant to [Federal Rule of Civil Procedure 65](#) and 18 U.S.C. § 160(j). During the Section 10(j) hearing, the Court permitted the parties to supplement the testimony from the hearing before the ALJ. *See N.L.R.B. v. Electro-Voice, Inc.*, 83 F.3d 1559, 1566 (instructing courts to evaluate Section 10(j) requests with "an eye toward the traditional equitable principles that normally guide such an inquiry") (quotation marks and citation omitted). During the hearing, the NLRB called Frank Shubert as a witness. Mr. Shubert is the Staff Representative and President for the Local 7773 Union. Mr. Shubert first discussed the Union's monthly meeting structure and format. According to Mr. Shubert, the

Union met on the second Sunday of every month to hold a general membership meeting followed by separate unit meetings. Only members “in good standing” who signed a membership card were allowed to attend these meetings. At most general membership meetings, the Union maintained an attendance log and the recording secretary kept minutes. Mr. Shubert explained that the individual unit meetings were more informal and did not require attendance logs and minutes. Generally, when the Union would discuss AMC-related matters, the topics covered a range of matters including, in part, employment terms and conditions, AMC's 2012 unilaterally implemented wage terms, contract negotiations, and alleged unfair labor practices.

Next, Mr. Shubert, in relevant part, verified a number of meeting attendance logs and minutes that illustrated a drop in AMC-employee union participation during the alleged unfair labor practices. Specifically, on September 29, 2013, the Union held a special meeting after the July 2013 informal settlement agreement. At least eighteen AMC employees attended the meeting, six of whom filled out membership cards to participate for the first time. Later, four AMC employees attended the Union's January 12, 2014 meeting, none of whom were the six new members from the September 2013 meeting. By the Union's April 13, 2014 meeting, two AMC employees attended, and none of the six new September 2013 members attended. At the Union's June 8, 2014 meeting, eight AMC employees attended, including some of the new September 2013 members, but the meeting ended without being adjourned when a number of them walked out. After the July 10, 2014 employee withdrawal of recognition petition, zero AMC employees attended the July 18, 2014 Union meeting. Ultimately, AMC employee attendance dwindled to two members on average during the year following the July 2014 withdrawal petition. Finally, on August 30, 2015, six AMC employees attended the Union's special meeting to discuss the ALJ's July 2015 decision.

The Court also admitted various redacted meeting minutes into evidence during the hearing. The Court has reviewed the unredacted versions of these documents *ex parte* and *in camera* and is satisfied that the NLRB appropriately redacted irrelevant information.

AMC called the following employee witnesses to testify at the hearing: Brandon DeLaCruz, Dallas Wright, Zdzislaw Bajno, Casimir Waz (Casey), Chris Keiler, Anthony Menotti, Vincent Roldan, Emil Stezeck, Stanley Landowski, Michael Krasinski, Steve Hill, Andres Coronel, Brandon Trezzo,

Joshua Arndt, and Joseph Carrisal. Counsel separate from AMC's counsel represented these employees. In sum, out of the ten employee signees who AMC presented, nine employees testified that they signed the petition of their own volition, free from AMC input, threats, or rewards. The tenth petition signee, Brandon Trezzo, was unable to remember the events at issue. Each employee expressed some version of employee Brandon De La Cruz's sentiment: “I feel I don't need a union.”(Nov. 12 Hrg. Tr. at 174.) AMC also called Tim Orłowski, AMC's Executive Vice President, to testify at the hearing. Mr. Orłowski testified, in relevant part, that AMC management played no role in organizing the withdrawal petition. Further, he explained that an injunction forcing financial data disclosure would damage AMC's privacy and success. The Court carefully observed and evaluated the demeanor of each witness on the stand.

In addition, the parties stipulated to the testimony of the following witness employees: Daniel DeLaCruz, Pedro Garcia, Chris Jasinski, Samuel Medrano, and Jesus Reyes. Specifically, the parties stipulated that “if called to testify, each of these witnesses would testify that they did not work at the company in July of 2014 when the petition was signed; that they currently work there; and, they do not wish to be represented by the Union.”(Nov. 12 Hrg. Tr. at 288.) The Court notes that each of these employees was present, represented by counsel, and ready to testify.

LEGAL STANDARD

*10 “Under [Section] 10(j) of the [National Labor Relations] Act, courts may grant temporary injunctions pending the Board's resolution of unfair labor practice cases.”⁶ *Harrell ex rel. N.L.R.B. v. Am. Red Cross, Heart of Am. Blood Services Region*, 714 F.3d 553, 556 (7th Cir. 2013). This relief “is intended to protect a union pending the Board's remedial action.”*Id.* Indeed, “[S]ection 10(j) directs district courts to grant relief that is ‘just and proper[.]’ +”*Ohr ex rel. N.L.R.B. v. Latino Exp., Inc.*, 776 F.3d 469, 472 (7th Cir. 2015) (citation omitted). “Interim relief is ‘just and proper’ when four factors are present: (1) NLRB has no adequate remedy at law; (2) the Union will be irreparably harmed without interim relief, and that potential harm to the Union outweighs potential harm to the employer; (3) public harm would occur without the relief; and (4) the Board has a reasonable likelihood of prevailing.”*Am. Red Cross*, 714 F.3d at 556 (citing *Lineback v. Irving Ready-Mix, Inc.*, 653 F.3d 566, 570 (7th Cir. 2011)); *see also Lineback v. Spurlino*

Materials, LLC, 546 F.3d 491, 499-500 (7th Cir. 2008) (“The court looks to the same factors to which it looks in other contexts when deciding whether to grant injunctive relief[.]”).

⁶ Section 10(j) of the Act (29 U.S.C. § 160(j)) states:
The board shall have power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

“The Director bears the burden of establishing the first, third, and fourth of these circumstances by a preponderance of the evidence.” *Spurlino Materials*, 546 F.3d at 500 (citing *Bloedorn v. Francisco Foods, Inc.*, 276 F.2d 270, 286 (7th Cir. 2001)). “The second prong,” however, “is evaluated on a sliding scale: The better the Director's case on the merits, the less its burden to prove that the harm in delay would be irreparable, and *vice versa*.” *Id.* (citing *Bloedorn*, 276 F.3d at 286-87). For each prong, the Director must “surpass the ‘possibility’ threshold into ‘likelihood[.]’ +” *Barker v. A.D. Conner, Inc.*, 807 F. Supp. 2d 707, 718 (N.D. Ill. 2011) (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 129 S. Ct. 365, 375, 172 L. Ed. 2d 249 (2008) (“[T]he... ‘possibility’ standard is too lenient. Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is likely in the absence of an injunction.”)). This “likelihood” standard requires more than a “mere possibility of relief” and more than a “better than negligible” showing. *A.D. Connor, Inc.*, 807 F. Supp. 2d at 719 (quoting *Nken v. Holder*, 556 U.S. 418, 129 S. Ct. 1749, 1762, 173 L. Ed. 2d 550 (2009) (discussing similar standards for issuance of stay)).

*11 Importantly, “[a]n injunction granted under [S]ection 10(j) is an ‘extraordinary remedy.’” *Irving Ready-Mix*, 653 F.3d at 570 (quoting *Bloedorn*, 276 F.2d at 297). Indeed, relief under Section 10(j) “should be granted only in those situations in which effective enforcement of the Act is threatened by delay in the Board's dispute resolution process.” *Id.*

ANALYSIS

I. Irreparable Harm And Adequate Remedy At Law

The NLRB argues that the Union and AMC unit employees face “irreparable harm.” Specifically, the Union contends that “failure to order immediate preliminary injunctive relief will only further erode employee support for the Union, deprive employees of the benefits of good faith bargaining and completely undermine employees' Section 7 rights guaranteed under the Act.” (R. 1 at 8.) In light of the NLRB's delay, however, the Court disagrees.

To succeed in a Section 10(j) preliminary injunction proceeding, the NLRB must demonstrate that “the union will be irreparably harmed without interim relief.” *Latino Exp., Inc.*, 776 F.3d at 472. According to the statute's drafters, “[t]he rationale behind [Section] 10(j) is that ‘[t]ime is usually of the essence[.]’ +” *McKinney ex rel. N.L.R.B. v. Southern Bakeries, LLC*, 786 F.3d 1119, 1122 (8th Cir. 2015) (quoting S. Rep. No. 80-105, at 8 (1947)). Indeed, “[t]he deprivation to employees from the delay in bargaining and the diminution of union support is immeasurable. That loss, combined with the likelihood that the Board's ability to rectify the harm is diminishing with time, equals a sufficient demonstration of irreparable harm to the collective bargaining process.” See *Spurlino Materials*, 546 F.3d at 501 (quoting *Electro-Voice*, 83 F.3d at 1573).

When the petitioner delays in seeking interim relief, however, it weighs against finding that the petitioner faces irreparable harm. See *Ideal Indus., Inc. v. Gardner Bender, Inc.*, 612 F.2d 1018, 1025 (7th Cir. 1979). Put differently, the petitioner's delay in seeking Section 10(j) relief implies that the petitioner does not believe “time is of the essence.” Sen. Rep. No. 80-105, at 8 (1947); see also *Iximation, Inc. v. Switch Bulb Co., Inc.*, No. 14-CV-6993, 2014 WL 5420273, at *7 (N.D. Ill. Oct. 23, 2014) (“Delay is a factor in assessing the existence of irreparable harm, and unexcused delay on the part of parties seeking extraordinary injunctive relief is grounds for denial of a motion because such delay implies a lack of urgency and irreparable harm.”) (quotation marks and citation omitted). Here, AMC allegedly committed its last unfair labor practice on July 10, 2014 when AMC ceased recognizing the Union. The Board, however, did not file the current petition for Section 10(j) relief until October 6, 2015—approximately fifteen months after the event. This delay on the part of the NLRB supports that the unit employees' alleged injuries are neither urgent nor irreparable.

The Court acknowledges that “delay is only one among several factors to be considered[.]” *Ideal Indus.*, 612 F.2d at 1025. Importantly, however, a petitioner’s delay is more than a “mere passage of time” when the petitioner delays knowing that the union it seeks to reinstate has been out of favor for an extended period of time. *Id.* at 1025 (stating that a “mere passage of time” alone cannot preclude petitioners from showing irreparable injury). Indeed, when “the party seeking injunctive relief has knowledge of the pending nature of the alleged irreparable harm,” its delay further cuts against the likelihood of irreparable injury. *Iximtion*, 2014 WL 5420273, at *7.

*12 The Eighth Circuit’s opinion in *Southern Bakeries* is instructive. 786 F.3d 1119. In *Southern Bakeries*, the NLRB filed its petition for Section 10(j) relief seven months after the company withdrew recognition of the union and two years after the union had lost majority support. *See id.* at 1124-25. The court found that “[t]here [was] no indication in this case that allowing the ordinary adjudicatory process to run its course would significantly undermine the Board’s ability to remedy the alleged unfair labor practices.... Because the Union had long been out of favor, when, if ever, [the employer] is ordered to recognize the Union, the Union would have to perform largely the same work to rebuild support from employees.” *Id.* Put differently, administrative delay would cause no marginal harm to the Board’s ability to effectively enforce the Act because said harm plateaued as a result of the petitioner’s delay. Indeed, “[t]he Director must satisfy the court that the case presents one of those rare situations in which the delay inherent in completing the adjudicatory process will frustrate the Board’s ability to remedy the alleged unfair labor practices.” *Id.* at 1123. Under these circumstances, a preliminary injunction “did not act to preserve the status quo. Rather, it accelerated what at this point only may be the ultimate remedy.” *Id.* at 1125. Thus, Section 10(j) “extraordinary relief” was inappropriate. *See id.*

The Court agrees with the reasoning in *Southern Bakeries*.⁷ As described above, Section 10(j) interim relief “should be granted only in those situations in which effective enforcement of the Act is threatened by delay in the Board’s dispute resolution process.” *Irving Ready-Mix*, 653 F.3d at 570. Here, the NLRB’s knowledgeable delay threatened effective enforcement of the Act. The NLRB delayed filing the immediate Section 10(j) petition by nearly fifteen months. Moreover, it did so knowing that the Union was out of favor, as AMC notified them as such on July 10, 2014.

Indeed, the NLRB directly raised the possibility of Section 10(j) relief with AMC in August 2014 and July 2015, but consciously chose not to seek such relief. Instead, the NLRB did not seek Section 10(j) relief until October 2015. The NLRB’s knowledgeable delay implies that any harm the unit employees face is neither urgent nor exclusive to administrative delay. Indeed, if AMC is ultimately ordered to re-recognize the Union, the Union will face the same rebuilding hurdles regardless of how long the administrative process takes. *See Southern Bakeries*, 786 F.3d at 1125. Thus, time is not of the essence, and the NLRB has failed to show that the unit employees face irreparable harm.⁸ Indeed, the normal administrative process which is well under way will constitute adequate relief rather than a judicially imposed “extraordinary remedy.” *Irving Ready-Mix*, 653 F.3d at 570 (quotation marks and citation omitted). “This approach respects Congress’ design that the Board initially decides the merits of labor disputes [...] ...Granting a preliminary injunction in situations other than when the remedial purpose of the Act would be frustrated unless immediate action is taken...would effectively circumvent the normal N.L.R.B. processes established by the Act and muddle the proper allocation of administrative and judicial functions.” *Southern Bakeries*, 786 F.3d at 1123-24.

⁷ The Court acknowledges that the Eighth Circuit evaluates irreparable harm in the Section 10(j) context a bit differently than the Seventh Circuit. *See Southern Bakeries*, 786 F.3d at 1124, n. 6. Indeed, as described above, the Seventh Circuit assesses the “irreparable harm” and “success on the merits” factors on a “sliding scale.” *Spurlino Materials*, 546 F.3d at 500. As the Court describes later, however, the NLRB’s weakened likelihood of success below increases its irreparable harm burden. Thus, despite the difference between the two circuits, the Eighth Circuit’s analysis is nonetheless relevant.

⁸ Holding otherwise would leave this Court’s analysis vulnerable to a dilemma in which future petitioners, despite knowing of potentially impending “irreparable harm,” could delay seeking interim relief, artificially enhancing their success on this factor given the Seventh Circuit’s holding that collective bargaining harm and time are directly correlated, as described above. *See Spurlino Materials*, 546 F.3d at 501 (quoting *Electro-Voice*, 83 F.3d at 1573). Here, as the Court made clear at the hearing, there is no indication that either party acted in bad faith. (*See* Nov. 13 Hrg. Tr. at 322.) Objectively, however, the NLRB’s fifteen-month

knowledgeable delay implies that the harm was not irreparable.

II. Reasonable Likelihood Of Success

*13 As the Court described earlier, the Director bears the burden of establishing by a preponderance of the evidence that the Board has a reasonable likelihood of prevailing. See *Spurlino Materials*, 546 F.3d at 500 (citing *Bloedorn*, 276 F.3d at 286). In assessing this factor, “it is not the district court’s responsibility...to rule on the merits of the Director’s complaint; that is the Board’s province. The Court’s inquiry is confined to the *probability* that the Director will prevail.” *Bloedorn*, 276 F.3d at 287 (emphasis in original); see also *Electro-Voice, Inc.*, 83 F.3d at 1567 (“In the context of a [Section] 10(j) petition, a federal court has no jurisdiction to pass on the merits of the underlying case before the Board.”). At this step, “[t]he court will give some measure of deference to the view of the ALJ in determining the likelihood of success.” *Am. Red Cross*, 714 F.3d at 556 (citing *Bloedorn*, 276 F.3d at 288 (“The ALJ is the Board’s first-level decisionmaker. Having presided over the merits hearing, the ALJ’s factual and legal determinations supply a useful benchmark against which the Director’s prospects of success may be weighed.”)); see also *Spurlino Materials*, 546 F.3d at 502-503.

A. Surface Bargaining Without The Intention Of Reaching An Agreement

The NLRB asserts that it has shown a likelihood of success of establishing that AMC “engaged in bad faith and/or surface bargaining by, bargaining with no intent to reach agreement” from “about October 13, 2013 [sic], through December 11, 2013.” (R. 1 at 6.) The ALJ’s decision, however, was based on only two months of an almost seven year bargaining relationship, thereby weakening the NLRB’s likelihood of success on the merits.

“Section 8(a)(5) of the Act places upon an employer the duty ‘to bargain collectively with the representatives of his employees.’ +” *N.L.R.B. v. Overnite Transp. Co.*, 938 F.2d 815, 821 (7th Cir. 1991) (quoting 29 U.S.C. § 158(a)(5)). “Section 8(a)(1) of the Act makes it an unfair labor practice for an employer to ‘interfere with, restrain or coerce employees’ in the exercise of their rights ‘to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.’ +” *Id.* at 819 (quoting 29 U.S.C. §§

157, 158(a)(1)). Put differently, these sections of the Act require that employers bargain in good faith with employee representatives. “The determination of whether a party has bargained in good faith must be based upon the totality of the circumstances.” *N.L.R.B. c. Schwab Foods, Inc.*, 858 F.2d 1285, 1292 (7th Cir. 1988) (citing *UAW Local No. 1712 v. N.L.R.B.*, 732 F.2d 573, 578-79 (7th Cir. 1984)). Indeed, “it is proper to determine whether there has been good faith bargaining by examining the ‘conduct of the parties as a whole.’ +” *Int’l. Union, United Auto., Aerospace & Agric. Implement Workers of America, & Its Local No. 1712 v. N.L.R.B.*, 732 F.2d 573, 578 (7th Cir. 1984) (quoting *N.L.R.B. v. Ins. Agents’ Int’l. Union*, 361 U.S. 477, 498, 80 S. Ct. 419, 4 L. Ed. 2d 454 (1960)). “Isolated instances of misconduct will not be viewed as a failure to bargain in good faith.” *Schwab Foods, Inc.*, 858 F.2d at 1292.

The ALJ rested his findings upon two meetings out of at least thirty-seven total between the Union and AMC. This small slice of meeting times does not amount to assessing the “totality of the circumstances.” *Id.* Indeed, the ALJ concluded that

Respondent’s [AMC] overall conduct during the bargaining that occurred in 2013 violated Section 8(a)(5) and (1) of the Act. Examining the entirety of the Respondent’s conduct during this time period, I find that it did not have a sincere purpose to find a basis for an agreement[.]

(R. 20-2, Admin. Rec., at 165.) Based on his opinion, the ALJ explicitly limited his focus to the October 31, 2013 and December 11, 2013 meetings and found that AMC “indicated a complete unwillingness to consider the Union’s proposal[.]” (*Id.* at 167.) Despite acknowledging that the “parties had approximately 37 collective-bargaining sessions between November 2007 and December 2013; that the parties reached a tentative agreement on the noneconomic provisions of a collective-bargaining agreement; and that in 2013 the Respondent [AMC] made a minor compromise,” the ALJ narrowly tailored his reasoning and conclusion to two 2013 meetings, stating that “when I consider the totality of the of the Respondent’s [AMC] conduct in bargaining during 2013, it convinces me that the Respondent [AMC] did not bargain in good faith in 2013[.]” (*Id.* at 167-68.) The holding, based on just two meetings, undercuts the “totality of the circumstances” analysis. *Schwab Foods, Inc.*, 858 F.2d at 1292. Failing to substantively consider nearly ninety-five

percent of the other negotiation meetings reduces the ALJ's likelihood of success.

B. Withdrawal Of Recognition

*14 Next, the NLRB contends that they have shown a likelihood of success in establishing that AMC illegally “withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Unit.”(R. 1 at 6.) Given the ALJ's reasoning, however, the NLRB's likelihood of success on the merits is decreased.

First, the ALJ concluded that a “causal relationship existed between the Respondent's [AMC] unfair labor practices and the petition received by the Respondent [AMC] on July 10, 2014[.]” (R. 20-2, Admin. Rec. at 170.) “[T]herefore,” the ALJ held, “the Respondent [AMC] cannot rely on that petition to assert that the Union no longer enjoyed majority status as of that date.” (*Id.*) Specifically, the ALJ directly tied AMC's “bargaining in bad faith” to “employee disaffection from the Union.” (*Id.* at 169.) As described above, however, the ALJ failed to consider the “totality of the circumstances” in concluding that AMC had engaged in bad faith bargaining. *Schwab Foods, Inc.*, 858 F.2d at 1292. Thus, the ALJ's narrow factual considerations weaken both his “bad faith bargaining” finding and “tainted petition” finding built upon it.

Second, the ALJ found that AMC “ha[d] not established by a preponderance of the evidence that the Union, had, in fact, lost majority status on July 10, 2014” and concluded that AMC “violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union.”(R. 20-2, Admin. Rec., at 171.) In reaching this holding, the ALJ relied on the fact that AMC never introduced evidence to support the petition's validity: “The Respondent [AMC] did not call any employees to testify that they solicited signatures or signed the petition. The Respondent also did not introduce any personnel records with the employee signatures in order for me to compare the signatures on the petition to signatures contained within the Respondent's [AMC] regular business records.”(*Id.*) The only evidence AMC introduced in support of the petition's validity was Mr. Orlowski's testimony. The ALJ found this testimony unsatisfactory: “Timothy Orlowski's [sic] admitted at the trial that he was not very familiar with the signatures of...some of the other newer employees....I find that [his] uncorroborated testimony can only establish the authenticity of 10 of the 26 signatures on the petition[.]” (*Id.*) As a result, the ALJ held that AMC had failed to satisfy its burden of establishing that the Union had indeed last majority support.

The administrative record, however, weakens the ALJ's findings. As AMC noted at the hearing, the Board repeatedly confirmed that it was not challenging the validity of the petition. Prior to the ALJ's April 2015 hearing, the Board opposed an AMC employee's intervention, stating that “the Complaint does not allege any violation with regard to the ‘validity’ of the employee petition and, in particular any actions carried out by employees in preparing the petition or presenting it to [AMC].” (R. 18-1, Ex. A.) Further, the Board repeated this position during the ALJ's hearing. Specifically, the ALJ recognized that nothing in the complaint directly challenged the petition. The Board agreed: “I am not challenging the petition. I am challenging the fact that... [AMC] did not check the signatures. Pretty much that's it.”(R. 20, Admin. Rec., at 111.) Finally, in its appellate briefs in the underlying administrative proceedings, the Board reaffirmed four days before petitioning this Court for Section 10(j) interim relief that “[t]he Complaint does not allege any violation with regard to the ‘validity’ of the employee petition.”(R. 20-2, Admin. Rec., at 389.) At the ALJ's hearing, however, the NLRB argued that AMC had “acknowledged that prior to the withdrawal of recognition it did not authenticate the signatures on the petition.”(R. 20, Admin. Rec., at 22.) Given the NLRB's position prior to the hearing, AMC was never notified that it would need to establish the petition's validity at the April 2015 hearing. Had it been, AMC may have called as witnesses the myriad of employee signees who testified at the November 2015 Section 10(j) hearing to authenticate the petition and satisfy the burden, if any, the Act imposes. Instead, the NLRB's shifting stance toward the petition's validity resulted in a lack of relevant evidence before the ALJ and, accordingly, deprived AMC of the opportunity to present further evidence. The ALJ did not have the opportunity to examine the demeanor or review the testimony of any of the employees before ruling on the petition's validity. Consequently, the ALJ's likelihood of success suffers.⁹

⁹ Interestingly, the NLRB's November 2014 attempt to supplement the original complaint, described above, included a challenge to the petition's validity. The review Board dismissed this charge, and it was not included in the consolidated charges the ALJ considered at the April 2015 hearing. (Nov. 13 Hrg. Tr. at 343-44.)

C. Refusal To Allow Health And Safety Inspection

*15 Finally, the NLRB argues that it has shown a likelihood of success in establishing that AMC has violated the Act by “refus[ing] to allow the Union access to its Franklin Park,

Illinois, facility for the purpose of performing a health and safety inspection.”(R. 1 at 6.) In light of the errors above, however, the likelihood of success for the ALJ’s finding diminishes.

The ALJ found that “[s]ince the only basis for the Respondent’s [AMC] refusal to grant the Union reasonable access to its facility in order to conduct a health and safety inspection was its reliance on its withdrawal of recognition on July 10, 2014, the Respondent [AMC] has violated Section 8(a)(5) and (1) by summarily rejecting the Union’s request for a healthy and safety inspection.”(R. 20-2, Admin. Rec., at 172.) The ALJ concluded that AMC’s refusal to allow the inspections was faulty, as its withdrawal was based on an invalid petition. For the same reasons that the ALJ’s related petition findings are weakened, as described above, so too are his inspection findings.

III. Public Harm

Another “interest at stake in a [Section] 10(j) proceeding is ‘the public interest in the integrity of the collective bargaining process.’ +”*Am. Red Cross*, 714 F.3d at 557 (quoting *Bloedorn*, 276 F.3d at 300). The collective bargaining process is built upon the employee rights established under 29 U.S.C. § 157. In relevant part, “[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, [and] to bargain collectively through representatives of their own choosing[.]”*Id.* Importantly, these statutory rights also include “the right to refrain from any or all of such activities[.]”*Id.*

At the heart of this case lies an inquiry as to what the AMC unit employees want, resulting in a tension between these two rights. It is not the Court’s role, however, to relieve this tension. Instead, the Court’s mission is to preserve

the “integrity of the collective bargaining process.”*Am. Red Cross*, 714 F.3d at 557. Doing so requires using the preliminary injunction factors as a litmus test for collective-bargaining procedural integrity. If a petitioner satisfies these factors, the facts warrant an “extraordinary remedy,” and the Court can preserve procedural integrity by providing it under Section 10(j).*Irving Ready-Mix*, 653 F.3d at 570 (quotation marks and citation omitted). If, however, the petitioner does not satisfy each factor, the Court preserves procedural integrity by denying such interim relief and allowing the underlying administrative process to proceed. Here, the NLRB has failed to successfully demonstrate that the AMC unit employees face irreparable harm, in part, due to its own knowledgeable delay. Similarly, the Board has not shown a strong likelihood of success in light of the errors at the ALJ proceeding described above. Given the “sliding scale” on which these two factors operate, the underlying opinion’s reduced likelihood of success enhances the NLRB’s irreparable harm burden. *Spurlino Materials*, 546 F.3d at 500 (citing *Bloedorn*, 276 F.3d at 286-87.) The NLRB has failed to satisfy this burden. In sum, this case does not present facts that warrant the extraordinary injunctive remedy. Thus, to preserve collective-bargaining procedural integrity, the Court denies the NLRB’s petition for Section 10(j) interim relief and allows the administrative process to proceed on the merits.

CONCLUSION

*16 For the foregoing reasons, the Court denies Plaintiff’s Section 10(j) petition for a preliminary injunction.

All Citations

--- F.Supp.3d ----, 2015 WL 7731959

Exhibit B

1 APPEARANCES (Cont'd):

2 Court Reporter: MR. JOSEPH RICKHOFF
3 Official Court Reporter
4 219 S. Dearborn St., Suite 1232
Chicago, Illinois 60604
(312) 435-5562

5 * * * * *

6 PROCEEDINGS RECORDED BY
7 MECHANICAL STENOGRAPHY
8 TRANSCRIPT PRODUCED BY COMPUTER

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1 THE CLERK: 15 C 8885, Peter Sung Ohr vs. Arlington
2 Metals Corporation.

3 THE COURT: Good morning.

4 MR. MIOSSI: Good morning, your Honor, Bill Miossi
5 for Arlington Metals.

6 MR. RUBINSTEIN: Good morning, your Honor, Dan
7 Rubinstein also appearing on behalf of Arlington Metals.

8 MR. BARELLA: Good morning, your Honor, Derek Barella
9 on behalf of Arlington Metals.

10 THE COURT: Good morning.

11 MR. MURPHY: Dan Murphy on behalf of the National
12 Labor Relations Board.

13 THE COURT: Good morning, Mr. Murphy.

14 MR. MURPHY: Good morning.

15 MS. HENSEL: Good morning, your Honor, Melinda Hensel
16 for the National Labor Relations Board.

17 THE COURT: Good morning.

18 And I know I am a few minutes early. I am going to
19 take a break, but I wanted to check with you first.

20 Is the union's lawyer here or the individual --

21 MR. TAUBMAN: Yes, your Honor.

22 THE COURT: Good morning.

23 MR. TAUBMAN: Good morning, Glenn Taubman for the
24 amicus employees. And my colleague Aaron Solem is also here
25 in the courtroom.

1 THE COURT: Good morning.

2 I believe you filed pro hacs that --

3 MR. TAUBMAN: Yes.

4 THE COURT: -- I have sent to Katie to grant, but she
5 has been out. So, they are in the works. But they are
6 granted.

7 MR. TAUBMAN: Thank you. Thanks a lot.

8 THE COURT: So, we do not have to worry about that.

9 MR. TAUBMAN: Thank you.

10 THE COURT: Good morning.

11 MR. YOKICH: Good morning, your Honor, Steve Yokich
12 on behalf of the United Steelworkers, amicus.

13 THE COURT: Good morning.

14 So, you are here for hearing. As I said, I will take
15 a break and let you finish getting set up and we will proceed.

16 I received your amended witness list with multiple
17 witnesses you intend on calling.

18 Are these in the order that you intend on calling
19 them?

20 MR. MIOSSI: No, they're not, your Honor. I can give
21 you the order if you prefer.

22 THE COURT: Yes, I would prefer that, Mr. Miossi.

23 MR. MIOSSI: The order is: The first employee
24 witness will be Brandon DeLaCruz.

25 THE COURT: Who is your first witness you are going

1 to call today?

2 MR. MIOSSI: Well, our first witness will be Frank
3 Shubert --

4 THE COURT: Okay.

5 MR. MIOSSI: -- who is the local union president. We
6 understand that the labor board will present him first. We've
7 had -- we've subpoenaed him. We propose to just put our
8 testimony on that we would otherwise do on our case, if that's
9 acceptable.

10 THE COURT: And I indicated -- I do not think you
11 were here, but earlier this week I indicated that was fine.

12 MR. MIOSSI: Okay.

13 THE COURT: So, I am fine with that.

14 MR. MIOSSI: First witness for --

15 THE COURT: Mr. Shubert.

16 MR. MIOSSI: Yeah.

17 THE COURT: And, then, who is next?

18 MR. MIOSSI: Then Brandon DeLaCruz.

19 THE COURT: Okay.

20 MR. MIOSSI: Then Dallas Wright.

21 THE COURT: All right.

22 MR. MIOSSI: Then for the next two witnesses, we have
23 a Polish language translator who is from the office of -- the
24 Interpreter's Office here in court. But the next two
25 witnesses are Ziggy Bajno, Casey Waz, Chris Keiler, Anthony

1 Menotti. And, then, the last witness on our amended list is
2 Vincent Roldan.

3 THE COURT: So, you are not going to call Tim
4 Orłowski?

5 MR. MIOSSI: I apologize. Tim Orłowski is our last
6 witness.

7 THE COURT: Okay.

8 MR. MIOSSI: And we just this morning, about 15, 20
9 minutes ago, the attorneys who represent the employees,
10 including Mr. DeLaCruz, provided me declarations from the
11 other 13 individuals, which we're prepared to submit to the
12 Court for its consideration. We'll provide copies. I
13 literally just have them. I don't even have copies. I've got
14 originals. Or we'll -- they're all here and we're prepared to
15 have them all testify live. However the Court cares to
16 proceed.

17 THE COURT: It is your case.

18 MR. MIOSSI: Sure.

19 THE COURT: Whatever you want to do.

20 They have not seen the declarations yet, so --

21 MS. HENSEL: We have not seen the declarations.

22 We would, frankly, object to the submission of
23 testimony in that form because we can't cross-examine a
24 declaration.

25 THE COURT: Okay.

1 MR. MIOSSI: Fine.

2 THE COURT: Then you can call them.

3 MR. MIOSSI: They are here.

4 THE COURT: Okay.

5 So, you are going to call Mr. Shubert first; is that
6 correct?

7 MR. MURPHY: That's correct, your Honor.

8 MR. RUBINSTEIN: Your Honor, we also propose to give
9 very brief opening statement before --

10 THE COURT: Yes. I will get to that in a just a
11 second.

12 How long do you anticipate on your side Mr. Shubert's
13 testimony is going to take?

14 MS. HENSEL: Potentially up to an hour.

15 THE COURT: That is fine.

16 And any sense of --

17 MR. MIOSSI: Of how long our case will take?

18 THE COURT: At least your direct part of Mr. Shubert
19 would be.

20 I know you are going to have cross. I am sure there
21 is going to some overlap.

22 MR. MIOSSI: I think the direct for Mr. Shubert would
23 probably be 15 minutes.

24 THE COURT: Okay.

25 And, then, I will let you do brief openings, and I

1 will, in all likelihood, want closings.

2 I have all day scheduled for you. I am Acting Chief,
3 so I may have to go in and out. And I have a 2:30 conference
4 I have to take. So, I am going to try to break around there
5 if we are still here at 2:30. But we have all day.

6 MR. MURPHY: We would move for sequester.

7 And are there rooms about that we can have? I've
8 never --

9 THE COURT: Yes. There are two attorney/witness
10 rooms outside of my courtroom. I know some of the other
11 judges have them, as well. I have no idea if they are using
12 them today or not. But there are two outside here. You can
13 each take one.

14 Witnesses should be excluded. Anyone who is
15 testifying is excluded from the courtroom.

16 Any other preliminary matters before I take a brief
17 break and then we will pick back up?

18 MR. RUBINSTEIN: Just one, your Honor.

19 THE COURT: Yes.

20 MR. RUBINSTEIN: Consistent with the Court's ruling
21 earlier this week, I assume that counsel for both the
22 witnesses and the union will sit in the gallery and not at
23 counsel table?

24 THE COURT: I do not think I excluded them from
25 counsel table, but they may not actively participate. So, if

1 they want to sit at counsel table to send notes, I am okay
2 with that. But they may not actively cross-examine and
3 actively participate. I think that will be more efficient
4 than having them get up and run back and forth from the
5 gallery.

6 MR. RUBINSTEIN: Okay.

7 MR. YOKICH: Your Honor, one point in that regard.
8 I'm also here representing Mr. Shubert, who is an officer and
9 a staff representative with the United Steelworkers.

10 THE COURT: Yes.

11 MR. YOKICH: If there are objections to be raised on
12 his cross-examination, may I participate?

13 THE COURT: That would allow you to actively
14 participate. No.

15 If there is a privilege issue or something he needs
16 to directly speak to you about, that is a separate matter.

17 MR. YOKICH: Okay.

18 THE COURT: As in any trial with witnesses who bring
19 their own attorneys, they do not get to actively participate
20 unless they are a party in the case.

21 MR. YOKICH: Okay.

22 THE COURT: If you have some kind of privilege
23 assertion, that is a separate issue and we can take that up as
24 it comes along.

25 MR. YOKICH: All right.

1 MS. HENSEL: Your Honor, one last thing.

2 THE COURT: Yes.

3 MS. HENSEL: Given that it does appear there's going
4 to be a significant amount of supplemental testimony provided
5 today, would the Court entertain a post-hearing brief, as well
6 as the closing statements, to address any issues that we may
7 not be able to --

8 THE COURT: Let's wait and see where we are at the
9 end of the day --

10 MS. HENSEL: Very good.

11 THE COURT: -- if we think it is necessary. So, I
12 will wait and hear everything. Then we will take that up at
13 the end of the day, again. And if so, I will give you
14 deadlines for submitting.

15 MS. HENSEL: Thank you.

16 MR. RUBINSTEIN: Thank you, your Honor.

17 MR. MIOSSI: Thank you.

18 MR. MURPHY: Thank you, your Honor.

19 THE COURT: So, about five minutes we will pick back
20 up. If you want to have Mr. Shubert on the witness stand and
21 we will get going.

22 Thank you.

23 MR. RUBINSTEIN: Your Honor, openings before
24 Mr. Shubert?

25 THE COURT: Oh, yes, you are right. You are right.

1 So, brief openings.

2 MR. RUBINSTEIN: Thank you.

3 THE COURT: Brief. Stress the "brief."

4 MR. RUBINSTEIN: Yes, your Honor. Understood.

5 (Brief recess.)

6 THE COURT: Are you Mr. Shubert?

7 THE WITNESS: Yes, I am.

8 THE COURT: I am going to hear opening statements
9 first, sir. You can wait there if you want. You are welcome
10 to step back down. I do not think it will take too long.
11 Whatever your preference.

12 THE WITNESS: That's fine.

13 THE COURT: Mr. Murphy.

14 You or Ms. Hensel, who is going to do --

15 MR. MURPHY: Ms. Hensel.

16 THE COURT: Okay.

17 MR. MURPHY: Your Honor, I do have two sets of
18 exhibits, one for the Court and one hard copy.

19 THE COURT: Thank you.

20 MR. MURPHY: This is our complete set.

21 We're also going to have them electronically so
22 they'll show up, also.

23 THE COURT: Great.

24 MR. MURPHY: We hope.

25 THE COURT: It should. It should work.

1 MR. BARELLA: Your Honor, we also have exhibits in
2 binders.

3 THE COURT: I will take them.

4 (Documents tendered.)

5 THE COURT: Is there two of the same?

6 MR. BARELLA: Two of the same, yes.

7 Thank you.

8 THE COURT: Ms. Hensel, whenever you are ready.

9 MS. HENSEL: Thank you, your Honor.

10 OPENING STATEMENT ON BEHALF OF PETITIONER

11 BY MS. HENSEL:

12 Your Honor, the government is here before you today
13 seeking an injunction against Arlington Metals Corporation in
14 order to protect the ability of the Board's remedial processes
15 to act out in an effective manner.

16 Section 10(j) relief is intended to be provided in
17 cases in which the passage of time may eradicate the
18 effectiveness of a Board order. As you know from the record
19 that's been filed, the case is currently pending before the
20 Board on exceptions. The counsel for the General Counsel
21 received a favorable ruling from the administrative law judge
22 in the underlying unfair labor practice trial.

23 THE COURT: Ms. Hensel, do you have any sense of
24 timing on the exceptions that have been filed to the ALJ's --

25 MS. HENSEL: Your Honor, the briefing was completed

1 at the end of September. I can't say specifically when the
2 Board might rule. I will say that particularly in cases where
3 an injunction does issue under 10(j), the Board's own rules
4 and regulations require it to expedite the case for final
5 decision from the Board.

6 So, if an injunction is issued today, we will notify
7 the Board of that development and it will rise to the top of
8 the list.

9 THE COURT: Okay. Thank you.

10 BY MS. HENSEL:

11 In this case here, the requirements necessary for the
12 Court to determine 10(j) is just and proper; it's that there's
13 no adequate remedy at law; that there would be irreparable
14 harm without interim relief; there's public harm in the
15 absence of interim relief; and, a reasonable likelihood of
16 success on the merits.

17 I think that the government has already, by the
18 administrative record alone, already shown that we've
19 satisfied these elements.

20 The success on the merits is defined as a better than
21 negligible chance at prevailing. And in that regard, I should
22 note that 10(j) does not confer any jurisdiction on the court
23 to pass on the merits of the underlying ULPs. Rather, the
24 just and proper analysis is based on those four factors I've
25 just noted.

1 In addition, the court in the Seventh Circuit has
2 directed to give considerable deference to the underlying
3 administrative law judge opinion, which has already been
4 filed.

5 And here we do have an ALJ decision finding that
6 respondent Arlington Metals did bargain in bad faith by
7 engaging in surface bargaining with no intent to reach
8 agreement; that it bargained in bad faith by refusing to
9 provide relevant and necessary information so that the union
10 could intelligently bargain and create counterproposals; that
11 it unlawfully withdrew recognition from the union based on a
12 tainted employee petition and, also, based on a peripheral
13 factor that the respondent did not adequately satisfy its
14 burden to authenticate a sufficient number of signatures on
15 that petition to establish that the union had, in fact, lost
16 majority status.

17 Now, we have previously briefed -- and I will raise
18 again -- that the respondent's desire to present the
19 supplemental testimony of the disputed employees who allegedly
20 signed the petition, as well as, it appears, current employees
21 who weren't even present in the bargaining unit at the time of
22 this petition -- I am presupposing to testify that they do not
23 want this union to represent it -- is completely irrelevant to
24 the Court's consideration of this case.

25 The issue being, if you look at the administrative

1 law judge decision, the petition was tainted at the time that
2 it was presented to the employer. That cannot be overcome by
3 a subsequent authentication of signatures or a subsequent
4 possibly coerced testimony regarding whether or not these
5 employees do or don't want this union.

6 The fact is, there was an unclean environment tainted
7 by the unfair labor practices, which cannot be fixed now at
8 this juncture to clean that petition.

9 With respect to the irreparable harm, your Honor,
10 we're going to present evidence today that through the
11 respondent's commission of the unfair labor practices -- the
12 bad faith bargaining, the refusal to turn over relevant and
13 necessary information -- interest in participation in the
14 collective bargaining process and in union meetings increased
15 during the bargaining period and, following the last notice
16 from the union to the bargaining unit of what was occurring in
17 bargaining, declined dramatically and finally ended in the
18 decertification petition that the employer is relying on here
19 to validate its withdrawal of recognition.

20 In addition, we will present evidence that in the
21 year-and-a-half after the withdrawal of recognition, the
22 irreparable harm has continued because participation by the
23 bargaining unit membership has further declined. The union
24 has lost the support of a former and longtime supporter who
25 used to be on the bargaining committee. Absent an injunction

1 issuing here today --

2 THE COURT: What do you mean by lost the longtime
3 supporter?

4 MS. HENSEL: A longtime supporter is no longer
5 supporting the union.

6 THE COURT: Who is that?

7 MS. HENSEL: It's an employee by the name of Antoni
8 Gorlik (phonetic).

9 MR. RUBINSTEIN: I'm sorry, your Honor, I didn't hear
10 that.

11 THE COURT: Antoni Gorlik.

12 MR. RUBINSTEIN: Thank you.

13 BY MS. HENSEL:

14 Your Honor, to the extent that there is still some
15 support, this is not a dead endeavor by the union. There is
16 still some support. But if the Court does not issue an
17 injunction to require this employer to recognize and bargain
18 in good faith, as well as turn over the necessary documents
19 for it to intelligently bargain, there is a great danger that
20 the remaining support that is there will also fade into the
21 sunset and much like Mr. Antoni Gorlik (phonetic) has.

22 Thank you.

23 THE COURT: Thank you.

24 OPENING STATEMENT ON BEHALF OF RESPONDENT

25 BY MR. RUBINSTEIN:

1 Your Honor, the NLRB is seeking extraordinary relief
2 here. The ALJ below issued a recommended decision finding
3 that our client, Arlington Metals -- a small, family-owned
4 business that's been in business for approximately 45 years
5 here in the Chicagoland area -- engaged in unfair -- four
6 unfair labor practices. And we filed an exception to that,
7 noting 118 different mistakes with the ALJ's decision. The
8 merits of that claim remain to be determined by the NLRB in
9 Washington, D.C., and, ultimately, by a federal court of
10 appeals.

11 The reason we're here today is because the Chicago
12 office of the NLRB has sought interim relief in the form of a
13 10(j) injunction not to maintain the status quo, your Honor,
14 but to obtain final relief before my client has had the full
15 opportunity to be heard not only by the NLRB in Washington,
16 D.C., but by a federal appeals court.

17 As this Court is aware, you are required to apply
18 traditional equitable principles in resolving this dispute.
19 And in assessing this case, obviously the Chicago office bears
20 the burden of proof. And as this Court has previously
21 described in *Triumph Packaging Group vs. Ward*, 834 F.Supp.2d
22 729 at 805, a preliminary injunction is an extraordinary
23 remedy intended to preserve the status quo until the merits of
24 the case may be resolved, and that very serious remedy is
25 never to be indulged except in a case clearly demanding it.

1 This is not that case, your Honor, as the evidence
2 will show today. And they will not satisfy their burden.

3 By way of background, the Chicago office efforts in
4 prosecuting this action belie any suggestion that
5 extraordinary injunctive relief is necessary to prevent
6 immediate irreparable harm. And I've created a demonstrative,
7 your Honor, to make clear some of that point.

8 THE COURT: Can you see okay? If you need to move
9 around --

10 MR. RUBINSTEIN: We provided them a copy.

11 THE COURT: Oh, you have a copy. Or you can move
12 around. Whatever you want.

13 Do you have a small copy, too?

14 MR. RUBINSTEIN: I do, your Honor. It's in your
15 exhibits.

16 THE COURT: Thank you.

17 MR. RUBINSTEIN: It's Respondent's Exhibit 8.

18 BY MR. RUBINSTEIN:

19 So, first -- and I'm going to talk at length, keeping
20 in mind your rule about the length of opening statements,
21 about the withdrawal of the recognition of the union and the
22 petition, which was filed on July 10th.

23 On July 18th, the union filed a charge alleging that
24 my client, Arlington Metals, violated the NLRA by withdrawing
25 recognition from the union. This is in 2014.

1 On August 28th, 2014, almost 15 months ago, the Board
2 asked my client for its position regarding 10(j) relief. We
3 obviously vigorously opposed it.

4 On September 30th, they issued their complaint
5 against us. And, then, on November 3rd, after issuing their
6 complaint, they sought an indefinite continuance of the
7 proceedings below, which was granted on January 9th, 2015.
8 And, then, the trial happened on April 26th and 27th of 2015
9 before the ALJ below.

10 On July 23rd, 2015, the ALJ issued its decision and
11 recommended order. Five days later, the Chicago office,
12 again, sought our position regarding 10(j) relief and, again,
13 we opposed it.

14 They then waited nine more weeks, your Honor, after
15 they had the ALJ's decision and filed this petition on October
16 6th, which, again, we submit to you belies the notion that
17 there's immediate irreparable harm here.

18 And worse than the Chicago office's lack of urgency
19 in prosecuting this action is their actions have
20 disenfranchised the very people that they're supposed to
21 represent -- the employees of Arlington Metals.

22 And, quite frankly, I'm shocked that counsel would
23 say that we unlawfully withdrew recognition of the union in a
24 so-called tainted petition. And I say that, your Honor -- and
25 I don't say it lightly -- because in the proceedings below,

1 these very lawyers have taken exactly the opposite position,
2 and they would not allow the employees of Arlington Metals to
3 intervene in those proceedings.

4 And the reason -- contrary to what they've said here
5 today -- is, "Counsel for the General Counsel notes, however,
6 that the complaint does not allege any violations with regard
7 to the validity -- " the validity " -- of the employee
8 petition and, in particular, any actions carried out by the
9 employees in preparing the petition or presenting it to the
10 respondent."

11 And I apologize, your Honor, because I'm a little
12 worked up about this. But I'm, quite frankly, shocked that
13 they would say to you -- and I'd ask your reporter to mark
14 that page -- that we unlawfully withdrew the petition because
15 it was tainted when they told the Court below exactly the
16 opposite.

17 In fact, when the ALJ below said to Mr. Murphy, "I
18 didn't see anything in the complaint that directly challenged
19 the petition," Mr. Murphy said, "And I'm not challenging the
20 petition."

21 Worse yet, the employees tried to file exceptions to
22 the ALJ's decision. And on October 2nd, 2015, four days
23 before they filed here with this Court, they, again, said, "As
24 counsel for the General Counsel argued in its opposition to
25 the intervenor's motion to intervene, the complaint does not

1 allege -- " does not allege " -- any violation with regard to
2 the 'validity' of the employee petition and, in particular,
3 any actions carried out by the employees in preparing the
4 petition or presenting it to the respondent," yet Ms. Hensel
5 told you more than once that the petition was tainted.
6 Tainted. That's duplicitous, your Honor

7 And that's the reason why we're going to call the
8 employees -- so you can hear it for yourself. The employees
9 did not have their voices heard before the ALJ, and they're
10 going to have their voices heard today.

11 What they're requesting -- and the only irreparable
12 harm that will flow from what they're requesting -- is they're
13 seeking to deny Arlington Metals the ultimate opportunity to
14 be heard by the NLRB in Washington, D.C., and by a federal
15 court of appeals; and, second, by forcing union representation
16 on a group of employees who don't want it, in violation of
17 Section 7 of the National Labor Relations Act, which says that
18 they have a right to not be represented by a union.

19 You will also learn, your Honor, that the company
20 will also suffer irreparable harm by being forced to disclose
21 highly confidential information -- such as tax returns, sales
22 data, cash flow statements -- before a final determination is
23 made on the merits.

24 And in sum, your Honor, for the reason I said -- and,
25 quite frankly, again, I apologize for getting worked up about

1 this, but I am really surprised that their position is this
2 petition was tainted. They've stated repeatedly, in writing
3 and on the record to the court below, that as part of the
4 record before you, judicial admissions that it wasn't.

5 So, we're going to ask that you deny this motion.
6 They don't deserve the extraordinary relief they're seeking
7 and, in your words, you should not indulge it.

8 THE COURT: Thank you, Mr. Rubinstein.

9 Ready for Mr. Shubert, Ms. Hensel?

10 Ms. Hensel, are you ready --

11 MS. HENSEL: Yes.

12 THE COURT: -- for Mr. Shubert?

13 MS. HENSEL: Yes, your Honor.

14 FRANK SHUBERT, PETITIONER'S WITNESS, SWORN

15 MS. HENSEL: Sorry, your Honor, I didn't get the
16 computer hooked up.

17 THE COURT: I did not hear you, Ms. Hensel. I am
18 sorry.

19 MS. HENSEL: Is that better?

20 THE COURT: Yes.

21 MS. HENSEL: I didn't get the computer hooked up to
22 the monitors yet.

23 THE COURT: Okay.

24 MS. HENSEL: Give me one second.

25 (Brief pause.)

1 MS. HENSEL: Can everybody see on the screen?

2 THE COURT: Yes, I can see.

3 And are these documents in the hard copies that you
4 gave me?

5 MS. HENSEL: Yes, they are, your Honor.

6 THE COURT: Okay.

7 MS. HENSEL: And we've also turned over a copy to the
8 respondent already.

9 THE COURT: Okay.

10 DIRECT EXAMINATION

11 BY MR. HENSEL:

12 Q. Good morning, Mr. Shubert.

13 THE COURT: Are you going to question from there? I
14 would prefer you come to the podium.

15 MS. HENSEL: Would you? Okay. I can do that.

16 THE COURT: Please.

17 Maybe Mr. Murphy can help you with the document
18 display.

19 (Brief pause.)

20 BY MS. HENSEL:

21 Q. Good morning, Mr. Shubert.

22 A. Good morning.

23 Q. Would you please state and spell your name for the record.

24 A. My name is Frank Shubert. F-r-a-n-k, S-h-u-b-e-r-t.

25 Q. Mr. Shubert, are you currently employed?

1 A. Yes, I am.

2 Q. Where are you employed?

3 A. I'm employed by the United Steelworkers of America.

4 Q. What's your position with the United Steelworkers?

5 A. I am a staff representative, and I'm also the local union
6 president for Local 7773.

7 Q. Okay.

8 Is Local 7773 affiliated with the international
9 union?

10 A. Yes, they are.

11 Q. How long have you held the president's position with Local
12 7773?

13 A. Since 2006.

14 Q. How long have you held the staff representative position?

15 A. For about six months.

16 Q. Mr. Shubert, can you please describe your job duties as
17 the president of Local 7773?

18 A. As the president of my local, I'm responsible for
19 enforcement of the contract through the grievance and
20 arbitration procedures. I'm responsible for collective
21 bargaining, negotiating new contracts. I'm responsible for
22 organizing -- organizing new facilities. I also act as a
23 recording secretary for some of the major negotiations. I
24 conduct monthly membership meetings for the entire amalgamated
25 local. And I provide whatever resources are required of me

1 from my units.

2 Q. Mr. Shubert, for purposes of ease, if I refer to Local
3 7773 as "the union," can we agree that that is the same thing?

4 A. Yes.

5 Q. Okay. Thank you.

6 Now, how many members does the union have?

7 A. Approximately, 350.

8 Q. And how many different bargaining units does that number
9 encompass?

10 A. Five.

11 Q. Can you name those bargaining units?

12 A. My home plant, Castle Metals; Precision Steel Warehouse;
13 Integris Ryerson; Material Science Corp.; and, Arlington
14 Metals.

15 Q. And how does the union stay in communication with its
16 members about union business?

17 A. We communicate via monthly postings, one-on-one
18 conversations, and also e-mails.

19 Q. Okay.

20 And what about meetings? Do you have union meetings?

21 A. We have monthly meetings second Sunday of every month.
22 Those are communicated through the unit presidents in each
23 facility. They put postings up indicating the date and times
24 and location of the meetings.

25 Q. All right.

1 Perhaps you can educate us on what you mean by the
2 unit president.

3 A. My Local 7773 is the amalgamated local. It's a local
4 that's made up of five different units. Each unit has their
5 own executive board; their own elected officers, which include
6 a president, grievance chairperson, stewards.

7 Each unit is responsible for communicating with their
8 members the meeting times, dates and locations, that I pass on
9 to them through -- via telephone or hand delivery and such of
10 those meeting postings.

11 Q. Okay.

12 Then the units come together for the monthly
13 meetings --

14 A. Every --

15 Q. -- is that correct?

16 A. On the second Sunday of every month, the entire local gets
17 together. We conduct a general membership meeting. At the
18 conclusion of that general membership meeting, each unit has
19 their own meeting.

20 Q. Okay.

21 Mr. Shubert, does the union have any rules about who
22 may attend union meetings?

23 A. Yes, we do. Only members in good standing can
24 participate.

25 Q. All right.

1 And how does one become a member in good standing of
2 the union?

3 A. By signing a membership card.

4 Q. All right.

5 Other than the monthly meetings you've talked about
6 and the unit meetings that follow those monthly meetings,
7 what, if any, other type of meetings does the union hold for
8 its bargaining units?

9 A. We hold occasional meetings for contract negotiations and
10 ratifications. There are special meetings called from time to
11 time, depending on the situation, that might arise whether or
12 not a case has merit to go to arbitration. We'll discuss the
13 merit of those issues. Sometimes we call special meetings for
14 political and legislative agendas.

15 Q. All right.

16 And, now, who presides on behalf of the union over
17 the monthly general membership meeting?

18 A. I do as president.

19 Q. All right.

20 And who presides over the unit meetings that
21 immediately follow the monthly general membership meeting?

22 A. The -- each unit's responsible for their own through their
23 elected officials. However, I do participate -- and I have
24 been participating -- with Arlington Metals. I also
25 participate at the request of other units when they have

1 pending business that they would like my input on.

2 Q. Okay.

3 What kinds of circumstances, then, would cause you to
4 participate in a unit meeting?

5 A. If a unit president or grievance committee chairperson may
6 have a contractual interpretation issue about a grievance or
7 would like some insight, again, on whether or not a grievance
8 has merit to go forward to arbitration, they would consult
9 with me and ask me to participate with the membership meeting.
10 Historically, a member of the grievance would attend, and they
11 would want some clarification from me to help them present
12 that to the members that are affected.

13 Q. All right.

14 And, then, when a special membership meeting is
15 called, do you preside over those?

16 A. Yes, I do.

17 Q. Let's talk for a minute about the monthly membership
18 meeting. Is there a regular format that is followed?

19 A. Yes, there is. We have a structure.

20 Q. All right.

21 Can you describe that?

22 A. We generally welcome everybody, have the pledge of
23 allegiance. The recording secretary will read the minutes
24 from the last meeting. After the minutes are read, there'll
25 be a reading of any correspondence that the local had received

1 in the past month since the last meeting.

2 We would then move on to a financial secretary
3 report, followed by a treasurer's report, followed by a
4 trustee report. After the trustee report, there would be a
5 staff representative -- international staff representative --
6 report.

7 After that, we have reports from each of the unit
8 presidents. Each of the units would report to the local
9 issues regarding the grievance procedure, safety, et cetera.
10 After the unit share reports are finished -- unit president
11 reports are finished -- then we go down the list of our
12 constitutional committees, which include civil rights, next
13 generation, rapid response, and safety.

14 At the conclusion of those reports, we talk about old
15 business. After old business, we go into new business.
16 Following new business, there will be a motion to adjourn the
17 meeting.

18 Q. Okay.

19 You mentioned that the minutes of the meetings are
20 read and approved by the membership. Does the union keep
21 regular -- notes of the regular monthly meetings?

22 A. It's the responsibility of our recording secretary to keep
23 the official record of the local.

24 Q. All right.

25 Who is the recording secretary?

1 A. Mike Nelson.

2 Q. All right.

3 And after Mr. Nelson takes the notes -- the minutes
4 of the meeting -- what happens to those notes?

5 A. Mr. Nelson types them up and he hands copies out to the
6 entire executive board prior to the next month's meeting for
7 review.

8 Q. All right.

9 Do you also receive a copy?

10 A. Yes. I receive a copy as the president of the local. I
11 mandate that. So, I keep those in chronological order.

12 Q. All right.

13 So, where do you keep the notes after you receive
14 them?

15 A. I keep them in my own personal three-ring binder in
16 protective plastic in chronological order.

17 Q. All right.

18 And why does the union keep minutes of the membership
19 meetings?

20 A. The union keeps minutes for a couple reasons. First of
21 all, any expenditures of the local union have to be approved
22 by the entire membership; and, such expenditures, if there's a
23 question that arise later on whether or not an expenditure was
24 approved, we would need to go back and review.

25 We also need to have a copy of the minutes in case a

1 question comes up about a status of something that was
2 discussed in a meeting, possibly negotiations or an
3 arbitration.

4 Q. All right.

5 Now, does the union also keep track of members that
6 attend the general monthly meetings?

7 A. Yes, we do.

8 Q. All right.

9 And why do you do that?

10 A. We do that primarily for elections. When people run for
11 office, we need to know if they meet the meeting requirements
12 for our constitution.

13 Q. Okay.

14 How do employees sign in when they arrive at a
15 membership meeting?

16 A. When they arrive at the membership meeting at the front
17 table, the entire top five officers of the local sit and a
18 recording secretary maintains the possession of the book.
19 It's immediately in front of him. Our members, as they walk
20 in, they walk up to the front executive board table; they sign
21 in; and, then, they take a seat in the gallery.

22 Q. All right.

23 And after those -- the meeting is completed, where
24 are those sign-in sheets maintained?

25 A. They're kept in the possession of our recording secretary.

1 Q. All right.

2 Do you also receive a copy of the sign-in sheets?

3 A. Upon request.

4 Q. All right.

5 Let's turn now to the unit meetings that immediately
6 followed the general membership meetings.

7 Does the union also require members attending those
8 meetings to sign in separately?

9 A. No, we do not. It's not a requirement. However, a lot of
10 the units do require that on their own individual basis.

11 Q. Okay.

12 But it's not a union requirement?

13 A. It's not a local requirement, no.

14 Q. Okay.

15 And does the union also keep minutes of the unit
16 meetings that follow the general membership meeting?

17 A. No, we do not.

18 Q. Why not?

19 A. The unit meetings are more informal. They talk about the
20 task associated with the individual units. It's an
21 opportunity for our people -- our members -- in those
22 individual units to participate and ask questions, hopefully
23 receive some answers from our elected officials.

24 Q. All right.

25 Now, you indicated that the general monthly

1 membership meetings are publicized by posting at the various
2 units and perhaps by word of mouth; is that correct?

3 A. Yes.

4 Q. Okay.

5 How does the union typically publish notice of the
6 special unit meeting?

7 A. Special meetings generally go out in the mail first. The
8 notification will be mailed to each individual member's house.
9 We will also follow through like our regular Sunday -- second
10 Sunday -- meetings are. We'll have a posting inside the
11 plant. And, then, we encourage our unit leadership there to
12 pass it through word of mouth.

13 Q. Okay.

14 Now, Mr. Shubert turning your attention to a company
15 called Arlington Metals Corporation, you indicated that that
16 is one of the bargaining units that the union represents; is
17 that correct?

18 A. Yes, it is.

19 Q. All right.

20 When did the union first become the representative of
21 Arlington Metals?

22 A. On October 10th, 2007.

23 Q. And how did the union first become the representative of
24 Arlington Metals employees?

25 A. On that date, we won the certification election through

1 NLRB.

2 Q. That was an NLRB-conducted election?

3 A. Yes, it was.

4 Q. All right.

5 Now, directing your attention to July of 2012, was a
6 second representation election held at Arlington?

7 A. Yes, there was.

8 Q. All right.

9 How did that election come to be?

10 A. There was a employee out in Arlington Metals who filed a
11 petition to decertify.

12 Q. All right.

13 I would like you to take a look, please, at what's
14 been marked as Petitioner's Exhibit 1. It should show up on
15 your screen there.

16 Do you recognize that document?

17 A. Yes, I do.

18 Q. All right.

19 What is that?

20 A. That was the decertification petition filed by the
21 member -- or the employee Dallas Wright.

22 Q. All right.

23 I'm sorry. You said the signature at the bottom is
24 Dallas Wright?

25 A. Dallas Wright. That's correct.

1 Q. Okay. Thank you.

2 And how did you come to receive a copy of this
3 document?

4 A. I received a copy of this document through my sub-district
5 director who had received one from the NLRB.

6 Q. All right.

7 MS. HENSEL: Your Honor, I move for the admission of
8 Petitioner's Exhibit 1.

9 THE COURT: Any objection?

10 MR. MIOSSI: I don't think it's relevant, your Honor.
11 The question here -- if the purpose to -- for the exhibit is
12 to relate to the alleged erosion of union support.

13 The unfair labor practices at the heart of this case
14 occurred in late 2013. So, it would seem to us that the
15 measure should be from that date, not 2011. But that's why we
16 don't think it's relevant to the issues the Board is
17 presenting here on its petition.

18 THE COURT: Ms. Hensel?

19 MS. HENSEL: Your Honor, the exhibit does go to first
20 an increase and then an erosion of union support. This will
21 come out later in Mr. Shubert's testimony.

22 THE COURT: I will admit it. And since it is just
23 me, there is no jury, I will determine the relevance of it.

24 It is admitted.

25 MS. HENSEL: Thank you, your Honor.

1 (Petitioner's Exhibit No. 1 received in evidence.)

2 BY MS. HENSEL:

3 Q. Mr. Shubert, what was the result of Mr. Wright's
4 decertification petition?

5 A. The union won recertification that election. We won
6 recognition.

7 Q. Okay.

8 Mr. Shubert, I'd like you to look at what's been
9 marked as Petitioner's Exhibit 2.

10 Do you recognize this document?

11 A. Yes, I do.

12 Q. And what is that?

13 A. That is a certification of representative that came as a
14 result of that election.

15 MS. HENSEL: Your Honor, I move for the admission of
16 Petitioner's Exhibit 2.

17 THE COURT: Any objection?

18 MR. MIOSSI: Yes. And I understand the Court's
19 ruling.

20 THE COURT: Same objection?

21 MR. MIOSSI: Yes.

22 THE COURT: I will admit it with the same caveat.
23 You may proceed.

24 MS. HENSEL: Thank you.

25 (Petitioner's Exhibit No. 2 received in evidence.)

1 BY MS. HENSEL:

2 Q. Mr. Shubert, after the union was recertified in 2012, did
3 you begin bargaining, again, with Arlington Metals?

4 A. No, we did not.

5 Q. Why not?

6 A. The company refused to bargain, claiming we're at impasse.

7 Q. What, if anything, did the union do about that?

8 A. The union filed an unfair labor practice charge with the
9 NLRB.

10 Q. Were those charges ultimately resolved?

11 A. Yes, they were.

12 Q. All right.

13 How were they resolved?

14 A. They were resolved by the company agreeing to bargain --
15 return to the table and bargain -- in good faith, and it
16 extended the certification period for another 12 months from
17 the time of that agreement.

18 Q. All right.

19 Do you recall when that settlement occurred?

20 A. That was July of 2013.

21 Q. All right.

22 And at that time, in July of 2013, how long had the
23 parties been away from the bargaining table?

24 A. About a year-and-a-half.

25 Q. Now, following that settlement, what, if anything, did the

1 union do to advise the membership about what had occurred with
2 those unfair labor practice charges?

3 A. I had requested a special meeting of the entire membership
4 from Arlington Metals. I had created a posting and mailed it
5 out to each individual member's house. I had the posting with
6 the date, time and location of the meeting and along with a
7 little explanation of agenda, so to speak. It was in both
8 English and Polish.

9 Q. Okay.

10 I would like you, please, to take a look at what's
11 been marked Petitioner's Exhibit 3.

12 Do you recognize that document?

13 A. Yes, I do.

14 Q. What is it?

15 A. That's the document I had created announcing a special
16 meeting for members of Arlington Metals.

17 Q. All right.

18 MS. HENSEL: I move for the admission Petitioner's
19 Exhibit 3.

20 THE COURT: Any objection?

21 MR. MIOSSI: No, your Honor.

22 THE COURT: It is admitted.

23 (Petitioner's Exhibit No. 3 received in evidence.)

24 THE COURT: Ms. Hensel, if you tap, I think it is,
25 the bottom right-hand corner, you can get rid of --

1 MS. HENSEL: Oh, how did get that there?

2 THE COURT: You touched it somewhere along the way,
3 so they show up.

4 BY MS. HENSEL:

5 Q. All right. So, the special unit meeting was held
6 September 29th, 2013?

7 A. That's correct.

8 Q. All right.

9 How many Arlington Metals employees showed up for
10 this meeting?

11 A. It was a total of 18.

12 Q. All right.

13 And who attended this meeting on the union's behalf?

14 A. It was myself, my sub-district director José Gudino and
15 retired co-director for District 7, Bill Gibbons.

16 Q. Did the union have a sign-in sheet for this meeting?

17 A. Yes, we did.

18 Q. All right.

19 If you could please take a look at Petitioner's
20 Exhibit 4. I'd ask if you recognize that document.

21 A. That's the sign-in sheet for the special meeting that was
22 held on September 29th.

23 Q. Did you maintain this record, and did the union maintain
24 this record, in the manner to which you've previously
25 testified?

1 THE COURT: Yes.

2 MS. HENSEL: We move for the admission of
3 Petitioner's Exhibit 4.

4 THE COURT: Any objection?

5 MR. MIOSSI: No, your Honor.

6 THE COURT: It is admitted.

7 (Petitioner's Exhibit No. 4 received in evidence.)

8 BY MS. HENSEL:

9 Q. All right. Was a turnout of 18 employees at a unit
10 meeting a larger than usual turnout for the union?

11 A. Yes, it was.

12 Q. All right.

13 What kind of turnout did you normally have?

14 A. For a meeting, we usually had five to six employees unless
15 it was around -- immediately following a contract negotiating
16 session, which we would see a spike in. Usually people want
17 to know what's happening with their negotiations.

18 In this case here, we had actually identified several
19 new members for the first time at that meeting.

20 Q. Okay.

21 So, among the -- looking at Petitioner's Exhibit 4
22 then, among the 18 people that came, can you identify which
23 among those attended a meeting for the first time?

24 A. Yes, I can.

25 Q. Would you read those names off for us, please?

1 A. It's Tony Menotti, Brandon Trezzo, Andres Coronel, Chris
2 Keiler, José Maynez -- and I think you have to go up a little
3 bit farther. It stops at 17.

4 (Brief pause.)

5 BY THE WITNESS:

6 A. Casey Waz.

7 BY MS. HENSEL:

8 Q. Okay.

9 THE COURT: Is that the "CW" at the bottom?

10 THE WITNESS: Yes, it is.

11 BY MS. HENSEL:

12 Q. All right. What, if anything, did you do with regard to
13 the non-members who had shown up for the union meeting?

14 A. Prior to the start of the official meeting, our guys had
15 arrived relatively early and, as I was sitting at the front
16 table, I noticed there were several people that I haven't seen
17 before.

18 So, at that time, I had approached them and I had
19 asked them to sign membership cards for the union. As long as
20 they were in attendance, that was a requirement by our
21 international in order to attend the meeting.

22 So, I distributed membership cards, and each one of
23 those new employees I've seen for the first time -- new
24 members -- signed cards.

25 Q. Okay.

1 If you would please take a look at what we've marked
2 as Petitioner's Exhibit -- it's a group exhibit -- 5A
3 through -- I apologize, give me a moment -- through 5H.

4 Let's start with Exhibit 5A. Do you recognize this
5 document?

6 A. Yes. This is one of the new membership cards signed by
7 Mr. Andres Coronel.

8 Q. Okay.

9 This is a two-page exhibit. If you would go to the
10 second page.

11 Would you describe what the membership cards look
12 like?

13 A. The membership cards are approximately two-and-a-half by
14 four inches. On the front, the member has an opportunity to
15 put down their information -- personal information. And the
16 back describes what the card is used for: "By signing the
17 card, you are taking an important step towards collective
18 bargaining."

19 The cards itself represent voluntary action to join
20 the membership of the union and to have the Steelworkers act
21 as representative for collective bargaining.

22 Q. Okay.

23 So, going back to Petitioner's Exhibit 5A, did you
24 accept this authorization card from Mr. Coronel?

25 A. Yes, I did.

1 Q. Okay.

2 Did Mr. Coronel note any objection to you when he
3 turned it in?

4 A. No.

5 Q. If would you please take a look at Petitioner's Exhibit
6 5B.

7 Do you recognize this document?

8 A. Yes, I do.

9 Q. What is it?

10 MR. MIOSSI: Your Honor --

11 BY THE WITNESS:

12 A. It's a membership card for Brandon DeLaCruz.

13 MR. MIOSSI: May I interrupt a moment?

14 I object because these are clearly hearsay documents.
15 If I understand, the witness didn't complete these documents.
16 They're third parties.

17 MS. HENSEL: Your Honor, I can cure it by asking if
18 he witnessed the individuals preparing the cards, if I may do
19 that.

20 THE COURT: You can ask that. We will see if it
21 cures it.

22 MS. HENSEL: All right.

23 BY MS. HENSEL:

24 Q. Mr. Shubert, returning to Petitioner's Exhibit 5A, the
25 card of Mr. Coronel, did you observe Mr. Coronel filling in

1 this card?

2 A. Yes, I did. I distributed those cards, and I waited for
3 them to sign it, and they handed them back to me.

4 Q. All right.

5 My question was: Did you watch Mr. Coronel sign this
6 card?

7 A. Yes, I did.

8 Q. Okay.

9 How were you able to watch Mr. Coronel sign the card?

10 A. I was standing over him.

11 Q. All right.

12 Can you describe what the room setup looked like such
13 that you were able to observe them signing the card?

14 A. The room setup is approximately 25 by 25 feet. There's a
15 big table in the front of the room for the executive board to
16 sit at, and then there's individual chairs in the gallery.
17 There's one door, one exit -- entrance and exit. A person has
18 to walk up an aisle single file to the front table. And
19 everybody else sits out in the gallery.

20 During this period of time, after I noticed that we
21 had a lot of new members in attendance, I actually took the
22 cards to each individual member sitting in their seats, handed
23 him the card, handed him a pen, asked him to sign it. They
24 handed it back to me. And I witnessed them sign it.

25 Q. Okay.

1 MS. HENSEL: Your Honor, we'll go card by card then.
2 We move for the admission of Petitioner's Exhibit 5A.

3 THE COURT: Any objection?

4 MR. MIOSSI: Yes, I do. It's still hearsay, and it
5 hasn't cured the defects of the document by describing the
6 table, the fact that the witness was standing over the person
7 who allegedly signed it and completed it.

8 And I think we should also -- we do move to strike
9 the testimony that this gentleman didn't note any objection
10 when he was allegedly filling out the card. That's clearly
11 hearsay testimony, as well.

12 MS. HENSEL: Your Honor, I believe Mr. Coronel is
13 here. He can certainly come and testify to whether he did or
14 didn't object.

15 THE COURT: I will overrule the second objection.

16 As to the hearsay, you still have not satisfied any
17 of the hearsay exceptions for the admission of this document,
18 if you are seeking to admit it for the truth of the matter
19 asserted.

20 I do not know if you can lay a business records
21 foundation or get around that in some way with this witness,
22 but you are welcome to try.

23 MS. HENSEL: Okay.

24 BY MS. HENSEL:

25 Q. Mr. Shubert, with respect to membership cards -- we're not

1 talking about a filled-in one; we're talking about a blank
2 card -- does the union maintain copies of membership cards in
3 its records as part of its union business?

4 A. Yes, we do.

5 Q. Why do you do that?

6 A. To ensure that they meet the requirement to be a
7 membership, to attend the meetings.

8 There's a guide -- one of our officers, a guide --
9 who stands by the door. If he doesn't recognize a member as
10 being a member in good standing, he'll challenge that with the
11 executive board to ensure that they do have a card on file so
12 they can be in attendance.

13 Q. All right.

14 And where does the union maintain its membership
15 cards?

16 A. They're maintained by the recording secretary along with
17 the meeting attendance notes and attendance sheets.

18 Q. All right.

19 And do you know where precisely the recording
20 secretary maintains the authorization cards?

21 A. I don't know exactly how he does it. I believe everybody
22 does it individually. But I don't know if he has a file or a
23 folder or how he -- how he -- keeps that.

24 Q. And do you have access to the authorization cards as the
25 union president?

1 A. Yes, I do, upon request.

2 Q. All right.

3 So, the recording secretary will provide you with
4 what you need?

5 A. Yes.

6 MS. HENSEL: Your Honor, again, I would offer
7 Petitioner's Exhibit 5A pursuant to F.R.E. 803(6).

8 THE COURT: Any objection?

9 MR. MIOSSI: Yes. It still doesn't meet the business
10 records exception.

11 If the union agent were to complete the document,
12 that might be something different. But it's apparently signed
13 and completed by a person not here in court for the purpose of
14 demonstrating he was voluntarily interested in and supportive
15 of the union. So, I do object, your Honor.

16 THE COURT: Well, the second part, I think, is
17 argument. As to whether or not it meets the business records
18 exception, a custodian does not have to be there or know all
19 the things you just said.

20 But I agree, you have not met the business records
21 exception yet. If you want to ask a few more foundational
22 questions.

23 BY MS. HENSEL:

24 Q. Mr. Shubert, then a couple of more questions.

25 Other than establishing the identity and membership

1 of particular employees, for what purposes -- or are there any
2 purposes that the union uses these authorization cards?

3 A. Again, they're primarily used to ensure that people who
4 are in attendance at the meeting are authorized to be there by
5 being a member of our organization.

6 Q. All right.

7 Mr. Shubert, if you would please look at the text on
8 Petitioner's Exhibit 5A?

9 THE COURT: On the front or the back?

10 MS. HENSEL: Let's look at the back, Page 2 of that
11 exhibit.

12 BY MS. HENSEL:

13 Q. There's some text noting what this card will be used for.
14 Can you please share with us what that says this card will be
15 used for?

16 A. It says, "This card will be used to secure union
17 recognition and collective bargaining rights."

18 Q. Okay.

19 Does the union, in fact, use these authorization
20 cards to secure recognition and collective bargaining rights?

21 A. Yes, we do.

22 Q. All right.

23 And how do you do that?

24 A. These cards are collected. They're used for a person's
25 ability to be able to vote on the terms and conditions of the

1 contract, the terms that are proposed or that are agreed upon.

2 Q. Does the union ever use them to present to an employer to
3 secure voluntary recognition?

4 A. On occasion we do.

5 Q. Does the union use these cards at the NLRB to support a
6 representation petition?

7 A. Yes.

8 Q. And if we didn't go over it before, can you please share
9 with us what is the union's business?

10 A. What is the union's business?

11 Q. Yeah. What is the business of the union?

12 A. The business of the union is to negotiate fair and
13 equitable terms and conditions of employment for our members.

14 Q. All right.

15 A. To enforce those --

16 Q. And do you use these authorization cards as filled out by
17 individuals to further the purpose of the union's business?

18 A. Yes.

19 MS. HENSEL: Your Honor, I would, again, offer
20 Petitioner's Exhibit 5A.

21 THE COURT: Any objection?

22 MR. MIOSSI: Yes, Judge. The witness testified he
23 didn't know how the recording secretary maintains these
24 records. So, it still fails 803(6)(b) as far as testimony
25 from this witness.

1 THE COURT: Ms. Hensel?

2 MS. HENSEL: Your Honor, it is, as I understand the
3 testimony, the recording secretary's job to maintain the
4 cards. He has access to them upon request.

5 THE COURT: Why don't you confirm with this witness
6 if he knows if they are maintained in the ordinary course of
7 the union's business.

8 BY MS. HENSEL:

9 Q. Mr. Shubert, are you aware if these cards were maintained
10 by the union in the ordinary course of its business?

11 A. Yes, they were.

12 MS. HENSEL: Thank you, your Honor.

13 THE COURT: I will admit them as business records.

14 (Petitioner's Exhibit No. 5A received in evidence.)

15 BY MS. HENSEL:

16 Q. Moving on to Petitioner's Exhibit 5B, do you recognize
17 this document?

18 A. Yes, I do.

19 Q. What is it?

20 THE COURT: May I make a suggestion in the interest
21 of time. Lump these together at least for admissibility
22 purposes.

23 Your objection can stand.

24 But why don't you lump B through H, for admissibility
25 purposes, together; and, then, if you want to go through any

1 particular detail on any card, you certainly are welcome --

2 MS. HENSEL: Very good.

3 THE COURT: -- to do that; or, we can address in
4 argument what these mean or the value of them if you prefer to
5 do that.

6 But rather than spending ten minutes on each card, it
7 might be easier just to lump them all together, now that we
8 have been through the first one.

9 MS. HENSEL: Thank you, your Honor.

10 BY MS. HENSEL:

11 Q. Mr. Shubert, do you recognize 5B?

12 A. Yes, I do.

13 Q. What is it?

14 A. It's a membership authorization card for Brandon DeLaCruz.

15 Q. All right.

16 And did you request Mr. DeLaCruz to sign this card?

17 A. Yes, I did.

18 Q. Did you observe Mr. DeLaCruz sign this card?

19 A. Yes, I did.

20 Q. If would you please take a look at Petitioner's 5C.

21 Do you recognize this document?

22 A. It's not up there.

23 MS. HENSEL: Dan.

24 (Brief pause.)

25 BY THE WITNESS:

1 A. Yes, I do. I see them.

2 BY MS. HENSEL:

3 Q. What is this?

4 A. That's a membership authorization card for Steven Hill.

5 Q. And did you request Mr. Steven Hill to prepare this card
6 on September 29th, 2013?

7 A. Yes, I did.

8 Q. Did you observe Mr. Hill sign this card?

9 A. Yes, I did.

10 Q. Moving to Petitioner's Exhibit 5D, do you recognize this
11 document?

12 A. Yes, I do.

13 Q. What is it?

14 A. That's the membership authorization card from Chris
15 Keiler.

16 Q. Did you request Mr. Keiler to sign this card on September
17 29, 2013?

18 A. Yes, I did.

19 Q. And did you observe Mr. Keiler sign this card?

20 A. Yes, I did.

21 Q. Petitioner's Exhibit 5E, do you recognize this document?

22 A. I do.

23 Q. What is it?

24 A. It's a membership authorization card for José Maynez.

25 Q. Did you request Mr. Maynez to sign this card on September

1 29, 2013?

2 A. Yes, I did.

3 Q. And did you observe Mr. Maynez sign this card?

4 A. Yes.

5 Q. Let's look at Petitioner's Exhibit 5F.

6 Do you recognize this?

7 A. I do.

8 Q. What is it?

9 A. That is a membership authorization card for Anthony
10 Menotti.

11 Q. And did you request Mr. Menotti to sign this card on
12 September 29th?

13 A. Yes, I did.

14 Q. Did you observe him sign the card?

15 A. I did.

16 Q. Petitioner's Exhibit 5G, do you recognize this document?

17 A. I do.

18 Q. What is it?

19 A. That is the membership authorization card for Brandon
20 Trezzo.

21 Q. Did you request Mr. Trezzo to sign this card on September
22 29th?

23 A. I did.

24 Q. Did you observe Mr. Trezzo sign this card?

25 A. Yes, I did.

1 Q. Let's look at Petitioner's Exhibit 5H.

2 Do you recognize this document?

3 A. I do.

4 Q. What is it?

5 A. That is the membership authorization card for Casey Waz.

6 Q. Did you request Mr. Waz to sign this card on September
7 29th?

8 A. Yes, I did.

9 Q. And did you observe him sign the card on September 29th?

10 A. Yes, I did.

11 Q. Mr. Shubert, following your collection of these
12 authorization cards, what did you do with them?

13 A. I collected them all, and I put them by my personal
14 belongings on the front table.

15 Q. Okay.

16 And thereafter, what did you do with the cards when
17 the meeting was over?

18 A. When the meeting was over, I kept that in my possession --
19 those cards in my possession -- along with the other records
20 for the meeting.

21 Q. All right.

22 You did not turn these cards over to the recording
23 secretary?

24 A. I did not at this time.

25 Q. Why did you not do that?

1 A. I felt it was important for me to hold onto them. I
2 thought I'd be using them, again.

3 Q. So, you personally maintained these cards in your
4 possession?

5 A. From the time I received them, yes.

6 Q. All right.

7 And did you maintain these cards in the ordinary
8 course of the union's business?

9 A. Yes, I did.

10 MS. HENSEL: Your Honor, I move for the admission of
11 Petitioner's Exhibits 5B through 5H.

12 THE COURT: Any objection?

13 MR. MIOSSI: Yes, your Honor. With the testimony
14 that the witness maintained these documents in his personal
15 possession, that's not the normal course of business as I
16 understood the testimony with regard to maintenance of union
17 records.

18 THE COURT: Sustained.

19 You need to rephrase that question about who
20 maintained them in the ordinary course. You asked it right on
21 5A, but that one was not correct.

22 MS. HENSEL: Okay.

23 THE COURT: Just that one question.

24 MS. HENSEL: All right.

25 BY MS. HENSEL:

1 Q. Mr. Shubert, what was the business purpose for you
2 maintaining these cards as opposed to turning them over to
3 your recording secretary?

4 A. Because at the end of this meeting, there was a
5 ratification vote held, and I wanted to make sure that I
6 maintained the membership cards to show that all that were
7 present were eligible to vote in the event that there were any
8 challenges to this.

9 THE COURT: Did you personally maintain these from
10 the time of that meeting until today?

11 THE WITNESS: Yes, I did.

12 THE COURT: You did not turn them over to --

13 THE WITNESS: I've never turned them over. I've
14 maintained them in my possession --

15 THE COURT: Okay.

16 THE WITNESS: -- in the Arlington file.

17 THE COURT: Did you maintain them as part of your
18 role with the union?

19 THE WITNESS: Yes, I did.

20 MS. HENSEL: I'm sorry, your Honor.

21 THE COURT: Go ahead. You can follow up.

22 MS. HENSEL: I'm sorry, your Honor, I was being
23 spoken to. I didn't hear what you said.

24 THE COURT: Joe, would you repeat the last two
25 questions and answers, please.

1 (Record read.)

2 BY MS. HENSEL:

3 Q. Mr. Shubert, do you sometimes maintain copies of business
4 documents for the union instead of turning them over to the
5 recording secretary?

6 A. Generally, no. Generally, the recording secretary -- I
7 would turn things over to the recording secretary and, upon
8 request, he would furnish copies to me back.

9 Q. Was there any challenge to the ratification vote that you
10 discussed?

11 A. No, there was not.

12 Q. And where did you maintain these cards?

13 A. In the Arlington Metals file.

14 Q. Your own personal Arlington Metals file?

15 A. Yes.

16 Q. Okay.

17 And when I say "personal," I mean as the union
18 president.

19 A. As the local union president in my file for -- under
20 Arlington Metals.

21 MS. HENSEL: Your Honor, again, I offer the documents
22 as a business record.

23 THE COURT: Any objection?

24 MR. MIOSSI: Same objection, but I think we've argued
25 it completely.

1 THE COURT: Overruled.

2 I understand the objection. I think that is a weight
3 issue here.

4 (Petitioner's Exhibit Nos. 5B through 5H received in
5 evidence.)

6 MS. HENSEL: Your Honor, I would further offer -- the
7 cards outside of the business records do have an independent
8 significance to this proceeding and should be accepted by the
9 Court on that basis alone.

10 THE COURT: What exception are you -- are you saying
11 you are not offering them for the truth of the matter? You
12 are offering them for something else?

13 I am not sure independent significance -- I am not
14 aware of any exception or non-hearsay independent significance
15 aspect of --

16 MS. HENSEL: They go to the operative facts that are
17 at issue here.

18 THE COURT: I have admitted them already. So, let's
19 move on.

20 MS. HENSEL: Thank you, Judge.

21 THE COURT: Your witness would like some water. If
22 somebody would get it for him.

23 (Brief pause.)

24 THE COURT: Go ahead.

25 BY MS. HENSEL:

1 Q. Mr. Shubert, as president of the union, what does it mean
2 to you when somebody voluntarily signs an authorization card?

3 A. What it means to me is they're asking to be represented by
4 the United Steelworkers of America; be represented during
5 collective bargaining.

6 Q. Okay.

7 And that is, in fact, what the authorization cards
8 say on them; is that correct?

9 A. Yes.

10 Q. Now, did all of the individuals who signed the
11 authorization cards that day then stay for the special unit
12 meeting that was being held?

13 A. Yes, they did.

14 Q. About how long did this meeting on September 29 last?

15 A. About two hours.

16 Q. Were any notes of this meeting taken?

17 A. Pardon?

18 Q. Were any notes of this meeting taken?

19 A. No.

20 Q. Mr. Shubert, was anyone present at this meeting that was
21 not affiliated with either Arlington Metals or with United
22 Steelworkers?

23 A. Yes, there was.

24 Q. Who was that?

25 A. Cornelia Fudala.

1 Q. Who is Cornelia Fudala?

2 A. Cornelia Fudala is the daughter of one of our members at
3 Arlington Metals, Bogdan Fudala.

4 Q. Why was she present?

5 A. The union used Ms. Fudala as a interpreter or translator
6 for our Polish-speaking members at Arlington Metals.

7 Q. All right.

8 And at this time, about how many of those were there?

9 A. There was a great number.

10 Q. Who was doing the speaking for the union during this
11 meeting?

12 A. I was the primary presenter.

13 Q. All right.

14 Can you please tell us how the meeting started?

15 A. After I welcomed everybody there, I opened up with a
16 discussion on the settlement agreement between the NLRB and
17 Arlington Metals. And I discussed what those terms were and
18 the potential impact it had on the unit itself.

19 Immediately following the disposition of those
20 charges, we talked about the OSHA citations that had just
21 recently been mailed out.

22 Q. Okay. Can I stop you for a moment?

23 A. Certainly.

24 Q. Would you please describe in more detail, what did you
25 tell the employees present at this meeting about the

1 settlement and what would happen?

2 A. I had explained that the company had entered into an
3 agreement with the NLRB stating that they would return to the
4 table; begin negotiating, again, in good faith; and, that the
5 recertification period would be extended until July of the
6 following year based upon that agreement.

7 Q. Okay.

8 And what did you discuss next, then, at the meeting?

9 A. Then I went through the OSHA citations that were submitted
10 on behalf of OSHA. I actually went through each individual
11 citation because safety was a big issue for our members. I
12 probably spent about a half an hour just talking on the safety
13 initiative.

14 After we completed the conversation on the OSHA
15 citations, we reviewed the company's implemented terms --
16 primarily, the economic terms of the implementation -- and we
17 reinforced the fact that if we were able to get a contract, it
18 would provide the members an opportunity to have a grievance
19 procedure that also included arbitration. It would also help
20 to set up safety committees that had some type of bite when it
21 came to addressing safety hazards in the plant and
22 corrective -- correcting those hazards.

23 Q. Okay.

24 At some point after you discussed the implemented
25 terms, did you take a ratification vote regarding the

1 implemented terms?

2 A. Yes. Following the review of the implemented terms, we
3 held a ratification vote based upon those implemented terms.

4 Q. Was that a secret-ballot vote?

5 A. It was a secret-ballot vote.

6 Q. And what was the outcome of the secret-ballot vote?

7 A. It was a tie, 9 to 9.

8 Q. What happens when there is a tie vote on a ratification?

9 A. Essentially, the contract does not get ratified. We go
10 back and begin negotiating, again.

11 Q. All right.

12 So, in this case, in the case of Arlington Metals,
13 what did that mean for the union?

14 A. What that meant for the union is that our members did not
15 agree with the terms of the implemented contract with
16 Arlington Metals.

17 Q. And at the time of this special unit meeting on September
18 29th, did the union already have a negotiation date set up
19 with the company?

20 A. Yes, we did. That was explained to -- as part of the
21 conversation I had. And we had our -- a first negotiating
22 session was scheduled for October 31st of 2013.

23 Q. All right.

24 And, then, how did the meeting end on September 29th?

25 A. There was a motion to adjourn.

1 Q. Now, directing your attention to October 13th, 2013, did
2 the union have a regular monthly meeting on that date?

3 A. On October 13, yes.

4 Q. All right.

5 I'd like you to take a look, please, at what we've
6 marked as Petitioner's Exhibit 6.

7 Do you recognize this document?

8 A. Yes, I do.

9 Q. What is it?

10 A. That is the meeting attendance sign-in book for local
11 union attendance for October of 2013.

12 Q. Mr. Shubert, was this sign-in sheet maintained in the same
13 manner you've previously testified to?

14 A. Yes, it was.

15 Q. All right.

16 Is this document in its original form in which it was
17 maintained?

18 A. It is, with the exception that I redacted all the
19 information of members who did not -- who were not from
20 Arlington Metals.

21 Q. All right.

22 And according to Petitioner's Exhibit 6, how many
23 Arlington employee members attended the meeting?

24 A. There was only one.

25 Q. Who was that?

1 A. Alfred Karas.

2 MS. HENSEL: Move for the admission of Petitioner's
3 Exhibit 6.

4 THE COURT: Any objection?

5 MR. MIOSSI: No, your Honor.

6 THE COURT: It is admitted.

7 (Petitioner's Exhibit No. 6 received in evidence.)

8 BY MS. HENSEL:

9 Q. Mr. Shubert, were minutes of the general membership
10 meeting taken on October 13th, 2013?

11 A. Yes, they were.

12 Q. All right.

13 If you could please take a look at what we've marked
14 as Petitioner's Exhibit 7. Do you recognize this document?

15 A. I do.

16 Q. What is it?

17 A. That is the monthly meeting minutes for the October 13th
18 amalgamated local meeting.

19 Q. And were these minutes maintained in the same manner in
20 which you previously testified?

21 A. Yes, they were.

22 Q. All right.

23 And is Petitioner's Exhibit 7 in its original form in
24 which you maintained it?

25 A. No, it is not.

1 Q. What's different?

2 A. It's been redacted to only include information relevant to
3 Arlington Metals.

4 Q. All right.

5 And according to Petitioner's Exhibit 7, what, if
6 any, discussion did you have regarding Arlington Metals at the
7 general membership meeting on October 13th?

8 A. I discussed the discharge hearing of Federico Ceja. We
9 also talked about insurance issues that were facing some of
10 our members, Ziggious (phonetic) and the record.

11 I also had a discussion on the September 29th meeting
12 for the overall membership and explaining how some of the
13 members who were in attendance at the September 29th meeting
14 said they were happy with making \$9 per hour.

15 Q. Okay.

16 MS. HENSEL: Move for the admission of Petitioner's
17 Exhibit 7.

18 THE COURT: Any objection?

19 MR. MIOSSI: Only to the hearsay aspect of it where
20 they're purportedly quoting somebody calling about an issue.
21 We don't know who the person is or the circumstances.

22 But to the document -- with that exception, no
23 objection.

24 THE COURT: I will admit it with that caveat because
25 it does contain hearsay within here that you have not provided

1 an exception for.

2 MS. HENSEL: Thank you, your Honor.

3 (Petitioner's Exhibit No. 7 received in evidence.)

4 BY MS. HENSEL:

5 Q. Mr. Shubert, did a special -- I'm sorry, just a unit
6 meeting follow the general monthly meeting on October 13th?

7 A. For the month of October, no.

8 Q. Why not?

9 A. Because we had mentioned at the September 29th meeting
10 that our next negotiating session would occur on October 31st;
11 and, for that reason, we didn't receive a high attendance at
12 that last -- at the October membership meeting.

13 Q. Okay.

14 And the one member that did attend -- Mr. Karas --
15 are you aware if he was somehow already familiar with what had
16 occurred at the bargaining session?

17 A. Mr. Karas -- we did not enter bargaining until October
18 31st. But Mr. Karas is one of our leaders inside the plant,
19 and he's also part of the negotiating committee. So, he was
20 aware of what was happening, what the schedule was.

21 Q. Okay.

22 Now, directing your attention then to November 10th,
23 2013, did the union hold a regular monthly membership meeting
24 on that day?

25 A. Yes, we did.

1 Q. If you would please take a look at Petitioner's Exhibit 8.

2 Do you recognize this document?

3 A. Yes, I do.

4 Q. What is it?

5 A. This is the meeting attendance record book for November

6 10th, 2013.

7 Q. Did the union maintain this document in the manner that

8 you previously testified to?

9 A. Yes, it was.

10 Q. And is this document in its original form in which it was

11 maintained?

12 A. Yes, with the exceptions of redactions for our other

13 members from the other units. The names of members of the

14 other units.

15 Q. All right.

16 And according to Petitioner's Exhibit 8, how many

17 Arlington Metals employees came to this meeting?

18 A. Three.

19 Q. Can you read those names?

20 A. Looks like Alfred Karas. I believe the next one is

21 Mr. Menotti and Chris Keiler.

22 Q. Were any of the individuals attending the November 10

23 meeting individuals who had signed cards in September?

24 A. Yes, both Mr. Menotti and Mr. Keiler.

25 MS. HENSEL: I move for the admission of Petitioner's

1 Exhibit 8.

2 THE COURT: Any objection?

3 MR. MIOSSI: No, your Honor.

4 THE COURT: It is admitted.

5 (Petitioner's Exhibit No. 8 received in evidence.)

6 BY MS. HENSEL:

7 Q. Mr. Shubert, did you address issues with respect to
8 Arlington Metals at the general membership meeting?

9 A. Yes, I did.

10 Q. If you would please take a look at Petitioner's Exhibit 9.

11 Do you recognize that document?

12 A. These are the monthly meeting minutes for November 10th,
13 2013.

14 Q. And were these minutes kept in the same manner in which
15 you described earlier in your testimony?

16 A. Yes, they were.

17 Q. Are the minutes in the original form in which they were
18 maintained?

19 A. Yes, with the exception of redactions for all other
20 business that's not related to Arlington Metals.

21 Q. And can you share with us what Petitioner's Exhibit 9
22 references, as far as what you discussed with regard to
23 Arlington?

24 A. It says that we -- this is my record. It says I discussed
25 with the members lawyers and legal team were looking at

1 preparing a lawsuit, and that members joined the union to
2 protect rights and have a grievance procedure. We were trying
3 to get the company to agree to a third-party arbitration for
4 Mr. Federico Ceja. The company declined --

5 MR. MIOSSI: Objection, your Honor. He's reading the
6 document fine, but he's now adding to what the document
7 states. So --

8 THE COURT: Sustained.

9 BY MS. HENSEL:

10 Q. Mr. Shubert, can you please just tell us what you
11 discussed? You don't have to read the entry.

12 Tell us what you discussed with regard to Arlington
13 Metals at this meeting.

14 A. We recapped the current events. There was a potential
15 workers' compensation issue with one of our members that was
16 discussed to the general membership. And we also discussed
17 the status of the October 31st negotiating sessions briefly.

18 Q. Okay.

19 MS. HENSEL: Move for the admission of Petitioner's
20 Exhibit 9.

21 THE COURT: Any objection?

22 MR. MIOSSI: No, your Honor.

23 THE COURT: It is admitted.

24 (Petitioner's Exhibit No. 9 received in evidence.)

25 BY MS. HENSEL:

1 Q. Mr. Shubert, did a unit meeting follow this regular
2 monthly meeting?

3 A. It did not.

4 Q. Okay.

5 Why not?

6 A. There were three members in attendance, one of which was
7 on the negotiating committee. We had other issues to attend
8 to at other units.

9 Q. Okay.

10 Do you recall whether or not you had an informal
11 conversation with Mr. Keiler following the general membership
12 meeting?

13 A. I do.

14 Q. How long did you speak to Mr. Keiler?

15 A. About five minutes.

16 Q. And what were the topics of the discussion?

17 A. Mr. Keiler approached me asking a few questions, at which
18 time --

19 MR. MIOSSI: Object to the extent the witness is
20 going to tell us what Mr. Keiler said on hearsay grounds.

21 THE COURT: What is your response?

22 BY MS. HENSEL:

23 Q. Well, Mr. Shubert, I did ask what were the topics raised
24 during this conversation, not precisely what Mr. Keiler said.

25 A. The topics raised were, what are the benefits of the

1 union. He wanted -- he asked what the benefits of the union
2 were, what the union was -- what the union stood for.

3 MR. MIOSSI: Object. I mean, the topics is about as
4 close as you can get to what did the man say. I have no
5 objection to Mr. Shubert testifying to what he said during
6 this conversation, but I do to Mr. Keiler.

7 THE COURT: Overruled on topics.

8 You can finish answering the question of topics.

9 The other individual's conversation can come in not
10 for the truth of the matter, but to give context to what he
11 said.

12 MS. HENSEL: I understand, your Honor.

13 BY MS. HENSEL:

14 Q. Can you tell us what topics were discussed during this
15 five-minute meeting?

16 A. Mr. Keiler asked me what the benefits of the union were.
17 He asked for my telephone number. I presented him my
18 telephone number. He said he had a lot of questions regarding
19 what organized labor was about.

20 He asked me about being a new employee, heard a lot
21 of bad things from the group he worked with; and, he said he
22 had an open mind; that he was willing to understand a
23 different perspective, not just the people he was working
24 with, the small group.

25 So, I handed him my -- I gave him my telephone

1 number, and we had many dialogue after that period of time --
2 many conversations.

3 Q. Okay.

4 Now, directing your attention to December 15th,
5 2000- -- I'm sorry, 2013, did the union hold a regular monthly
6 meeting on that date?

7 A. Yes, we did.

8 Q. If you would please take a look at what's been marked as
9 Petitioner's Exhibit 10.

10 Do you recognize that?

11 A. Yes, I do.

12 Q. What is it?

13 A. That is the monthly meeting attendance sheet for the
14 December 15th, 2013, membership meeting.

15 Q. Was this document maintained in the same manner to which
16 you've previously testified?

17 A. Yes, it was.

18 Q. Is it in the original form it was in where it was
19 maintained?

20 A. Yes, it was, with the exceptions of the redactions for
21 members who are not related to Arlington Metals.

22 Q. All right.

23 Now, according to Petitioner's Exhibit 10, how many
24 Arlington Metals employees showed up at this meeting?

25 A. 11.

1 Q. All right.

2 Were any of the 11 individuals who came to the
3 December 15th meeting individuals who had signed authorization
4 cards in September, 2013?

5 A. Yes, there were.

6 Q. All right.

7 Can you read those names to us, please?

8 A. Brandon DeLaCruz, Andres Coronel, Tony Menotti, Chris
9 Keiler, Brandon Trezzo, Steve Hill.

10 MS. HENSEL: I move for the admission of Petitioner's
11 Exhibit 10.

12 THE COURT: Any objection?

13 MR. MIOSSI: No, your Honor.

14 THE COURT: It is admitted.

15 (Petitioner's Exhibit No. 10 received in evidence.)

16 BY MS. HENSEL:

17 Q. All right. Mr. Shubert, during the general membership
18 meeting on December 15th, did you address issues related to
19 Arlington Metals?

20 A. Yes, I did.

21 Q. I'd like you to take a look at what's been marked as
22 Petitioner's Exhibit 11.

23 Do you recognize this?

24 A. Yes, I do.

25 Q. What is it?

1 A. This is the monthly meeting minutes for the December,
2 2013, meeting.

3 Q. And according to Petitioner's Exhibit 11, can you
4 summarize for us what you addressed with regard to Arlington
5 Metals at the December 15th meeting?

6 A. Yes. We discussed some charges that were dismissed by the
7 NLRB along with contract negotiations from December 11th and a
8 new set of OSHA citations that came down, including a press
9 release.

10 MS. HENSEL: Move for the admission of Petitioner's
11 Exhibit 11.

12 THE COURT: Any objection?

13 MR. MIOSSI: Yes, your Honor. Not generally to the
14 document, but to the redactions, because these redactions
15 appear to relate to Arlington Metals. If they related to some
16 of the other redactions to other non-Arlington parties, that's
17 no problem. But we don't know what the redaction is.

18 THE COURT: Do you have a non-redacted version of
19 this document?

20 MS. HENSEL: I believe I do, but I think I can clear
21 it up. I just failed to ask that question.

22 THE COURT: Okay. Try to clear it up.

23 BY MS. HENSEL:

24 Q. Mr. Shubert, is the document in the same form in which it
25 was maintained?

1 A. Yes, it was, with the exception of the redactions for
2 business that was other than Arlington Metals.

3 Q. Okay.

4 MS. HENSEL: On that basis then, your Honor, I offer
5 it, again.

6 THE COURT: Any objection?

7 MR. MIOSSI: I guess I'd ask for an in camera review
8 then, because --

9 THE COURT: I will do that.

10 MR. MIOSSI: Okay.

11 THE COURT: That is the best way.

12 MR. MIOSSI: Thank you.

13 THE COURT: I will admit this document subject to an
14 in camera review.

15 MS. HENSEL: Okay. Very good.

16 (Petitioner's Exhibit No. 11 received in evidence.)

17 THE COURT: If you could at some point today give me
18 the unredacted version of Plaintiff's 11, as well.

19 MS. HENSEL: Your Honor, there's a good chance I did
20 not bring the set of unredacted. Perhaps when we take the
21 break at 2:30, I can run and get them?

22 THE COURT: Sure. Or over the lunch break you can go
23 get them or you can drop it off tomorrow.

24 MS. HENSEL: Very good.

25 BY MS. HENSEL:

1 Q. All right. Mr. Shubert, following the general meeting on
2 December 15th, did a special -- or did a unit meeting
3 follow --

4 A. Yes.

5 Q. -- with Arlington?

6 And how many employees that attended the general
7 meeting also attended the unit meeting?

8 A. They all did.

9 Q. All right.

10 You did not maintain a sign-in sheet for the unit
11 meeting?

12 A. No.

13 Q. All right.

14 How long did the unit meeting last?

15 A. About a half an hour.

16 Q. All right.

17 Did you preside over this meeting?

18 A. Yes, I did.

19 Q. All right.

20 Can you tell us how you started that meeting?

21 A. I started the meeting off with giving a synopsis of
22 contract negotiations from December 11th.

23 Q. What did you say?

24 A. I explained to the group that based upon the company's
25 statements during the October 31st negotiating sessions, that

1 the union had submitted a comprehensive economic information
2 request; and, that we wouldn't be able to proceed further with
3 negotiations until we received that information from the
4 company.

5 I further explained to them that due to the
6 historical nature of the union's economic information request,
7 that I didn't have any high expectations of receiving the
8 information that we received; and, that, more than likely,
9 we'd have to file some more unfair labor practice charges with
10 the NLRB in order to secure those documents.

11 I went on to discuss the next round of OSHA citations
12 that came down.

13 I addressed a question from Mr. DeLaCruz about right
14 to work. Mr. DeLaCruz had brought in a stack of papers
15 relating to right to work.

16 Q. You're just -- and you're making a gesture, and the court
17 reporter cannot take that down.

18 A. I'm sorry.

19 It was a considerable amount of paperwork relating to
20 right to work. So, you know, I -- we covered topics regarding
21 right to work; and, also, in regards to that, at the very end,
22 I covered the press release that came out from OSHA. OSHA --
23 I explained to them that these are relatively rare in my
24 experience and the significance of that.

25 Q. Do you recall what some of the questions were about right

1 to work?

2 A. Some of the questions that Mr. DeLaCruz posed was that --

3 MR. MIOSSI: I object, your Honor. Hearsay grounds.

4 THE COURT: What is your response?

5 MS. HENSEL: Again, providing context for Mr.

6 Shubert's responses to Mr. DeLaCruz's questions.

7 THE COURT: Rephrase it then if that is what you are
8 trying to do.

9 MS. HENSEL: Okay.

10 BY MS. HENSEL:

11 Q. Mr. Shubert, was the topic of right to work raised at this
12 meeting?

13 A. Yes, it was.

14 Q. How was it raised?

15 A. It was raised by Mr. DeLaCruz.

16 Q. All right.

17 Did you respond to the statements by Mr. DeLaCruz?

18 A. I tried to.

19 Q. Okay.

20 Can you please tell us what that conversation
21 entailed?

22 A. Mr. DeLaCruz's interpretation of right to work from what
23 was happening in Indiana -- or had recently happened in
24 Indiana -- seemed to evolve around a person's ability to have
25 the right to work in the designated facility and that -- the

1 true meaning of what right to work meant. So, I tried to add
2 some clarity to what that meant in our perspective, from my
3 perspective.

4 MR. MIOSSI: Your Honor, I object. If he wants -- if
5 the purpose of that is to quote the gentleman and it's not
6 offered for the truth of the matter asserted, fine; but, what
7 I heard was sort of, "This is what I think he meant." And I
8 object on that grounds.

9 THE COURT: And I am not taking it for the truth of
10 the matter. I am taking it with context and to show what
11 Mr. Shubert may or may not have done in response to the
12 comments.

13 MR. MIOSSI: All right. Thank you.

14 THE COURT: But I am not accepting it for the truth
15 of the matter.

16 MS. HENSEL: Okay.

17 BY MS. HENSEL:

18 Q. And what did you say in response to Mr. DeLaCruz's
19 questions?

20 A. I tried to explain it from the context of what I believe
21 right to work to mean.

22 Q. And what did you tell him you believed it to mean?

23 A. I explained that it was a means to diminish the union's
24 ability to perform its work based upon representing people
25 without having the ability for them to pay their equal share

1 for dues.

2 Q. Now, with respect to your summary of the contract
3 negotiations, were there any member comments regarding what
4 was going on in bargaining?

5 A. Yes, there were. Mr. Casey Waz seemed to be --

6 MR. MIOSSI: Object. If it's not for the truth of
7 the matter asserted, no objection. Just as long as we're
8 clear on that.

9 THE COURT: I will not accept it for the truth of the
10 matter.

11 MR. MIOSSI: Okay.

12 THE COURT: There is no jury here. It is just me.
13 So, I am not accepting these other comments for the truth of
14 the matter. I will note you have a standing objection or --

15 MR. MIOSSI: Thank you very much.

16 THE COURT: -- standing comment on that.

17 BY THE WITNESS:

18 A. So, Mr. Casey Waz was agitated, and he asked when he can
19 expect to receive a contract; that he's been employed there
20 from the very beginning of the original certification in '07
21 and how long is it going to take; it's been at that time six
22 years.

23 BY MS. HENSEL:

24 Q. How did you respond to Mr. Waz?

25 A. I don't recall.

1 Q. Mr. Shubert, over the next four months, between January
2 and April of 2014, how was membership attendance at the
3 general meetings?

4 A. Membership at our general meetings declined.

5 Q. All right.

6 If you could please take a look at Petitioner's
7 Exhibits -- and it's Group 12A through 12D. Let's start with
8 12A.

9 Do you recognize Exhibit 12A?

10 A. Yes, I do.

11 Q. What is it?

12 A. That is the membership attendance sign-in sheet for
13 January, 2014.

14 Q. Okay.

15 Does it have a date that's January 12th --

16 A. January 12, 2014.

17 Q. -- 2014? Okay.

18 Was this document -- I take that back.

19 How many individuals from Arlington attended the
20 union membership meeting on this day?

21 A. There were three.

22 Q. Were any of them the individuals who had signed cards in
23 September?

24 A. No.

25 Q. And was this document maintained in the same manner to

1 which you previously testified?

2 A. Yes, it was.

3 Q. Has it been altered from the original form in which it was
4 maintained?

5 A. No, with the exceptions of the redactions for members'
6 names who are not employed by Arlington Metals.

7 MS. HENSEL: I move for the admission of Exhibit 12A.

8 THE COURT: Any objection?

9 MR. MIOSSI: No, your Honor.

10 THE COURT: It is admitted.

11 (Petitioner's Exhibit No. 12A received in evidence.)

12 MS. HENSEL: Your Honor -- I'm sorry.

13 BY MS. HENSEL:

14 Q. Mr. Shubert, moving on to Petitioner's Exhibit 12B, do you
15 recognize this document?

16 A. Yes, I do.

17 Q. What is it?

18 A. It is the membership meeting attendance record for
19 February 9, 2014.

20 Q. And according to Exhibit 12B, how many Arlington Metals
21 employees attended the February meeting?

22 A. Zero.

23 Q. Mr. Shubert, did you maintain this document in the same
24 manner you previously testified?

25 A. Yes, I did.

1 Q. Has it been altered from the form in which it was
2 maintained?

3 A. No, with the exception of the redactions made for the
4 members who are not employed by Arlington Metals.

5 MS. HENSEL: Move for the admission of Exhibit 12B.

6 THE COURT: Any objection?

7 MR. MIOSSI: No, your Honor.

8 THE COURT: It is admitted.

9 (Petitioner's Exhibit No. 12B received in evidence.)

10 BY MS. HENSEL:

11 Q. Mr. Shubert, let's move on to Exhibit 12C.

12 Do you recognize this document?

13 A. Yes, I do.

14 Q. What is that?

15 A. That is the meeting attendance record for March 9th, 2014,
16 general membership meeting.

17 Q. And according to Exhibit 12C, how many employees from
18 Arlington attended this meeting?

19 A. There were four.

20 Q. Were any of those individuals among the group that signed
21 cards in September, 2013?

22 A. No.

23 Q. Mr. Shubert, did you maintain this document in the same
24 manner you previously testified to?

25 A. Yes, I have.

1 Q. Has it been altered from the manner in which it was
2 maintained?

3 A. No, with the exceptions of the redactions for the members
4 who are not employed by Arlington Metals.

5 MS. HENSEL: Move for the admission of Exhibit 12C.

6 THE COURT: Any objection?

7 MR. MIOSSI: No, your Honor.

8 THE COURT: It is admitted.

9 (Petitioner's Exhibit No. 12C received in evidence.)

10 BY MS. HENSEL:

11 Q. Now, looking at Petitioner's Exhibit 12D, do you recognize
12 this document?

13 A. Yes, I do.

14 Q. What is it?

15 A. That is the member -- the meeting attendance record for
16 the general membership meeting held on April 13th, 2014.

17 Q. And according to Exhibit 12D, how many Arlington employees
18 attended the union meeting on this day?

19 A. Two.

20 Q. Were any of them from the group of new members who signed
21 in September, 2013?

22 A. No.

23 Q. All right.

24 And was this document maintained in the same manner
25 that you previously testified to?

1 A. Yes, it was.

2 Q. And has it been altered from the original form in which it
3 was maintained?

4 A. No, with the exceptions of the redactions made for members
5 who are not employed by Arlington Metals.

6 MS. HENSEL: Move for the admission of Petitioner's
7 Exhibit 12D.

8 THE COURT: Any objection?

9 MR. MIOSSI: No, your Honor.

10 THE COURT: It is admitted.

11 (Petitioner's Exhibit No. 12D received in evidence.)

12 BY MS. HENSEL:

13 Q. Did you continue to discuss the status of Arlington Metals
14 at the union meetings between January and April of 2014?

15 A. Yes, I did.

16 Q. Now, directing your attention to May 18th, 2014, did the
17 union hold a general membership meeting that day?

18 A. Yes, we did.

19 Q. I'd like you to please take a look Petitioner's Exhibit
20 13.

21 Do you recognize this document?

22 A. I do.

23 Q. What is it?

24 A. This is the membership attendance record for the -- I
25 can't see the date. It's Ap- --

1 Q. May 18?

2 A. May 18th, 2014.

3 Q. Okay.

4 And according to this Exhibit 13, how many Arlington
5 employees showed up for this general membership meeting?

6 A. Eight.

7 Q. Were any of those individuals from the group of employees
8 who had signed cards in September?

9 A. No, there were not.

10 Q. Did you maintain this list in the same form as you
11 previously testified to?

12 A. Yes, I did.

13 Q. All right.

14 And is the document in its original form in which it
15 was maintained?

16 A. Yes, it is, with the exceptions of the redactions made for
17 members who are not employed by Arlington Metals.

18 MS. HENSEL: Move for the admission of Petitioner's
19 Exhibit 13.

20 THE COURT: Any objection?

21 MR. MIOSSI: No, your Honor.

22 THE COURT: It is admitted.

23 (Petitioner's Exhibit No. 13 received in evidence.)

24 BY MS. HENSEL:

25 Q. Did you discuss the status of Arlington Metals at the

1 general membership meeting that day?

2 A. Yes, I did.

3 Q. All right.

4 If you would please take a look at Petitioner's
5 Exhibit 14.

6 Do you recognize this document?

7 A. Yes, I do.

8 Q. What is it?

9 A. That is the official meeting minutes for the general
10 membership meeting for May of 2014.

11 Q. And reviewing Petitioner's Exhibit 14, can you summarize
12 for us what you discussed with regard to Arlington Metals at
13 the general membership meeting?

14 A. I had discussed that additional NLRB charges were filed.

15 Q. Were you any more specific than that?

16 (Brief pause.)

17 BY MS. HENSEL:

18 Q. If you recall.

19 A. I don't recall.

20 Q. Okay.

21 Mr. Shubert, were the May 18th, 2014, minutes
22 maintained in the same manner to which you previously
23 testified?

24 A. Yes, they were.

25 Q. All right.

1 And are they in the same form they were kept in which
2 they were maintained?

3 A. Yes, they were.

4 Q. Okay.

5 Were they redacted?

6 A. They were redacted to leave out any information that
7 wasn't related to Arlington Metals.

8 MS. HENSEL: I move for the admission of Petitioner's
9 Exhibit 14.

10 THE COURT: Any objection?

11 MR. MIOSSI: No, your Honor. But we request that the
12 Court conduct an in camera review of all the minutes that
13 contain redactions so the Court can be satisfied it doesn't
14 pertain to Arlington. We just saw the documents this morning
15 for the first time, so we have no independent access.

16 THE COURT: I could do that.

17 MR. MIOSSI: Thank you.

18 THE COURT: If you would submit --

19 MS. HENSEL: Sure.

20 THE COURT: -- not today, but the unredacted versions
21 of each of the monthly meeting minutes to the Court, so that I
22 can do a check.

23 MS. HENSEL: Very good, your Honor.

24 BY MS. HENSEL:

25 Q. Mr. Shubert, did you -- was a unit meeting held for

1 Arlington Metals after the general membership meeting on May
2 18th?

3 A. Yes, there was.

4 Q. Did you attend that meeting?

5 A. Yes, I did.

6 Q. Why did you attend that meeting?

7 A. I attended that meeting. The members who were present
8 from Arlington members were displaying frustration with the
9 entire negotiating process and length of time it took for the
10 investigation to occur from the NLRB. The members had
11 strongly encouraged another ratification vote on the
12 implemented terms.

13 I explained to them that we could go ahead and take a
14 vote, but it would be purely advisory for the reason that we
15 did not make an announcement to the entire membership and give
16 them an opportunity to vote on it. And we didn't believe that
17 was fair.

18 Q. Okay.

19 And I'm sorry, the ratification vote was on the
20 implemented terms?

21 A. On the implemented terms.

22 Q. Okay.

23 Did you take that vote at the unit meeting?

24 A. Yes, we did.

25 Q. All right.

1 How many employees who attended the general meeting
2 also attended the unit meeting?

3 A. All. They all attended.

4 Q. Okay.

5 What was the result of the ratification vote on the
6 implemented terms?

7 A. It was unanimously accepted by the members who were
8 present.

9 Q. And following the ratification vote, how did the meeting
10 end?

11 A. I explained to the group that I would take the results
12 back to our legal team for review, and that I would be in
13 touch with them.

14 Q. Now, between May and July of 2014, what, if any, action
15 did the union take with regard to the advisory ratification
16 vote?

17 A. It was decided by the union that we would take no action
18 on that vote pending the results of the NLRB ULPs that were
19 filed. It was felt that if the NLRB ruled in our favor and
20 allowed us to have access to that material, that we might be
21 in a better position to intelligently bargain over the
22 economics for them.

23 Q. Okay.

24 Now, directing your attention to June 8th, 2014, did
25 the union hold a regular monthly meeting on that date?

1 A. Yes, we did.

2 Q. I'd like you to look at Petitioner's Exhibit 15.

3 Do you recognize this document?

4 A. Yes, I do.

5 Q. What is it?

6 A. This is the monthly meeting attendance record for June.

7 June, 2014.

8 Q. According to Exhibit 15, how many employees from Arlington

9 Metals appeared at the meeting on this day?

10 A. There were eight.

11 Q. And were any of those eight individuals, individuals who

12 had signed authorization cards in September of 2013?

13 A. Yes.

14 Q. All right.

15 Can you name off who those individuals were?

16 A. Brandon DeLaCruz, Steve Hill and Andres Coronel.

17 Q. Mr. Shubert, was this sign-in sheet maintained in the

18 manner you previously testified to?

19 A. Yes, it was.

20 Q. Has it been altered from the original form in which it was

21 maintained?

22 A. No, with the exception of the redactions.

23 Q. What did you redact?

24 A. I redacted the names of the members who are not employed

25 by Arlington Metals.

1 MS. HENSEL: I move for the admission of Petitioner's
2 Exhibit 15.

3 THE COURT: Any objection?

4 MR. MIOSSI: No, your Honor.

5 THE COURT: It is admitted.

6 (Petitioner's Exhibit No. 15 received in evidence.)

7 BY MS. HENSEL:

8 Q. Mr. Shubert, did you discuss the status of Arlington
9 Metals at the general membership meeting on May 8th -- I'm
10 sorry, June 8th -- 2014?

11 A. Yes, I did.

12 Q. If you would please take a look at Petitioner's Exhibit
13 16.

14 I apologize. It's sideways. There we go.

15 Okay. It should be right side up.

16 Do you recognize Exhibit 16?

17 A. I do.

18 Q. What is it?

19 A. It's a local monthly meeting minutes from May 18th, 2014.

20 Q. All right.

21 And based on Exhibit 16, can you summarize for us
22 what you covered at the general membership meeting with regard
23 to Arlington Metals?

24 A. The document's not matching.

25 Q. I'm sorry?

1 A. This document doesn't match. It went forward or
2 something. That's June now.

3 Q. We're on June 8th. This is Petitioner's Exhibit 16.

4 THE COURT: Are you saying the contents of the
5 minutes do not match the meeting?

6 THE WITNESS: No. What I said was I just identified
7 the monthly meeting minutes from May and I'm being asked for
8 something that happened in June.

9 THE COURT: May was last.

10 You may have misspoken.

11 MS. HENSEL: I'm sorry.

12 THE COURT: Do you want to see the hard copy?

13 THE WITNESS: Please.

14 THE COURT: I am handing him Plaintiff's 16.

15 (Document tendered.)

16 THE WITNESS: This is June.

17 THE COURT: That is the one we are on.

18 THE WITNESS: Okay.

19 THE COURT: So, do you want to ask, again.

20 BY MS. HENSEL:

21 Q. Are we -- Petitioner's Exhibit 15, which you just
22 identified.

23 MS. HENSEL: Dan, can you go back to 15.

24 BY MS. HENSEL:

25 Q. And, again, I apologize. It's sideways, again.

1 It's for the June 8th, 2014, meeting --

2 A. That's correct.

3 Q. -- is that correct?

4 And now looking at Petitioner's Exhibit 16, can you
5 identify what this document is?

6 A. Yes, I can. That is the monthly meeting minutes for the
7 June 8th, 2014, general membership meeting.

8 Q. All right.

9 And based on Exhibit 16, can you summarize for us
10 what it was you discussed with regard to Arlington Metals at
11 this meeting?

12 A. It was the Federico Ceja settlement agreement between the
13 NLRB and Arlington Metals.

14 Q. Did you discuss anything else at the general membership
15 meeting?

16 A. No.

17 Q. All right.

18 Mr. Shubert, was Petitioner's Exhibit 16 maintained
19 by the union in the same form that you previously testified
20 to?

21 A. Yes, it was.

22 Q. All right.

23 And is the document in the same form in which it was
24 maintained?

25 A. It is, with the exceptions of the redactions for material

1 that isn't related to Arlington Metals.

2 MS. HENSEL: I move for the admission of Petitioner's
3 Exhibit 16.

4 THE COURT: Any objection?

5 MR. MIOSSI: No, subject to the Court's review.

6 THE COURT: It is admitted.

7 (Petitioner's Exhibit No. 16 received in evidence.)

8 BY MS. HENSEL:

9 Q. Mr. Shubert, did a unit meeting for Arlington Metals
10 follow the general membership meeting on June 8th, 2014?

11 A. Yes, there was.

12 Q. All right.

13 How many people who attended the general meeting also
14 came to the unit meeting?

15 A. They were all present.

16 Q. All right.

17 Did you attend the meeting?

18 A. Yes, I did.

19 Q. You headed up the meeting?

20 A. Pardon me. I didn't hear. Will you repeat the question?

21 Q. Did you preside over the unit meeting?

22 A. Yes, I did.

23 Q. About how long did this meeting last?

24 A. 10 to 15 minutes.

25 Q. All right.

1 How did you start the meeting?

2 A. I welcomed everybody as I normally do. I went into more
3 detail about Federico Ceja's settlement agreement. I also
4 mentioned that there were no updates from the Board in
5 relationship to the ULPs filed; and, that until that was
6 resolved, there would be no further scheduled negotiations
7 between the two parties.

8 Q. Okay.

9 Did you tell the bargaining unit what ULPs you were
10 referring to?

11 A. The ones that were in relationship to the information
12 request from the -- the comprehensive information request that
13 the union submitted back on December 11th, during the second
14 bargaining session.

15 Q. Okay.

16 Was there any reaction from the members in attendance
17 at this unit meeting?

18 A. Just frustration.

19 Q. When you say "frustration," was it orally communicated?

20 A. More body language than anything. You could tell by the
21 appearance on their faces -- the way they looked -- the
22 frustration; getting up abruptly afterwards and leaving.

23 Q. Did anybody from the bargaining unit have any comments
24 about the status of the ULPs?

25 A. Not that I can recall.

1 Q. How did that meeting end?

2 A. That meeting ended without a motion to adjourn. Some of
3 our members got up and walked out.

4 Q. Which members got up and walked out?

5 A. I can't identify each one, but there were a few that had
6 walked up after the conversation -- stood up and walked out.

7 Q. Do you recall if they were individuals who had recently
8 signed authorization cards or longer-term members?

9 A. I believe they were from the pool of candidates that just
10 recently signed membership cards.

11 Q. Mr. Shubert, what, if anything, happened between the June
12 8th, 2014, membership meeting and the next regularly scheduled
13 union meeting with regard to Arlington Metals?

14 A. The union had received communications from Arlington
15 Metals' counsel Bill Miossi that there was a withdrawal of
16 recognition petition that was signed and forwarded by Mr.
17 Miossi to José Gudino.

18 Q. And how did you receive a copy of the document then?

19 A. Mr. Gudino copied me on the document.

20 Q. If you would please take a look at Petitioner's Exhibit
21 17.

22 Do you recognize this document?

23 A. Yes, I do.

24 Q. What is it?

25 A. That is the withdrawal of recognition petition that was

1 submitted on behalf of Mr. Miossi for Arlington Metals to
2 Mr. Gudino.

3 Q. The exhibit is a few pages long.

4 MS. HENSEL: Dan, if you could scroll down so he
5 could see the whole thing.

6 Keep going, Dan.

7 (Brief pause.)

8 THE COURT: Those last two pages are not in my
9 exhibit. I have three pages with Plaintiff's Exhibit 17, all
10 the signatures. So, the Winston & Strawn letter from
11 Mr. Miossi and whatever follows that is not attached to my
12 exhibit.

13 MS. HENSEL: I apologize, your Honor. That's a
14 mistake on my part. I will also collect that at the break and
15 supplement.

16 THE COURT: Have you seen what is attached?
17 Obviously, you know the letter. You have seen it. But have
18 you seen it as a complete exhibit?

19 MR. MIOSSI: The petition?

20 THE COURT: And the documents that are attached.

21 MR. MIOSSI: Oh, no. I'm sorry. What I'm looking at
22 on the screen here --

23 THE COURT: Yes.

24 MR. MIOSSI: What's below my letter, I've never seen
25 before.

1 MS. HENSEL: That's a separate exhibit.

2 MR. MIOSSI: Oh.

3 MS. HENSEL: Exhibit 17 is four pages. It's a
4 three-page petition.

5 THE COURT: With the letter?

6 MS. HENSEL: With Mr. Miossi's letter.

7 THE COURT: Okay.

8 Just drop off the letter for me at some point,
9 please.

10 MS. HENSEL: Sure.

11 I apologize, your Honor.

12 BY MS. HENSEL:

13 Q. Okay. So, the four-page exhibit, you recognize this?

14 A. Yes, I do.

15 Q. Okay.

16 Reviewing the petition, Mr. Shubert, can you tell if
17 any of the individuals who signed authorization cards in
18 September, 2013, also signed this petition submitted to you by
19 the respondent?

20 A. Yes, I can.

21 Q. All right.

22 Can you tell us who signed cards and then signed this
23 petition?

24 A. Andres Coronel, Anthony Menotti, Brandon Trezzo, Brandon
25 DeLaCruz, Chris Keiler, Steve Hill, Casey Waz.

1 MS. HENSEL: I move for the admission of Petitioner's
2 Exhibit 17.

3 THE COURT: Any objection?

4 MR. MIOSSI: No, your Honor.

5 THE COURT: I will admit it.

6 (Petitioner's Exhibit No. 17 received in evidence.)

7 THE COURT: We are going to take about a ten-minute
8 break now.

9 I have a suggestion for you, Ms. Hensel, to move
10 things along. I see you have -- especially Exhibit 19 --
11 multiple pages similar to what we have seen. You may be able
12 to lay a shorter foundation. I am guessing there is not going
13 to be an objection to the admission of these.

14 You may be able to expedite, rather than doing it
15 document by document, trying to get all of these attendance
16 records in at once if he can verify them. I think that will
17 serve your purposes and just move things along.

18 So, take a look at those during the break, and we
19 will pick back up in about ten minutes.

20 MS. HENSEL: Very good. Thank you.

21 (Brief recess.)

22 THE COURT: You may be seated.

23 Ms. Hensel, you may proceed.

24 MS. HENSEL: Thank you, your Honor.

25 BY MS. HENSEL:

1 Q. Mr. Shubert, I believe we finished discussing Petitioner's
2 Exhibit 17.

3 THE COURT: Yes. You were moving on to 18.

4 MS. HENSEL: Okay. Very good.

5 BY MS. HENSEL:

6 Q. Mr. Shubert, following the withdrawal of recognition that
7 you received from the company, directing your attention to
8 July 13th of 2014, did the union hold a general membership
9 meeting on that day?

10 A. Yes, we did.

11 Q. I'd like you to please take a look at Petitioner's Exhibit
12 18.

13 Do you recognize this document?

14 A. Yes, I do.

15 Q. What is it?

16 A. It's a meeting attendance record for July 18th, 2014,
17 general membership meeting.

18 Q. Does this document show whether or not any Arlington
19 Metals employees attended the general union meeting?

20 A. Does not.

21 Q. So, no employees attended?

22 A. No employees attended from Arlington Metals.

23 Q. Was this document maintained in the same manner which
24 you've previously testified to?

25 A. Yes, it was.

1 Q. All right.

2 Is it in its original form in which it was
3 maintained?

4 A. Yes, with the exception of the redactions for names of the
5 members who were not currently employed by Arlington Metals.

6 MS. HENSEL: Move for the admission of Petitioner's
7 Exhibit 18.

8 THE COURT: Any objection?

9 MR. MIOSSI: No, your Honor.

10 THE COURT: It is admitted.

11 (Petitioner's Exhibit No. 18 received in evidence.)

12 BY MS. HENSEL:

13 Q. Mr. Shubert, did you discuss what had occurred at
14 Arlington Metals at the general membership meeting that day?

15 A. I believe so, yes.

16 Q. Okay.

17 I'd like you to take a look at Petitioner's Exhibit
18 18A.

19 Do you recognize this?

20 A. Yes, I do.

21 Q. What is it?

22 A. That is the monthly membership meeting's minutes for July,
23 2014.

24 Q. Okay.

25 And does it indicate that you addressed Arlington

1 Metals?

2 A. Yes, it does.

3 Q. All right.

4 Can you summarize for us what you addressed?

5 A. We continued to speak about the Federico Ceja discharge
6 from the NLRB settlement agreement; and, also, we discussed
7 the withdrawal of recognition petition the union had received.

8 Q. All right.

9 Now, did the union maintain these meeting minutes in
10 the same manner to which you previously testified?

11 A. Yes, we have.

12 Q. And are the minutes in the same form in which they're
13 maintained?

14 A. Yes, with the exception of the redactions for non-
15 Arlington Metals business.

16 MS. HENSEL: Move for the --

17 THE COURT: Is there an objection?

18 MS. HENSEL: -- admission of Petition- --

19 MR. RUBINSTEIN: Your Honor, the same caveat from
20 before with regard to the in camera review of the meeting
21 minutes.

22 But, Dan, could you pull those minutes back up,
23 please?

24 THE COURT: So, you do not object to the admission
25 subject to the Court's in camera review?

1 MR. RUBINSTEIN: I don't, with the following caveat,
2 however.

3 We object to any suggestion about the validity of the
4 petition because they should be judicially estopped from
5 taking a different position. And I could set forth the cases
6 in my argument if you want to hear it. But any argument or
7 suggestion that there's anything tainted about the petition
8 shouldn't be accepted into evidence and --

9 THE COURT: Why don't you supplement the record with
10 the cases you are going to cite. I will note your objection.
11 And I noted that from your briefs and your submissions.

12 MR. RUBINSTEIN: Thank you, your Honor. We will do
13 that.

14 THE COURT: Thank you.

15 So, I will admit Plaintiff's Exhibit 18A subject to
16 the in camera review and the objection Mr. Rubinstein just
17 noted, that I have assumed was an objection throughout the
18 entire proceeding and one of your main arguments.

19 MR. RUBINSTEIN: Yes, your Honor.

20 (Petitioner's Exhibit No. 18A received in evidence.)

21 BY MS. HENSEL:

22 Q. Mr. Shubert, in the 12 months following the withdrawal of
23 recognition, how has Arlington Metals employee attendance been
24 at the membership meetings?

25 A. It has eroded to just two members showing up on average --

1 two of our leaders: Alfred Karas and Bogdan Fudala. Absent
2 from there is one of our negotiating committee members and
3 strong supporters, Antoni Golik.

4 Q. Okay.

5 I would like you to take a look through the next
6 exhibit, Petitioner's 19A through K, and let me know if you
7 recognize those documents.

8 THE COURT: I have the hard copy if that is easier
9 for you.

10 THE WITNESS: Yes, please. This is just --

11 (Brief pause.)

12 BY MS. HENSEL:

13 Q. Have you had a chance to review them?

14 A. Yes, I have.

15 Q. Do you recognize these documents?

16 A. Yes, I do.

17 Q. As a group, what are they?

18 A. These are the meeting attendance records for September 14,
19 2014, through August 9th, 2015.

20 These meeting attendance sign-in sheets show that we
21 had three members attending through the November meeting,
22 which included Mr. Golik, and afterwards it was Alfred Karas
23 and Bogdan Fudala.

24 Q. Okay.

25 So, in most months in the year following the

1 withdrawal of recognition, you've had two individuals --

2 A. That's correct.

3 Q. -- appearing at meetings?

4 Mr. Shubert, were these attendance records kept by
5 the union in the manner in which you've previously testified
6 to?

7 A. Yes, they were.

8 Q. All right.

9 And are they in their original format?

10 A. Yes, they were, with the exceptions of the redactions made
11 for members who are not employees of Arlington Metals.

12 MS. HENSEL: Your Honor, I offer Petitioner's Exhibit
13 19A through 19K.

14 THE COURT: Any objection?

15 MR. MIOSSI: No, your Honor.

16 THE COURT: They are admitted.

17 (Petitioner's Exhibit Nos. 19A through 19K received in
18 evidence.)

19 BY MS. HENSEL:

20 Q. Mr. Shubert, are you familiar with an administrative law
21 judge decision that was issued in the unfair labor practice
22 charges filed by the Steelworkers in July of 2015?

23 A. Yes, I am.

24 Q. Okay.

25 Did you receive a copy of that decision?

1 A. Yes, I did.

2 Q. All right.

3 After you received that decision, what, if anything,
4 did you decide to do regarding the Arlington Metals bargaining
5 unit?

6 A. I decided to conduct a special meeting for the entire
7 membership to convey to them what the ALJ's decision was and
8 what it meant to the membership.

9 Q. And what, if anything, did you do to publish this meeting
10 to the Arlington Metals membership?

11 A. I created a letter that was sent via mail to each
12 individual member. I also asked the leadership in the plant
13 to post a similar posting.

14 Q. I'd ask you to take a look, please, at Petitioner's
15 Exhibit 20.

16 Do you recognize this document?

17 A. Yes, I do.

18 Q. What is it?

19 A. That is a document I created announcing a special meeting
20 for the members of Arlington Metals.

21 Q. Now, this is a three-page exhibit. If you would look at
22 Page 2, did you create that page, as well?

23 A. Yes, I did.

24 Q. And what about Page 3?

25 A. That, I used the help of Cornelia Fudala for the

1 translation.

2 Q. Okay.

3 Is that written in Polish then?

4 A. Yes, that's written in Polish for our Polish-speaking
5 members.

6 Q. And you said that you mailed out this exhibit?

7 A. I had my secretary mail those out to our census list.

8 MS. HENSEL: I move for admission of Petitioner's
9 Exhibit 20.

10 THE COURT: Any objection?

11 MR. MIOSSI: No, your Honor.

12 THE COURT: It is admitted.

13 (Petitioner's Exhibit No. 20 received in evidence.)

14 BY MS. HENSEL:

15 Q. Mr. Shubert, did you receive any copies of Exhibit 20 that
16 had been mailed out back in the mail as undeliverable?

17 A. I did. I received two.

18 Q. But as far as you're aware, the remainder were delivered?

19 A. Yes.

20 Q. Did you hold the special unit meeting on August 30, 2015?

21 A. I did.

22 Q. How many people showed up for that meeting?

23 A. Six.

24 Q. I'd like you to please take a look at Petitioner's Exhibit

25 21.

1 Do you recognize this document?

2 A. Yes, I do.

3 Q. What is it?

4 A. That is a sign-in sheet that I used for the special
5 meeting held on August 30th, 2015.

6 Q. Okay.

7 And it reflects six individuals. Were all of the
8 individuals who signed in on this sheet current employees of
9 Arlington Metals?

10 A. No.

11 Q. How many are current employees?

12 A. There are four.

13 Q. Can you name them, please?

14 A. Bogdan Fudala, Ryszard Hryniewicki, Alfred Karas, and
15 Stanislaw Rosol.

16 Q. And who are the other individuals who signed in?

17 A. Mark Zachara and Federico Ceja.

18 Q. Who is Mark Zachara?

19 A. Mark Zachara at one time was the president of the unit at
20 Arlington Metals. Federico Ceja, he was at one time one of
21 our union stewards at Arlington Metals.

22 Q. Okay.

23 But they're no longer employed?

24 A. They're no longer employed by Arlington.

25 Q. And do you know how they received notice of this meeting?

1 A. When I handed the document to my secretary to mail out to
2 all the members, after I did some further research, she was
3 using a older census, not the most recent census I had
4 received; and, thus Mark Zachara and Federico Ceja's name
5 appeared on that census and they, by mistake, had received the
6 meeting notice.

7 Q. Okay.

8 Did you preside over this meeting?

9 A. Yes, I did.

10 Q. Was anybody else there from the union with you?

11 A. Yes. Bill Gibbons.

12 Q. Who is Bill Gibbons?

13 A. Bill Gibbons is the retired co-director for District 7
14 United Steelworkers.

15 Q. All right.

16 Would you summarize for us, please, what you
17 discussed at this special meeting on August 30, 2015?

18 A. We discussed the administrative law judge decision as it
19 related to the charges that were filed for the information
20 request and unfair labor practices for bad faith bargaining.

21 We explained to the membership what that potentially
22 meant for them. And we were optimistically portraying it as
23 we were going to receive the documentation requested and be
24 able to move on to negotiations.

25 Q. Okay.

1 I want to return to Petitioner's Exhibit 21 just
2 briefly.

3 Did the union maintain this document in the same
4 manner as you previously testified to?

5 A. Yes.

6 Q. All right.

7 And is it in its original form in which it was
8 maintained?

9 A. Yes, it is.

10 MS. HENSEL: I move for the admission of Petitioner's
11 Exhibit 21.

12 THE COURT: Any objection?

13 MR. MIOSSI: No, your Honor.

14 THE COURT: It is admitted.

15 (Petitioner's Exhibit No. 21 received in evidence.)

16 BY MS. HENSEL:

17 Q. Mr. Shubert, since bargaining began, again, with Arlington
18 in 2013, has the union lost the support of any particular
19 individuals who have been long-term supporters?

20 A. Yes, we have.

21 Q. Who is that?

22 A. Antoni Golik sticks out to me. He was a negotiating
23 committee member and one of the leaders in the plant
24 throughout from the very beginning.

25 Q. Okay.

1 From when to when was Mr. Golik a negotiating
2 committee member?

3 A. Mr. Golik attended the negotiating session of October
4 31st, 2013, and December 11th; and, I believe that he -- we
5 rotated him in and out of prior negotiations, but I believe
6 maybe it was 2009, 2010. I'm not sure about the dates on
7 that.

8 Q. Okay.

9 Was he employed when the union first represented
10 Arlington in 2007?

11 A. Yes, he was.

12 Q. Okay.

13 In what manner have you lost the support of
14 Mr. Golik? Can you explain?

15 A. Mr. Golik being one of the Polish-speaking members, I
16 would have to use our interpreter, Cornelia Fudala, to contact
17 Mr. Golik. And several attempts made by both Cornelia Fudala,
18 as well as her father and Alfred Karas, have gone answered.
19 Mr. Golik did not attend the special meeting on August 30th,
20 although he was mailed out a notification to, and has since
21 stopped responding to any phone calls made to him.

22 Q. Okay.

23 You mentioned Cornelia --

24 A. Fudala.

25 Q. I'm sorry, the name?

1 A. Fudala.

2 Q. -- Fudala and her father.

3 Is Cornelia Fudala's father an Arlington employee?

4 A. Yes, he is.

5 Q. Okay.

6 And Mr. Karas, of course, is also an Arlington
7 employee?

8 A. Yes.

9 Q. Okay.

10 Have you made any attempts on your own to try to
11 contact Mr. Golik?

12 A. No, I have not.

13 Q. Why is that?

14 A. Because of the language barrier.

15 Q. Okay.

16 Have you requested Ms. Fudala to contact him for you?

17 A. Yes, I have.

18 Q. All right.

19 When is the last time you attempted contact with
20 Mr. Golik?

21 A. After the August 30th meeting.

22 Q. How many times do you think you've attempted to contact
23 Mr. Golik and over what period of time has he not responded to
24 your calls?

25 A. Several times from August 30th -- the conclusion of the

1 August 30th meeting to the present time.

2 Q. All right. Thank you.

3 MS. HENSEL: I have no further questions for this
4 witness.

5 THE COURT: Cross-examination.

6 MR. BARELLA: Your Honor, I'll be cross-examining
7 Mr. Shubert. I wonder if we might just take five minutes,
8 because I think I can consolidate some of the questions that I
9 was going to ask as part of a direct examination from having
10 subpoenaed him.

11 THE COURT: Okay.

12 MR. BARELLA: But I just need to consolidate my
13 notes. Five minutes at the most.

14 THE COURT: Okay. Go ahead. And I will give you a
15 break. Let me know when you are ready.

16 MR. BARELLA: Okay. Thank you.

17 (Brief pause.)

18 MR. BARELLA: I'm ready when the Court is ready.

19 THE COURT: Cross-examination, go ahead. And your
20 direct you can bring in, as well.

21 MR. BARELLA: Thank you.

22 CROSS-EXAMINATION

23 BY MR. BARELLA:

24 Q. Good morning, Mr. Shubert.

25 A. Good morning. How are you?

1 Q. I'm great. Thanks.

2 Mr. Shubert, you testified you organized the
3 Arlington Metals employees at the Franklin Park facility in
4 2007, correct?

5 A. That's correct.

6 Q. And that bargaining unit was certified October 10th, 2007?

7 A. Yes.

8 Q. And following certification of the unit there, sir, you
9 participated in collective bargaining negotiations with the
10 union -- with Arlington Metals on behalf of the union; is that
11 right, sir?

12 A. That's correct.

13 Q. Those negotiations started in November, 2007?

14 A. Yes.

15 Q. And the last face-to-face meeting between the parties was
16 December 11th, 2013; is that right?

17 A. That's correct.

18 Q. And you testified, just to be clear, Arlington Metals
19 withdrew recognition of the union as the bargaining
20 representative for employees in Franklin Park on July 10,
21 2014, correct?

22 A. That's correct.

23 Q. The union's unfair labor practice charges against
24 Arlington Metals that form the basis of the petition that
25 we're here about today concerned that withdrawal of

1 recognition, right?

2 A. Yes.

3 Q. And, also, the bargaining that occurred between the
4 parties on October -- in October and December of 2013, the
5 charges relate to those bargaining meetings, as well, correct?

6 A. That's correct.

7 Q. Now, you gave a lot of testimony during your direct
8 examination about the regular monthly meetings that the union
9 holds, and I just had a few questions I wanted to follow up on
10 some of that.

11 I think you explained that those meetings take place
12 on the second Sunday of each month?

13 A. For the most part, yes, barring holidays.

14 Q. And they're held at the local union hall in Franklin Park?

15 A. Yes. 9660 Franklin.

16 Q. And with respect to --

17 MR. BARELLA: Strike that.

18 BY MR. BARELLA:

19 Q. The meetings are amalgamated meetings, meaning the
20 employees from employers that the local represents attend
21 meetings, correct?

22 A. Yes.

23 Q. Or at least they're invited to attend those meetings?

24 A. Yes.

25 Q. And, then, at the end of the amalgamated group meeting,

1 there are individual unit meetings, correct?

2 A. That's correct.

3 Q. And you presided over the unit meetings that applied to
4 Arlington Metals employees; is that right?

5 A. A great majority of time, yes.

6 Q. The first meeting that you held for Arlington Metals
7 employees was in May or June of 2007, even before the union
8 was certified as their representative; is that right?

9 MS. HENSEL: Object to the relevance.

10 THE COURT: What is the relevance?

11 MR. BARELLA: I'd like to establish, your Honor -- we
12 had a lot of testimony on direct about what attendance was
13 like at the meetings in December, 2013, going forward, but I'd
14 like to ask about some of the preceding meetings as a way to
15 compare.

16 THE COURT: Overruled.

17 You may answer, sir, if you can.

18 BY THE WITNESS:

19 A. I'm not sure of the timeline. We had a lot of meetings
20 prior to the NLRB certification election. I believe I first
21 received a call back in February inquiring about how to go
22 about organizing. And I'm not sure exactly what month we
23 started holding meetings with the members.

24 BY MR. BARELLA:

25 Q. Okay.

1 Certainly, by the time that you were certified -- the
2 union was certified -- as the bargaining agent in October,
3 2007, you were having regular monthly meetings for interested
4 employees of Arlington Metals; is that right?

5 A. We had general membership meetings during that period of
6 time. The only time we had unit meetings for Arlington Metals
7 followed the negotiating session, in between the -- because
8 sometimes negotiating sessions could be several months; there
9 was nothing new to report; therefore, we didn't have a great
10 amount of attendance during that period of time.

11 Q. Well, help me understand, then, Mr. Shubert, because I
12 thought you testified that you had -- on most months, you had
13 -- a regular membership meeting, correct?

14 A. That's correct.

15 Q. And, then, at the end of the regular membership meeting,
16 you had a unit meeting for each of the employers that the
17 local represented; is that correct?

18 A. That's correct.

19 Q. Okay.

20 So, by the time you started representing employees at
21 Arlington Metals in October, 2007, is it fair to say you were
22 having monthly meetings that were open and available to
23 Arlington Metals employees to attend?

24 A. That's correct.

25 Q. And it's true, isn't it, that during the initial months

1 after the union started representing employees at Arlington
2 Metals in October, 2007, the attendance of Arlington Metals
3 employees at those meetings averaged around 45 employees per
4 meeting? That's true, isn't it?

5 A. I don't believe that's true.

6 Q. Okay.

7 Well, Mr. Shubert, the union's filed a number of
8 unfair labor practice charges against Arlington Metals since
9 it was certified as the bargaining agent; is that correct?

10 A. That's correct.

11 Q. And in connection with those unfair labor practice
12 charges, you have given interviews to NLRB agents who are
13 investigating the charges, correct?

14 A. That's correct.

15 Q. And at the end of your interviews, you've provided written
16 statements to the NLRB?

17 A. That's correct.

18 Q. And those written statements are actually sworn affidavits
19 in which you swore to tell the truth and that everything in
20 your statement was true and accurate, correct?

21 A. That's correct.

22 Q. Mr. Shubert, do you have respondent's exhibit binder
23 beside you?

24 A. No.

25 MR. BARELLA: Your Honor, may I approach?

1 THE COURT: You may.

2 (Document tendered.)

3 BY MR. BARELLA:

4 Q. Mr. Shubert, I'd like to direct your attention to what
5 we've marked as Respondent's Exhibit 2. It's behind Tab 2 in
6 the binder.

7 A. Okay.

8 Q. Let me know when you've seen it.

9 Mr. Shubert, this is a copy of an affidavit that you
10 provided to the NLRB in February of 2010, correct?

11 A. Yes, it is.

12 Q. February 8, 2010?

13 (Brief pause.)

14 BY MR. BARELLA:

15 Q. Correct, sir?

16 A. I'm not sure where the date is here. I see -- I see --
17 February 8, 2010.

18 Q. Okay.

19 So, you -- direct your attention to Page 4 of the
20 document, Mr. Shubert, about three-quarters of the way down
21 the page. That's your signature, right?

22 A. Yes, it is.

23 Q. And I'd like to direct your attention to Page 1 of the
24 affidavit, Lines 11 to 12. You told the NLRB in your sworn
25 statement on February 8, 2010 -- and I quote -- actually, it's

1 Lines 11 to 12 -- "The first time I held one of these meetings
2 was back in May or June, 2007. Initially, we averaged about
3 45 people."

4 That's what you said in your sworn statement,
5 correct?

6 A. That is correct.

7 Q. And at that time, Mr. Shubert, averaging 45 employees from
8 Arlington Metals, that was the majority of the bargaining
9 unit, wasn't it?

10 A. Yes, it was.

11 Q. Now, in 2009, Arlington Metals reduced its work force,
12 correct?

13 A. Yes, it did.

14 Q. But even after the reduction in the work force, you still
15 averaged about 25 Arlington Metals employees at each of your
16 monthly meetings; is that correct, sir?

17 A. No, that's not correct. Not monthly meetings.

18 Q. Mr. Shubert, direct your attention to what we've marked as
19 Respondent's Exhibit 2, your 2000- -- February 10, 2000- --
20 I'm sorry, February 8, 2010, affidavit to the NLRB, Page 2,
21 Lines 4 through 6.

22 Mr. Shubert, in your sworn statement to the NLRB, you
23 stated -- and I quote -- "In about August, 2009, the support
24 for union meetings did not change in the numbers. There was
25 still about 25 members coming to the meetings, which was

1 pretty much the whole unit."

2 You said that in your sworn statement in February,
3 2010, correct?

4 A. That's correct. Those are unit meetings.

5 Q. Now, direct your attention to the middle of 2009, sir.

6 And I'm not asking you about the document at this point. I'm
7 asking you about the meetings that you held.

8 In middle of 2009, you started to receive negative
9 feedback from the Arlington Metals employees who attended your
10 regular monthly meetings at that time, didn't you?

11 A. Yes, we did.

12 Q. Some of the employees told you that they questioned
13 whether or not they were worse off than they had been before
14 the union was certified as their agent, correct, sir?

15 A. That is correct.

16 Q. And by the end of 2009, you noticed a significant decrease
17 in the attendance of Arlington Metals employees at your
18 regular monthly meetings; isn't that correct, sir?

19 A. At the regular general meetings, yes.

20 Q. In fact, at the regular meeting in December, 2009, only
21 five employees from Arlington Metals attended, true?

22 A. I'd have to check the membership attendance roster.

23 Q. Okay.

24 Mr. Shubert, it's true, isn't it, that at the
25 December 9 -- I'm sorry, the December, 2009 -- regular monthly

1 meeting, only five employees from Arlington Metals attended
2 that meeting? That's correct, isn't it?

3 A. It could be.

4 Q. Do you recall how many Arlington Metals employees attended
5 the December, 2009, regular monthly meeting?

6 A. I do not.

7 Q. Mr. Shubert, your February 8, 2010, statement to the NLRB
8 was given shortly after, within a matter of months of the
9 December 9 -- December, 2009, meeting, correct?

10 A. I believe so.

11 Q. And if that statement reflected a statement from you as to
12 how many employees attended the December, 2009, monthly
13 meeting, would that help to refresh your recollection as to
14 how many employees attended that meeting?

15 A. I think the document would speak for itself.

16 Q. Okay.

17 Well, let me direct your attention to the document,
18 sir. It's been marked as Respondent's Exhibit 2. And I
19 direct your attention to Page 2, Lines 15 to 16.

20 I'd like you to just read Lines 15 to 16 to yourself.

21 (Brief pause.)

22 BY MR. BARELLA:

23 Q. Let me know when you've finished.

24 A. I'm finished.

25 Q. Having read the statement that you prepared and gave to

1 the NLRB under oath in February, 2010, is your memory
2 refreshed as to how many Arlington Metals employees attended
3 the December, 2009, monthly meeting?

4 A. I did testify to five.

5 Q. It was five people, correct, sir?

6 A. Five people.

7 Q. And in the January, 2010, monthly meeting, no Arlington
8 Metals employees attended, correct?

9 A. At the general membership meeting, that's correct.

10 Q. Mr. Shubert, I just want to be clear, since you're using
11 the term "general membership meeting," no Arlington Metals
12 employees attended your meeting -- the union's meeting -- in
13 January, 2010, correct?

14 A. That's correct.

15 Q. And other than the decrease in attendance at meetings
16 during this 2009-'10 -- 2010 -- time period, there were other
17 indicators in late 2009 of decreasing employee support for the
18 union among the employee group at Arlington Metals; is that
19 correct, sir?

20 A. I'm not sure.

21 Q. Olesmo Diaz was an Arlington Metals employee in 2009;
22 isn't that true?

23 A. That's correct.

24 Q. And he had previously served on the union's bargaining
25 committee during bargaining negotiations with Arlington Metals

1 prior to 2009?

2 A. Yes.

3 Q. But Mr. Diaz stopped coming to the union's meetings in
4 August, 2009; didn't he, sir?

5 A. I believe so.

6 Q. And you never contacted him to discuss that, did you?

7 A. I was under the understanding he was retiring.

8 Q. I'm asking you whether you contacted him to discuss his
9 cessation of attendance at meetings --

10 A. No.

11 Q. -- beginning in August, 2009?

12 A. No.

13 Q. You never contacted him?

14 A. No, I had not.

15 Q. In fact, Mr. Diaz speaks Spanish, doesn't he?

16 A. That's correct.

17 Q. You don't speak Spanish; do you, sir?

18 A. No.

19 Q. Mark Zachara was an employee of Arlington Metals in 2009?

20 A. Yes.

21 Q. And, in fact, I think you testified on direct that he was
22 the local unit --

23 A. President.

24 Q. He held a position, correct?

25 A. He was the president of the unit.

1 Q. President of the local unit.

2 He was also your number one primary contact among the
3 Arlington Metals employees at the facility at that time
4 period; isn't that true, sir?

5 A. He was one of them, yes.

6 Q. Well, you talked to him two to three times a week in 2009,
7 right?

8 A. Probably a little more often than that.

9 Q. And a majority of the work force at that time was Polish
10 speaking?

11 A. I think that's a fair assessment, yes.

12 Q. And, in fact, you don't speak Polish, do you?

13 A. I do not.

14 Q. So, you had no way of contacting a majority of the
15 employees in the Arlington Metals unit other than through
16 Mr. Zachara; is that true?

17 A. That's correct.

18 Q. And in late November, 2009, just before Thanksgiving time,
19 you called Mr. Zachara and he did not return your call.
20 That's true; isn't it, sir?

21 A. Yes, it is.

22 Q. You wanted to ask him who was coming to the union's
23 Christmas party in December, 2009, from Arlington Metals,
24 correct?

25 A. That's correct.

1 Q. You called him back and finally got through to him; isn't
2 that true?

3 A. Yes.

4 Q. And when you did, Mr. Zachara told you he was done,
5 through with the whole union process; didn't he, sir?

6 A. Yes, he did.

7 Q. He told you he was dropping out of the leadership role?

8 A. That's correct.

9 Q. And after that, he didn't contact you ever again
10 concerning the union business?

11 A. That's incorrect. He eventually did. He ended up taking
12 the leadership role, again.

13 Q. Okay.

14 In November -- between the time period of November,
15 2009, when Mr. Zachara told you he was dropping out of the
16 leadership role, and the end of 2013, Mr. Zachara never
17 contacted you concerning union business; did he, sir?

18 A. I'm not sure.

19 Q. Well, was Bogdan Fudala the only employee in the unit who
20 contacted you after Mr. Zachara told you he was done, through
21 with the whole union business?

22 A. No. Federico Ceja would contact me, too.

23 Q. Okay.

24 Mr. Ceja, Mr. Fudala, and that was it, correct, sir?

25 A. That's correct.

1 Q. Now, Mr. Fudala is a longtime employee of Arlington
2 Metals?

3 A. That's correct.

4 Q. And after Mr. Zachara told you he was done with the union
5 business, he became -- Mr. Fudala became -- your primary point
6 of contact among the employees at the facility, correct?

7 A. Yes, that's true.

8 Q. He contacted you on a regular basis?

9 A. He didn't contact me. I contacted him and his daughter
10 Fudala -- Cornelia Fudala.

11 Q. Now, Cornelia Fudala is not an employee of the facility,
12 correct?

13 A. No. She was my translator.

14 Q. In early 2010, sir, Mr. Fudala -- Bogdan Fudala -- told
15 you that support for the union was dwindling among the
16 employees at the facility, didn't he?

17 A. Yes.

18 Q. And, in fact, at the union's Christmas party that was held
19 in December, 2009, Mr. Fudala was the only Arlington Metals
20 employee who attended, correct, sir?

21 A. I don't remember.

22 Q. Mr. Shubert, in your February 8, 2010, sworn statement to
23 the NLRB, if you would have explained in that statement who
24 attended the union's party in December, 2009, would that
25 refresh your recollection as to whether or not Mr. Fudala was

1 the only Arlington Metals employee who attended?

2 A. Sure.

3 Q. Let me direct your attention to the statement we've marked
4 as Respondent's Exhibit 2 and, in particular, Page 4 of the
5 statement, Lines 11 through 13. If you could read that to
6 yourself and let me know when you're done.

7 A. I'm finished.

8 Q. Mr. Shubert, has your recollection been refreshed as to
9 how many employees of Arlington Metals attended the union's
10 Christmas party in December, 2009?

11 A. Yes, that's my testimony.

12 Q. And it's correct that Mr. Bogdan Fudala was the only
13 Arlington Metals employee who attended that party in December,
14 2009, correct?

15 A. Yes.

16 Q. Mr. Shubert, we had a lot of testimony from you on direct
17 as to attendance of Arlington Metals employees beginning at
18 regular monthly meetings beginning in October, 2013. I'd like
19 to ask you about some of the meetings that occurred earlier in
20 2013. And in connection with that, I'd like to hand you a
21 document.

22 MR. BARELLA: Your Honor, unfortunately, this was
23 produced to us this morning and I only have just the one copy
24 of it.

25 THE COURT: Okay.

1 MR. BARELLA: We've marked it as Respondents Exhibit
2 10 -- Group Exhibit 10. It is an eight-page document that I
3 will show to counsel. And, then, I'd like permission to show
4 it to the Court and the witness.

5 THE COURT: Where did you receive the document from?
6 You said it was produced this morning.

7 MR. BARELLA: We received it from the union's counsel
8 in response to a subpoena for records that we served on them.

9 MR. YOKICH: The subpoena was returnable today, your
10 Honor, so we returned it on today.

11 THE COURT: Okay.

12 Show it to opposing counsel, and then you can ask the
13 witness about it. You can always supplement and give me a
14 copy after the hearing.

15 MR. BARELLA: Thank you, your Honor.

16 THE COURT: Or I will take that one if it is
17 admitted, and you can get copies.

18 MR. BARELLA: Your Honor, may I approach?

19 THE COURT: You may.

20 (Document tendered.)

21 BY THE WITNESS:

22 A. Thank you.

23 BY MR. BARELLA:

24 Q. Mr. Shubert, I've handed you what we've marked for
25 identification as Respondent's Exhibit 10.

1 Can you take a look at the document and tell me if
2 you recognize what it is.

3 A. Yes. These are the monthly meeting attendance records for
4 January 13th, 2013, through September 9th, 2013.

5 Q. And, Mr. Shubert, are those true and accurate copies of
6 the union's attendance records from the monthly meetings that
7 occurred between the months January, 2013, through September,
8 2013?

9 A. Yes, they are.

10 Q. And are they maintained by the union in the fashion that
11 you testified on direct with respect to the previous
12 attendance logs that were shown to you in the course of your
13 direct examination?

14 A. Yes, they are.

15 MR. BARELLA: Your Honor, we move for the admission
16 of Group Exhibit 10 and would certainly make copies and
17 provide them for the Court and opposing counsel at a break.

18 THE COURT: Any objection to the admission?

19 MS. HENSEL: No objection.

20 THE COURT: They are admitted.

21 (Respondent's Exhibit No. 10 received in evidence.)

22 BY MR. BARELLA:

23 Q. Mr. Shubert, take a look at the document that's in front
24 of you, Respondent's 10, the first page.

25 It's true, isn't it, sir, that at the January 13,

1 2013, regular monthly meeting, only four employees from
2 Arlington Metals attended that meeting, correct?

3 A. That's correct.

4 Q. And at the February 10 meeting, 2013, four employees from
5 Arlington Metals attended, correct?

6 A. That's correct.

7 Q. The March 10, 2013, meeting, five employees attended from
8 Arlington Metals, correct?

9 A. I think it's six.

10 Q. You see six?

11 A. I believe it's six.

12 Q. Sir, the March 10, 2013, monthly meeting attendance log,
13 there were five Arlington Metals employees who attended that
14 meeting, correct?

15 A. That's correct.

16 Q. And the April 14, 2013, meeting attendance log reflects
17 that five Arlington Metals employees attended?

18 A. No, it only reflects four.

19 Q. Four. That's right.

20 And there's another name on that particular meeting
21 log that is indicated that that person is staff?

22 Do you see that?

23 A. That's correct.

24 Q. Who is that person? Can you tell me who the name is?

25 A. Esther Foster.

1 Q. Esther Foster is not an employee of Arlington Metals, is
2 she?

3 A. No, she is not.

4 Q. Take a look at the next page of the exhibit, May 5, 2013.
5 The union's attendance logs reflect that zero employees from
6 Arlington Metals attended that monthly meeting, correct?

7 A. That's correct.

8 Q. And the meeting that was held June 9, 2013, three
9 Arlington Metals employees attended that meeting, correct,
10 sir?

11 A. That's correct.

12 Q. The meeting that was held August 11, 2013, five Arlington
13 Metals employees attended, correct, sir?

14 A. Yes.

15 Q. And, then, last page of the exhibit, the meeting that was
16 held September 9, 2013, three Arlington Metals employees
17 attended that meeting, correct?

18 A. Yes.

19 Q. Mr. Shubert, in connection with the NLRB litigation
20 concerning the union's unfair labor practice charges in this
21 case, the union was served with a subpoena for records prior
22 to the hearing before the administrative law judge, correct?

23 A. I'm not sure.

24 Q. Okay.

25 Well, as the president of the local union, did you

1 have a role in gathering documents for your counsel to respond
2 to a subpoena in connection with that NLRB litigation?

3 A. Yes, I did.

4 Q. Okay.

5 And did you gather all the documents that you were
6 asked to gather and provide them to your counsel in order that
7 the union's attorney could respond to a subpoena issued by the
8 company?

9 MR. YOKICH: Excuse me, your Honor, but the first
10 question in this line asked Mr. Shubert about a union-served
11 subpoena, and I think it might have confused him.

12 THE COURT: Why don't you --

13 MR. BARELLA: I will rephrase the question.

14 THE COURT: -- rephrase your question.

15 BY MR. BARELLA:

16 Q. Mr. Shubert --

17 THE COURT: And that is active participation. It is
18 not a privilege issue. You can communicate with counsel.

19 BY MR. BARELLA:

20 Q. Mr. Shubert, did you gather documents to be produced to
21 the company in response to the company's subpoena to the union
22 in connection with the NLRB litigation in this case?

23 MS. HENSEL: Your Honor, what's -- I'm going to
24 object to the relevance here. I have no idea what a subpoena
25 in the ULP trial has to do with what we're doing here today.

1 MR. BARELLA: Your Honor, these attendance logs and
2 meeting minutes, we're seeing them for the first time today.
3 And they were responsive to subpoenas we served on the union
4 in connection with the NLRB litigation. So, I think it goes
5 to the authenticity of the documents themselves and, frankly,
6 the credibility of the union in responding to claims in this
7 case.

8 THE COURT: The documents that were just admitted
9 under Respondent's 10 or the earlier documents we're seeing?

10 MR. BARELLA: All of the documents that were admitted
11 during the direct examination and as part of Respondent's 10
12 that comprise the union's attendance logs and meeting minutes
13 were produced to us -- we're seeing them for the first time
14 this morning. And we maintain that they should have been
15 produced months earlier in response to a subpoena that was
16 served on the union --

17 THE COURT: It is cross-examination.

18 MR. BARELLA: -- in connection with Board litigation.

19 THE COURT: I will give you leeway and determine the
20 relevance of it.

21 You may answer, if you can, sir.

22 BY THE WITNESS:

23 A. I'm sorry, can you repeat the question?

24 MR. BARELLA: I can restate it.

25 THE COURT: Do you want it read back?

1 MR. BARELLA: No.

2 THE COURT: Do you want to restate it or --

3 MR. BARELLA: I'll go ahead and restate state it.

4 BY MR. BARELLA:

5 Q. Mr. Shubert, you participated in gathering documents on
6 behalf of the union to respond to subpoenas that the company
7 served on the union during the litigation before the NLRB in
8 this matter, correct?

9 A. Yes.

10 Q. And you understood that it was important for you to be
11 accurate and complete in gathering the documents that were
12 responsive to the company's subpoena?

13 A. I provided everything asked for.

14 Q. Okay.

15 But you did not provide copies of these meeting
16 minutes and these attendance logs to be produced to the
17 company in connection with the NLRB litigation, did you?

18 A. These were requested within the last few days.

19 Q. Okay.

20 And my question is: During the course of the
21 preparation and in the weeks leading up to the NLRB trial that
22 occurred in April, 2015, you did not gather and produce
23 attendance logs and meeting minutes from the union's monthly
24 meetings to be produced to the company in response to its
25 subpoenas, did you?

1 A. I was not asked to; no.

2 Q. Okay.

3 Mr. Shubert, do you still have plaintiff's -- or
4 Petitioner's -- Exhibit 3 in front of you?

5 A. Yes.

6 Q. Could you take a look at that document, sir?

7 A. Just to make sure, is this the affidavit?

8 MR. BARELLA: Strike that.

9 BY MR. BARELLA:

10 Q. I meant Petitioner's Exhibit 2. I'm sorry.

11 (Brief pause.)

12 BY MR. BARELLA:

13 Q. Do you have Petitioner's Exhibit 2 in front of you?

14 A. Yes, I do.

15 Q. This is not in the respondent's exhibit binder. This is
16 the document, the one-page certification of representative.

17 Are the petitioner's exhibits still in front of you?

18 A. I have your book.

19 THE COURT: I do not think he ever received hard
20 copies of petitioner's. They just showed them online. I have
21 Petitioner's 2 if that is what you want him to see. He can
22 look at mine.

23 MR. BARELLA: May I approach?

24 THE COURT: You may.

25 MR. BARELLA: I can bring up my copy.

1 (Document tendered.)

2 BY MR. BARELLA:

3 Q. Do you now have Petitioner's Exhibit 2 in front of you,
4 Mr. Shubert?

5 A. Yes, I do.

6 Q. You testified on direct that this was the certification of
7 the results of the decertification election that occurred in
8 2012.

9 Do you recall that testimony?

10 A. That's correct.

11 Q. And I believe you testified on direct that the results of
12 that election were that the union was recertified as the
13 bargaining agent, correct?

14 A. That's correct.

15 Q. That election was a secret-ballot election, right, sir?

16 A. Yes, it was.

17 Q. So, you don't know who voted in the election, do you?

18 A. No, I do not.

19 Q. And you certainly don't know how any particular employee
20 at Arlington Metals voted, do you?

21 A. No, I do not.

22 Q. And you have no knowledge why any particular employee at
23 Arlington Metals would have cast a vote either for or against
24 the union in that election; do you, sir?

25 A. I'm sorry, could you repeat that one more time?

1 Q. You have no personal knowledge as to why any individual
2 who may have voted in that election voted one way or another,
3 for or against the union, do you?

4 A. I believe that would be correct.

5 MR. BARELLA: Your Honor, may I approach, again?

6 THE COURT: You may.

7 (Document tendered.)

8 BY MR. BARELLA:

9 Q. Mr. Shubert, I've handed you Petitioner's Exhibit 3.

10 You testified on direct examination that this was a
11 notification the union mailed to each member's house in
12 English and Polish announcing a special meeting among
13 Arlington members' employees to be held September 29, 2013,
14 correct, sir?

15 A. That's correct.

16 Q. It's true, isn't it that you did not -- the union did not
17 -- mail Petitioner's Exhibit 3 to every employee in the
18 bargaining unit at Arlington Metals, did you?

19 A. We mailed to everybody on our census list.

20 Q. You only mailed to the Arlington Metals employees who were
21 members in good standing of the union, didn't you?

22 A. I believe -- I believe -- my secretary may have mailed it
23 to everybody on the census list.

24 Q. Did you mail this letter out personally to individuals
25 from Arlington Metals?

1 A. No. I created it. My secretary sent it out.

2 Q. Okay.

3 You wrote the document, correct, sir?

4 A. Yes.

5 Q. And, then, you gave it to your secretary?

6 A. Yes.

7 Q. And you told her to mail it out to the Arlington Metals
8 employees?

9 A. From the census list she had, yes.

10 Q. From the census list?

11 A. Uh-huh.

12 Q. And where does the census list come from? That comes from
13 the company, correct, sir?

14 A. Yes. Those were through the information requests the
15 union had made for that information.

16 Q. Okay.

17 But you didn't actually send the letter yourself?

18 A. I did not send it myself.

19 Q. So, you don't know who among the employee group are
20 Arlington Metals your secretary actually mailed it to?

21 A. I do not know personally myself, no.

22 Q. So, if she only mailed it to the employees at Arlington
23 Metals who were at that time members in good standing of the
24 union, you would have no way of knowing that, correct, sir?

25 A. That would be correct.

1 MR. BARELLA: Your Honor, may I approach, again?

2 THE COURT: You may.

3 (Document tendered.)

4 THE COURT: What did you just hand the witness,
5 Mr. Barella?

6 MR. BARELLA: I just handed the witness, your Honor,
7 Petitioner's Exhibit 5A through H.

8 THE COURT: Okay.

9 MR. BARELLA: And I have asked petitioner's counsel
10 if she could show that on the screen so that we can all read
11 along.

12 BY MR. BARELLA:

13 Q. Mr. Shubert, I've handed you Petitioner's Exhibit 5A
14 through H. And you offered some testimony on direct wherein
15 you explained that these were authorization cards you received
16 from six Arlington Metals employees who attended the February
17 29, 2013, union meeting.

18 Do you recall that testimony, sir?

19 A. Yes, I do.

20 Q. You testified that you took these cards to the employees
21 who were seated in the union hall and you told them to sign
22 the cards.

23 Do you recall that testimony, sir?

24 A. That's correct. I asked them to sign the cards.

25 Q. And they did sign the cards, right?

1 A. They did.

2 Q. They needed to sign those cards, sir, in order to be
3 admitted into the meeting; isn't that true?

4 A. That is true.

5 Q. And they needed to sign those cards in order to be
6 permitted to vote on the contract that was going to be
7 presented for the membership's consideration at that meeting;
8 isn't that true, sir?

9 A. That's true.

10 Q. Take a look at Petitioner's Exhibit 5A, the first page on
11 the document.

12 Do you have that in front of you --

13 A. I do.

14 Q. -- Mr. Shubert?

15 Do you have Petitioner's 5A in front of you?

16 A. Yes, I do.

17 Q. This was the authorization card that you gave to Andres
18 Coronel at the September 29, 2013, monthly meeting?

19 A. That's correct.

20 Q. And you asked him to sign it?

21 A. Yes.

22 Q. And you testified on direct that you witnessed him sign
23 the card, correct, sir?

24 A. That's correct.

25 Q. Take a look at the last line on the authorization card.

1 Do you see that?

2 A. Yes.

3 Q. There's a line that says "Witness" and then a blank line
4 there and "E-Mail Address" and a blank line there.

5 Do you see that?

6 A. I do.

7 Q. Okay.

8 You didn't sign the card to witness the signature,
9 did you?

10 A. No, I did not.

11 Q. And you testified these were important records to the
12 union, correct?

13 A. That's right.

14 Q. You use them in order to maintain or secure representative
15 status of employees, don't you?

16 A. That's correct.

17 Q. And this is how you determine who gets to vote in union
18 elections?

19 A. Correct.

20 Q. Correct?

21 A. That's correct.

22 Q. And this is how you determine who gets to vote on
23 contracts, correct?

24 A. Yes.

25 Q. And the card itself asks for a signature and a witness,

1 correct?

2 A. It does.

3 Q. You didn't witness -- you didn't sign indicating that you
4 witnessed any of the other signatures among the employees who
5 signed the cards that are reflected at Petitioner's Exhibit 5,
6 did you?

7 A. I did not.

8 Q. In fact, take a look at the last of the cards, which
9 applies to employee Casey Waz. It's Petitioner's Exhibit 5H.

10 Do you have that in front of you?

11 A. I do.

12 Q. That card's not even signed by Mr. Waz, is it?

13 A. It is not.

14 Q. Mr. Shubert, you testified on direct that you read the
15 words on the back of the authorization cards to the employees
16 when you asked them to sign.

17 Is that true?

18 A. I did not read the cards word for word, no.

19 Q. Okay.

20 But you explained to them that the cards gave them
21 the right under federal law to organize and join the
22 Steelworkers union, correct?

23 A. Yes.

24 Q. You did not explain to the employees at that time that
25 they had a right under federal law to choose not to join the

1 Steelworkers union, did you?

2 A. I did not.

3 Q. Mr. Shubert, Petitioner's Exhibit 5D is the card that was
4 signed by Arlington Metals employee Brandon DeLaCruz. Could
5 you take a look at that document?

6 A. Yes.

7 Q. You witnessed Mr. DeLaCruz sign the document, correct?

8 A. Yes, I did.

9 Q. But you did not sign the line marked for a witness
10 certification, correct?

11 A. That's correct.

12 Q. And you have no idea the reason why Mr. DeLaCruz may have
13 signed that document, do you?

14 A. It was my understanding he wanted to be part of the
15 organization.

16 Q. And your understanding is based solely on your -- I think
17 you testified it was your -- understanding, your assumption
18 that that's why somebody signs a card, correct, sir?

19 A. That and the willingness to participate.

20 Q. So, you don't know whether or not Mr. DeLaCruz signed the
21 card just to be admitted to the meeting, do you?

22 A. I do not.

23 Q. During the meeting, when the union presented the final
24 implemented proposal to employees for them to vote on, the
25 union didn't actually show employees the physical copy of the

1 implemented terms, did you?

2 A. Yes. We had copies there.

3 Q. You had copies there?

4 A. Yes. That's what we had to review off of.

5 Q. Did you present them -- you didn't present them to the
6 employees, did you?

7 A. I don't believe we handed out individual copies. I think
8 they were handed out previously, during the company's first
9 initial implementation. Nothing changed.

10 Q. Okay.

11 Mr. Shubert, my question relates to the September 29,
12 2013, meeting. You did not pass out copies of the implemented
13 terms you were asking employees to vote on at that meeting,
14 did you?

15 A. No. We reviewed them orally.

16 MR. BARELLA: Could you repeat the witness' answer?
17 I didn't hear it.

18 BY THE WITNESS:

19 A. We reviewed them orally. I reviewed them orally.

20 BY MR. BARELLA:

21 Q. Mr. Shubert, you testified on direct about the regular
22 monthly meeting that the union held with employees on December
23 15, 2013.

24 Do you recall that testimony?

25 A. Yes, I do.

1 Q. You said you explained to employees at that meeting what
2 had occurred during the December 11 bargaining meeting with
3 Arlington Metals, right?

4 A. That's correct.

5 Q. And at one point in the meeting, you said employee Brandon
6 DeLaCruz asked you questions about right to work.

7 Do you recall that testimony?

8 A. I do.

9 Q. And you explained to Mr. DeLaCruz what you believed "right
10 to work" meant, right?

11 A. Yes.

12 Q. You told him that it was a means to diminish the union's
13 ability to represent the people, correct?

14 A. Yes, from an economic standpoint.

15 Q. Right.

16 So, you didn't explain to Mr. DeLaCruz that right to
17 work is a concept that arises under state law, did you?

18 A. I think the documents he had contained that.

19 Q. Okay.

20 You didn't explain to Mr. DeLaCruz, when you were
21 answering his questions, that right to work is a concept that
22 arises under state law, did you?

23 A. I did not.

24 Q. And that right to work under state law means that a union
25 cannot bargain what's called a union security clause in a

1 collective bargaining agreement, correct?

2 A. In a right-to-work state, yes.

3 Q. And you didn't explain that to Mr. DeLaCruz, did you?

4 A. I did explain that Illinois was not a right-to-work state.

5 Q. Okay.

6 You didn't explain to Mr. DeLaCruz that one of the
7 union's proposals to Arlington Metals in collective bargaining
8 was for a union security clause in the collective bargaining
9 agreement, did you?

10 A. I don't think I covered the non-economic portions of the
11 contract. I covered the economic portions, other than, as I
12 testified to, the grievance procedure, safety committee.

13 Q. My question to you, sir, is: When you spoke with
14 Mr. DeLaCruz and answered his questions about what "right to
15 work" meant, you did not explain to him that the union was
16 proposing and insisting on the very contract provision that
17 would not be allowed under state laws that have adopted
18 right-to-work legislation, did you?

19 A. I did not have that conversation, no.

20 MR. BARELLA: Your Honor, may I approach?

21 THE COURT: You may.

22 (Document tendered.)

23 THE COURT: Do you have a sense, Mr. Barella, of how
24 much longer you have? I am only trying to gauge if we can
25 finish Mr. Shubert before lunch.

1 MR. BARELLA: Not much longer. I think I have
2 probably got five minutes at the most.

3 THE COURT: That is fine. Keep going.

4 BY MR. BARELLA:

5 Q. Mr. Shubert, I've handed you Petitioner's Exhibit 13.

6 I believe you testified on direct that these were the
7 attendance logs pertaining to the May 18, 2014, monthly
8 meeting where the union took an advisory ratification vote on
9 the company's implemented terms, correct, sir?

10 A. That's correct.

11 Q. The first name on the list on Petitioner's Exhibit 13, can
12 you read that?

13 A. Yes. That's Ziggy Symanski.

14 Q. Mr. Symanski was not an Arlington Metals employee in May
15 of 2014, was he?

16 A. I'm not sure.

17 Q. Mr. Symanski, in fact, had gone out on layoff in December,
18 2012, and terminated employment a year later, December, 2013,
19 correct, sir?

20 A. It could be, yes.

21 Q. And yet it's your testimony that the union took an
22 advisory ratification vote on a contract at this meeting in
23 which it accepted a vote from an individual who wasn't even an
24 employee at the facility, correct, sir?

25 A. That is correct.

1 Q. Mr. Shubert, you testified on direct examination about an
2 employee -- I'm not sure I got his name right. I think you
3 said it was Antoni -- is it Golik?

4 A. It's Golik.

5 Q. Do you know how to spell his last name?

6 A. G-o-l-i-c-k.

7 Q. Okay. Golik.

8 And I think you testified that he attended collective
9 bargaining meetings on behalf of the union with Arlington
10 Metals in October and December of 2013, correct?

11 A. That's correct.

12 Q. And he may have attended earlier bargaining meetings; you
13 just can't remember today?

14 A. He cycled in and out of them earlier, yes.

15 Q. Okay.

16 But he was an Arlington Metals employee from the
17 union's initial certification in October of 2007, right, sir?

18 A. That's correct.

19 Q. And Mr. Golik was a Polish -- is Polish speaking, correct,
20 sir?

21 A. He does speak Polish, yes.

22 Q. In order to communicate with Mr. Golik, you had to work
23 through a translator; is that right, sir?

24 A. For in-depth conversation, yes. He did have some English
25 knowledge.

1 Q. And I believe you testified -- I just want to be clear --
2 that at some point Mr. Golik stopped returning calls from you,
3 correct?

4 A. Not from me. From my translator Cornelia Fudala and the
5 other leaders inside the plant.

6 Q. Okay.

7 So, you never attempted to call Mr. Golik yourself,
8 right, sir?

9 A. That's correct.

10 Q. But you asked translators to do that on your behalf?

11 A. That's correct.

12 Q. And at some point, Mr. Golik stopped returning the calls
13 they were making on your behalf?

14 A. I don't believe he ever returned any.

15 Q. Okay.

16 You have no knowledge, sir, as to why he was not
17 responsive to those calls, do you?

18 A. Only what's been communicated to me through our
19 leadership.

20 Q. Through who?

21 A. Through our workers at the plant, our leadership in the
22 plant, our supporters in the plant.

23 Q. You have no personal knowledge as to why Mr. Golik stopped
24 returning calls that were made on your behalf?

25 A. I do not.

1 Q. You never spoke to him about it?

2 A. I did not.

3 Q. Okay.

4 MR. BARELLA: Could I just have one minute, your
5 Honor?

6 THE COURT: You may. Of course.

7 (Brief pause.)

8 MR. BARELLA: No further questions at this time.

9 I'm happy to leave our copies of the exhibits up at
10 the table, but I'll need to get them back at some point --

11 THE COURT: Sure.

12 MR. BARELLA: -- because they're our only copies.

13 THE COURT: Let's see if there is redirect.

14 Ms. Hensel, do you have redirect?

15 MS. HENSEL: Just a few questions, your Honor.

16 THE COURT: Okay.

17 Let's see if we can do redirect and any recross
18 before lunch, and that way we can finish Mr. Shubert before
19 the lunch break.

20 MR. BARELLA: Thank you.

21 THE COURT: Thank you.

22 REDIRECT EXAMINATION

23 BY MS. HENSEL:

24 Q. Mr. Shubert, much was made on cross-examination of a Mark
25 Zachara's decision not to support the union anymore back in

1 around 2009. There were some special circumstances
2 surrounding his unhappiness with being union in 2009, weren't
3 there?

4 A. Yes, there were.

5 Q. What were those circumstances?

6 A. Mr. Zachara was upset with the new job assignments -- his
7 new job responsibilities -- with having to clean the washrooms
8 every morning. Mr. Zachara felt that he was being harassed
9 and intimidated by the management at Arlington Metals. And
10 through repeated attempts to try to address those issues, he
11 became frustrated with what was happening and felt like he was
12 a target.

13 MR. BARELLA: Your Honor, I'd like to object to the
14 testimony that was just provided. I'm not sure it was
15 responsive to the question, but what came out was a hearsay
16 statement that cannot be accepted, we submit, for the truth of
17 the matters asserted.

18 THE COURT: Sustained.

19 You will have to lay a foundation and see if you can
20 come in with -- if you are offering it for the truth, which is
21 what I think you are offering it for -- some basis to get
22 around hearsay.

23 BY MS. HENSEL:

24 Q. Well, let me -- Mr. Shubert, was there an unfair labor
25 practice charge filed with the NLRB on Mr. Zachara's behalf?

1 A. Yes, there was.

2 Q. All right.

3 And what did that ULP charge allege?

4 A. That charge alleged unfair treatment towards a union
5 representative.

6 Q. Okay.

7 MR. BARELLA: Your Honor, same objection. It's still
8 hearsay at this point.

9 THE COURT: Identify a foundation for it -- how he
10 knows this -- which will help me determine if it is hearsay.
11 I do not know if somebody told him this. I do not know if he
12 read something.

13 MS. HENSEL: Okay.

14 THE COURT: So, lay a little more foundation so I can
15 address the objection.

16 MS. HENSEL: I can do that, your Honor.

17 The ULP charge is a part of the administrative record
18 that is already filed with the Court, and it's an official
19 government document.

20 THE COURT: But the objection was hearsay. I do not
21 know how Mr. Shubert knows this information, if he knows it
22 because somebody told him or if he knows it because he has
23 read an official court document, which will dictate the
24 ruling.

25 MS. HENSEL: I understand.

1 BY MS. HENSEL:

2 Q. Mr. Shubert, so, the union did file an unfair labor
3 practice charge, right?

4 A. Yes, we did.

5 Q. Okay.

6 What did the union base the filing of the charge on?

7 A. Mr. Zachara's repeated complaints.

8 Q. And who did he complain to?

9 A. He complained to myself, Mr. Gibbons and Mr. Gudino.

10 Q. And did the union promise to take action on his
11 complaints?

12 A. Yes, they did. Mr. Gudino filed charges.

13 Q. Okay.

14 Was that charge resolved then?

15 A. I believe so.

16 Q. Okay.

17 How was it resolved?

18 MR. BARELLA: Objection. Lack of foundation.

19 THE COURT: Sustained.

20 BY MS. HENSEL:

21 Q. Did you receive notice from the National Labor Relations
22 Board about a resolution of the charge involving Mr. Zachara?

23 A. I received copies through my sub-district director José
24 Gudino.

25 Q. Okay.

1 And why did you receive copies?

2 A. As a local union president.

3 Q. Okay.

4 And what did you receive copies of?

5 A. The results from the investigation from the NLRB.

6 Q. Okay.

7 What was the result?

8 MR. BARELLA: Objection, your Honor. He's testifying
9 about a document that we don't have in front of us, that he
10 hasn't identified; and, I don't think it's proper. I don't
11 think there's been a foundation laid as to what the document
12 is. And it is an out-of-court statement in and of itself.

13 Beyond that, I understand that counsel has said it's
14 part of the administrative record already. So --

15 THE COURT: Lay a little more foundation.

16 Sustained.

17 BY MS. HENSEL:

18 Q. The union filed an unfair labor practice charge on
19 Mr. Zachara's behalf; is that correct?

20 A. That's correct.

21 Q. To your knowledge, as union president, did the NLRB
22 resolve those charges?

23 A. I believe they did.

24 Q. How were the charges -- how was the charge with regard to
25 Mr. Zachara resolved?

1 MR. BARELLA: Objection, your Honor. Same objection.

2 THE COURT: Overruled.

3 You may answer, if you can.

4 And I understand your objection.

5 BY THE WITNESS:

6 A. I'm not sure -- I don't remember. It's been a long time.

7 BY MS. HENSEL:

8 Q. Okay.

9 So, you're unaware if there was a settlement
10 agreement or if the charge was dismissed or if a complaint
11 issued?

12 MR. BARELLA: Objection. Leading.

13 THE COURT: Sustained.

14 And he said he did not remember.

15 THE WITNESS: I didn't remember.

16 BY MS. HENSEL:

17 Q. What complaints did Mr. Zachara make to you personally
18 that led the union to consider filing a ULP charge?

19 MR. BARELLA: Objection. Hearsay.

20 THE COURT: What are you offering these for?

21 MS. HENSEL: I'm offering it for what led -- I'm not
22 offering it for its truth, but what led the union to file the
23 ULP charge.

24 THE COURT: Then that is a different question. You
25 do not need to elicit all of the detail, and that would be

1 hearsay.

2 If you want to elicit that they filed a charge after
3 talking with him, that is one thing. But to try to get
4 everything in through the back door which you cannot get in
5 the front door does not work.

6 BY MS. HENSEL:

7 Q. Okay. So, let's return to -- you did file a ULP -- the
8 union, I should say, filed a ULP -- on behalf of Mr. Zachara?

9 A. That's correct.

10 Q. Why did you file that charge?

11 A. At the request of Mr. Zachara. He felt he was being
12 singled out because of his activities as a union leader. And
13 he started beginning to become disenfranchised with the
14 process.

15 MR. BARELLA: Objection, your Honor. Move to strike
16 the last answer.

17 THE COURT: I will strike it. It is hearsay.

18 (Brief pause.)

19 BY MS. HENSEL:

20 Q. Let's move on for a moment, Mr. Shubert.

21 With regard to Respondent's Exhibit 10, which they
22 provided, the January, 2013, through September 9, 2013,
23 membership sign-in lists --

24 A. Yes.

25 Q. -- between -- during that period, January, 2013, to

1 September 9, 2013, what, if anything, was occurring regarding
2 bargaining between the union and Arlington Metals?

3 A. I'm sorry, I didn't hear you.

4 Q. What, if anything, was occurring during that time period
5 with regard to bargaining between the union and Arlington
6 Metals?

7 A. There were no bargaining sessions. We were awaiting
8 disposition of the previous ULPs that were filed.

9 Q. Okay.

10 There were no scheduled bargaining sessions. Did the
11 union attempt to schedule bargaining sessions?

12 A. From January 13th, 2013, through --

13 Q. What was the reason there was no bargaining going on
14 during that period?

15 A. Because the company --

16 MR. BARELLA: Objection, your Honor.

17 BY THE WITNESS:

18 A. -- claimed we were at impasse and refused to bargain.

19 MR. BARELLA: Objection. The question was what the
20 reason there was no bargaining, and he started to answer on
21 behalf of the company; and, I don't think he can do that.

22 THE COURT: Sustained.

23 There is no foundation for him to answer on behalf of
24 the company.

25 BY MS. HENSEL:

1 Q. What, from the union's perspective -- why, from your
2 perspective, was there no bargaining going on during this
3 period?

4 A. Because the company refused to meet, claiming we were at
5 impasse.

6 MR. BARELLA: Objection. Move to strike the last
7 answer as improper opinion, your Honor.

8 THE COURT: I will accept it as his opinion.

9 BY MS. HENSEL:

10 Q. And, Mr. Shubert, with regard to the low turnout at the
11 September, 2013, meeting, this document is encompassed in
12 Respondent's Exhibit 10, did that meeting occur very shortly
13 after the special meeting that the union had called in August,
14 2013?

15 MS. HENSEL: I'm -- you know, strike that.

16 BY THE WITNESS:

17 A. The special meeting was conducted --

18 BY MS. HENSEL:

19 Q. Right, was September 29th.

20 A. -- September 29th.

21 MS. HENSEL: I apologize. Strike that.

22 BY MS. HENSEL:

23 Q. As of the September, 2013, general membership meeting, was
24 the bargaining unit aware -- had the union made the bargaining
25 unit aware in any form of the settlement that had been

1 reached?

2 A. I don't believe so.

3 Q. So, the bargaining unit was unaware that there was
4 something to come listen to?

5 MR. BARELLA: Objection.

6 THE COURT: Sustained. Calls for speculation.

7 BY MS. HENSEL:

8 Q. Regarding the notice -- the September 29th meeting
9 notice -- that was sent out, you said that your assistant
10 mailed out those notices. What did you instruct her to use to
11 mail out the meeting notice?

12 A. I asked her to send out the current census she possessed,
13 send out to all members on the census list.

14 Q. Did you provide her with that census list?

15 A. I did not.

16 Q. To your knowledge, does she maintain a copy of the census
17 list?

18 A. Yes, she does.

19 Q. Do you have any idea how current the census list was that
20 she maintained?

21 MR. BARELLA: Objection.

22 BY THE WITNESS:

23 A. I do not.

24 THE COURT: The answer can stand. He does not.

25 MS. HENSEL: Okay.

1 BY MS. HENSEL:

2 Q. Mr. Shubert, did you also maintain a copy of Arlington
3 Metals' census?

4 A. I had a copy of the census.

5 Q. Okay.

6 Do you know when you received that census?

7 A. I don't believe it was the most current one. I don't know
8 the date on it. Those information requests went through José
9 Gudino.

10 Q. All right.

11 Now, do you know whether or not the census that you
12 had included the names of all of these individuals who showed
13 up for the meeting and signed cards?

14 MR. BARELLA: Objection to relevance. He's testified
15 that he had his assistant send it out; that she used a census
16 list. He's not aware which one. And, so, I don't know why
17 questions about the list he may or may not have, have any
18 bearing.

19 THE COURT: What is the relevance?

20 MS. HENSEL: Well, the rel- --

21 BY MS. HENSEL:

22 Q. Mr. Shubert, do you --

23 MS. HENSEL: Can I ask one more question --

24 THE COURT: You may.

25 MS. HENSEL: -- to establish this?

1 BY MS. HENSEL:

2 Q. Do you provide your secretary with a copy of the census?

3 A. I do not.

4 Q. All right.

5 Who does?

6 A. José Gudino.

7 Q. José Gudino?

8 A. Yes.

9 Q. Okay.

10 Mr. Shubert, you were asked a number of questions
11 about why you did not explain certain things about right to
12 work to Mr. DeLaCruz and, in particular, asked if you informed
13 Mr. DeLaCruz that the union had proposed a union security
14 clause in bargaining previously.

15 Do you recall this?

16 A. Yes, I do.

17 Q. All right.

18 Mr. Shubert, to your knowledge, had Arlington Metals
19 agreed at some point to include a union security clause in the
20 final collective bargaining agreement?

21 A. Yes, it had.

22 Q. All right.

23 When did that occur?

24 A. Prior to March of 2009.

25 (Brief pause.)

1 BY MS. HENSEL:

2 Q. Mr. Shubert, you were asked questions about member
3 attendance at union meetings back in 2009, and you agreed that
4 an employee -- a reduction had taken place at Arlington
5 Metals.

6 Did you receive any information from Arlington Metals
7 about how many employees that unit included after the
8 reduction in 2009?

9 A. I'm not sure.

10 Q. Did you receive any employee censuses?

11 A. We did request those occasionally.

12 Q. Okay.

13 Do you think you requested one after the -- or did
14 you request one after the reduction in 2009?

15 A. Yes, we did.

16 Q. All right.

17 Do you recall how many employees that census showed
18 were employed at the facility after the reduction?

19 A. I believe it was 24 or 26. Something like that. 24 to
20 26.

21 Q. Now, you were also asked questions about whether or not
22 the union handed out copies of the implemented terms at the
23 September 29th special meeting. Now, these were -- can you
24 explain what these implemented terms were, please?

25 A. These implemented terms were a result of the company

1 claiming that we had reached impasse. They implemented the
2 terms back in January of 2012. The union sent copies out to
3 our members at that time. So, at this meeting I just covered
4 non-economic portions verbally.

5 Q. And at the time of the September 29th, 2013, meeting,
6 these terms had been in place for how long?

7 A. Over a year-and-a-half.

8 MS. HENSEL: I have no further questions, your Honor.

9 THE COURT: Any recross?

10 MR. BARELLA: No, your Honor. Thank you.

11 THE COURT: Thank you, Mr. Shubert. You may step
12 down, sir.

13 (Witness excused.)

14 THE COURT: Let's break for lunch and pick up at 2:00
15 o'clock. We will go for about a half hour then, and then I
16 will have to break for my conference call and we will pick
17 back up.

18 So, 2:00 o'clock, please.

19 (A recess was taken at 12:52 o'clock p.m., until 2:00
20 o'clock p.m., of the same afternoon.)

21 * * * * *

22

23 I certify that the foregoing is a correct transcript from the
24 record of proceedings in the above-entitled matter.

25 /s/ Joseph Rickhoff
Official Court Reporter

November 20, 2015

1 APPEARANCES (Cont'd):

2 Also Present: MS. AGATHA ANNA FEDULOW,
3 Polish Interpreter

4 Court Reporter: MR. JOSEPH RICKHOFF
5 Official Court Reporter
6 219 S. Dearborn St., Suite 1232
7 Chicago, Illinois 60604
8 (312) 435-5562

9 * * * * *

10 PROCEEDINGS RECORDED BY
11 MECHANICAL STENOGRAPHY
12 TRANSCRIPT PRODUCED BY COMPUTER
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1 (Proceedings had in open court:)

2 THE COURT: Ready?

3 MR. MIOSSI: Yes, your Honor.

4 One housekeeping matter. I think we owe you a copy
5 of Respondent's 10.

6 THE COURT: Yes, please.

7 MR. MIOSSI: I'll hand it up.

8 THE COURT: Hand it to LT and he will get it to me.

9 (Document tendered to the Court.)

10 MR. MIOSSI: Arlington Metals calls Brandon DeLaCruz,
11 please.

12 THE COURT: Please come forward, sir.

13 BRANDON DELACRUZ, RESPONDENT'S WITNESS, SWORN

14 MR. MIOSSI: I'm going to move over here so you can
15 see me and I can see you.

16 THE COURT: Whenever you are ready.

17 MR. MIOSSI: Thank you.

18 DIRECT EXAMINATION

19 BY MR. MIOSSI:

20 Q. Please state your name.

21 A. Brandon DeLaCruz.

22 Q. Who are you employed by?

23 A. Arlington Metals.

24 Q. What's your job?

25 A. Right now I am a setup operation.

1 Q. I apologize. What?

2 A. Setup operations.

3 Q. How long have you been employed at Arlington Metals?

4 A. For about four years now.

5 Q. Can I ask you to look at the binder that's right in front
6 of you at Tab No. 1, please. And that is Respondent's Exhibit
7 No. 1.

8 MR. MIOSSI: Which is the same thing as Petitioner's
9 Exhibit 17, your Honor.

10 BY MR. MIOSSI:

11 Q. Mr. DeLaCruz, do you recognize that document?

12 A. I'm sorry, what did you say?

13 Q. Do you recognize the document that's marked Respondent's
14 Exhibit No. 1?

15 A. The petition to remove the union?

16 Q. Yes.

17 A. I remember that.

18 Q. Did you have anything to do with preparing that petition?

19 A. I did everything.

20 Q. You did everything?

21 A. Yes.

22 Q. Can you explain what you -- how you went about preparing
23 the document and collecting the signatures that appear on it?

24 A. Well, I went online; started doing my research on the
25 National Right to Work Foundation; looked up their Web site

1 trying to figure out how to decertify the union. Through my
2 efforts and talking to a few individuals, I realized that we
3 did have majority to out the union.

4 So, on July 9th, I copied the petition offline. All
5 I had to do was put my boss' name on it, my name on it and the
6 company's; and, then, I spread the word around that I was
7 going to be taking signatures on that date off the site or off
8 of work, company.

9 I handed out my phone number. I told them if you
10 have anyone, you know anyone, just have them call me. I'm
11 willing to meet them in various locations, wherever they would
12 like to meet. I had people meet me at BP. Some people meet
13 me at my house. I met some people at their houses.

14 Q. Okay.

15 And over what period of time did you go about
16 collecting the signatures on the exhibit, on Respondent's
17 Exhibit No. 1?

18 A. I did that all in one day.

19 Q. One day?

20 A. Yes.

21 Q. Now, in collecting the signatures, did you witness each
22 employee -- let me ask you first, are all the names that
23 appear on that petition employees of Arlington Metals as of
24 July, 2014?

25 A. Yes.

1 Q. And in collecting the signatures, did you personally
2 present the document to each employee for them to consider and
3 sign?

4 A. Yes. I brought up the document. I explained to them what
5 the details were; that if we would get 50 percent or more,
6 we'll be able to take away the recognition from the union and
7 get them out of the shop. If we got 30 percent, if a little
8 higher, we were able to conduct a secret-ballot vote on the
9 union's behalf.

10 Q. Okay.

11 Now, in collecting the signatures, did you witness
12 each person who signed it actually sign the document?

13 A. Yes. I did not let that document leave my hand. I showed
14 them it. I read it to them. I told them if they wanted to
15 sign it -- I read it to them. I told them if they wanted to
16 sign it, they were more than free to sign it; and, if they
17 didn't want to sign it, I will see them tomorrow at work.

18 Q. Did any member of management have anything whatsoever to
19 do with preparing or supporting the employee petition?

20 A. No.

21 Q. Did you seek any guidance from management as to how to go
22 about decertifying the United Steelworkers?

23 A. No.

24 Q. Did anyone from management offer you any benefit or reward
25 for collecting a petition of signatures to decertify the

1 United Steelworkers?

2 A. No.

3 Q. After collecting the signatures on the petition, what did
4 you do?

5 A. After I collected all the signatures and I felt that the
6 majority -- the people that wanted to sign that signed, I went
7 home, relaxed, came to work the next day and waited for Ron.
8 Ron usually comes out of his office with our work gloves every
9 day. I waited until people around me were away from me, and
10 then I handed Ron the document and I asked him to please hand
11 it to Tim, that this was a petition and we have more than 50
12 percent.

13 Q. Who is Ron?

14 A. Ron --

15 Q. The Court doesn't know who Ron is. You have to explain.

16 A. Ron is my supervisor at Arlington Metals.

17 Q. All right.

18 And who is Tim that you're referring to?

19 A. Tim? Tim is my boss.

20 THE COURT: Would you include last names, please.

21 MR. MIOSSI: Yeah.

22 BY MR. MIOSSI:

23 Q. Give Tim's last name.

24 A. Orłowski.

25 Q. And Ron's last name, please?

1 A. I don't know his last name.

2 Q. If I said it's Ron Sowrizol, does that ring a bell?

3 A. Yes.

4 Q. Okay.

5 Why did you go to the effort to collect these
6 employees' signatures for the purpose of decertifying the
7 union?

8 A. My family's pretty much non-union. My old man was a union
9 member. I remember him talking about how he has to pay union
10 dues; how the union never really respected him, listened to
11 him. And that's just not my old man. That's my uncle, too.

12 And now my mom's also -- works for Conway, trucking
13 industry; and, they just had a union ratify in their company,
14 which now the boss has sold the company to foreign people
15 pretty much. I believe it was -- Europe, I think it was. So,
16 Conway Freight now is no longer existing. The whole outfit
17 and everything is gone. I think it was because the owner did
18 not want to deal with the unions --

19 MR. MURPHY: Objection. Speculation. Hearsay.

20 THE COURT: Sustained on speculation.

21 MR. MIOSSI: Okay.

22 BY MR. MIOSSI:

23 Q. Was there any other reason, based upon your personal
24 opinion or personal feeling, why you went to the trouble to
25 collect these signatures on this petition?

1 A. Because I feel I don't need a union.

2 Q. Thank you.

3 Did you threaten anyone to get them to sign the
4 petition?

5 A. No.

6 Q. As you sit here today, Mr. DeLaCruz, do you wish to be
7 represented at Arlington Metals by United Steelworkers?

8 A. No.

9 MR. MIOSSI: I don't know if you can pull it up on
10 your electronic copy. Otherwise, I can go -- I'm looking for
11 Petitioner's Exhibit 5B, please.

12 MS. HENSEL: Let me plug in.

13 MR. MIOSSI: I can go ahead with a paper copy, Judge.

14 THE COURT: That is fine. Go ahead.

15 (Document tendered.)

16 BY MR. MIOSSI:

17 Q. Mr. DeLaCruz, I've given you a document that's marked and
18 is in evidence as Petitioner's Exhibit 5B, as in boy. And I
19 think it contains two pages.

20 Now you've got it in front of you. So, I'll take it.
21 Well, keep it. I don't need it?

22 Do you recognize that document?

23 A. Yes, sir, I do.

24 Q. Is that something that you completed, a document that you
25 filled out in your handwriting?

1 A. Yes, sir.

2 Q. Why did you do that?

3 A. This was when we had to go. And we found out that the
4 union was going to try to ratify a contract, and me and a
5 handful of other members from Arlington Metals attended that
6 meeting to block them. At that certain time, we were pretty
7 much new to the system, I guess, and this was a way for them
8 to give us a vote.

9 Q. All right.

10 In signing or completing the document, Petitioner's
11 Exhibit 5B, did you mean to indicate that you wanted the union
12 to represent you?

13 A. No.

14 Q. Okay.

15 A. I think that's why on the bottom of this page it says,
16 "Are you interested in joining the organization?" and,
17 obviously, my box is marked -- not marked.

18 Q. Okay.

19 Now, after this occasion in September, 2013, did you
20 attend any subsequent meetings that the union sponsored?

21 A. I attended a few meetings, but not in support. Mainly to
22 make sure that there was not going to be any more votes on
23 ratifying the contract or to allow the union in.

24 Q. Thank you.

25 MR. MIOSSI: I have no more questions for Mr.

1 DeLaCruz.

2 THE COURT: Cross-examination.

3 MR. MURPHY: One moment, your Honor.

4 (Brief pause.)

5 CROSS-EXAMINATION

6 BY MR. MURPHY:

7 Q. Good afternoon, Mr. DeLaCruz. My name is Dan Murphy, and
8 I represent the labor board in this proceeding. I'm going to
9 be asking you a couple of questions.

10 Now, when you -- do you recall the day that you
11 arrived at the union hall or the union meeting to sign your
12 card?

13 A. The only thing I remember was that was the same day that
14 they tried to ratify the contract.

15 Q. Okay.

16 A. Besides that, I don't know exact date.

17 Q. Fair enough.

18 That was a Sunday, as far as I know?

19 A. Yes, I believe so.

20 Q. Okay.

21 Did you ask any questions at this meeting?

22 A. Nothing to my knowledge.

23 Q. Did you have any knowledge of what the contract stated?

24 A. No. I didn't understand anything until afterwards.

25 Q. Okay.

1 But you took the time to go to the meeting?

2 A. Yes, I did.

3 Q. And you took the time to sign the card, right?

4 A. Yes.

5 Q. Now, you seem to be a particular sort of fellow. When you
6 presented your petition to employees -- the decertification
7 petition -- you knew what it said, right?

8 A. Yes.

9 Q. And you knew what it meant, right?

10 A. Yes.

11 Q. And you tried to explain it to employees?

12 A. I did explain it to my employees.

13 Q. You did, right?

14 A. I didn't try to explain it to them.

15 Q. You just handed it to them and let them read it?

16 A. No, I read it to them, and then I let them read it while
17 it was still in my hands.

18 Q. Okay.

19 Because you didn't want to let anybody else get their
20 hands on it, right? On the petition?

21 A. Yes.

22 Q. Okay.

23 Now, the same is true for your Petitioner's Exhibit
24 5B, the authorization card. I mean, you read the card, didn't
25 you?

1 A. And that's why I didn't --

2 Q. I didn't ask that question. I said, did you read the
3 card?

4 A. Yes, I read the card.

5 Q. And it says, I'm authorizing these people to represent me,
6 right?

7 A. To me, I didn't think --

8 Q. I didn't ask to you. I said, you read it and signed it,
9 correct?

10 A. Yes, I did.

11 Q. Now, I don't see any mark at the bottom that says you're
12 interested in joining the organizing committee. You didn't
13 mark that, did you?

14 A. No.

15 Q. But you did authorize the union to represent you; did you
16 not?

17 A. I didn't realize that they were going to be representing
18 me.

19 Q. But that's what it says, correct?

20 A. Yeah, I guess so.

21 Q. And you're a particular fellow and you know what your
22 petition said, right?

23 A. Uh-huh.

24 Q. Pardon me?

25 A. Yes.

1 Q. And, so, you knew what this card said, too, right?

2 A. Yes.

3 Q. And you signed it?

4 A. Yes, I did.

5 Q. Okay.

6 And you voted against the contract on that day,
7 right?

8 A. Yes.

9 Q. Okay.

10 And you participated in the meeting enough to vote
11 against a union contract, right?

12 A. I went to one meeting, and that was the same meeting that
13 I voted against it.

14 Q. Well, you went to some more meetings, too, though, didn't
15 you?

16 A. After the rat- -- they tried to ratify the contract.

17 Q. Right, but that was the only meeting that they tried to
18 ratify the contract at, right?

19 A. To my knowledge, all they need is one person to vote. So,
20 I attended just mainly to keep my interests of being a
21 non-union member.

22 Q. So, you were interested in participating in the meetings
23 to the extent of your interests? You wanted to be there?

24 A. No, I didn't.

25 Q. You didn't.

1 You voluntarily went to these meetings on a Sunday,
2 right?

3 A. Yes, I did.

4 Q. And you voluntarily signed the card, right?

5 A. Yes, I did.

6 Q. And you sat through these union meetings for, what? Hour,
7 two hours?

8 A. Half an hour, 20 minutes and I left.

9 Q. To the best of your recollection?

10 A. Yes.

11 Q. Could have been longer?

12 A. Not to my knowledge.

13 Q. All right.

14 How about the December 15th meeting, the -- that
15 would be Petitioner Exhibit No. 10. It should be on your
16 screen there.

17 You were at the December 15th meeting, also, correct?

18 A. I can't -- I guess I was. My signature's there.

19 Q. Oh, okay.

20 So, do you recall what was talked about at that
21 meeting?

22 A. No.

23 Q. You don't?

24 A. No.

25 Q. Okay.

1 Now, how did you find out about these meetings?

2 A. They put a Post-it up in the bathroom.

3 Q. In the bathroom?

4 A. Yes.

5 Q. Have they done that since December 15th, 2013? Has
6 anything been posted in the bathrooms about the union?

7 A. Ever since we took away recognition from the union, there
8 has been no Post-it.

9 Q. So, there's no communication in the plant about the union
10 anymore?

11 A. No.

12 Q. And you're currently, what? You're a setup operator?

13 A. Yes.

14 Q. That's a relatively new position. Under the implemented
15 terms, there wasn't any setup operator. When were you
16 promoted?

17 A. Four months ago.

18 Q. Okay.

19 And the wage rate for that position is, what?

20 A. 16.

21 Q. 16. All right.

22 Now, did you speak to anybody about your testimony
23 today from the company?

24 A. No.

25 Q. No. Okay. Fair enough.

1 Now, I also note that you went to the June 8th
2 meeting just before you filed the petition.

3 You have to -- a "Yes" or "No" on that.

4 A. Yes.

5 Q. And you did.

6 Why did you go to that meeting?

7 A. Because I thought that someone might have known that I was
8 about ready to sign the petition -- or get a petition signed.
9 And like I stated, the union only needs one member to vote for
10 the union to get in. So, I attended that meeting just in case
11 if they try ratify the contract, again, before I get my
12 petition in.

13 Q. Okay.

14 But you did, again, voluntarily show up?

15 A. Yes, I did.

16 Q. And you voluntarily participated in the meeting?

17 A. As a non- --

18 Q. Well, no, you just participated in the meeting. Not as a
19 non anything. You participated, correct?

20 A. I participated, yes.

21 Q. All right.

22 MR. MURPHY: One moment, your Honor.

23 THE COURT: Okay.

24 (Brief pause.)

25 MR. MURPHY: No further questions, your Honor.

1 THE COURT: Redirect?

2 MR. MIOSSI: No, thank you, your Honor.

3 THE COURT: Thank you, sir. You may step down.

4 THE WITNESS: Thank you very much.

5 (Witness excused.)

6 THE COURT: Please call your next witness.

7 MR. MIOSSI: Next witness is Dallas Wright.

8 (Brief pause.)

9 THE COURT: Please come forward, Mr. Wright.

10 DALLAS WRIGHT, RESPONDENT'S WITNESS, SWORN

11 DIRECT EXAMINATION

12 BY MR. MIOSSI:

13 Q. Good afternoon, Mr. Wright.

14 Would you please state your name for the record?

15 A. My name is Dallas Wright.

16 Q. Who do you work for?

17 A. Arlington Metals.

18 Q. How long have you worked there?

19 A. 30-plus.

20 Q. 30-plus years?

21 A. Yeah.

22 Q. What's your job?

23 A. I'm a crane operator.

24 Q. Can I ask you, please, to look at the binder that's right
25 in front of you at Tab No. 1. Just open it up.

1 Do you have that open there?

2 A. Yeah.

3 Q. Okay.

4 Do you recognize that document?

5 A. Yeah.

6 Q. So --

7 A. Petition to remove union.

8 Q. Okay.

9 That's Exhibit -- it's Respondent's Exhibit No. 1?

10 A. Yes.

11 Q. Did you sign that petition?

12 A. Yes.

13 Q. Can I ask you to look at Page 2 of the petition and point
14 out where your signature appears?

15 MR. MURPHY: Your Honor, if I may, Mr. DeLaCruz is
16 still in the courtroom. I don't know whether or not we're
17 going to call him or not as a rebuttal witness. Certainly, he
18 probably shouldn't be here.

19 MR. MIOSSI: I don't have any plan to call him as a
20 rebuttal.

21 MR. MURPHY: Or I may call him.

22 MR. MIOSSI: Oh.

23 THE COURT: He may call --

24 MR. MIOSSI: Oh, I didn't understand.

25 THE COURT: Mr. Murphy may call him.

1 Yes, you should step out, please, then, Mr. DeLaCruz,
2 under the rules.

3 (Brandon DeLaCruz exits courtroom.)

4 BY MR. MIOSSI:

5 Q. Mr. Wright, do you see where your signature appears?

6 A. No.

7 Q. Let me -- you're on the right page. Just a minute.

8 A. Oh, yeah, one more. Right here? It's on the bottom right
9 here.

10 Q. All right.

11 A. And that's -- it's printed and signed.

12 THE COURT REPORTER: Sorry?

13 BY THE WITNESS:

14 A. Printed and signed. I got to print mostly.

15 BY MR. MIOSSI:

16 Q. How did it come about that you signed that petition?

17 A. Well, I didn't want no union and some other guys didn't
18 want no union, so we got together and we put it together.

19 Q. Who presented the petition to you to sign?

20 A. For me to sign?

21 Q. Yeah. Who gave you the -- who gave it to you?

22 A. Nobody I don't think.

23 Q. Do you recall anyone giving you the document --

24 A. No.

25 Q. -- to sign?

1 You don't recall?

2 A. No. Don't recall.

3 Q. Did anyone threaten you that you should sign the document?

4 A. No, sir.

5 Q. Did anyone offer you any reward for signing the document?

6 A. No.

7 Q. Did anyone from management instruct you to sign that
8 document?

9 A. No.

10 Q. Why did you sign the petition to decertify the
11 Steelworkers, Mr. Wright?

12 A. Because I didn't want a union. I don't want to pay dues.

13 Q. I'm sorry, you didn't want to pay dues?

14 A. No.

15 Q. Okay.

16 As you sit here today, do you wish to be represented
17 by the United Steelworkers?

18 A. No, sir.

19 MR. MIOSSI: Thank you. I have no more questions for
20 Mr. Wright.

21 THE COURT: Cross-examination?

22 MR. MURPHY: Just a couple, your Honor.

23 THE COURT: Okay.

24 CROSS-EXAMINATION

25 BY MR. MURPHY:

1 Q. Good afternoon, Mr. Wright.

2 A. Good afternoon.

3 Q. My name's Dan Murphy, and I'm with the National Labor
4 Relations Board. I'm going to ask you a couple of questions,
5 all right?

6 A. Okay.

7 Q. So, you were the petitioner for the decertification
8 petition that was held in 2012, right? I think July?

9 MR. MIOSSI: Your Honor, I object. It's clearly
10 beyond the scope of my direct examination.

11 MR. MURPHY: We've been pretty flexible with respect
12 to questioning, your Honor, especially with my first witness.
13 I can always make him my own witness, but --

14 THE COURT: This was a pretty narrow direct. We were
15 broad --

16 MR. MURPHY: It's going to be narrow.

17 THE COURT: We were broad with Mr. Shubert because he
18 was -- you both had him listed to call and rather than
19 recalling him.

20 MR. MURPHY: As an offer of proof, your Honor, all
21 I'm saying is that this fellow filed the petition and
22 thereafter went to a union meeting. I mean, it's a pretty
23 direct connection.

24 THE COURT: I will give you leeway, but let's not go
25 beyond that.

1 MR. MURPHY: Yes.

2 THE COURT: You can answer the question, sir.

3 Do you need it repeated?

4 THE WITNESS: Yes. Repeat it.

5 MR. MURPHY: Okay.

6 BY MR. MURPHY:

7 Q. So, you filed the petition -- Petitioner's Exhibit No.

8 1 -- in 2011, for an election in 2012, right?

9 You're aware of that petition?

10 A. Yeah. Yes.

11 Q. Right.

12 And you lost that -- you lost that election; the
13 union was certified, right?

14 A. Yeah.

15 Q. Now, after that, in and around December, I believe, 2013,
16 you went to a union meeting about a contract, right?

17 A. I went to a couple of them.

18 Q. Did you?

19 A. Just to see what was going on.

20 Q. So, you were interested in what was going on with the
21 union?

22 A. I was checking out what they was gonna do, talking about.

23 Q. You were interested enough to go to the union meeting on
24 Sunday, right?

25 A. I went two times.

1 Q. Okay.

2 You were interested in what was going on?

3 A. Not really.

4 Q. But you did show up --

5 A. Oh, I was there a couple times, yeah.

6 Q. And you did participate?

7 A. What do you mean?

8 Q. You showed up, you sat down, and you listened?

9 A. Yeah.

10 Q. Okay.

11 Now, you were talking about signing the
12 decertification petition in June -- July of 2014, right?

13 A. '14?

14 Q. Respondent's Exhibit No. 1.

15 Who handed -- who gave you the petition? Do you
16 remember?

17 A. I don't remember.

18 Q. Did it happen in June? Did it happen in May? When did
19 you get --

20 A. It's been so long, I don't remember.

21 Q. You don't remember.

22 You don't remember the circumstances at all?

23 A. No.

24 Q. Okay.

25 But you do recognize your signature; is that it?

1 A. Yeah.

2 Q. But you don't know how it was ever signed?

3 A. No.

4 Q. Fair enough.

5 MR. MURPHY: No further questions.

6 THE COURT: Any redirect?

7 MR. MIOSSI: No, your Honor.

8 THE COURT: Thank you, Mr. Wright. You may step
9 down, sir.

10 (Witness excused.)

11 MR. MIOSSI: The next witness is Ziggy Bajno, and we
12 will require for this witness and the next witness our Polish
13 language interpreter.

14 THE COURT: Before we do that, Mr. Miossi, it is
15 almost 2:30.

16 MR. MIOSSI: Okay.

17 THE COURT: So, I have to step out.

18 Let's pick back up -- I should be done by 3:00.

19 Let's pick back up at 3:00 o'clock. We will take our
20 afternoon break now.

21 MR. MIOSSI: Okay. Thank you.

22 THE COURT: Thank you.

23 (Recess was taken.)

24 THE COURT: Are you ready with your next witness?

25 MR. MIOSSI: We are, your Honor.

1 THE COURT: And you are using an interpreter,
2 correct?

3 MR. MIOSSI: Yes, we are.

4 THE COURT: Okay.

5 MR. MURPHY: Insofar, your Honor, as she's court
6 certified, we have no objection at all. Probably don't even
7 have to go through any of the prerequisites --

8 MR. MIOSSI: Thank you.

9 THE COURT: Thank you.

10 MR. MURPHY: -- to move along.

11 THE COURT: Please come forward, sir.

12 Would the interpreter please state her name?

13 THE WITNESS: My name is Agatha Anna Fedulow,
14 F-e-d-u-l-o-w.

15 THE COURT: Sir, if you would please come over here.

16 ZDZISLOW BAJNO, RESPONDENT'S WITNESS, SWORN

17 (Witness testified through Polish interpreter as follows:)

18 DIRECT EXAMINATION

19 BY MR. MIOSSI:

20 Q. Good afternoon, Mr. Bajno.

21 A. Yes, good afternoon.

22 Q. Please give your name for the Court.

23 A. Zdzislaw Bajno.

24 Q. Would you please spell your last name?

25 A. B-a-j-n-o.

1 Q. Where do you work, Mr. Bajno?

2 A. I work at Arlington Metals Corporation.

3 Q. How long have you worked there?

4 A. 32 years.

5 Q. What is your job?

6 A. I set up machines.

7 Q. Okay.

8 Mr. Bajno, can I please ask you to look at the
9 exhibit marked Respondent's Exhibit No. 1, which is in the
10 binder right in front of you.

11 Now, Mr. Bajno, does your name appear on that
12 document?

13 THE INTERPRETER: I don't think Mr. Bajno found the
14 document.

15 THE COURT: Do you want to come up and show him.

16 (Brief pause.)

17 (Discussion between witness and interpreter.)

18 BY MR. MIOSSI:

19 Q. So, I'll repeat my question. Do you see your name on
20 there, Mr. Bajno?

21 (Brief pause.)

22 MR. MIOSSI: Your Honor, I can speed this up with a
23 little direct- --

24 THE COURT: Why don't you direct him to a particular
25 page.

1 BY THE WITNESS:

2 A. I don't see it.

3 BY MR. MIOSSI:

4 Q. All right. Thank you. That's fine.

5 Is there a reason why you did not sign that petition,
6 Mr. Bajno?

7 A. Yes. I signed the first time, and then I went to Poland.
8 And, then, I came back from Poland; and, at that time, when I
9 came back, I found out that there was a second voting. And
10 that's the reason why I am not here.

11 Q. All right.

12 So, were you in Poland at the time the petition was
13 signed?

14 A. Yes.

15 Q. Were you there for personal reasons? To visit family, for
16 instance?

17 A. Yes. I went to see my father. I have not seen him for
18 seven years.

19 Q. All right.

20 Now, in July, 2014, did you wish for the United
21 Steelworkers to represent you as your union?

22 MR. MURPHY: Objection, your Honor. There's no
23 evidence that this employee was employed at the time.

24 THE COURT: Do you want to step back and just confirm
25 he was employed at that time?

1 MR. MIOSSI: Certainly. I thought he testified he
2 had been there -- well, I'll ask the question.

3 BY MR. MIOSSI:

4 Q. As of July, 2014, Mr. Bajno, you were still employed --
5 you were employed -- were you employed at Arlington Metals
6 Corporation?

7 A. Yes. I have been employed there for a long time.

8 Q. And you work there today; is that correct?

9 A. Yes.

10 Q. So, my question, in July, 2014, did you wish for the
11 United Steelworkers to represent you?

12 A. No.

13 Q. If you had the opportunity -- restate the question.

14 If you were in the country in July, 2014, would you
15 have signed the petition to decertify the United Steelworkers?

16 MR. MURPHY: Objection. Speculation.

17 THE COURT: Sustained.

18 BY MR. MIOSSI:

19 Q. Mr. Bajno, as you sit here today, do you want to be
20 represented by the United Steelworkers?

21 A. No.

22 MR. MIOSSI: Thank you. I have no more questions.

23 THE COURT: Cross-examination.

24 MR. MURPHY: No questions.

25 THE COURT: Thank you, sir. You may step down.

1 THE WITNESS: Thank you (in English).

2 (Witness excused.)

3 THE COURT: Please call your next witness.

4 MR. MIOSSI: Casey Waz.

5 And we'll also require our Polish language
6 interpreter for this witness.

7 THE COURT: Okay.

8 (Brief pause.)

9 THE WITNESS: Hello (in English).

10 CASIMIR WAZ, RESPONDENT'S WITNESS, SWORN

11 (Witness testified through Polish interpreter as follows:)

12 DIRECT EXAMINATION

13 BY MR. MIOSSI:

14 Q. Good afternoon, Mr. Waz. Would you please give the Court
15 your name?

16 A. Casimir Waz.

17 Q. Where do you work, Mr. Waz?

18 A. At Arlington Metals Corporation.

19 Q. How long have you worked there?

20 A. (In English): 36. Little bit over 36.

21 THE INTERPRETER: 36.

22 MR. MIOSSI: Thank you.

23 BY MR. MIOSSI:

24 Q. What is your job, Mr. Waz?

25 A. Machine operator (in English).

1 THE INTERPRETER: I'm a machine operator.

2 BY MR. MIOSSI:

3 Q. Would you please look at the Respondent's Exhibit No. 1,
4 which is in the binder in front of you.

5 MR. MIOSSI: Is it open?

6 BY MR. MIOSSI:

7 Q. Do you have that in front of you, Mr. Waz? Do you
8 recognize that document?

9 A. Yes.

10 Q. May I please ask you to turn to the third page.

11 Do you see your signature there?

12 A. Yes (in English).

13 Q. How did you come to sign that document, Mr. Waz?

14 A. We talked among ourselves. Brandon DeLaCruz, he came and
15 he asked if I would sign something like that. And I said yes.

16 Q. Did anyone threaten you or force you to sign that
17 document, Mr. Waz?

18 A. No.

19 Q. Did anyone offer you any reward for signing your name to
20 that document?

21 A. No.

22 Q. Mr. Waz, why did you sign that petition?

23 A. Because I was -- since the beginning, I was -- against the
24 whole thing. I know that union mix things up and make a mess
25 at places.

1 Q. All right.

2 Mr. Waz, as you sit here today, do you want to be
3 represented by the United Steelworkers?

4 A. No. Since the beginning, it has been no all the time.

5 MR. MIOSSI: Thank you. I have no more questions.

6 THE COURT: Cross-examination.

7 MS. MURPHY: Yes, your Honor.

8 THE COURT: You are not done yet, sir. He gets to
9 ask questions.

10 CROSS-EXAMINATION

11 BY MR. MURPHY:

12 Q. Good afternoon, Mr. Waz.

13 A. Good afternoon (in English).

14 Q. My name is Dan Murphy, and I represent the labor board.
15 And I'm going to ask you a few questions.

16 A. Okay (in English).

17 Q. Now, you did go to a meeting about the union in September,
18 2013, correct?

19 A. I don't remember very well, but probably, yes.

20 Q. So, you were -- and you attended other meetings with the
21 union, too; yes?

22 A. I went a few times.

23 Q. You went a few times?

24 So, you did have some interest in the union to see
25 what they were doing, right?

1 A. Somewhat, because it was very difficult to find out from
2 anybody what was going on. So, from time to time, I went to
3 find out what was going on.

4 Q. Okay.

5 And, so, you did go to the September 29th meeting,
6 correct, 2013?

7 A. I am not sure I remember. I don't remember. I don't know
8 if I was there or not.

9 MR. MURPHY: Can we please put up Petitioner No. 4.

10 BY MR. MURPHY:

11 Q. If you look at your monitor, too.

12 I see "CW."

13 A. (In English): Yes, yes. Yeah, yeah. Probably -- then
14 probably I was there, yeah.

15 Q. So, you were there?

16 A. Yeah (in English).

17 Q. Okay.

18 A. (In English): What does mean, even if I was there? That
19 mean something?

20 Q. I don't know. Well, we'll see.

21 A. (In English): Okay. Good.

22 Q. So, Mr. Frank, the union fellow, he was at the location,
23 also? He was at the meeting?

24 A. Probably (in English).

25 (Through interpreter): I don't know if he was there

1 or the other guy. Maybe the other one, José or someone.

2 Q. Okay.

3 So, they talked about the contract?

4 A. One time there was a meeting when they were talking about
5 voting and they had voting and, yes, they have a tie.

6 Q. I see.

7 Now -- so, the topic of the contract did come up at
8 this meeting, right?

9 A. Not too much.

10 Q. Enough -- okay.

11 And, so, the union didn't --

12 A. More or less I remember there was one of the
13 representatives, and he stated that we cannot know about
14 everything. Something like that.

15 Q. Okay.

16 Now, Mr. Waz, you testified that the union messed
17 things up in the plant?

18 THE INTERPRETER: Excuse me?

19 BY MR. MURPHY:

20 Q. The union messed up things up at the plant?

21 A. That's my life experience. That's from my life
22 experience. That's what I think union do.

23 Q. So, the union didn't get you any wage increases?

24 A. I got less money, not more money.

25 Q. So, the union lost you money, as far as you're concerned?

1 A. I don't know who, but I think that the whole mess caused
2 by the union as a reason -- that that's the reason.

3 Q. So, the union caused all the mess at Arlington?

4 A. Probably, yes.

5 Q. That's your opinion?

6 A. Yes.

7 Q. So, let's take a look at that petition that you signed
8 against the union in July of 2014. That would be employer's
9 No. 1 -- Respondent No. 1.

10 MR. MURPHY: It should be in front of him.

11 BY MR. MURPHY:

12 Q. You don't read English too well, do you?

13 A. Not too well.

14 Q. So, you didn't know what that petition said, right?

15 A. What do you mean I didn't know? I knew.

16 Q. Well, you can't read it, right?

17 A. I understand more or less. So, I don't understand
18 exactly, but I understand more or less.

19 Q. You can't read it, right?

20 A. Yes, I can read it, but not as well as in Polish.

21 Q. Okay.

22 And no one translated it for you in Polish, correct?

23 THE INTERPRETER: Excuse me?

24 MR. MURPHY: No one translated this document to him
25 in Polish before he signed it.

1 BY THE WITNESS:

2 A. No, it wasn't translated, but it was obvious what this is
3 all about.

4 BY MR. MURPHY:

5 Q. How is it obvious?

6 A. I don't know how to state it. In a way, that we had
7 enough.

8 Q. Because the union didn't do them any good at the plant?

9 THE INTERPRETER: One more time.

10 BY MR. MURPHY:

11 Q. Because the union did not perform well at the plant?

12 A. Yes, you can describe that as that.

13 Q. And you were dissatisfied with them? The union.

14 A. I was against them since the beginning. And that is it.
15 I didn't see any sense of them being there.

16 Q. And they certainly didn't accomplish anything for you?

17 MR. MIOSSI: Your Honor, I just object. I know it's
18 cross-examination, but I think it's crossed the line to
19 arguing with the witness, who stated his views very clearly.

20 MS. MURPHY: Fair enough. I have no other questions.

21 THE COURT: Okay.

22 Redirect?

23 MR. MIOSSI: No, thank you, your Honor.

24 THE COURT: Thank you, sir. You may step down,

25 Mr. Waz.

1 (Witness excused.)

2 THE COURT: Please call your next witness.

3 MR. RUBINSTEIN: Thank you, your Honor. We call
4 Chris Keiler.

5 THE COURT: Thank you.

6 THE INTERPRETER: Thank you.

7 THE COURT: You do not need the services of the
8 Polish interpreter any more?

9 MR. MIOSSI: We do have two more witnesses who prefer
10 Polish. So, please wait in the courtroom.

11 THE COURT: So, you are not excused yet.

12 MR. MIOSSI: Right.

13 THE INTERPRETER: Yes, Judge.

14 THE COURT: Thank you.

15 (Brief pause.)

16 THE COURT: Please come forward, sir.

17 CHRIS KEILER, RESPONDENT'S WITNESS, SWORN

18 MR. RUBINSTEIN: May I proceed, your Honor?

19 THE COURT: You may.

20 DIRECT EXAMINATION

21 BY MR. RUBINSTEIN:

22 Q. Sir, could you please state and spell your name for the
23 record.

24 A. Chris Keiler. Last name is K-e-i-l-e-r.

25 Q. Where do you work, sir?

1 A. Arlington Metals.

2 Q. What's your job with Arlington Metals?

3 A. Right now I work as a helper.

4 Q. How long have you worked for Arlington?

5 A. Since July of 2013.

6 Q. I want to direct your attention to confront you. There
7 should be a binder that has respondent's exhibits in it. Can
8 you look at No. 1?

9 A. What am I looking at here? Sorry.

10 MR. RUBINSTEIN: May I approach, your Honor?

11 THE COURT: You may.

12 BY MR. RUBINSTEIN:

13 Q. Sir, do you recognize that document, what is Respondent's
14 Exhibit 1?

15 A. Yes.

16 Q. And did you sign that document?

17 A. Yes, I did.

18 Q. Where does your name appear?

19 A. The second one from the top.

20 Q. Which page?

21 A. It says "878" at the bottom.

22 Q. How did you come to sign that document, sir?

23 A. I had heard about it from some of the other people who
24 were not interested in having the union there, and I expressed
25 an interest in signing it.

1 Q. Did any member of Arlington Metals management have
2 anything to do with your signing that petition?

3 A. No. It was my own decision.

4 Q. Did anybody instruct you from management to sign that
5 petition?

6 A. No. It was on my own.

7 Q. Did anybody threaten you or make you any promises in
8 return for signing that petition?

9 A. No.

10 Q. Did anybody offer you a reward for signing that petition?

11 A. No.

12 Q. Why did you sign it?

13 A. I don't want the union at Arlington Metals. I don't want
14 to be represented by someone else. I want to represent
15 myself.

16 Q. Is that how you still feel today?

17 A. Uh-huh.

18 Q. And that was how you felt in July of 2014 when you signed
19 the petition?

20 A. Yes.

21 MR. RUBINSTEIN: Nothing further, your Honor.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. MURPHY:

25 Q. Good afternoon, Mr. Keiler. My name is Dan Murphy. I'm

1 with the National Labor Relations Board. I'll be asking you a
2 few questions.

3 A. Okay.

4 Q. So, around September, October, November and December,
5 2013, you had occasion to go to a number of union meetings,
6 right?

7 A. Yes.

8 Q. So, you had some -- you wanted to see what was going on
9 with the union at the time, right?

10 A. I wanted to be open minded about it.

11 Q. Sure. Okay.

12 And that included signing a union authorization card
13 so you could participate, right?

14 A. Yes.

15 Q. So, you signed the card and -- well, let's take a look at
16 that card. That would be --

17 MR. MURPHY: Want to put that up on the screen.

18 BY MR. MURPHY:

19 Q. Why don't you look at that screen up there at 5D.

20 THE COURT: Can you see that okay?

21 THE WITNESS: Yeah, I can see it here.

22 BY MR. MURPHY:

23 Q. So, you signed that card in order to participate with the
24 union, right?

25 A. Just with the --

1 Q. For that day?

2 A. -- meeting.

3 Q. Right. For the meeting?

4 A. Yes.

5 Q. So, you would vote on the contract that was being voted on
6 that day, right?

7 A. Yes.

8 Q. And you participated in that meeting, right?

9 A. Correct.

10 Q. Okay.

11 And the other people that were there, such as
12 Mr. DeLaCruz, right, you saw him sign the authorization card,
13 too, right?

14 MR. RUBINSTEIN: Objection. Foundation.

15 BY THE WITNESS:

16 A. I -- I'm not really --

17 THE COURT: The question was did he see him sign.

18 You may answer "Yes" or "No," if you saw him sign.

19 BY THE WITNESS:

20 A. Not that I recall. I wasn't really watching for what he
21 was signing.

22 BY MR. MURPHY:

23 Q. I see.

24 So, you read the card and you signed it, right?

25 A. Yeah.

1 Q. Okay. Fair enough.

2 So, you went to the September 15th meeting, right --
3 or 19 -- or 29th meeting, right?

4 A. Yeah, I believe so.

5 Q. And you went to one in October?

6 A. I think so, yes. It's hard to remember the exact times.

7 Q. Sure.

8 And you went to one in December?

9 A. Yeah, I think so.

10 Q. Now, you also had some conversations with Mr. Shubert
11 there about -- the union president, about -- the union after
12 that date, right?

13 A. Yes.

14 Q. After December?

15 A. Yes. I was just trying to find out whatever information I
16 could.

17 Q. So, you were really trying to see what they could do for
18 you, right?

19 A. Yeah.

20 MR. RUBINSTEIN: Objection, your Honor. Move to
21 strike. It's beyond the scope of direct, and I don't see its
22 relevance.

23 MR. MURPHY: Relevance is, is we have support for the
24 union and then the support dwindles and he signs the petition.
25 It's the main event of this entire hearing. They put the

1 witnesses on. I'm examining them as to what happened to their
2 union support.

3 THE COURT: Mr. Rubinstein?

4 MR. RUBINSTEIN: Still beyond the scope of direct.

5 MS. MURPHY: I'll make him my witness right now.

6 THE COURT: I will give you leeway so we do not have
7 to recall this witness.

8 MR. MURPHY: Thank you.

9 THE COURT: You may answer, sir, if you can.
10 Do you need it repeated?

11 THE WITNESS: Yes, please.

12 BY MR. MURPHY:

13 Q. So, you wanted to give the union a chance to see what they
14 could accomplish at your employment situation?

15 A. Yes.

16 Q. And between December 15th and July 16th -- or July 9th,
17 when you signed the decertification petition, did the union
18 accomplish anything for you?

19 A. They didn't really present me with any selling points that
20 interested me.

21 Q. So, they didn't increase your wages, and they didn't
22 get -- accomplish anything? They didn't package your terms
23 and conditions of employment?

24 A. Not that I know.

25 Q. Okay.

1 And that's why you signed the petition?

2 A. Correct. That's one of the reasons, yes.

3 Q. Sure. Okay. Thank you.

4 MR. MURPHY: No further questions.

5 MR. RUBINSTEIN: No redirect.

6 THE COURT: Thank you, sir. You may step down,

7 Mr. Keiler.

8 (Witness excused.)

9 THE COURT: Please call your next witness.

10 MR. RUBINSTEIN: Thank you, your Honor.

11 We call Anthony Menotti.

12 (Brief pause.)

13 THE COURT: Please come forward.

14 ANTHONY MENOTTI, RESPONDENT'S WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MR. RUBINSTEIN:

17 Q. Good afternoon, sir.

18 A. Good afternoon.

19 Q. Could you please state and spell your name for the record?

20 A. Anthony Menotti. A-n-t-h-o-n-y, M-e-n-o-t-t-i.

21 Q. Where do you currently work, sir?

22 A. Arlington Metals.

23 Q. What's your job with Arlington?

24 A. I am a crane man.

25 Q. How long have you been working for Arlington Metals?

1 A. Little over 25 months.

2 Q. If you look in front of you, sir, there's a binder that
3 hopefully is open to Respondent's Exhibit No. 1.

4 Do you see that document?

5 A. Exhibit No. 1? Yes.

6 Q. Do you recognize that document?

7 A. Yes.

8 Q. How do you recognize it?

9 A. How do I recognize it?

10 Q. Did you see it before?

11 A. Yes.

12 Q. And did you sign that document?

13 A. I did.

14 Q. How did you come to sign that document?

15 A. What do you mean? Like where?

16 Q. I'm sorry. Let me -- I'm not being very clear.

17 Tell the Court how it came that you signed the
18 document. Who presented it to you? What were the
19 circumstances?

20 A. Oh. Brandon had asked if we had wanted them in. And he
21 asked if I wanted to sign it.

22 Q. Did any member of Arlington Metals management ask you to
23 sign that document?

24 A. No, they did not.

25 Q. Did any member of Arlington --

1 MR. RUBINSTEIN: Well, strike that.

2 BY MR. RUBINSTEIN:

3 Q. Did anybody from management instruct you to sign that
4 document?

5 A. No.

6 Q. Did anyone at all threaten you or promise you anything in
7 return for signing that document?

8 A. They did not.

9 Q. Why did you sign the document?

10 A. Because I didn't want them in.

11 Q. Who are you referring to by "them"?

12 A. The union.

13 Q. Do you want to have the union representing you today?

14 A. No.

15 MR. RUBINSTEIN: No further questions, your Honor.

16 THE COURT: Cross-examination, Mr. Murphy.

17 MR. MURPHY: Yes, your Honor.

18 CROSS-EXAMINATION

19 BY MR. MURPHY:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. My name is Dan Murphy, and I represent the National Labor
23 Relations Board.

24 A. Uh-huh.

25 Q. I'm going to be asking you a few questions, okay?

1 A. Sure.

2 Q. All right.

3 So, you were hired around September 5th, 2013?

4 A. That's exactly when I was hired.

5 Q. Was it?

6 A. Yes.

7 Q. And when you came in, I guess the union was representing
8 employees there, but did you know anything about it?

9 A. No.

10 Q. Okay.

11 So, when you went to the September 29th meeting, you
12 were there to see what was going on, right?

13 A. I wanted to hear both sides.

14 Q. Sure. Of course.

15 A. Because I had -- I wasn't sure either if I was with them
16 or against them, and I wanted to hear both sides and see what
17 it was all about, yes.

18 Q. Absolutely.

19 And, so, that's when you signed -- on September 29th,
20 that's when you signed -- that union authorization card,
21 right?

22 A. I mean, I'm not sure of the exact date. I remember
23 signing it, yes.

24 Q. Well, there's your card right there. It looks to me like
25 you signed it on September 25th?

1 A. Okay. Yeah, I mean, that's my signature, yes.

2 Q. Or 25th or 29th. I guess it's 29th.

3 And that's your signature, right?

4 A. Yes, sir.

5 Q. So, at that time, you signed the card so you could
6 participate in the union?

7 A. They told me I could not vote without signing that card.

8 Q. And you wanted to vote, right?

9 A. Yes, I did.

10 Q. And you wanted to participate, right?

11 A. In the voting, yes.

12 Q. And you wanted to hear both sides at the time?

13 A. I did.

14 Q. Okay.

15 And the same is true when you went to the November
16 16th meeting, too, correct? The November 18th meeting.

17 A. I mean, I'm not sure about dates, but I did go to quite a
18 few, yes.

19 Q. That would be Petitioner's No. 8. On Line, looks like, 2,
20 towards the bottom, that's your signature there, isn't it?

21 A. No, I don't think so. I don't believe so.

22 Q. Oh, okay. Fair enough.

23 A. I mean, it doesn't look like my signature, no.

24 Q. So, you don't know whether or not you went to that meeting
25 or not?

1 A. I mean, I went to quite a few meetings. I don't know
2 about November.

3 What day did you say? November --

4 Q. That would be November 16th?

5 A. November 16th? I could not be sure. I know I went to
6 quite a few and they were right around the same time.

7 Q. Oh, okay.

8 A. We went once a month for maybe four or five months.

9 Q. Okay.

10 A. So, probably I was at that meeting, yes.

11 Q. So, as far as you recall, you went to at least four or
12 five meetings month to month?

13 A. We went for a good while, yeah. Or I went, yes.

14 Q. Sure. Okay. Thank you.

15 A. Uh-huh.

16 Q. Now, do you recall what topics were discussed at these
17 meetings, to the best of your recollection?

18 A. Not much. I know the one, we voted for a contract.

19 Q. Do you remember anything about unfair labor practices or
20 anything of that sort?

21 A. I don't remember anything like that.

22 Q. All right.

23 How about the terms of the contract? Do you remember
24 talking about them?

25 A. We did not talk about terms.

1 Q. Okay.

2 So, after December, 2013, through and including July
3 when you signed the petition, right --

4 A. Okay.

5 Q. -- did the union accomplish anything for you?

6 A. They did nothing for me.

7 Q. They did nothing for you?

8 A. No.

9 Q. And you were dissatisfied with the union during that
10 period of time?

11 A. I was completely dissatisfied.

12 Q. Okay. Thank you.

13 MR. MURPHY: Nothing further.

14 THE COURT: Redirect?

15 MR. RUBINSTEIN: No, your Honor.

16 THE COURT: Thank you, sir. You may step down.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 THE COURT: Please call your next witness, Mr.
20 Rubinstein.

21 MR. RUBINSTEIN: Thank you, your Honor.

22 We call Vincent Roldan.

23 (Brief pause.)

24 THE COURT: Please come forward, sir.

25 VINCENT ROLDAN, RESPONDENT'S WITNESS, SWORN

1 MR. RUBINSTEIN: May I proceed, your Honor?

2 THE COURT: You may.

3 DIRECT EXAMINATION

4 BY MR. RUBINSTEIN:

5 Q. Good afternoon, sir. My name is Dan Rubinstein. I'm a
6 lawyer for Arlington Metals.

7 Could you please state and spell your name for the
8 record?

9 A. Vincent Anthony Roldan.

10 Q. Where do you work currently, sir?

11 A. Arlington Metals.

12 Q. What's your job?

13 A. I'm a helper on the line.

14 Q. How long have you worked for Arlington?

15 A. About six months.

16 Q. Sir, do you currently want the United Steelworkers union
17 to represent you in your job at Arlington Metals?

18 A. No, I do not.

19 MR. MURPHY: Objection, your Honor. Relevance.
20 We're dealing with a period of time between in and around
21 December -- in and around 2012 through and including the date
22 that the petition was signed, when the employer specifically
23 withdrew recognition.

24 Now we're getting into testimony dealing with
25 employees that have been recently hired in the last six

1 months. We don't see the relevance of this testimony at this
2 time.

3 THE COURT: What is the relevance?

4 MR. MURPHY: And it's beyond the scope of the just
5 and proper hearing.

6 THE COURT: What is the relevance?

7 MR. RUBINSTEIN: Well, your Honor, they've claimed
8 that they will suffer irreparable harm if they don't wait for
9 the NLRB in Washington, D.C., and a subsequent appeal of this
10 to happen. They've taken the position, at least in opening
11 statement, that -- counsel did, that -- they challenge the
12 authenticity of the petition, even though below they had done
13 just the opposite.

14 So, we want to establish that the majority of people
15 there still don't want to be represented by the union and
16 there will be no irreparable harm by you not issuing this
17 injunction.

18 THE COURT: Overruled.

19 You may answer, if you can, sir.

20 BY MR. RUBINSTEIN:

21 Q. Do you want the union to represent you?

22 A. No, I do not.

23 MR. RUBINSTEIN: I have no further questions.

24 THE COURT: Cross-examination, Mr. Murphy.

25 CROSS-EXAMINATION

1 BY MR. MURPHY:

2 Q. How do you do, sir. My name is Dan Murphy, and I'm with
3 the labor board?

4 A. Hi.

5 Q. I'll be asking you a couple questions, not many.

6 You've never spoken to any union representative about
7 your representational goals?

8 A. No, I have not.

9 Q. You've never spoken to anybody from the union, right?

10 A. No, not at this time.

11 Q. What union is everyone talking about here?

12 A. The United Steelworkers.

13 Q. Okay.

14 So, you at least know their name, right?

15 A. Yeah.

16 Q. Okay.

17 But you've never spoken to anybody about it?

18 A. Just my co-workers.

19 Q. Just co-workers.

20 Certainly, no one from the union?

21 A. No.

22 Q. All right.

23 MR. MURPHY: Nothing further, your Honor.

24 THE COURT: Any redirect?

25 MR. RUBINSTEIN: Just one question.

1 THE COURT: Go ahead.

2 REDIRECT EXAMINATION

3 BY MR. RUBINSTEIN:

4 Q. Why don't you want the union to represent you?

5 MR. MURPHY: Asked and answered.

6 MR. RUBINSTEIN: Actually, I haven't asked that.

7 THE COURT: Overruled.

8 You may answer, if you can.

9 BY THE WITNESS:

10 A. I don't feel I need to be represented by anyone else. I'm
11 very happy with my current employment situation. If I want to
12 negotiate something, I can talk to my boss.

13 MR. RUBINSTEIN: Thank you, sir.

14 THE COURT: Any recross, Mr. Murphy?

15 RECROSS EXAMINATION

16 BY MR. MURPHY:

17 Q. Did you recently get a wage increase?

18 A. Yes. After my 90 days probation was over, I did.

19 Q. Was there a general wage increase in around this time?

20 MR. RUBINSTEIN: Objection, your Honor.

21 MR. MURPHY: He said he was negotiating for his own
22 terms and conditions of employment. I'm asking if he has.

23 MR. RUBINSTEIN: On behalf of himself, he can
24 testify.

25 THE COURT: Yes.

1 MR. MURPHY: They brought it up.

2 THE COURT: Sustain the objection to that question.

3 You can rephrase it if you want to target it toward
4 him. That was not how -- it was phrased very broadly.

5 BY MR. MURPHY:

6 Q. Have you received a general wage increase recently?

7 A. After my 90 days probation, yes.

8 Q. And what was that?

9 A. It was 2.25 more.

10 Q. 2.25 -- \$2.25 more an hour?

11 A. Yeah.

12 Q. All right.

13 And you negotiated it yourself?

14 A. No. That was company policy.

15 Q. Pardon me?

16 A. That was what was, you know, told to me.

17 Q. What was told to you by whom?

18 A. My boss. My employer.

19 Q. Who?

20 A. Ron.

21 Q. Ron -- the plant manager?

22 A. Yeah.

23 Q. Okay.

24 And he just told you you guys were all getting a wage
25 increase?

1 MR. RUBINSTEIN: Objection to the phrase of the
2 question.

3 BY MR. MURPHY:

4 Q. How was it granted to you?

5 A. That's what -- it's --

6 Q. Was it at a meeting?

7 A. No.

8 Q. Did he walk up to you and grant you the wage increase
9 individually?

10 A. No.

11 Q. How was it announced?

12 A. It wasn't announced. It was -- I asked him in the -- you
13 know, in the -- penalty when I first started, you know, "This
14 is what I'm getting along with my, you know, next increase?"

15 And he told me after my 90 days was over.

16 Q. You got it. Okay. Thank you.

17 A. Uh-huh.

18 MR. MURPHY: One moment.

19 (Brief pause.)

20 BY MR. MURPHY:

21 Q. So, it seems you may have received two wage increases.

22 You started work on 6-8-15, right?

23 A. Uh-huh.

24 Q. And you were working as a first shift line bander for \$10
25 an hour, right?

1 A. Uh-huh.

2 THE COURT: Can you answer "Yes" or "No," please.

3 Joe is taking --

4 BY THE WITNESS:

5 A. Yes.

6 THE COURT: -- down everything you say. "Uh-huh" is
7 hard to take down.

8 THE WITNESS: Sorry.

9 BY THE WITNESS:

10 A. Yes.

11 BY MR. MURPHY:

12 Q. And, then, you got a raise to \$12.25 an hour, right?

13 A. Uh-huh, yes.

14 Q. And, then, you got another one to 13.50, correct?

15 A. Yes.

16 Q. Okay.

17 And that's the wage increase you were talking about?

18 A. No, I was talking about the 90-day increase.

19 Q. Oh, okay.

20 But then you got an additional --

21 A. Yes.

22 Q. -- wage increase?

23 And you negotiated that yourself?

24 A. No, I didn't negotiate it myself.

25 Q. It was just granted to you by the company?

1 A. Yeah.

2 Q. And that was around when? October 5th, 2015?

3 A. Yes, around that time.

4 Q. Thank you.

5 MR. MURPHY: No further questions.

6 THE COURT: Anything further?

7 MR. RUBINSTEIN: No, your Honor.

8 THE COURT: Thank you, sir. You may step down.

9 (Witness excused.)

10 THE COURT: Please call your next witness.

11 MR. RUBINSTEIN: Thank you, your Honor.

12 We call Tim Orlowski.

13 TIMOTHY T. ORLOWSKI, RESPONDENT'S WITNESS, SWORN

14 MR. RUBINSTEIN: May I proceed, your Honor?

15 THE COURT: You may.

16 DIRECT EXAMINATION

17 BY MR. RUBINSTEIN:

18 Q. Mr. Orlowski, could you please state and spell your name
19 for the record?

20 A. Timothy T. Orlowski. O-r-l-o-w-s-k-i, last name.

21 Q. Where did you grow up, Mr. Orlowski?

22 A. Grew up in the city when I was born -- in the city in
23 Chicago -- till about 1969, 1970 -- '69. My parents moved to
24 Arlington Heights.

25 Q. Where did you go to school?

1 A. I went to grade school in Arlington Heights. I went to
2 Our Lady of the Wayside, transferred there in second grade;
3 and, then, went to high school at St. Viator High School in
4 Arlington Heights.

5 Q. Did you attend college?

6 A. I attended Marquette University in Milwaukee.

7 Q. How long have you worked for Arlington Metals?

8 A. Really since I was pretty young. My dad started the
9 company in 1971 in Skokie in a used building -- rented
10 building, used piece of equipment that he put together. And I
11 was 11 years old and I went to work with him.

12 Q. So, your father founded and is the owner of the company?

13 A. Yes.

14 Q. Do you also have an interest in the company, ownership?

15 A. No, I do not. Ownership's written -- no, I do not.

16 Q. What's your position at Arlington Metals?

17 A. My position is executive vice president of the company.

18 Q. Where is the company currently located? You mentioned to
19 the Court that it started in Skokie. Where is it currently
20 located?

21 A. Current location, we have two locations right now. Our
22 facility, about 145,000 square feet, is in Franklin Park,
23 Illinois; and, our other facility, that we built in 1986, is
24 in Sawyer, Michigan.

25 Q. Can you describe Arlington Metals' business for the Court?

1 What do you do?

2 A. We are a toll processor and a metals service center
3 distributor of slit coil product and cut-to-length product.

4 Q. What product in particular?

5 A. Steel products. Steel coils. Steel cold rolled
6 galvanized. We do some slitting of aluminum coil stock, as
7 well as stainless; but, primarily, cold rolled galvanized and
8 even some prepaint material, for example. Prepainted coil
9 stock, what they call flat rolled.

10 Q. Could you explain to the Court what toll processing means?

11 A. The toll processing that we do -- and we've been doing
12 since my father founded the business -- there was no cash,
13 there was no credit in which we could buy steel from the mill.
14 So, when you try to start out with very little cash in 1971,
15 you start out with a used piece of equipment in a rented
16 building and you do toll processing.

17 There are people that buy steel from the mill.
18 There's OEMs that buy steel from the mill. OEMs are original
19 equipment manufacturers. And those people need somebody to
20 slit the material for them, to be able to make whatever part
21 they're making or stamping, and so on.

22 So, we charge a -- we would bring material in as the
23 consignee, bring material in that we never take title to. We
24 bring it in as the consignee. We charge a tolling fee to, in
25 fact, cut the steel and then ship it to our customers'

1 destination.

2 So, it's similar to you don't own the toll road; you
3 pay a tolling fee to use the toll road. We don't own the coil
4 when you toll process. We, in fact, just charge a fee to cut
5 the coil of steel, but we don't actually take title to the
6 coil. We're the consignee.

7 Q. Is there another part of your business called metal sales?

8 A. There is. Metal sales -- by 1974, '75, we -- my dad
9 developed our metal sales group, though it was incredibly
10 small. We were able to buy some steel ourselves from various
11 vendors and buy the steel, take ownership of the steel, cut it
12 and ship it to the -- to our end-use customer.

13 Q. When you buy and cut steel to your end processor, is your
14 tolling process involved at all?

15 A. Yes.

16 Q. Explain to the Court how that works.

17 A. As far as our metal sales group?

18 Q. Yes.

19 A. Our metal sales group -- we have two toll divisions: Our
20 Sawyer, Michigan, location and our Franklin Park toll
21 processing location. In other words, both of our shops where
22 all of our equipment is located where we do our slitting and
23 cut to length.

24 Our metal sales group is another toll customer of our
25 Sawyer or Franklin Park toll processing location. It's

1 another customer. They get charged the going rate for
2 processing the material for our metals group. In fact, our
3 metals group, if they wanted to -- and they have at times --
4 could use an independent toll processor to do processing. And
5 sometimes we do that on very heavy gauge material whereby we
6 don't want to run that heavy gauge through our machinery. We
7 will use outside toll processors to do that.

8 Q. Okay.

9 How many active employees do you have at your
10 Franklin Park location currently?

11 A. Franklin Park, currently 34.

12 Q. Sir, are you familiar with a document demand that was made
13 by the union and ultimately ordered by the administrative law
14 judge regarding disclosure of certain documents to the union
15 in this case?

16 A. Yes, I am.

17 Q. And did those documents include first audited financial
18 statements certified by an outside CPA for the years 2009 to
19 2012?

20 A. Yes, sir.

21 Q. Do they also include financial reports for 2010 through
22 2013 that include a detailed income statement, detailed
23 balance sheet and a statement of cash flows for your business
24 in Franklin Park?

25 A. Yes, it does.

1 Q. Did they also include sales by customer for 2009 and 2012,
2 and current 2013 and projected sales for 2014 through 2000-
3 -- on 2016?

4 A. It does.

5 Q. And did they also ask for an explanation of AMC's business
6 conditions, including specific changes that have occurred and
7 the actual impact on AMC's financial conditions, seeking
8 "specific data reports and analysis"?

9 A. Yes, it also does.

10 Q. Does Arlington Metals maintain those materials?

11 A. Yes, we do.

12 Q. Do you keep this material confidential?

13 A. We do. Electronically. Paper copies, electronic copies
14 are kept extremely confidential. This is a private company.

15 Q. How do you maintain the confidentiality of this
16 information? Explain that.

17 A. Electronic documents that are on our network are under
18 heavy security, heavy password protection on servers that are
19 partitioned from any other interference, hacking, et cetera.

20 Paper copies are under lock and key.

21 Q. What about physical security in your building and offices?

22 A. Physical security would be office is locked. My finance
23 manager's office -- his office, as well as our area or wing,
24 if you call it, locked, fully alarmed 24/7, et cetera, et
25 cetera.

1 Q. Who has access to this financial information?

2 A. My family, our finance manager.

3 Q. Are the documents that were requested by the union that
4 I've just described limited to the Franklin Park processing
5 division?

6 A. No, they are not.

7 Q. Why not?

8 A. The audited financial statements, for example, are, in
9 fact, consolidated numbers that reflect -- are reflected in
10 our audited financial statement. They're consolidated with
11 our Sawyer, Michigan; Franklin Park; and, our metal sales
12 division all consolidated into one document.

13 Q. Do you want to disclose these documents to the union?

14 A. Absolutely not.

15 Q. Why not?

16 A. This is private information. We are a private company.
17 They're closely guarded -- closely guarded -- documents.
18 There are -- you could extrapolate, through the disclosure of
19 tonnage, revenue, profit, loss one way or another. You could
20 back into certain numbers whereby my competitors, my vendors,
21 my customers, if they got a hold of this information, it could
22 be catastrophic for our company. We're a small company in a
23 very small Midwest region that we are competing in, and that
24 could be a catastrophic release of information.

25 Q. What could you do with this kind of information if you got

1 it from one of your competitors?

2 MR. MURPHY: Objection. Speculation.

3 THE COURT: What is your response?

4 MR. RUBINSTEIN: My response is he's going to
5 describe what he would do -- well, strike that. I'll withdraw
6 the question.

7 THE COURT: Okay.

8 MR. RUBINSTEIN: Nothing further, your Honor.

9 THE COURT: Cross-examination.

10 MR. MURPHY: Sure.

11 CROSS-EXAMINATION

12 BY MR. MURPHY:

13 Q. Good afternoon, Mr. Orlowski.

14 A. Good afternoon.

15 Q. It's good to see you, again.

16 A. Good to see you.

17 Q. Tough circumstances, unfortunately.

18 You were very concerned about turning over your
19 consolidated set of financial documents, right?

20 A. Yes, sir.

21 Q. Now, there's no question in my mind at least -- and I'm
22 asking you -- that these types of documents that you have can
23 be broken down into documents that relate just to each of the
24 two facilities that you have for analysis purposes, correct?

25 A. You'd have to elaborate on what you mean by "broken down."

1 Q. For example, you have two locations, right? You have one
2 in Michigan; you have one in Franklin Park, right?

3 A. We do. But specifically you said could be broken down in
4 what manner?

5 Q. Broken down for each location, right?

6 A. Possibly.

7 Q. Well, you certainly analyze how well things are going in
8 Franklin Park, correct?

9 A. For example, we have a consolidated --

10 Q. I asked you a question that you analyze your financial
11 circumstances at the Franklin Park facility by itself. You
12 analyze the numbers, production, tonnage, and all those other
13 things at Franklin Park?

14 A. Yes, separately.

15 Q. Separately.

16 As well as the Sawyer, Michigan location, correct?

17 A. Separately we do that. Separate income statements.

18 Q. Yes.

19 A. One balance sheet, one cash flow statement for the entire
20 company.

21 Q. Okay.

22 But you do break it down -- certain sets of documents
23 -- for analysis purposes for each location, correct?

24 A. That is available, sure.

25 Q. Okay.

1 Now, you said that you didn't want to give up tonnage
2 information or gross revenue types of information to the
3 union, right? You said it's highly confidential, correct?

4 A. I said that I didn't want to give that up to the union?

5 Q. Yes.

6 A. I didn't say that just now. I didn't want to give that to
7 the -- to the -- union now?

8 Q. No, ever.

9 A. I think in the past, we have given some information in the
10 past to the union in regards to tonnage and sales revenue. I
11 believe we have done that in the past.

12 Q. So, that's not confidential information?

13 A. Some information was given out previously.

14 Q. So, the dire consequences of giving up that information
15 isn't really true, right, because nothing happened?

16 A. That's not true. That's a misrepresentation of what I'm
17 saying.

18 Q. Then what are you saying?

19 A. I'm saying that you're asking for audited financial
20 statements whereby they're consolidated balance sheet and cash
21 flow data, and there is no way to parse that information out.
22 On a tax return, both federal and state, there is no way to
23 parse that information out separately by division. No, there
24 is not.

25 Q. Okay.

1 Who in your family has -- describe your family
2 circumstances as it relates to the company. You said that
3 you -- your family members have access to the information.
4 What does that mean?

5 A. Well, it's a family company.

6 Q. Sure.

7 A. So, my sister works there and my other sister. I have two
8 sisters. My other sister is an attorney. She has worked
9 there and has a capacity there. And my parents.

10 Q. Okay.

11 A. So, if they want access to financial information or, et
12 cetera, they have that privilege.

13 Q. Okay.

14 Are they currently -- have any -- your parents, for
15 example, do they have any corporate positions at the moment?

16 A. Yes, they do.

17 Q. Okay.

18 MR. MURPHY: Nothing further, your Honor.

19 THE COURT: Redirect?

20 MR. RUBINSTEIN: No, your Honor.

21 THE COURT: Thank you, sir. You may step down.

22 THE WITNESS: Thank you, your Honor.

23 (Witness excused.)

24 THE COURT: Do you have any additional witnesses?

25 MR. MIOSSI: We do, your Honor. Maybe this is the

1 time -- I realize it's 4:15. And to understanding, there are
2 some options.

3 As I indicated this morning, we have declarations
4 from 13 additional witnesses. I don't think -- perhaps the
5 labor board will stipulate. We have 13 more witnesses who I
6 will make an offer are largely going to testify to what you've
7 heard today. We're happy to proceed. We could submit the
8 declarations and the Court can take them and give them what
9 weight the Court chose.

10 I don't know what the Court wishes in terms of
11 hearing oral argument. So, in a sense, I'm -- we're flexible.

12 THE COURT: There was an objection to the
13 declarations this morning. I do not know if the Board has
14 changed its position on that. Do you --

15 MR. MURPHY: May I talk to my co-counsel --

16 THE COURT: Of course.

17 MR. MURPHY: -- as well as --

18 THE COURT: And in terms of timing, I was going to
19 wait and see when we were done with the presentation of
20 evidence if it made sense to go tonight or to come back
21 tomorrow.

22 MR. MIOSSI: Okay.

23 We did give the Board the affidavits during the
24 break.

25 THE COURT: Okay.

1 MR. MIOSSI: So, we --

2 THE COURT: Let's see what their position is.

3 MR. MIOSSI: See what they say.

4 (Brief pause.)

5 MR. MURPHY: Your Honor?

6 THE COURT: Yes.

7 MR. MURPHY: We may have a bit of a compromise.

8 THE COURT: Okay.

9 MR. MURPHY: With respect to the declarations, I find
10 that from my examination of them --

11 THE COURT: Could you stand and move close to a
12 microphone.

13 MR. MURPHY: I'm sorry.

14 THE COURT: The acoustics in this room are awful and
15 I am having a hard time hearing you.

16 MR. MURPHY: I'm getting bad enough as it is. I
17 understand the concern.

18 THE COURT: I am not saying it is my ears.

19 MR. MURPHY: I'm not saying that either, your Honor.

20 MR. MIOSSI: Go ahead and offend the Court.

21 (Laughter.)

22 MR. MURPHY: I have enough trouble --

23 THE COURT: I am teasing you. Go ahead.

24 MR. MURPHY: Your Honor, the declarations themselves
25 are full of ad hominem that just -- we're not going to

1 stipulate to them.

2 But we would stipulate that the testimony that we
3 have received in the record at this time would be
4 representative of the testimony of the 13 employees that they
5 are going to be calling in the future.

6 THE COURT: Is that acceptable?

7 MR. MIOSSI: I think it is, your Honor.

8 Just so that we're very clear and don't let any
9 witnesses go if we're not, the witnesses who are here who did
10 sign the petition will testify like their co-workers -- they
11 signed the petition, et cetera. It would be very similar.

12 Then there are other employees who were hired
13 subsequent to the petition -- so, after -- sometime July --
14 late July -- 2014, and they're currently employed. And they
15 will testify similar to Mr. Roldan, that he -- for whatever
16 reasons they have, prefer not to be represented by the union.

17 So, with that, we would stipulate.

18 THE COURT: I assume as to the first category, those
19 who would stipulate -- or those who would testify that they
20 did not want the union, I assume they would also testify that
21 there were not any threats, promises --

22 MR. MIOSSI: Yes, your Honor.

23 THE COURT: -- coercion to get them to come out that
24 way?

25 MR. MIOSSI: Correct.

1 MR. MURPHY: We're not opposed to that. However,
2 there was all sorts of other testimony by those employees, and
3 that would also be representative of the employees that they
4 wish to call that have signed the petition. We have all sorts
5 of people testifying to all sorts of things.

6 But we're just not picking one person over the other
7 person. It would be representative of the various employees'
8 testimony.

9 THE COURT: I think what Mr. Miossi just said is
10 those are the areas of testimony that he would stipulate to
11 would be representative of these 13.

12 With that caveat, is that acceptable to you,
13 Mr. Murphy? Mainly that those who were there before July
14 of --

15 MR. MURPHY: No.

16 THE COURT: -- 2000- -- pardon me?

17 MR. MURPHY: No.

18 THE COURT: No, that is not acceptable?

19 MR. MURPHY: No, it's not acceptable.

20 THE COURT: Okay.

21 MR. MURPHY: Obviously, what we have -- if they want
22 to testify that 13 employees that they would be calling would
23 testify generally as the current employees have, period --
24 they have all sorts of motivations, they have all sorts of
25 reasons, they have all sorts of -- lots of --

1 THE COURT: I must have misunder- --

2 MR. MURPHY: In other words --

3 THE COURT: Wait. Let me finish.

4 I must have misunderstood you because I thought you
5 just said there were a lot of other things in the testimony
6 that you did not want to stipulate.

7 MR. MURPHY: Oh, no, I would stipulate that they
8 would test- -- that the current emp- -- that the 13 employees
9 that they would be calling would testify in a manner that
10 would be representative of what was testified to with the
11 employees that were on the record.

12 THE COURT: I am a little concerned because then we
13 are going to get into a fight of what is representative or
14 not.

15 MR. MURPHY: That's correct.

16 THE COURT: Which I do not think anybody wants to.

17 MR. MURPHY: Okay.

18 THE COURT: Call your first witness -- or your tenth
19 witness.

20 MR. MIOSSI: We'll go.

21 THE COURT: We will go through if that is what we
22 need to do.

23 MR. RUBINSTEIN: So, one other issue, your Honor.
24 Maybe this could short-circuit some of it.

25 As I argued in the beginning of this case, if they

1 are contesting the validity of the petition, we have six more
2 witnesses who signed the petition and, as the Court said, did
3 so voluntarily. And that's what their testimony would be,
4 consistent with what you heard from some of the witnesses.

5 THE COURT: I have understood from the filings that
6 they are contesting the validity of the petition.

7 MR. MURPHY: "Contesting the validity of the
8 petition" is probably a term of art, your Honor. Obviously, I
9 have not been inquiring desperately into whether they signed
10 it on this day at this time and this place, whether or not
11 they were coerced or not. That's really not the issue in this
12 case.

13 The issue in this case is whether or not the petition
14 in and of itself, as an entity which has independent legal
15 significance, has been impacted by the unfair labor practices
16 of the employer in and around between -- I don't know --
17 October through December of 2013, which would call into
18 question whether or not it is the true representation of the
19 employees, period, as a matter of law.

20 THE COURT: I understood you to be arguing that, as
21 well. But I understood from your submissions that you were --
22 and, frankly, from the ALJ's findings --

23 MR. MURPHY: That was a failing of the respondent's
24 ability to authenticate what they had at the time. We did not
25 cross --

1 THE COURT: But that was not an issue that they were
2 necessarily prepared to do because -- at least from my reading
3 of everything, because -- you had represented -- you, the
4 Board -- had represented that you were not contesting the
5 validity, and the intervenors were not allowed to come in.

6 MR. MURPHY: A petition is handed to -- I can only do
7 this by analogy. A petition is handed to an employer. The
8 employer has to look at that petition and say as of this date,
9 the employees that I know, that I can authenticate on this
10 piece of paper signed this and I'm no longer going to allow
11 this union to represent these employees anymore, which we --
12 there's no question that the National Labor Relations Board
13 allows for that.

14 THE COURT: Doesn't that go to the validity of the
15 petition if you are --

16 MR. MURPHY: It goes to the --

17 THE COURT: -- contesting the signatures?

18 MR. MURPHY: It goes to the responsibility of the
19 employer or the party who is withdrawing recognition to
20 self-authenticate itself. Because there are two avenues in
21 which this can be done. This can be done through an election,
22 as we've now seen twice in this proceeding; and, an employer
23 can do it itself. But the hoops that the employer has to jump
24 over to just self-authenticate is clearly shown in the case
25 authority of the National Labor Relations Board.

1 As the judge noted specifically in more than one
2 occasion in the decision -- the ALJ -- they didn't do that.
3 They did not authenticate and substantiate what they did.
4 It's not the government's job to do that until -- to decide
5 whether or not it's going to challenge the petition until
6 after the respondent authenticates it itself.

7 THE COURT: So, I guess for purposes of today --

8 MR. MURPHY: Right.

9 THE COURT: -- are you contesting the validity of the
10 petition?

11 I understand that you are --

12 MR. MURPHY: At this time --

13 THE COURT: -- arguing that the petition is not valid
14 under law because it was impacted by the unfair labor
15 practices in 2013 that we are going on, but are you contesting
16 the validity of the petition itself or the authenticity of it?

17 I understood you were, from your submissions to the
18 Court. But maybe --

19 MR. MURPHY: Merely because the respondent at the
20 time of the trial did not authenticate it themselves.

21 THE COURT: So, yes, you are contesting it?

22 MR. MURPHY: Yes.

23 In and of itself at the time, the respondent had not
24 done it. They did not meet their burden at the time of the
25 trial or at the time that they withdrew recognition.

1 Therefore, it is not -- we challenge it in that manner.

2 THE COURT: Okay.

3 Whoever wants to take this.

4 MR. MIOSSI: I will address it, please.

5 I'm afraid that Mr. Murphy is misstating the law
6 under the National Labor Relations Act. It is not an
7 employer's obligation to authenticate signatures on an
8 employee decertification petition unless -- and this is cited
9 in the record, which has been submitted to the Court; and,
10 we've briefed the issue to the National Labor Relations Board.
11 This is one of the many errors the ALJ made, which we believe
12 is reversible.

13 The employer has no obligation to authenticate
14 signatures and cross-reference them against signature proofs
15 unless the authenticity of the signature is challenged or in
16 question in some way. That's the law.

17 Number two, throughout this proceeding, and as the
18 demonstrative exhibit makes clear, and into four days before
19 this petition was filed, the labor board took the position --
20 and didn't qualify it -- the petition wasn't an issue. The
21 ALJ understood the petition wasn't an issue. So, no, we
22 weren't prepared to have independent testimony regarding, if
23 you will, a handwriting expertise.

24 Number three, the testimony in this case at the trial
25 in April, Mr. Orlowski was asked -- and the record is --

1 excuse me, the testimony is in the record and the Court can
2 certainly review it -- do you recognize these signatures?

3 THE COURT: Yes.

4 MR. MIOSSI: He said yes.

5 THE COURT: I read it. Right. Right.

6 So, this is part of the issue that is tied up in the
7 motion for preliminary injunction. If you are not contesting
8 it, then I do not think we can proceed by stipulation, given
9 what I have just heard you say.

10 So, you may call the 13 witnesses.

11 MR. RUBINSTEIN: Your Honor, we will make a record,
12 our submission on judicial estoppel, because I don't think
13 before this Court they should be permitted to do it. And I
14 can give you the cases on it now or we can give you some -- a
15 filing either tonight or tomorrow morning.

16 THE COURT: Either-or, or you can address them when
17 we have closings.

18 I know you have those, and I certainly want those.

19 MR. RUBINSTEIN: Let me just give them --

20 THE COURT: We have 13 witnesses waiting. I am
21 trying to --

22 MR. RUBINSTEIN: I apologize.

23 THE COURT: -- move this along.

24 MR. RUBINSTEIN: It's Butler vs. Village of Round
25 Lake Police Department, 585 F.3d 1020 and 1022 through 1023.

1 THE COURT: Wait one second. At 1020, 1022 to '23.

2 MR. RUBINSTEIN: Yes.

3 Also, The Matter of Cassidy, 892 F.2d 637 at 641,
4 also a Seventh Circuit case.

5 And, finally, there is a Supreme Court case, New
6 Hampshire vs. Maine, 532 U.S. 742 and 750, a 2001 case, which
7 I won't belabor the point, but this is a textbook case of
8 judicial estoppel, given the position they've taken.

9 THE COURT: Okay.

10 Whenever you are ready, please call your next
11 witness.

12 MR. MIOSSI: Arlington calls Emil Sterczek.

13 And Mr. Sterczek will require our Polish language
14 interpreter. The next witness will also require the Polish
15 translator. And, then, we will be done with the translation.
16 So, we'll do them at once.

17 THE COURT: Please come forward, sir.

18 EMIL STERCZEK, RESPONDENT'S WITNESS, SWORN

19 (Witness testified through Polish interpreter as follows:)

20 DIRECT EXAMINATION

21 BY MR. MIOSSI:

22 Q. Good afternoon, Mr. Sterczek.

23 Would you please give your name to the Court and
24 spell your last name.

25 A. Emil Sterczek.

1 S-t-e-r-c-z-e-k (in English).

2 Q. Where do you work, Mr. Sterczek?

3 A. At Arlington Metals.

4 Q. What is your job there?

5 A. Maintenance supervisor.

6 Q. And how long have you worked there?

7 A. Over 32 years.

8 Q. Could I ask you, please, to look at the binder, which is
9 in front of you, at Tab No. 1. It contains Respondent's
10 Exhibit No. 1.

11 MR. MIOSSI: Does he have it open? Okay.

12 BY MR. MIOSSI:

13 Q. Mr. Sterczek, do you recognize the document in front of
14 you?

15 A. Yes.

16 Q. And did you sign that document?

17 A. Yes.

18 Q. Where does your signature appear on the document?

19 A. It's right here.

20 Q. Is that the second page of the document?

21 A. I don't really know.

22 Q. Okay. Well, you see your name; is that correct?

23 A. (In English): Yes. I -- I -- sign it.

24 Q. When did you sign it?

25 A. The same date that it's there.

1 Q. Okay.

2 The date is stated on the document?

3 A. Correct.

4 Q. How did you come to sign it?

5 A. I met Brandon and I signed.

6 Q. All right.

7 Why did you sign it?

8 A. Because I have always been against union, and I was never
9 tempted by union -- by the unions.

10 Q. Did anyone offer you any reward for signing the petition?

11 A. No.

12 Q. Did anyone in management instruct you to sign the
13 document?

14 A. No.

15 Q. Did Mr. DeLaCruz coerce you or force you in some way to
16 sign your name to that petition?

17 A. No.

18 Q. You're still employed at Arlington Metals; is that
19 correct, Mr. Sterczek?

20 A. Yes.

21 Q. As you sit there today, do you want to be represented by
22 the United Steelworkers?

23 A. No.

24 MR. MIOSSI: Thank you. No more questions.

25 THE COURT: Cross-examination.

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CROSS-EXAMINATION

BY MS. HENSEL:

Q. Good afternoon, Mr. Sterczek. My name is Melinda Hensel. I'm an attorney for the National Labor Relations Board.

A. Yes, hello.

Q. Mr. Sterczek, how long have you held the title of maintenance supervisor?

A. About ten years.

Q. Are you wearing a work uniform here today in court?

THE INTERPRETER: Excuse me?

BY MS. HENSEL:

Q. Are you wearing a work uniform here today in court?

A. Yes.

Q. All right.

Can you explain why the shirt you're wearing is white and the shirts that your colleagues that you are here with today are blue?

A. I think it's because I am a supervisor.

Q. Okay.

And at the time that you signed Respondent's Exhibit 1, you were a supervisor?

A. Yes.

Q. Do you have the ability to discipline people, Mr. Sterczek?

A. I don't think so. I can point out things, what should be

1 done.

2 Q. And does the company follow your recommendations as to
3 what should be done?

4 A. No, I didn't mean management. I meant the workers. Let's
5 say that if someone does something incorrectly, I can point
6 out to that and tell the person how to do it.

7 Q. If a person -- if a worker acts inappropriately at work or
8 comes in late too many times, are you able to report that to
9 management and obtain discipline?

10 A. Yes, I should notify them if something is done
11 incorrectly.

12 Q. And do you do that?

13 A. Yes.

14 Q. Do you have an office at the company?

15 A. I have the maintenance department, my desk where I sit.
16 And I have my papers there.

17 Q. And what kinds of things do you do at the desk where you
18 sit?

19 A. I fill out PM maintenance.

20 THE INTERPRETER: Interpreter: I'm not sure what
21 that means.

22 BY THE WITNESS:

23 A. So, it's what type of things we are supposed to do or what
24 we have done.

25 BY MS. HENSEL:

1 Q. Okay.

2 And in that regard, can you explain what are the
3 types of things that you do as the maintenance supervisor?

4 A. So, safety. We check the safety. We check the machines,
5 if they work correctly or they should be repaired. So, let's
6 say that someone from a previous shift notify us about
7 something that would need a repair, we have to check this and
8 correct this.

9 Q. And who -- are you the person that's notified of issues
10 with machines?

11 THE INTERPRETER: One more time, please.

12 BY MS. HENSEL:

13 Q. Are you the person who is notified when an employee
14 notices an issue with a machine?

15 A. Yes. Second shift. Yes. So, the second shift, if they
16 have problems, they leave messages on the phone or they leave
17 messages with a manager and the manager then relates those to
18 me.

19 Q. All right.

20 And do you then decide who does the repair work on
21 any particular machine?

22 A. Basically, I fix the machines, myself and my co-worker.

23 Q. Okay.

24 Who is your co-worker?

25 A. Jozef Kowalkowski.

1 Q. And do you instruct Mr. -- I'm sorry, I can't --
2 Kowalkowski -- what to do each day?

3 A. Let's say that there's a serious repair. Then we talk
4 about it. We discuss how to do such repair in the best way.
5 And after that, we do that.

6 Q. Okay.

7 But you assign the work to Mr. Kowalkowski. You
8 don't -- he does not assign the work to himself; is that
9 correct?

10 A. Yes.

11 Q. Mr. Sterczek, are you aware if you make more money than
12 other maintenance persons?

13 A. I -- I -- think I do.

14 Q. Okay.

15 What is your hourly wage rate?

16 A. About \$20 per hour. I don't remember exactly.

17 Q. Do you make overtime when you work over?

18 A. Yes.

19 Q. Mr. Sterczek, you indicated that you signed the petition
20 that is Respondent's Exhibit 1, correct?

21 A. Yes.

22 Q. Are you able to read English?

23 A. Yes (in English).

24 Q. Okay.

25 THE INTERPRETER: Yes.

1 BY MS. HENSEL:

2 Q. Is it fair to say, do you read English better than you
3 speak it?

4 A. I think -- (in English).

5 (Through Interpreter): In my opinion, I speak better
6 than I read.

7 Q. All right.

8 Were you able to read the petition that you say
9 Mr. DeLaCruz presented to you for your signature?

10 A. Yes.

11 Q. Do you also understand spoken English?

12 A. Yes.

13 Q. And did Mr. DeLaCruz explain to you what the petition was?

14 A. Yes.

15 Q. At what time of day did you sign the petition?

16 A. After work.

17 Q. What time was after work?

18 A. Maybe around 4:00. Before 4:00.

19 Q. Okay.

20 Where were you when you signed the petition?

21 A. I was on the street. We decided to meet there.

22 Q. Where on the street were you?

23 A. At the end of the street where you go to our factory.

24 MS. HENSEL: I'm sorry, I didn't hear the last part.

25 THE INTERPRETER: At the end of the street leading to

1 our factory.

2 BY MS. HENSEL:

3 Q. How did you arrange to meet Mr. DeLaCruz at the end of the
4 street leading to the factory?

5 A. I don't recall that now.

6 Q. So, you were employed at Arlington Metals when the union
7 was first selected as your representative; is that correct?

8 THE INTERPRETER: I have difficulty hearing you.

9 I apologize, Judge.

10 MS. HENSEL: That's okay. I speak very quietly. I'm
11 sorry.

12 BY MS. HENSEL:

13 Q. You were employed at Arlington Metals when the union was
14 first elected as the employee's representative; is that
15 correct?

16 A. When was that? I don't understand.

17 Q. Were you employed at Arlington Metals in 2007?

18 A. Yes. Yes, I worked there.

19 Q. And since 2007, has the union done anything for you?

20 A. Nothing.

21 Q. Does that upset you?

22 A. No. I never pay any attention to that. I didn't care
23 about the union.

24 Q. Well, if you didn't care, then why did you sign a petition
25 to get rid of them?

1 THE INTERPRETER: If you didn't care, then?

2 BY MS. HENSEL:

3 Q. If you didn't care, why did you sign a petition to get rid
4 of it?

5 A. That's why.

6 Q. That's why, what?

7 A. Because I didn't pay any attention and I was not
8 interested in the union.

9 Q. Okay.

10 The union never got you any better wages or benefits,
11 did it?

12 A. I know nothing about it.

13 Q. So, you never even paid attention --

14 MR. MIOSSI: I object, your Honor. This is really
15 repetitive. And the gentleman has testified as clearly as he
16 could he didn't want the union. And this is beyond
17 cross-examination.

18 THE COURT: You are getting very repetitive, and we
19 are way beyond the scope at this point. So, I have given you
20 leeway, but --

21 MS. HENSEL: All right, your Honor.

22 THE COURT: -- you are pushing the outer limits.

23 MS. HENSEL: All right. I can stop now. Thank you,
24 sir.

25 THE WITNESS: Thank you (in English).

1 THE COURT: Any redirect?

2 MR. MIOSSI: I do, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. MIOSSI:

5 Q. Mr. Sterczek, do you have the authority to hire employees
6 at Arlington Metals?

7 A. No.

8 Q. Do you have the authority to fire employees at Arlington
9 Metals?

10 A. No.

11 Q. Do you have the authority to conduct performance
12 evaluations of employees' work?

13 A. What do you mean evaluation?

14 Q. A written evaluation where you evaluate the performance of
15 an employee over a period of time, whether a year or six
16 months.

17 A. No.

18 Q. Do you have the authority to authorize other employees to
19 work overtime?

20 A. No.

21 Q. I understood your testimony a moment ago that you have a
22 co-worker who performs maintenance work with you; is that
23 correct?

24 A. Yes.

25 Q. Do you do the same work as your co-worker?

1 A. Sometimes yes; sometimes no.

2 Q. Do you both perform work -- maintenance work -- on the
3 same machinery?

4 A. I am not sure I understand.

5 Q. Do you have, for instance -- I'm not sure. Are you an
6 electrician or a mechanic?

7 A. We do almost all those maintenance work, half and half.

8 Q. And when you say "we," you and who else?

9 A. And Jozef Kowalkowski.

10 MR. MIOSSI: Thank you very much, Mr. Sterczek.

11 Thank you, your Honor.

12 THE COURT: Recross.

13 RECCROSS EXAMINATION

14 BY MS. HENSEL:

15 Q. You just testified that you sometimes do some of the same
16 work and sometimes you don't do the same work as your
17 co-worker. What is the different work from your co-worker
18 that you do?

19 A. As an example I will give you, that I do some paperwork
20 and Jozef doesn't.

21 Q. Okay.

22 How much time do you spend doing the paperwork?

23 A. It's difficult to establish that because, for example, I
24 do -- I start doing my paperwork, but during this time
25 somebody needs help with a machine and I have to go and do --

1 check that.

2 Q. All right.

3 So, you do paperwork on a daily basis?

4 A. Yes.

5 Q. And if you were uninterrupted by somebody needing help,
6 how much time would you spend doing that paperwork on a daily
7 basis?

8 A. It's hard to say. Maybe 15 minutes, maybe an hour.

9 Q. Are you also -- as the maintenance supervisor, you're
10 responsible for ordering parts and that kind of thing for the
11 equipment?

12 A. Yes.

13 Q. Do you have to get any approval or authority? Do you have
14 authority on your own to order those parts?

15 A. If there is something basic, not too expensive, then, yes,
16 I can order those.

17 Q. Okay.

18 Is there a dollar limit up to which you can order
19 without approval from somebody in the office?

20 A. I usually, you know, have conversation about this with my
21 boss -- my direct boss. Sometimes, you know, if I have to
22 order a line for a machine that it's worth 600, \$700, but it's
23 needed, I can order it, too.

24 Q. Okay.

25 Who is your boss?

1 A. Ronald Sowizrol.

2 Q. Is that the plant manager?

3 A. Yes (in English).

4 THE INTERPRETER: Yes.

5 BY MS. HENSEL:

6 Q. Do you have access to a company credit card, then, to
7 complete these purchases?

8 A. No.

9 Q. All right.

10 Where does the money come from? Do you order with a
11 credit on delivery type of --

12 A. Yes. I order it, I provide my name, and later on we
13 receive an invoice --

14 Q. Okay.

15 A. -- and company pays for it.

16 Q. All right.

17 And do you do your parts work in the office, as well,
18 then, with a computer?

19 THE INTERPRETER: Excuse me?

20 BY MS. HENSEL:

21 Q. Do you do the parts ordering in the office that you have
22 with a computer?

23 A. Usually by phone.

24 Q. Okay.

25 And do you have a computer to use?

1 A. Yes.

2 Q. Are you the only one that's allowed to use that computer?

3 A. Yes.

4 Q. Does your co-worker Mr. Kowalkowski ever work overtime?

5 A. Yes, of course.

6 Q. All right.

7 And do you approve his overtime?

8 THE INTERPRETER: Excuse me?

9 BY MS. HENSEL:

10 Q. Do you approve his overtime?

11 A. As an example, let's say that there is a serious repair to
12 be done. Then, first of all, we have to -- or I have to
13 inform the manager, and the manager has to allow us to do the
14 overtime. And, then, we come and work Saturday.

15 Q. Okay. Thank you very much.

16 MR. MIOSSI: No further questions, your Honor. Thank
17 you.

18 THE COURT: Thank you, sir. You may step down.

19 (Witness excused.)

20 THE COURT: Your next witness requires the
21 interpreter's services, as well?

22 MR. MIOSSI: Yes. This will be the last one.
23 Stanley Landowski.

24 (Brief pause.)

25 THE COURT: Please come forward.

1 STANISLAW LANDOWSKI, RESPONDENT'S WITNESS, SWORN

2 (Witness testified through Polish interpreter as follows:)

3 DIRECT EXAMINATION

4 BY MR. MIOSSI:

5 Q. Good afternoon, Mr. Landowski.

6 A. Yes, hello.

7 Q. Would you please give the Court your name.

8 A. Stanislaw Landowski.

9 Q. May I ask you to please spell your name for the benefit
10 of --

11 A. L-a-n-d-o-w-s-k-i (in English).

12 Q. Thank you.

13 Where do you work, sir?

14 A. At Arlington Metals Corporation.

15 Q. What is your job?

16 A. Shipping clerk.

17 Q. How long have you worked at Arlington Metals?

18 A. 25, 26 years.

19 Q. Mr. Landowski, there is a binder in front of you. Can I
20 ask you, please, to look at Respondent's Exhibit No. 1.

21 Sir, do you recognize that document?

22 A. Yes. My signature is right here.

23 Q. And are you -- do you see your signature on the third page
24 of that document?

25 A. Second page.

1 Q. Fine. Thank you.

2 Mr. Landowski, how did you come to sign that
3 document?

4 A. Because I don't want to be part of the union. I am an
5 older person. I don't want to pay any dues. It's not for me.

6 Q. Did someone present that document to you to consider?

7 A. All of us, we were signing it.

8 Q. Do you know who Brandon DeLaCruz is?

9 A. Yes. He is a co-worker.

10 Q. And did he -- was he among the people that you referred to
11 who discussed it before you signed it?

12 A. There were a few -- few people.

13 Q. All right.

14 Mr. Landowski, did anyone in management instruct you
15 or encourage you to sign that document?

16 A. No, nobody.

17 Q. Did anyone threaten you or pressure you to sign that
18 document?

19 A. No.

20 Q. Did anyone make you a promise in exchange for signing the
21 document?

22 A. No.

23 Q. Mr. Landowski, as you are sitting here today, do you want
24 to be represented by the United Steelworkers?

25 A. No.

1 MR. MIOSSI: Thank you. No more questions.

2 THE COURT: Cross-examination, Mr. Murphy.

3 MR. MURPHY: Yes, your Honor.

4 CROSS-EXAMINATION

5 BY MR. MURPHY:

6 Q. Good afternoon -- good evening.

7 A. Yes, hello.

8 Q. My name is Dan Murphy, and I represent the National Labor
9 Relations Board in this matter. And I'll be asking you some
10 questions.

11 Does any member of your family work for the company
12 besides yourself?

13 THE INTERPRETER: Excuse me?

14 BY MR. MURPHY:

15 Q. Does any member of your family work at the company besides
16 yourself?

17 A. Yes.

18 Q. Who?

19 A. My son.

20 Q. Ah.

21 Where does he work?

22 A. Office (in English).

23 THE INTERPRETER: At the office.

24 BY MR. MURPHY:

25 Q. What's his title?

1 A. He works at the office, and he also work at the hall.

2 Q. Is he a manager?

3 A. No.

4 Q. Okay.

5 A. He's a worker like I am.

6 Q. Okay.

7 Now, you testified that when you signed the petition,
8 there were a number of other employees with you?

9 A. Yes. They were also signing it.

10 Q. And that was at the plant?

11 A. No.

12 Q. Where?

13 A. Outside.

14 Q. Outside the plant?

15 A. Yes.

16 Q. Okay.

17 MR. MURPHY: Nothing further.

18 THE COURT: Any redirect?

19 MR. MIOSSI: No, your Honor.

20 THE COURT: Thank you, sir. You may step down.

21 THE WITNESS: Thank you (in English).

22 (Witness excused.)

23 THE COURT: Let's take a break until about ten after.

24 MR. MIOSSI: Very briefly, your Honor, just a
25 logistical point.

1 THE COURT: Yes.

2 MR. MIOSSI: Could you give us an idea how long you
3 are prepared to stay this evening? Because we just have a
4 logistic issue with the employees. They came down together.
5 And, so, that's all we're trying to figure out.

6 THE COURT: I was hoping we would be done by 6:00. I
7 do not know -- it took a little while with the one witness. I
8 do not know if we will be able to be done by 6:00 or not. If
9 not, I am going to have you pick back up tomorrow.

10 We will not get to closings today, I am quite
11 certain. I am going to have you come back tomorrow, probably
12 about 10:30 with my morning schedule.

13 MR. MIOSSI: That's fine. If we could at least
14 finish the employee witnesses today.

15 THE COURT: That is my hope. I know the building
16 closes at 6:00. So --

17 MR. MIOSSI: I understand. I understand.

18 THE COURT: So, if we can complete the witnesses by
19 6:00, that would be great. If we cannot, then the remaining
20 ones either may have to come back tomorrow or if we push it
21 ten minutes, I think that is okay. I know it is a long day
22 for Joe, too, doing this.

23 So, let's come back at ten after and hopefully we can
24 finish close to 6:00.

25 MR. MIOSSI: All right. Thank you.

1 MR. RUBINSTEIN: Thank you, your Honor.

2 (Brief recess.)

3 THE COURT: Whenever you are ready, you may call your
4 next witness.

5 MR. MIOSSI: Thank you, your Honor.

6 We call Michael Krasniski (phonetic),

7 K-r-a-s-n-i-s-k-i.

8 (Brief pause.)

9 THE COURT: Please come up here, sir.

10 MICHAEL JOSEPH KRASINSKI, RESPONDENT'S WITNESS, SWORN

11 DIRECT EXAMINATION

12 BY MR. MIOSSI:

13 Q. Good evening, Mr. Krasinski. Would you please give the
14 Court your name.

15 A. Michael Joseph Krasinski.

16 Q. And please spell your last name.

17 A. K-r-a-s-i-n-s-k-i.

18 Q. Where do you work, sir?

19 A. Arlington Metals.

20 Q. How long have you worked there?

21 A. 28 months.

22 Q. What's your job?

23 A. I'm in charge of the -- making the skids.

24 Q. Making pallets?

25 A. Yes, sir.

1 Q. Okay.

2 Can I ask you to look at the binder in front of you
3 at Tab No. 1. There's a document marked Respondent's Exhibit
4 No. 1.

5 Do you have that in front of you?

6 A. These are all the names here.

7 Q. Do you recognize Respondent's Exhibit No. 1, Mr.
8 Krasinski?

9 A. Yes, sir.

10 Q. Do you see, does your name and signature appear on that
11 document? Is it on the first page?

12 A. It's right here, yes.

13 Q. Do you see it?

14 A. Yes.

15 Q. How did you come to sign it, sir?

16 A. We met at a -- we were told to meet at a gas station, and
17 that's where we signed it.

18 Q. Who was in the group when you signed the document?

19 A. There was no group. It was just Brandon.

20 Q. So, did Brandon present the document to you?

21 A. Yes, sir.

22 Q. Brandon DeLaCruz?

23 A. Yes, sir.

24 Q. And did you sign the document of your own free will?

25 A. Yes, sir.

1 Q. Did you understand what you were signing?

2 A. Yes, sir.

3 Q. Why did you sign it?

4 A. Never -- the union never did anything for us, for me. So,
5 that's -- that's -- why I signed it.

6 Q. Did you sign it because you were troubled by unfair labor
7 practices?

8 MR. MURPHY: Objection. Leading.

9 BY THE WITNESS:

10 A. Yes, sir.

11 THE COURT: Sustained. Rephrase it.

12 BY MR. MIOSSI:

13 Q. Were you aware of any unfair labor practices alleged
14 against Arlington Metals?

15 A. Yes, sir.

16 Q. And is that the reason -- did that -- for that reason, did
17 you sign this document?

18 A. Yes, sir.

19 Q. In what respect did you -- what about the unfair labor
20 practices led you to sign the document?

21 A. The false statements that were made.

22 Q. By whom?

23 A. That were told to us that was -- I -- that I was told to
24 by Brandon.

25 Q. Okay.

1 Could you explain a little bit, what false statements
2 and who do you believe was telling these untruths?

3 A. All that was -- that I realized was -- that the union
4 official was at the door of the plant and that he was thrown
5 out of the plant, that I know never happened. He was always,
6 you know -- he wasn't always, but he was there at one time.
7 It was pointed out that he was a union official, and he was
8 more than welcome in the plant.

9 The other points were --

10 Q. Did you believe that an unfair labor practice had been
11 filed by the union in connection with this --

12 A. Yes, sir.

13 MR. MURPHY: Objection. Asked and answered twice,
14 and calls for a legal conclusion.

15 THE COURT: The question was, was there one filed. I
16 do not think that calls for a legal conclusion.

17 Overruled.

18 BY MR. MIOSSI:

19 Q. Did you have an opinion about the truth or falsity of this
20 unfair labor practice?

21 A. I had questions.

22 Q. Okay.

23 What about it -- what about your -- you testified
24 that you were troubled about untruths. And I just want to
25 understand, who were you accusing of stating untruths?

1 A. The union.

2 Q. Did anyone from management instruct you to sign the
3 petition?

4 A. No, sir.

5 Q. Did anyone at all offer you any promise in exchange for
6 signing the document?

7 A. No, sir.

8 Q. As you sit here today, do you wish to be represented by
9 the United Steelworkers?

10 A. No, sir.

11 MR. MIOSSI: Thank you. No more questions.

12 THE COURT: Cross-examination.

13 MR. MURPHY: A bit, your Honor.

14 CROSS-EXAMINATION

15 BY MR. MURPHY:

16 Q. How do you do, sir. My name is Dan Murphy. I'm with the
17 labor board. I'm going to ask you a couple questions, okay?

18 A. Yes, sir.

19 Q. Now, between December of 2013 --

20 A. Okay.

21 Q. -- and July of 2014, when you signed the petition, you
22 were dissatisfied with the union throughout that period of
23 time, correct?

24 A. I was not aware of the union at that time.

25 Q. Oh, you weren't.

1 Why not?

2 A. We had never dealt with the union at all.

3 Q. You had no communication with the union?

4 A. No, sir.

5 Q. They did not accomplish anything for you?

6 A. No, sir.

7 Q. Did you see anything posted in the bathrooms about union
8 meetings?

9 A. Meetings, yes, sir.

10 Q. But you chose not to go there?

11 A. No, sir, I did not.

12 Q. Okay.

13 What other lies were being told by the union and who
14 did you discuss them with?

15 A. The union never really did anything for us. So, there was
16 no lies to be denied.

17 Q. You mentioned lies about something in your direct
18 examination.

19 A. Uh-huh.

20 Q. What were you speaking about?

21 A. Having the union official that was standing in the plant
22 being removed from the plant. That never happened.

23 Q. When did that happen, to your knowledge, or is that just a
24 rumor in the plant?

25 A. No, it was pointed out that he was there. From my

1 position where I work in the plant in Bay 1, I could see him
2 there. But there was nothing -- he was standing there.

3 Q. Okay.

4 MR. MURPHY: Nothing further, your Honor.

5 THE COURT: Any redirect?

6 MR. MIOSSI: No, your Honor.

7 THE COURT: Thank you, sir. You may step down.

8 (Witness excused.)

9 THE COURT: Please call your next witness.

10 MR. MIOSSI: The next witness is Steve Hill.

11 While we are waiting, your Honor, I don't know that
12 I've asked to -- for the admission of Respondent's Exhibit No.
13 1. It's the same as the Petitioner's Exhibit 17, I think.

14 THE COURT: I assume there is no objection to its
15 admission.

16 MR. MURPHY: No.

17 THE COURT: I will admit it.

18 (Respondent's Exhibit No. 1 received in evidence.)

19 MR. MIOSSI: Thank you.

20 STEVE HILL, RESPONDENT'S WITNESS, SWORN

21 DIRECT EXAMINATION

22 BY MR. MIOSSI:

23 Q. Good evening, sir. Will you please give your name to the
24 Court.

25 A. Steve Hill.

- 1 Q. Where do you work, Mr. Hill?
- 2 A. Arlington Metals.
- 3 Q. What's your job?
- 4 A. Machine operator.
- 5 Q. How long have you worked there?
- 6 A. Combined, about ten years.
- 7 Q. Would you please open the binder that's in front of you
- 8 and look at the document behind Tab No. 1, which is
- 9 Respondent's Exhibit No. 1.
- 10 A. Yeah.
- 11 Q. Do you recognize that document?
- 12 A. Yeah.
- 13 Q. What is it?
- 14 A. It's the petition we signed.
- 15 Q. Did you sign it?
- 16 A. Yes.
- 17 Q. Do you see your name on there?
- 18 A. Yes.
- 19 Q. And why did you sign it?
- 20 A. I didn't want the union anymore.
- 21 Q. How did you come about to sign it? Did someone present it
- 22 to you or what happened?
- 23 A. Yeah. Brandon presented it to me. He let me know of the
- 24 idea.
- 25 Q. All right.

1 And did anyone make you any promise in exchange for
2 signing the document?

3 A. No.

4 Q. Did anyone threaten or force you to sign it?

5 A. No.

6 Q. Did anyone in management instruct you to sign it?

7 A. No.

8 Q. As you sit here today, Mr. Hill, do you want to be
9 represented by the United Steelworkers?

10 A. No.

11 MR. MIOSSI: Thank you. No more questions.

12 THE COURT: Cross-examination.

13 MR. MURPHY: Yes.

14 CROSS-EXAMINATION

15 BY MR. MURPHY:

16 Q. Good evening, Mr. Hill.

17 A. Good evening.

18 Q. My name is Dan Murphy, and I'm with the labor board.

19 A. Hi.

20 Q. And I'm going to ask you a couple questions, all right?

21 A. All right.

22 Q. So, looking at Petitioner's Exhibit 5C -- do you have a
23 packet of exhibits up there at all?

24 MR. MURPHY: It's up on the screen, I believe.

25 THE COURT: I have a hard copy if you prefer.

1 THE WITNESS: Okay.

2 THE COURT: 5C?

3 MR. MURPHY: 5C, your Honor.

4 THE COURT: Can you see that?

5 THE WITNESS: Yeah, I can see it here. It popped up.

6 MR. MURPHY: Thank you.

7 BY MR. MURPHY:

8 Q. Mr. Hill, you signed this card around September 29th,
9 2013, right?

10 A. Yeah. I believe it was at a meeting.

11 Q. You were at a union meeting?

12 So, you did attend it?

13 A. Yeah.

14 Q. How many union meetings did you attend, to your
15 recollection?

16 A. Five or six.

17 Q. Five or six?

18 So, you did have some interest in what was going on
19 with the union, correct?

20 A. I actually only went to block the vote.

21 Q. Oh.

22 A. Because I didn't like the contract.

23 Q. Okay.

24 So, when you signed this card to get in --

25 A. It was -- we were all handed it, and I just signed it.

1 Q. So, you were lying when you signed this card?

2 A. I wasn't lying. I was told I had to fill it out.

3 Q. So, it says here that you were there to have the union
4 represent you in collective bargaining, but that was not what
5 you wanted, right?

6 A. No.

7 Q. So, you signed this card under false pretenses?

8 A. It was handed out at the meeting, and we were pretty much
9 told to fill it out.

10 Q. But you could have walked out, right?

11 A. I could have, but I was under the impression I wouldn't be
12 allowed in there if I didn't sign it.

13 Q. Well, that's true, but you signed the card and you didn't
14 mean any of it; that's what your testimony is? You signed it
15 at the time to give the union representational status and
16 you -- that wasn't the truth, right?

17 MR. MIOSSI: I object, your Honor. He's really
18 mischaracterizing --

19 THE COURT: Sustained on form.

20 You can rephrase, although I think you have probably
21 made your point. But you may --

22 MR. MURPHY: Yeah.

23 THE COURT: -- rephrase if would like.

24 BY MR. MURPHY:

25 Q. You were signing this card under false pretenses, correct?

1 You were falsely signing this card?

2 MR. MIOSSI: Object, your Honor. That's really an
3 argument. He can ask him what he signed and what he --

4 THE COURT: Sustained.

5 BY MR. MURPHY:

6 Q. Did you mean the union to represent you at the time you
7 signed this card?

8 A. No.

9 Q. You just signed the card to obstruct the union at the
10 time?

11 A. Not obstruct. I was under the impression that I wouldn't
12 be allowed any information if I didn't sign it.

13 Q. What information were you seeking?

14 A. Well, information on the -- on what was going on, period.

15 Q. So, you were interested in what the union was doing?

16 A. I was interested on what was going on because I worked
17 there.

18 Q. And after you decide- -- after you attended how many
19 meetings?

20 A. About five or six.

21 Q. How long did it take you to understand what the union was
22 doing? One or two meetings?

23 A. Well, yeah, around one or two meetings.

24 Q. So, you were interested in what the union was doing for
25 the rest -- for the next four?

1 A. What do you mean by that?

2 Q. Well, you were interested in the process under which they
3 were trying -- you wanted to know what they were trying to
4 accomplish for you, right?

5 A. Yeah.

6 Q. And if it was something good, it would have satisfied you,
7 correct?

8 A. Probably not.

9 Q. Probably not.

10 So, you signed a card seeking union representation,
11 correct?

12 MR. MIOSSI: I object. This is repetitive.

13 THE COURT: Sustained.

14 MR. MURPHY: No further questions, your Honor.

15 THE COURT: Any redirect?

16 MR. MIOSSI: No, your Honor.

17 THE COURT: Thank you, Mr. Hill. You may step down.

18 (Witness excused.)

19 THE COURT: Please call your next witness.

20 MR. MIOSSI: Next witness is Andres Coronel.

21 (Brief pause.)

22 MR. MIOSSI: Step up to this side, please. Thank
23 you.

24 ANDRES CORONEL, RESPONDENT'S WITNESS, SWORN

25 DIRECT EXAMINATION

1 BY MR. MIOSSI:

2 Q. Good evening, sir.

3 A. Good evening.

4 Q. Please give the Court your name.

5 A. Andres Coronel.

6 Q. And please spell your last name.

7 A. C-o-r-o-n-e-l.

8 Q. Where do you work?

9 A. Arlington Metals.

10 Q. And what's your job?

11 A. I am the operator of the four-gate machine.

12 THE COURT REPORTER: I'm sorry?

13 BY THE WITNESS:

14 A. Operator.

15 THE COURT REPORTER: Of the?

16 BY THE WITNESS:

17 A. The slitter machine.

18 BY MR. MIOSSI:

19 Q. How long have you worked there, sir?

20 A. Three years.

21 Q. Please look at the binder -- open the binder in front of
22 you to Tab 1.

23 A. Uh-huh.

24 Q. Do you recognize the document there, Respondent's Exhibit

25 No. 1?

1 A. Yes.

2 Q. What is it?

3 A. It's the petition to remove the union.

4 Q. Did you sign it?

5 A. Yes, I did.

6 Q. Do you see your signature and your name on the document?

7 A. Yes, I do.

8 Q. How did you come to sign it?

9 A. We met up after work outside of a park.

10 Q. Who is in the group that -- at this meeting?

11 A. Just everyone who didn't want the union. But, like,
12 directly everyone, I don't remember. It's been a while.

13 Q. Do you remember anyone in particular by name?

14 A. I remember Brandon DeLaCruz. I remember Steve Hill. I
15 remember Chris King -- or Chris Keiler. I'm sorry. I call
16 him Chris King.

17 Q. Where why did you sign it?

18 A. I signed it because I felt that I did not want the union
19 representing me.

20 Q. And did you have any particular reason why you didn't want
21 the union to represent you?

22 A. I was just well-established already with the company and I
23 didn't believe --

24 THE COURT REPORTER: I'm sorry, sir, you're going to
25 need to slow down.

1 Could you say it, again, please.

2 BY THE WITNESS:

3 A. I said I was well-established already with the way things
4 are and I was really happy with the way things are.

5 BY MR. MIOSSI:

6 Q. All right. Thank you.

7 Did anyone offer you any benefit or make a promise to
8 you in exchange for signing it?

9 A. No.

10 Q. Did anyone threaten or coerce you to sign it?

11 A. No.

12 Q. Did anyone in management instruct you or influence you to
13 sign it?

14 A. No.

15 Q. As you sit here today, sir, do you want the United
16 Steelworkers to be your exclusive bargaining representative?

17 A. No.

18 MR. MIOSSI: Thank you.

19 THE COURT: Cross-examination.

20 MR. MURPHY: No, your Honor.

21 THE COURT: Thank you, sir. You may step down.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 THE COURT: Please call your next witness.

25 MR. MIOSSI: Our next witness is Brandon Trezzo.

1 (Brief pause.)

2 THE COURT: Up here, please, Mr. Trezzo.

3 BRANDON TREZZO, RESPONDENT'S WITNESS, SWORN

4 DIRECT EXAMINATION

5 BY MR. MIOSSI:

6 Q. Good evening.

7 Would you please give your name to the Court.

8 A. Brandon Trezzo.

9 Q. Please spell your last name?

10 A. T-r-e-z-z-o.

11 Q. Where do you work, sir?

12 A. Arlington Metals.

13 Q. What's your job?

14 A. Helper.

15 Q. How long have you worked there?

16 A. Almost four years.

17 Q. Could you please open the binder in front of you to Tab

18 No. 1?

19 A. Okay.

20 Q. That's Respondent's Exhibit No. 1.

21 Do you recognize that document?

22 A. No.

23 Q. You've never seen it before?

24 Does your signature appear on it anywhere?

25 A. The first one, right?

1 Q. Let me see what you're looking at.

2 A. This one?

3 Q. No, sorry.

4 A. Oh. Oh, yes, this one.

5 Q. This one.

6 A. This one.

7 Q. Okay. Do you recognize Respondent's Exhibit No. 1?

8 A. Yes.

9 Q. And what is it?

10 A. National Labor Board Regulation Office.

11 Q. Is it a petition that you signed?

12 A. Is it a petition?

13 Q. Did you sign the document?

14 A. Yes, I signed it.

15 Q. Do you see your name on there?

16 A. Yeah, I do. Third one.

17 Q. And how did you come to sign it?

18 A. I think this was at one of the union meetings, I believe.

19 I'm not sure. I really don't remember.

20 Q. Did you sign it -- why did you sign it?

21 A. I -- I -- really don't remember which one this one -- if
22 this was at the meeting or -- this was, like, two years ago.

23 Q. Let me ask a different question.

24 Do you know, did someone give the document to you to
25 consider and sign if you agreed with it?

1 A. One more time.

2 Q. Did a person that you know give you that document to
3 consider and sign if you agreed with it?

4 A. Yes.

5 Q. Who?

6 A. The union.

7 Q. The union gave that to you?

8 A. Yeah.

9 Q. Are you sure?

10 A. It is -- I just don't remember the paperwork. It was two
11 years ago.

12 Q. Okay.

13 Do you know who Brandon DeLaCruz is?

14 A. Yes.

15 Q. Did he give you that document?

16 A. I do not remember.

17 Q. Okay.

18 Did you sign it alone or were there other people
19 around?

20 MR. MURPHY: Objection, your Honor. Asked and
21 answered more than once about the circumstance --

22 THE COURT: I am not sure he asked that, if he was
23 alone or others were around.

24 You may answer that.

25 BY THE WITNESS:

1 A. Yes.

2 BY MR. MIOSSI:

3 Q. Who was with you or who was around when you signed it?

4 A. I don't remember.

5 Q. Pardon me?

6 A. Don't remember.

7 Q. All right.

8 Did anyone force you --

9 A. No.

10 Q. -- to sign the document?

11 A. No.

12 Q. Did you sign it because you wanted to sign it?

13 A. Yes.

14 Q. As you sit here today, Mr. Trezzo, do you want the United
15 Steelworkers to represent you?

16 A. No.

17 MR. MIOSSI: No further questions.

18 THE COURT: Cross-examination, Mr. Murphy?

19 MR. MURPHY: Yes, your Honor.

20 CROSS-EXAMINATION

21 BY MR. MURPHY:

22 Q. How do you do, sir. My name is Dan Murphy and I'm with
23 the National Labor Relations Board, and I'd like to ask you a
24 couple questions.

25 You don't really remember much about that petition

1 right there before you, correct?

2 A. I have a bad memory.

3 Q. So, you don't remember where you signed it, right?

4 A. No.

5 Q. You don't remember when you signed it, right?

6 A. No.

7 Q. You don't remember who gave it to you, right?

8 A. I mean, if I looked more into it, I would remember.

9 Q. But I'm asking you now.

10 A. No, I do not remember.

11 Q. So, you really have no independent recollection of signing
12 that document, correct?

13 A. No, I do. That's my signature.

14 Q. But that's all you remember?

15 A. Yes.

16 Q. You don't remember when you signed it, who --

17 A. No.

18 Q. -- gave it to you, what not?

19 MR. MURPHY: No further questions, your Honor.

20 THE COURT: Any redirect?

21 MR. MIOSSI: No, your Honor.

22 THE COURT: Thank you, sir. You may step down.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 MR. MIOSSI: The next witness is Joshua Arndt.

1 (Brief pause.)

2 THE COURT: Please come forward.

3 JOSHUA ARNDT, RESPONDENT'S WITNESS, SWORN

4 DIRECT EXAMINATION

5 BY MR. MIOSSI:

6 Q. Good evening.

7 Will you please give your name to the Court.

8 A. Josh.

9 Q. And your last --

10 A. Josh Arndt.

11 Q. Okay.

12 Spell your last name, please.

13 A. A-r-n-d-t.

14 Q. Where do you work, sir?

15 A. Arlington Metals.

16 Q. What is your job?

17 A. Shipping.

18 Q. How long have you worked there?

19 A. Since February.

20 Q. Of 2015?

21 A. Of 2015, yes.

22 Q. Mr. Arndt, do you want the United Steelworkers to
23 represent you?

24 A. No.

25 MR. MIOSSI: I have no further questions, your Honor.

1 THE COURT: Any cross-examination?

2 MR. MURPHY: No, your Honor.

3 THE COURT: Thank you, sir. You may step down.

4 (Witness excused.)

5 THE COURT: Next witness, please.

6 MR. MIOSSI: Next witness is Joe Carrisal.

7 (Brief pause.)

8 THE COURT: Up here, please, sir.

9 JOSEPH CARRISAL, RESPONDENT'S WITNESS, SWORN

10 DIRECT EXAMINATION

11 BY MR. MIOSSI:

12 Q. Good evening.

13 Would you please give the Court your name.

14 A. Joseph Carrisal.

15 Q. Please spell your last name.

16 A. C-a-r-r-i-s-a-l.

17 Q. Mr. Carrisal, where do you work?

18 A. Arlington Metals.

19 Q. What's your job?

20 A. I am a lineman packager.

21 Q. How long have you worked at Arlington Metals?

22 A. Just over three months. Yeah, just over three months.

23 Q. Okay.

24 Mr. Carrisal, do you wish to be represented by the

25 United Steelworkers union?

1 A. I do not.

2 MR. MIOSSI: Thank you. No further questions, your
3 Honor.

4 THE COURT: Any cross-examination?

5 MR. MURPHY: No, your Honor.

6 THE COURT: Thank you. You may step down, sir.

7 (Witness excused.)

8 THE COURT: Next witness, please.

9 MR. MIOSSI: The next witness is Samuel Medrano.

10 THE COURT: Do you have other witnesses who have only
11 been working there a short period of time, like the last two?

12 MR. MIOSSI: The remaining witnesses have only been
13 there since after the petition was signed. So, they're new
14 since that time.

15 THE COURT: I see them as a little differently
16 situated than the other ones.

17 Would you be willing to stipulate that these
18 remaining witnesses, when called to testify, will testify that
19 they do not wish to be represented by the union?

20 That is all I am hearing being elicited.

21 MR. MURPHY: Yes, your Honor.

22 THE COURT: Is that acceptable?

23 MR. MIOSSI: It is acceptable, your Honor.

24 THE COURT: So, let's just put this on the record.

25 If called to testify, Daniel DeLaCruz, Pedro Garcia, José

1 Gudino --

2 MR. MIOSSI: No. Well, that would be really
3 interesting if he did. He's a union officer.

4 THE COURT: Okay. So, let's take him out.
5 Chris Jasinski.

6 MR. MIOSSI: Let me get my notes.

7 THE COURT: Samuel Medrano, who you just called and
8 is in the courtroom.

9 MR. MIOSSI: Yes.

10 THE COURT: And Jesus Reyes.

11 So, one, two, three, four, five -- the five witnesses
12 I just identified, not including José Gudino.

13 MR. MIOSSI: Correct.

14 THE COURT: So, is that acceptable to you if counsel
15 stipulates that if called to testify, each of these witnesses
16 would testify that they did not work at the company in July of
17 2014, when the petition was signed; that they currently work
18 there; and, they do not wish to be represented by the union?

19 MR. MIOSSI: Yes, that would be their testimony.

20 THE COURT: Is that --

21 MR. MURPHY: Yes, your Honor.

22 THE COURT: Is that stipulation acceptable to you?

23 MR. MURPHY: Yes.

24 THE COURT: Do you want those individual witnesses to
25 be called for any particular reason?

1 MR. MURPHY: No.

2 THE COURT: Okay.

3 I will accept your stipulation that each of those
4 five witnesses would testify as I just articulated.

5 Do you intend to call José Gudino?

6 MR. MIOSSI: No, your Honor.

7 THE COURT: Okay.

8 Mr. Medrano, you are excused. You do not have to
9 testify.

10 MR. MEDRANO: Have a nice evening, your Honor.

11 THE COURT: Thank you. You, too.

12 MR. MIOSSI: And we have no --

13 THE COURT: I think that is the first smiling face I
14 have seen in the courtroom all day.

15 MR. MIOSSI: I'm smiling.

16 THE COURT: So, you are done with the presentation of
17 witnesses?

18 MR. MIOSSI: Yes.

19 THE COURT: Do you have any rebuttal witnesses,
20 Mr. Murphy?

21 MR. MURPHY: No, your Honor.

22 THE COURT: Okay.

23 So, we are done with the presentation of evidence.

24 Can you be back here tomorrow at 10:30?

25 MR. MURPHY: Yes, your Honor.

1 MR. RUBINSTEIN: Your Honor?

2 THE COURT: Yes.

3 MR. RUBINSTEIN: I have school conferences with my
4 kids tomorrow from 8:00 to 11:00. Is it possible we could do
5 it slightly later?

6 THE COURT: Yes.

7 MR. RUBINSTEIN: Thank you.

8 THE COURT: So, are you done at 11:00?

9 MR. RUBINSTEIN: Done at 11:00. And I could come
10 straight here, obviously.

11 And, Mr. Miossi, I think, has to catch a flight at
12 3:00 o'clock.

13 MR. MIOSSI: My travel plans don't matter.

14 MR. YOKICH: Your Honor, I have a question.

15 THE COURT: Yes.

16 MR. YOKICH: And although I would like to argue, I'm
17 assuming by virtue of your prior order that you just want to
18 hear from the parties --

19 THE COURT: Correct. Correct.

20 If I order supplemental briefing, which I have not
21 yet, if there is anything as an amici you want to add, I will
22 let you. I am not sure I need supplemental briefing yet. I
23 will let the lawyers know tomorrow.

24 MR. YOKICH: Okay.

25 THE COURT: I have a 2:30 meeting. So, we just have

1 to work around that.

2 What time do you think? Do you want to do 12:30?

3 MR. RUBINSTEIN: That would work fine. Yes, your
4 Honor.

5 THE COURT: I want to give you plenty of time to get
6 down here.

7 Is that okay with everybody?

8 MR. MURPHY: Absolutely.

9 THE COURT: So, eat an early lunch.

10 I am here. So, I am --

11 MR. MIOSSI: That's great. Thanks, Judge.

12 MR. RUBINSTEIN: I really appreciate the
13 accommodation. Thank you.

14 THE COURT: Of course.

15 So, 12:30 tomorrow, we will pick up. No more
16 evidence. We will pick up with oral arguments. I will hear
17 from the lawyers.

18 It is your burden. So, the Board will go first, and
19 then I will hear from the company.

20 MR. MURPHY: Thank you, your Honor.

21 THE COURT: I do not like to put limits on things,
22 but I would certainly think that you could each do it in 45
23 minutes or under.

24 MR. MURPHY: Oh, God, yes.

25 THE COURT: Thank you.

1 So, aim for that. Again, I do not like to put limits
2 on things, but I am just guessing based on what I have seen,
3 being generous, 45 minutes each.

4 MR. MURPHY: That's very generous, your Honor.

5 THE COURT: Okay.

6 I will see you tomorrow.

7 MR. RUBINSTEIN: Thank you, your Honor.

8 MR. TAUBMAN: Your Honor, I just also would say for
9 the amici -- for the employee amici -- we will not be here
10 tomorrow. I appreciate your letting us be for the amici. If
11 you want additional briefing from us, we will be happy to
12 submit it.

13 THE COURT: If I want anything additional, I will
14 certainly let you know.

15 MR. TAUBMAN: Thank you.

16 MR. MIOSSI: Thank you, your Honor.

17 MR. RUBINSTEIN: Thank you, your Honor.

18 (An adjournment was taken at 5:44 o'clock p.m., until
19 10:30 o'clock a.m., the following day, November 13, 2015.)

20 * * * * *

21 I certify that the foregoing is a correct transcript from the
22 record of proceedings in the above-entitled matter.

23 /s/ Joseph Rickhoff
24 Official Court Reporter

November 20, 2015

25

1 APPEARANCES (Cont'd):

2

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1 (Proceedings had in open court:)

2 MR. MURPHY: It's my understanding the National Labor
3 Relations Board owes the Court Petitioner's 7, Petitioner's 9,
4 Petitioner's 11, Petitioner's 14, Petitioner's 16 and
5 Petitioner's 18A as the unredacted monthly minute meetings.

6 THE COURT: So, are each of the ones you are about to
7 hand up unredacted?

8 MR. MURPHY: That's correct.

9 THE COURT: Okay.

10 Just hand those up to my clerk, if you would.

11 (Documents tendered to the Court.)

12 THE COURT: Thank you.

13 And I will review these in camera.

14 MR. MURPHY: In addition, your Honor, there obviously
15 has been some display of a matter involving judicial estoppel.

16 THE COURT: Yes.

17 MR. MURPHY: An issue that, as far as I can see under
18 the Rule 9 or Rule 8, is an affirmative defense.

19 If you'll note in the respondent's answer, they do
20 not plead any sort of estoppel at all. So, at a minimum, it's
21 a surprise to the government that we are being alleged to have
22 had some sort of inconsistent pleading or inconsistent actions
23 on our part; and, at a minimum, we would wish to have some
24 time to address this issue via brief, if necessary, and also
25 some display of factual circumstances that would allow the

1 respondent to make such a claim.

2 For example, how, in fact, did the United States
3 government win in an underlying proceeding by taking an
4 inconsistent position? And things of that nature.

5 The pleading -- or the motion or the summary -- that
6 the respondent provided did not in any way provide any of
7 those facts. It's just argument, which is well, fine and
8 good; but, we would certainly -- if they're going to make the
9 claim: A, it's an affirmative defense, as far as I can tell.
10 It may not be. I'm not an expert on it. Obviously, you had a
11 bit of that in your patent case, which I did note.

12 However, we would like some time to -- they would
13 have to correct some of these issues, number one. Number two,
14 we would like some time to address it.

15 THE COURT: Mr. Rubinstein, do you want to take up
16 the judicial estoppel issue?

17 MR. RUBINSTEIN: Yes, please.

18 THE COURT: And, then, we will move to the closing
19 arguments.

20 MR. RUBINSTEIN: Yes.

21 So, it's their burden to prove their 10(j). We
22 didn't know what position they were going to take other than
23 their briefs they filed. Their briefs said the same thing
24 that they had said below. And, then, in opening statement,
25 counsel stood up and alleged that the petition was tainted,

1 that there was a problem with the petition. I'll read you the
2 quotes. I've included the transcript in what we filed, your
3 Honor.

4 But she said it -- being the employees -- or my
5 client, excuse me -- unlawfully withdrew recognition from the
6 union based on a tainted employee petition and, also, based on
7 a peripheral factor that the respondent did not adequately
8 satisfy its burden to authenticate a sufficient number of
9 signatures on the petition to establish that the union had, in
10 fact, lost majority status.

11 She said that our testimony was going to be
12 completely irrelevant to the Court's consideration of the
13 case, and that -- three times she said -- the petition was
14 tainted at the time it was presented to the employer. That
15 cannot be overcome by subsequent authentication of signatures
16 or a subsequent possibly coerced testimony regarding whether
17 or not these employees do or do not want this union.

18 You've now, obviously, heard from the employees.
19 They were absolutely unimpeached on what they said and what
20 they wanted with regard to the union. We couldn't anticipate
21 what position they were going to take. They're the ones who
22 took the contradictory position. It's of fact in the record.
23 You have the record what happened below.

24 And I would submit to you, your Honor, you saw below
25 the employees were not allowed to intervene. Their voices

1 were not heard by the ALJ at all. And as a result, I would
2 submit to the Court, we think, obviously, with 118 exceptions
3 we filed to the ALJ's petition, that was a huge factor in it.

4 So, they kept them out by what they said. And they
5 said it quite equivocally -- excuse me, unequivocally -- in
6 writing on their motion to prevent the intervention;
7 Mr. Murphy orally to the ALJ; and, then, four days before they
8 filed this petition.

9 The facts are all in the record. The positions
10 are -- I said it was textbook. And I know I've been a little
11 hyperbolic with my language on this, but I really am stunned.
12 When I was a federal prosecutor, we weren't allowed to take
13 inconsistent positions. You represented the United States of
14 America, and there was a high burden in doing that.

15 And I don't make these allegations lightly. But
16 they've taken that position. They're inconsistent. We went
17 back after Court. I did some further research, discovered
18 your case on it. It's on all fours.

19 THE COURT: Okay.

20 I have the submission. You can take it up further in
21 your closing arguments if you want to address this issue at
22 all. Then we will talk about any further briefing at the end
23 of the day. I understand the arguments.

24 Mr. Murphy, it is your motion, your burden. So, you
25 may start with your closing argument first.

1 MR. MURPHY: Okay. Ms. Hensel will be doing it.

2 THE COURT: Okay.

3 Ms. Hensel, whenever you are ready.

4 MS. HENSEL: Thank you, your Honor.

5 (Brief pause.)

6 THE COURT: Whenever you are ready.

7 OPENING ARGUMENT ON BEHALF OF PETITIONER

8 BY MS. HENSEL:

9 Your Honor, the National Labor Relations Board has
10 come here before you on a petition for 10(j) in order that the
11 respondent, Arlington Metals Corporation, not be permitted to
12 benefit by the unfair labor practices it has committed and
13 allow it to drive the employee disaffection and oust the union
14 by its unlawful, bad faith bargaining.

15 Absent an injunction from this Court that requires
16 the respondent to recognize and bargain in good faith with the
17 union and provide it with the information that is relevant and
18 necessary to bargaining, it will only serve to promote
19 respondent's bad faith conduct and undermine Congress' intent
20 in passing the National Labor Relations Act.

21 We are here to ask you, please, not to allow the
22 respondent to make good on its mission to rid itself of the
23 union that the bargaining unit elected not once, but twice --
24 first in 2007 and a second time in 2012.

25 As you know, your Honor, Section 10(j) seeks to

1 return the parties to the status quo pending a final Board
2 order. The status quo that was in place at the time that
3 these ULPs were committed is found in a settlement agreement
4 that the respondent signed in July of 2013. That settlement
5 agreement provided that the respondent would recognize and
6 bargain in good faith with the union, and that the
7 certification year was extended for a period of 12 months.
8 That extension of the certification year also set the status
9 quo at an irrebuttable presumption that the union did, in
10 fact, have majority status.

11 This case does, in fact, represent that rare case
12 when a preliminary injunction is necessary to preserve the
13 effectiveness of the ordinary adjudicative process and to
14 preserve the status quo. This case is the essence of the
15 nullification of the Board's remedial authority Section 10(j)
16 relief is designed to address.

17 Now, I'd like to highlight some of the most important
18 facts your Honor should consider in weighing your decision
19 here. First, as I said, the union won not one election, but
20 two. The first in 2007, when the unit elected the union as
21 its exclusive bargaining representative.

22 Now, come 2009, there was bargaining for a first
23 contract ongoing and the respondent unilaterally implemented
24 cuts to its employees' wages and cited a crisis in business
25 conditions and imposed an arbitrary and unreachable production

1 threshold to reinstate those cuts.

2 In 2010, respondent settled the first of several
3 unfair labor practices filed by the union alleging bad faith.
4 And I would like to now ask the Court to take judicial notice
5 that the region has notified respondent that it will be
6 seeking default against it on all 8(a)(5) allegations in past
7 settlements dating back to this 2010 settlement. And if you'd
8 like, I can provide the Court with a copy of that notice of
9 default.

10 THE COURT: When did that notice issue?

11 MS. HENSEL: It issued on November 10th, your Honor.

12 THE COURT: Have you seen the notice?

13 MR. MIOSSI: Yes, your Honor. It arrived on the
14 evening of the 10th.

15 THE COURT: Okay.

16 BY MS. HENSEL:

17 Now, following the settlements in 2010 regarding bad
18 faith bargaining, in 2011 the union found itself in need of
19 filing a second set of ULP charges, again, alleging bad faith.
20 The respondent settled those charges, as well, agreeing to
21 bargain in good faith and to provide the union with relevant
22 and necessary information in bargaining.

23 And, again, those same 8(a)(5) allegations, we have
24 notified the respondent that we will be seeking default.

25 Now, come January, 2012, the respondent implemented a

1 second last, best and final offer, that included additional
2 cuts to employees' benefits and that also maintained the same
3 unrealistic production threshold that had been implemented in
4 2009. In doing so, the respondent cited continued poor
5 business conditions, as well as significant financial losses.
6 And at that time, respondent did provide the union with some
7 cursory financial information showing a loss of revenue.

8 A decertification election was held in July of 2012.
9 Notably, that petition was first filed in 2011, but it was
10 held pending the resolution of the unfair labor practice
11 charges that I've just mentioned being settled. Once the
12 atmosphere was cleansed and those ULPs were considered
13 remedied, that decertification election went ahead in July of
14 2012. Once again, even in the midst of these unfair labor
15 practices, the union won the election and won recertification.

16 Following the 2012 election, respondent, once again,
17 refused to bargain, citing impasse based on 2012 implemented
18 terms.

19 In July, 2013, the respondent finally settled those
20 charges, and that settlement is what led to the status quo
21 that existed at the time that the ULPs underlying this
22 proceeding occurred. And I would point the Court to the
23 administrative record at Bates No. 766 if it would care to
24 review that settlement agreement that establishes the status
25 quo.

1 Now, as we know, the ALJ decision underlying this
2 proceeding, there he concluded that the respondent engaged in
3 bad faith bargaining, including surface bargaining with no
4 intent to reach agreement. And that was based on the
5 respondent's absolute insistence on the 2012 implemented terms
6 as the only contract it would accept with the union.

7 The ALJ also found that the respondent refused to
8 substantiate the claims it made in bargaining, including an
9 inability to pay, as well as its reliance on very specific
10 facts underlying its bargaining position.

11 Significantly, if we return to when the 2012 terms
12 were implemented, the respondent cited bad business conditions
13 and a loss of revenue and, at that time, did turn over
14 information. It was cursory, but they did at least provide
15 some information.

16 As bargaining occurred in 2013, the respondent made
17 similar claims that business was no better than it had been;
18 that the iceberg was melting; business conditions remained
19 terrible; and, yet they refused to substantiate it in any way,
20 shape or form.

21 Now, following these -- the bad faith bargaining, the
22 ALJ also found that respondent unlawfully withdrew recognition
23 from the union based on a tainted employee petition. Now,
24 let's talk about what a tainted employee petition means.

25 In the facts presented here -- and the ALJ fully

1 addresses -- the taint occurred not because of anything that
2 the employees did in creating the petition. The taint on the
3 petition was because of the respondent's unfair labor
4 practices in the bad faith bargaining and refusal to provide
5 information.

6 Under Board law, ULPs of that nature are -- as a
7 matter of law, per se will taint a petition. Those types of
8 ULPs tend to cause employee disaffection for the union. And
9 as I will get to in a moment, the testimony you heard
10 yesterday irrefutably shows that, in fact, the respondent's
11 ULPs were responsible for the disaffection that resulted in
12 that employee petition.

13 As a secondary finding to the tainted petition based
14 on the employer's ULPs, the ALJ also found that the respondent
15 did not satisfy its burden to authenticate a sufficient number
16 of signatures on that petition to establish that majority
17 support had, in fact, been lost.

18 THE COURT: Along those lines, Ms. Hensel, when did
19 you first challenge the validity of the petition?

20 MS. HENSEL: When you say "challenge the validity,"
21 your Honor --

22 THE COURT: I do not mean tainted by any unfair labor
23 practices. I mean the validity of the petition itself. The
24 signatures on it, whether or not they were signed voluntarily,
25 et cetera. That type of challenge.

1 MS. HENSEL: Your Honor, the General Counsel has
2 never challenged the validity of the signatures on the
3 petition.

4 THE COURT: And are you saying -- because I heard
5 something different yesterday. Are you challenging the
6 validity of the petition today separate and apart from your
7 claim that it is tainted by the unfair labor practices?

8 MS. HENSEL: No, your Honor. No. Our position has
9 always been that the taint occurred as a result of the ULPs,
10 and that the employer could not rely on that petition because
11 of the ULPs that it had committed. At the underlying unfair
12 labor practice trial, General Counsel never asserted that
13 there was any problem with the formation of the petition by
14 virtue of what the employees did or by their signatures.

15 THE COURT: Okay.

16 MS. HENSEL: I think that the respondent is
17 attempting to throw out a red herring that it somehow did not
18 have the burden to verify and authenticate those signatures
19 prior to withdrawing recognition.

20 If you look at the Board's Latino Express case -- I'm
21 sorry, I don't have the citation right here; I can get it for
22 you -- Latino Express very clearly states that it is the
23 employer's burden to authenticate those signatures. There was
24 also a very recent Seventh Circuit decision, that was just
25 issued, establishing that that is, in fact, the burden.

1 THE COURT: What is the Seventh Circuit case?

2 MS. HENSEL: Your Honor, I'm sorry, I had a little
3 technical difficulty with my computer this morning and
4 everything didn't quite come out the way I wanted it to. I
5 can get that citation for you and I will provide that.

6 THE COURT: You are arguing that it was the company's
7 burden to verify the petition, and that they did not meet
8 their burden. That sounds to me like you are challenging the
9 validity of the petition when you say that.

10 MS. HENSEL: There's two different concepts here.
11 The employees signed, didn't sign. We're not contesting that.

12 What we're contesting is that the employer did not
13 verify. The employer must have --

14 THE COURT: Even under that spin, it sounds like if
15 you were not challenging or arguing that the employer did not
16 verify the signatures, that sounds to me like you are
17 challenging the validity of the petition, saying they did
18 not -- the employer did not -- meet its burden because the
19 employer -- if they had the burden. I know there is a
20 disagreement on that.

21 But it sounds to me like you are saying the employer
22 did not meet the burden of verifying the signatures and,
23 therefore, the petition itself is not valid because the
24 employer did not meet its burden.

25 MS. HENSEL: The employer can't rely on the petition

1 if it doesn't authenticate a sufficient number of signatures.

2 It --

3 THE COURT: So, you are challenging the validity of
4 it on the basis that the employer did not meet its burden?

5 MS. HENSEL: We're challenging the validity of the
6 employer's reliance on the petition.

7 THE COURT: When did you first raise that issue with
8 the company?

9 MS. HENSEL: That has always been the case. It was
10 issued in the original complaint, and that's what we proceeded
11 to trial on in the unfair labor practice case.

12 THE COURT: I want to make sure my question is clear.
13 It is your position that you always challenged what you say is
14 the employer's burden to verify the authenticity of the
15 signatures on the petition?

16 MS. HENSEL: Correct. Or I should say a sufficient
17 number of signatures.

18 THE COURT: Okay.

19 All right. Go ahead.

20 BY MS. HENSEL:

21 Finally, your Honor, the administrative law judge
22 also found that the respondent unlawfully refused the union
23 access to conduct health and safety inspections based upon
24 this unlawful withdrawal of recognition.

25 Now, we presented a lot of evidence to the Court

1 yesterday that shows in the lead-up to the 2013 negotiations
2 that were entered into pursuant to the settlement agreement,
3 employee interest and participation in the collective
4 bargaining process increased significantly. It didn't
5 decrease. It increased.

6 Specifically, I would point you to the September
7 29th, 2013, special meeting that the union held to discuss the
8 respondent's implemented terms and whether or not those terms
9 were acceptable. The union took a ratification vote of those
10 terms that day. 18 employees showed up for this meeting in a
11 unit of approximately 24 to 26. The appearance of 18 people
12 indicated an increase of more than 50 percent over the average
13 number of employees who had appeared for union meetings in the
14 preceding months, when the parties were not bargaining.

15 At this meeting, eight new people, all of whom
16 eventually signed the decertification petition, came to this
17 meeting to participate in that process and participate in the
18 ratification vote. They were interested enough in what the
19 union was doing to come; to sign authorization cards
20 authorizing the union to represent them in collective
21 bargaining; and, they were interested enough following the
22 ratification vote to attend additional union meetings to
23 discover what was occurring in bargaining.

24 Now, many of these same employees also came to Sunday
25 morning union meetings during the period the bargaining was

1 ongoing and, finally, also attended the union meeting in June,
2 2014, which was the month prior to the decertification
3 petition being delivered to the respondent.

4 In the Sunday morning union meetings that were
5 conducted in September, November and December, 2013, and May
6 and June of 2014, the union still saw 40 to 50 percent of the
7 bargaining unit taking the time and effort to attend so that
8 they could stay informed about what was happening with regard
9 to bargaining and the information requests that the union had
10 made.

11 I would submit to your Honor that on any given Sunday
12 morning, most houses of worship in the United States are
13 hard-pressed to see those kinds of numbers appearing for their
14 services. Consequently, the appearance of these kinds of
15 numbers at the union meetings, there was clearly great
16 interest among the bargaining unit.

17 THE COURT: What impact should the testimony of
18 several employees from yesterday have where they said that
19 they went there to try to stop some of the things that the
20 union was doing; or, they went there not because they
21 supported the union, but it was the only way to find out what
22 was going on?

23 MS. HENSEL: Well, your Honor --

24 THE COURT: What impact should that have on your
25 argument? Because that seems completely counter to what you

1 are arguing.

2 MS. HENSEL: Interestingly, the contract that certain
3 employees went to stop being ratified was the 2012 implemented
4 terms. The same terms that the employer duplicitously
5 insisted upon throughout bargaining in October and December of
6 2013 and refused to move off of.

7 Now, does that present an inference that certain
8 employees were aware that if they --

9 THE COURT: I do not understand what you are -- I do
10 not understand your last argument.

11 MS. HENSEL: Okay.

12 THE COURT: So, my question to you was, I heard
13 testimony yesterday from multiple employees that they went to
14 some of these meetings -- including the September, 2013,
15 special meeting -- not because they supported the union, but
16 because it was the only way to find out what was going on and
17 try to block some of their votes.

18 So, you are asking the Court to take the attendance
19 at these meetings as support for the union, which is
20 contradictory to the testimony that the Court heard from
21 multiple employees yesterday.

22 MS. HENSEL: But those --

23 THE COURT: How do you reconcile that?

24 MS. HENSEL: Those same employees signed
25 authorization cards authorizing and requesting union

1 representation.

2 THE COURT: And the fact that some of them said
3 yesterday -- one of them did not sign it. He went in, filled
4 out the information, but did not sign it.

5 But the testimony that we heard, they only signed it
6 and they only went there because it was the only way to get
7 information. What impact should that have on your argument
8 and the Court's ruling?

9 MS. HENSEL: Again, your Honor, I return to what they
10 were going to stop was the ratification of the 2012
11 implemented terms. Those were clearly --

12 THE COURT: What is your argument based on? Because
13 that is not what I heard yesterday.

14 MS. HENSEL: Okay.

15 The testimony --

16 THE COURT: That is what I did not understand -- why
17 you were linking those. Because I did not hear any employees
18 say that they were going to stop the ratification of the
19 implementation of that.

20 MS. HENSEL: I don't believe that the employees
21 actually referred to the contract as being the 2012
22 implemented terms. What was on the table and had been
23 implemented by the employer at that time was the 2012
24 implemented terms. And, again, you can find those in the
25 administrative record.

1 THE COURT: Right. I have seen those.

2 MS. HENSEL: Okay.

3 What Mr. DeLaCruz testified to is he went to block
4 the ratification of those 2012 terms. I believe Mr. Shubert
5 for the union testified that he wanted to take a vote and hear
6 from the employees about whether or not the union should go
7 ahead and accept those terms just to get in the door with a
8 contract and get a relationship started.

9 Mr. DeLaCruz testified that he was uninterested in
10 the 2012 terms; he did not like that contract; and, he did not
11 want that contract ratified.

12 And, so, I would return to the fact that during
13 bargaining in 2013, in October and, again, in December, the
14 employer continued to insist on his 2012 implemented terms,
15 the very contract that Mr. DeLaCruz did not want.

16 And, so, he did have an interest in the process to
17 effect the course of collective bargaining and see to it that,
18 in his view, terms that were not acceptable to him would not
19 be ratified.

20 THE COURT: But how do you square that with his
21 testimony that he did not want anything from the union? He
22 did not want the union representing him.

23 You sound like you are asking the Court to draw an
24 inference that he wanted what the union was advocating for and
25 pushing for in 2013, not the terms proposed by the employer.

1 MS. HENSEL: Well, I think figuring out what he
2 really wanted is pure speculation.

3 THE COURT: But he testified to it. That is what I
4 am concerned about -- that you are asking the Court to take an
5 inference based on his testimony. I am asking you, how are
6 you supporting that inference?

7 MS. HENSEL: Mr. DeLaCruz is one individual. We also
8 heard from --

9 THE COURT: I know. You are the one who raised it,
10 though, to link your argument. I am just trying to understand
11 what you are relying on to support that particular aspect.

12 MS. HENSEL: Well, Mr. DeLaCruz is one individual.
13 There were several others that testified that they were
14 interested in the process and wanted to know what was going
15 on, had an open mind, wanted to hear what the union might be
16 able to achieve and, at the end of the day, after hearing
17 about the employer's conduct and its insistence on these
18 terms, determined that they wanted to decertify.

19 And that clearly -- that decision is clearly based
20 upon the employer's bad faith conduct in surface bargaining
21 with no intent to reach agreement and refusing to provide the
22 union with enough information to allow it to intelligently
23 bargain.

24 BY MS. HENSEL:

25 All right. Now, returning to the union meetings,

1 it's clear from the testimony of Mr. Shubert that the union
2 apprised all employees attending of what was going on. He
3 shared with them that there was continued insistence on the
4 2012 terms; that they were refusing to turn over information.
5 And in December, he shared that based upon employer's past
6 conduct in refusing to respond to information requests, it was
7 very, very likely that ULPs would be necessary to obtain the
8 information this time around, as well.

9 The union informed the employees that without that
10 information, they weren't going to be able to continue
11 bargaining because they didn't have enough information; that
12 the employer had made specific claims that they weren't able
13 to address without being provided information to back that up.

14 I want to run through some of the evidence that the
15 Court received yesterday because it verifies the
16 administrative law judge's ruling and conclusion that the
17 respondent's conduct did, in fact, cause the employee
18 disaffection that resulted in the decertification petition.

19 Again, as we've just discussed, Mr. DeLaCruz
20 testified that he didn't like the implemented terms and didn't
21 want them ratified, and yet that is the same terms that the
22 employer continued to insist upon.

23 Mr. Casey Waz testified that he was interested in
24 what was going on. That led him to fill out the authorization
25 card and attend union meetings. Mr. Waz further testified

1 that the -- and I quote -- mess at AMC was because of the
2 union. He got less money instead of more. And employees had
3 had enough because the union didn't do anything for him and
4 there was no sense in it being there.

5 Similarly, Chris Keiler attended union meetings so
6 that he could decide for himself about the union. He also
7 testified, in the end, the union didn't do anything for me.

8 Anthony Menotti was also interested in learning about
9 what the union was doing. So, he signed an authorization card
10 and testified he went to four or five union meetings to find
11 out what was happening. He testified that in the end, the
12 union also didn't do anything for him and he was, I quote,
13 totally dissatisfied come July, 2014, when he signed the
14 decertification petition.

15 Steve Hill testified that he signed an authorization
16 card and participated in the union meetings because he wanted
17 to block the ratification of a contract he did not like. And,
18 again, that is the 2012 implemented terms that the employer
19 duplicitously insisted upon in bargaining on.

20 THE COURT: Again, what is your support for the
21 inference you are asking the Court to make that based on that
22 testimony that he did not want the 2012 contract ratified,
23 that that means he did not -- that that should be blamed on
24 the employer and not what he also said, that he did not want
25 the union representing him?

1 MS. HENSEL: The 2012 terms were the product, as the
2 ALJ found, of the respondent's bad faith bargaining. It did
3 not engage in the give and take of collective bargaining;
4 continued to insist on those terms; made an inability-to-pay
5 claim as the rationale for why it would not move off of those
6 terms; and, otherwise relied on specific factors in support of
7 that bargaining position, but refused to substantiate that to
8 the union.

9 Of course, the administrative law judge also found
10 that over the years, the respondent had given varying
11 inconsistent positions for this production threshold of
12 180,000 tons. You know, in 2009, that there was a business
13 crisis, the company was going broke; later on, intimating that
14 it needed to produce the 180,000 tons to break even; and,
15 finally, in 2013, relating the 180,000-ton production
16 threshold to, I believe, its operating costs. Unexplained
17 operating costs.

18 BY MS. HENSEL:

19 Returning to Mr. Steven Hill attending union
20 meetings, again, he testified he wanted to attend the meetings
21 to find out what the union was trying to accomplish. And, of
22 course, what he learned at those union meetings was the union
23 was trying to obtain sufficient information to understand the
24 respondent's bargaining proposal so that it could
25 intelligently bargain and make counter-proposals to the terms

1 that respondent was insisting on.

2 Andres Coronel also voluntarily signed an
3 authorization card and went to union meetings, in the process
4 learning about the respondent's unlawful conduct in
5 bargaining.

6 Likewise, Brandon Trezzo voluntarily signed an
7 authorization card and went to union meetings where he also
8 learned about the respondent's unlawful conduct and ultimately
9 was one of the signatures on the decertification petition.

10 We heard testimony from Michael Krasinski. While he
11 did not sign an authorization card, he did testify that the
12 union didn't do anything for him either.

13 We heard from Emil Sterczek who arguably is a
14 supervisor. Nonetheless, he did sign that petition. But he
15 also testified the union hadn't done anything for him.

16 Now, the ALJ's decision inextricably links the
17 employer's ULPs and bad faith bargaining and refusal to
18 provide information to the employee disaffection that occurred
19 come July of 2014. I think that this testimony irrefutably
20 and overwhelmingly shows that the ALJ's conclusion was
21 correct. Employees signed that decertification petition
22 because the union hadn't done anything for them. And the
23 reason why the union hadn't done anything for them was because
24 the employer was engaged in duplicitous bargaining and refusal
25 to provide it with the relevant and necessary information it

1 required to bargain on behalf of the employees to fulfill its
2 statutory obligation to the employees as their exclusive
3 representative.

4 Your Honor, if I could turn, please, to the
5 likelihood of success on the merits. It is one of the
6 elements of 10(j) relief, and petitioner has satisfied this
7 burden. In the Seventh Circuit -- and we have previously
8 briefed this -- the Seventh Circuit holds the view that an ALJ
9 decision is due significant deference, as well as the General
10 Counsel's view of the law. And you will find it in *Harrell*
11 *vs. American Red Cross*, a Seventh Circuit 2013 decision.

12 MS. HENSEL: Would you like the full citation?

13 THE COURT: I am well aware of those.

14 MS. HENSEL: Okay.

15 BY MS. HENSEL:

16 And, of course, *Bloedorn v. Francisco Foods*.

17 Now, in this case, the administrative law judge heard
18 two full days of testimony, reviewed a few hundred pages worth
19 of exhibits, and wrote an exhaustive 40-page analysis of the
20 evidence that he took over the two-day period.

21 After that exhaustive review, he found -- as I
22 probably sound like a broken record at this point -- found
23 surface bargaining with no intent to reach agreement; the
24 refusal to provide the relevant and necessary information; the
25 unlawful withdrawal of recognition; and, the unlawful refusal

1 to provide access.

2 And with respect, of course, to the withdrawal of
3 recognition, it was unlawful first because it occurred in the
4 face of serious ULPs having the tendency to cause employee
5 disaffection. And, as I mentioned, such ULPs under Board law
6 are per se violations that would cause employee disaffection.

7 Your Honor is obligated under the Seventh Circuit law
8 to provide great deference to the ALJ's decision; and,
9 furthermore, 10(j), of course, does not confer any
10 jurisdiction on the Court to review the underlying merits.

11 I would also further state that the General Counsel
12 does not pursue Section 10(j) petitions on its own. This is a
13 proceeding which is authorized only by the Board. And we are
14 here before you pursuant to the Board's authority.

15 THE COURT: I am aware of that by the small number of
16 cases that come in under 10(j).

17 MS. HENSEL: Well, it is extraordinary relief. They
18 don't authorize this often. And that should point to the
19 import of what has occurred here and what we're asking the
20 Court to do.

21 BY MS. HENSEL:

22 With regard to the irreparable harm prong, the U.S.
23 Supreme Court in the Fall River Dyeing case held that when a
24 union is unable to protect employees or affect their working
25 conditions, the passage of time without those benefits

1 irreparably erodes employee support and it permits the
2 employer to achieve the object of its unlawful conduct by
3 irreparably chilling or eliminating support.

4 THE COURT: What about the fact that you waited about
5 15 months between the petition that was completed and the
6 filing for the 10(j) relief?

7 MS. HENSEL: I will say, your Honor, bad faith
8 bargaining cases, they're like a mosaic. It can take months
9 and sometimes literally years to put a complete picture
10 together.

11 THE COURT: And that may be true, but doesn't that
12 cut against the irreparable harm?

13 If you waited 15 months before doing anything and the
14 employees were in the position they were in for those 15
15 months, doesn't that cut against any type of irreparable harm
16 that you are asking the Court to now come in and take
17 immediate action on?

18 MS. HENSEL: No, your Honor. Again --

19 THE COURT: Do you have any case law supporting that?
20 Because the case law seems to suggest otherwise.

21 So, specifically, the delay in bringing this on the
22 Board's behalf seems to cut against any argument you have of
23 irreparable harm.

24 MS. HENSEL: Okay.

25 Your Honor, there is -- I can cite you Muffley --

1 THE COURT: Can you spell that, please?

2 MS. HENSEL: Sure. M-u-f-f-l-e-y.

3 -- vs. Spartan Mining Company. That's 570 F.3d 534,
4 Fourth Circuit, 2009.

5 THE COURT: Okay.

6 And what did the Fourth Circuit say there?

7 MS. HENSEL: That was a finding that a delay between
8 July, 2013, withdrawal of recognition and the 20 -- February,
9 2014, request for injunctive relief does not bar a finding of
10 irreparable harm as "complicated labor disputes like this one
11 require time to investigate and litigate."

12 THE COURT: And that is about a seven-month delay.
13 So, we are doubling that.

14 MS. HENSEL: That's right, your Honor. You know --

15 THE COURT: And I do not doubt these are complicated.
16 I am not questioning that.

17 MS. HENSEL: Your Honor, let me explain. Part of
18 what happens is that the unfair labor practice case was set to
19 go to trial in November of 2014. So, that was, what? Just
20 five -- four to five months following the withdrawal of
21 recognition. Another charge was filed by the union which was
22 potentially related to the issues that were at play in the
23 existing complaint set to go to trial.

24 The Board's rules require that if there are related
25 matters, that we postpone and investigate fully any related

1 charges so that if there is a merit finding, that we go to
2 trial on those charges together, at the same time.

3 THE COURT: Is that why you asked for the delay?

4 MS. HENSEL: That is why we postponed the trial -- so
5 that we were able to investigate.

6 That charge was ultimately dismissed. It was
7 appealed. And we needed to wait out the appeals process for a
8 final determination in the event that it was sent back to our
9 office for further investigation or for complaint.

10 The appeals process concluded, I believe, in December
11 of 2014. And at that -- you know, the administrative law
12 judges get busy. And when you ask for a new trial date, you
13 often aren't able to get one for anywhere between two to four
14 months down the road. And I believe the appeals decision came
15 down in December. So, in early January, we requested dates
16 and the earliest we were able to get was an April date. That
17 explains why the trial was put off for so long.

18 THE COURT: I do not think anybody is suggesting bad
19 faith on the Board's part for the delay, but the mere fact of
20 the delay and the 15 months in bringing this particular
21 action, which I do not think you had to wait for an ALJ
22 decision on.

23 MS. HENSEL: It's not required that we wait for an
24 ALJ decision. However, the -- we felt it was the responsible
25 thing to do and not waste this Court's time because of the

1 fine intricacies that go into the determinations as to whether
2 or not a violation has occurred.

3 The state of law on bad faith bargaining is not
4 always clear and, again, is extremely fine-line fact
5 dependent. And, therefore, we felt it was a much better
6 determination to wait until we had a decision so that we were
7 able to come to you with a much better showing of a likelihood
8 of success on the merits.

9 Returning to the concept of irreparable harm, again,
10 when employees are deprived for a significant amount of time
11 from their decision to be represented, that, all by itself,
12 constitutes irreparable harm; and, the Seventh Circuit adheres
13 to this premise. And you find that in Spurlino Materials vs.
14 NLRB.

15 The Seventh Circuit also has found that when interim
16 relief in a lengthy administrative process, the employees may
17 choose not to be represented by the union due to its lack of
18 impact.

19 The irreparable harm prong here in the Seventh
20 Circuit may also be evaluated on the same evidence which
21 establishes the likelihood of success on the merits. And
22 that, of course, would go back to the administrative law
23 judge's decision. And the Seventh Circuit, of course,
24 evaluates irreparable harm on a sliding scale, finding that
25 the better the case is on the merits, the less is the burden

1 to prove the irreparable harm.

2 Now, we have established irreparable harm by virtue
3 of the withdrawal of recognition in the face of the serious
4 ULPs, which had a tendency to cause employee disaffection.
5 The evidence that the Court heard yesterday irrefutably shows
6 that employee disaffection occurred as a result of the
7 employer's conduct.

8 You also heard some evidence yesterday that since the
9 union has been removed, at least two employees have received
10 fairly significant wage increases. The employer is continuing
11 to cause the irreparable harm by granting employees better
12 terms and conditions of employment by increasing their wages,
13 further causing disaffection.

14 I would note for your Honor the Region is currently
15 investigating a new charge filed by the union regarding wage
16 increases given to employees without notice to a bargaining
17 with the union as the exclusive representative. We have not
18 made a determination on that charge yet, but it is pending.

19 You also heard evidence yesterday that following the
20 withdrawal of recognition, while attendance and participation
21 in union meetings had spiked considerably during the
22 bargaining period and even just prior to the decertification
23 petition, following that, the attendance at meetings has
24 dropped precipitously, down to about two regular attendees per
25 month.

1 You also heard evidence from the union that it has
2 lost the support of a longtime and previously very involved
3 individual, Mr. Golik. Mr. Golik was previously on the
4 bargaining committee, attended union meetings on a regular
5 basis and, following withdrawal over the succeeding few
6 months, simply stopped attending union meetings and is now to
7 the point where he will not even return phone calls to the
8 union to discuss what's going on.

9 Your Honor, nobody is going to be irreparably harmed
10 by the issuance of an injunction here. The burden on the
11 employer is simply to sit down at the table and bargain with
12 the union. So, the harms there are non-existent. It's just a
13 little time spent across the table discussing terms and
14 conditions of employment.

15 The employees are not going to be irreparably harmed
16 by the issuance of an injunction in this case. As I noted
17 previously, the Act contains processes and procedures by which
18 employees can vote to decertify if they so choose. Once the
19 atmosphere is cleansed of the unfair labor practices and once
20 the certification year has expired, if the employees still
21 want to decertify, they're able to do that. They can file
22 another petition.

23 In this case, it's interesting that recognition was
24 withdrawn the way it was because the employees, with their
25 petition, could have come in and tried to file a

1 decertification petition. I think it's testament to the
2 seriousness of the ULPs that were under consideration at the
3 time. That petition would have been dismissed because of the
4 per se finding of disaffection caused by the bad faith
5 bargaining ULPs.

6 Therefore, the respondent didn't have any choice at
7 that time other -- it could either unilaterally withdraw
8 recognition or do nothing, because the decertification
9 petition filed with the Board would have been dismissed. But,
10 again, that option, that's out there. They can do that down
11 the road if they want to do that.

12 Now, pending the bargaining, if an injunction were to
13 issue, the employer is obligated to maintain the existing
14 terms and conditions of employment. And we heard testimony
15 yesterday that at least a couple of people have received wage
16 increases, and there certainly may be additional individuals
17 who have received wage increases. That is the status quo of
18 whatever they're making today. The employer doesn't take that
19 back just because bargaining recommences.

20 In addition, if there are non-discretionary increases
21 in the works for these employees, they don't lose that either.
22 In fact, it would be an unfair labor practice to withhold
23 non-discretionary wage increases or increases in benefits that
24 are already planned.

25 And, furthermore, pending bargaining, the employer

1 always has the option, if it wants, to give somebody an
2 increase. They can always ask the union, discuss it, and the
3 union can approve it. There is no irreparable harm to the
4 employees by virtue of the two sides sitting back down at the
5 table and bargaining.

6 Now, going to the unwanted union issue, you did hear
7 from a couple of newer employees yesterday who were not
8 employed at the time that the petition was filed. Some who
9 were hired as recently as just a couple of months ago state
10 that they don't want the union. I want to remind the Court,
11 again, that the status quo that we're seeking to return to is
12 the status quo that existed at the time of -- that the ULPs
13 were committed, and that is in that 2013 settlement agreement:
14 Certification year extension, an irrebuttable presumption of
15 majority status, and an obligation to recognize and bargain in
16 good faith.

17 The Fall River Dyeing case, the Supreme Court
18 indicated the courts are and should be skeptical when unwanted
19 union arguments are made by employers. I believe they stated
20 that allowing an employer to rely on employee rights and
21 refusing to bargain is inimical to industrial peace.

22 Now, in this case, the employees that were brought in
23 to testify were here represented by counsel, but the employees
24 were put on the witness stand at the employer's behest. This
25 really is the employer's argument and has made it repeatedly,

1 both at the ULP hearing, in its exceptions, and now here
2 before you.

3 Courts -- it's not an unprecedented action to impose
4 a bargaining order even in the face of employee testimony that
5 they are anti-union. A couple of cases for you to look at is
6 *Asseo vs. Centro Medico*. That's at --

7 THE COURT: Do you have a cite? Okay.

8 MS. HENSEL: You know that one?

9 THE COURT: No. Do you have a cite, I asked.

10 MS. HENSEL: 900 F.2d 445.

11 THE COURT: Okay.

12 MS. HENSEL: Pages 454 through '55, First Circuit,
13 1990.

14 You can also take a look at *Hoffman vs. Inn Credible*
15 -- and that's two words, I-n-n and then "credible" --
16 *Caterers*, 247 F.3d at 370.

17 THE COURT: What circuit?

18 MS. HENSEL: I'm sorry, your Honor, I didn't -- I
19 don't have the complete cite here. Again, I can get that for
20 you.

21 THE COURT: That is okay.

22 BY MS. HENSEL:

23 Now, you also heard yesterday from Mr. Orlowski that
24 he would be caused irreparable harm if he was forced to turn
25 over these confidential financial records. We disagree.

1 Protective orders are routinely issued in court proceedings,
2 as well as outside of court, between two parties in order to
3 protect sensitive information. The petitioner in this case
4 certainly would not be opposed to a protective order issuing
5 to limit who may see the information that is disclosed and
6 what it may be used for.

7 What I do know is that the information that the union
8 has requested is definitely relevant and necessary to
9 bargaining so that they can effectively create proposals in
10 accordance with the respondent's positions. They should be
11 able to substantiate that. Without that information, they're
12 bargaining against themselves. They're bargaining in the
13 dark. Without the information, there is no bargaining to be
14 had, as was shown by what occurred in 2013 into 2014.

15 In sum, your Honor, the petitioner here has
16 established all elements necessary for the issuance of a 10(j)
17 injunction. Without this injunction, Congress' intent in
18 promoting good faith collective bargaining will in no way,
19 shape or form be satisfied.

20 THE COURT: Thank you.

21 MS. HENSEL: Thank you.

22 I will find those cites for you.

23 THE COURT: Okay.

24 The ones that -- as long as you gave me a partial
25 cite, that is fine. But the ones that you did not have cites

1 for, that will be helpful.

2 MS. HENSEL: Thank you.

3 THE COURT: Let's take about a five-minute break, and
4 then I will pick up with you.

5 (Brief recess.)

6 THE COURT: Mr. Miossi, whenever you are ready.

7 MS. HENSEL: Your Honor, I found the citations. The
8 Board case, *Latino Express*, is 360 NLRB No. 112, 2014.

9 THE COURT: Okay.

10 MS. HENSEL: And the case -- I apologize if I said
11 Seventh Circuit. I think I meant D.C. Circuit. It's *Pacific*
12 *Coast Supply, LLC vs. NLRB*. The citation was 2015 BL 302572.

13 THE COURT: BL?

14 MS. HENSEL: BL.

15 THE COURT: Not WL?

16 MS. HENSEL: It might be WL.

17 THE COURT: It has got to be Westlaw.

18 MS. HENSEL: Okay.

19 302572, D.C. Circuit. And it attached the case
20 number of 14-047, and the decision is dated September 18th,
21 2015.

22 THE COURT: Okay. Thank you.

23 MR. MIOSSI: Thank you, your Honor.

24 ARGUMENT ON BEHALF OF RESPONDENT

25 BY MR. MIOSSI:

1 Allow me to start -- I believe I heard counsel for
2 the labor board say at one point during her closing argument
3 that the company presented evidence that was nothing but red
4 herrings. I'll address that. But first I have to clear away
5 a few red herrings that the labor board just asserted in
6 closing argument.

7 First, the administrative law judge in this case did
8 not find that the 2012 implemented terms were the product of
9 bad faith bargaining. That is false. In fact, the National
10 Labor Relations Board, and on appeal to the General Counsel of
11 the National Labor Relations Board twice, found that the
12 company lawfully reached a bargaining impasse and lawfully
13 implemented its last, best and final proposal. That occurred
14 in 2009, and the General Counsel affirmed that in January,
15 2010. And that occurred, again, in 2012.

16 All the settlement agreements that my colleague here
17 referenced in her opening statement were non-admission
18 settlements -- non-admission settlements -- to avoid the
19 expense and burden of litigation.

20 The ALJ in this case did not find that the company
21 asserted an inability to pay as a reason for any bargaining
22 position in this case. There is unrefuted evidence that all
23 parties agree that was never asserted. He found that through
24 implication. To be sure, that is one of our many points of
25 appeal, which is properly working its way through the Board

1 and, if necessary, the Circuit Court, whether the Seventh
2 Circuit or the D.C. Circuit. Time will tell.

3 There is no evidence that the implemented terms that
4 were referred to in closing argument were presented at the
5 September 29, 2013, meeting. None. No one testified to that.
6 Mr. Shubert could have clarified that if, in fact, that's what
7 happened.

8 The witnesses -- the employee witnesses -- who
9 testified did not say that. There is no evidence of that
10 whatsoever.

11 And last -- maybe second to last -- the two elections
12 that were conducted in this case by the Board in 2007 and 2012
13 are utterly not at issue here. They've never been at issue.
14 The union won both of those elections and the company did not
15 challenge them legally in any way, shape or form. That is
16 history.

17 My last point before I proceed with where I thought I
18 might start was in a dialogue that the Court had with counsel
19 a moment ago regarding the immediacy, the delay in proceeding.

20 In August, 2014, the Region -- the Board here --
21 inquired of us and asked us to state our position in
22 writing -- which we did -- concerning the appropriateness of
23 pursuing 10(j) relief. That was over a year ago.

24 THE COURT: That is in the record, I believe --

25 MR. MIOZZI: Yes, it is.

1 THE COURT: -- that you gave me.

2 MR. MIOSSI: Yes, it is.

3 I will proceed.

4 BY MR. MIOSSI:

5 The labor board from the very outset, your Honor, has
6 aggressively opposed the employees' request to be heard at any
7 stage of this litigation. They opposed them in October, 2014,
8 over a year ago, when they sought to be heard at the hearing
9 on the merits, stating without qualification that it was not
10 challenging the validity or authenticity of the petition.

11 The quotes from their pleadings make that
12 irrefutable. There is no way to parse that language. Judge
13 Carissimi was right. And I disagree very clearly with counsel
14 for the General Counsel when she says they did allege in the
15 complaint that the petition was in some way invalid. No, they
16 did not. And I've read the complaint. Judge Carissimi read
17 the complaint, too, and his dialogue with Mr. Murphy speaks
18 for itself.

19 And, then, finally, a month ago -- a month and a week
20 ago -- in a pleading filed with the labor board, they
21 reiterated the petition they asserted a year before, that the
22 validity and authenticity of the petition and, in particular,
23 any actions carried out by the employees in preparing the
24 petition or presenting it to respondent are not at issue.

25 Four days later, in their petition, at Paragraph

1 8(b), they allege as part of the petition here for which they
2 seek an injunction that among the unlawful actions that the
3 employer engaged in was "withdrawing recognition from the
4 union based upon a defective employee petition." That, your
5 Honor, is bold. We've addressed the issue. We filed a brief
6 on the subject of judicial estoppel, and I'm not going to
7 address it further. That is bold.

8 I think something else is bold, too. And if you'll
9 indulge me for a moment, I'd like to read from the opening
10 statement that the Board gave yesterday just briefly.

11 Counsel for the General Counsel said, "that it -- "
12 Arlington Metals Corporation " -- unlawfully withdrew
13 recognition from the union based on a tainted employee
14 petition and, also, based on a peripheral factor that the
15 respondent did not adequately satisfy its burden to
16 authenticate a sufficient number of signatures on their
17 petition to establish that the union had, in fact, lost
18 majority status."

19 Continuing: "The respondent's desire to present the
20 supplemental testimony of the disputed employees who allegedly
21 signed it" -- "the petition, as well as, it appears, current
22 employees who weren't even present in the bargaining unit at
23 the time of this petition -- I am presupposing, to testify
24 that they do not want this union to represent it -- is
25 completely irrelevant to the Court's consideration of this

1 case."

2 And last: "That cannot be overcome by a subsequent
3 authentication of signatures or a subsequent possibly coerced
4 testimony regarding whether or not these employees do or do
5 not want this union."

6 That's arrogant, your Honor. That is arrogant. To
7 assume that the employees who took this witness stand were in
8 some way going to give coerced testimony, that is
9 disrespectful. And there's no evidence whatsoever -- and as
10 the Court, I'm sure, determined based upon Mr. Murphy's
11 question to Mr. DeLaCruz, we never met with him before. It
12 should have been obvious we didn't prepare him. Or if we did,
13 we have problems.

14 It is astonishing that the federal agency charged
15 with enforcing employee rights under the National Labor
16 Relations Act would assert such a position in this case that
17 the employee testimony, that their interests, their Section 7
18 rights are irrelevant.

19 I will come back to those points in a moment. But
20 first, if I may, I think it would be helpful to understand
21 some of the fundamental principles here at stake briefly.

22 The principle of self-determination and employee free
23 choice as to whether they want union representation or do not
24 is the central -- is the core of the National Labor Relations
25 Act. And I don't think anyone in this room will dispute that.

1 It's contained in Section 7, 29 U.S.C., Section 157.

2 Yet what the NLRB seeks to do here is to apply the
3 heavy hand of government to deny the employees their Section 7
4 rights. And there is no way around that. Because an
5 injunction that they've requested, speaking of irreparable
6 harm, will negate their Section 7 rights. And the majority of
7 the employees -- and there is no question a majority of the
8 employees, both in July, 2014, and on November 12, 2015 -- do
9 not care to be represented by this union. And that is their
10 right.

11 The union -- excuse me. The labor board has cited no
12 case whatsoever authorizing or endorsing such a brute
13 application of a Court's equitable authority to negate Section
14 7 rights, and that's because there is none. But the authority
15 that there is, I will quote briefly. I'd like to quote --
16 I'll give you the cite -- from International Ladies' Garment
17 Workers' Union vs. NLRB, 366 U.S. 731 at Page 737, from 1961.

18 "There could be no clearer abridgement of Section 7
19 of the Act assuring employees the right to bargain
20 collectively through representatives of their own choosing, or
21 to refrain from such activity, than granting exclusive
22 bargaining status to an agency selected by a minority of its
23 employees, thereby impressing that agent upon the
24 non-consenting majority."

25 It's a similar effect in *Vaca v. Sipes*, 386 U.S. 171

1 at 182, 1967: "The congressional grant -- " and I'm quoting.
2 "The congressional grant of power to a union to act as
3 exclusive bargaining representative necessarily results in a
4 corresponding reduction in the individual rights of the
5 employees so represented."

6 And last, NLRB vs. Allis-Chalmers Manufacturing
7 Company, also a 1967 case, 388 U.S. 175, Page 180. "Exclusive
8 representation extinguishes the individual employee's power to
9 order his own relations with his employer and creates a power
10 vested in the chosen representative to act in the interests of
11 all employees."

12 So, the individual employees here do suffer a loss of
13 rights if a union is imposed upon them against their wishes.

14 Here, the labor board is really turning federal labor
15 law on its head in a case -- in a manner I have never seen
16 before. This is not a case where the employer -- as you will
17 typically find in a 10(j) case, this is not the type of case
18 where the employer -- is accused of unlawfully firing
19 employees, unlawfully interfering with an ongoing organizing
20 effort that employees are attempting to promote, unilaterally
21 and in a retaliatory way cutting wages or benefits. None of
22 that's here. None of that's here.

23 So, allow me to step back for a minute. What
24 happened here? A group of employees came together on their
25 own, with no coercion from any party. Certainly not

1 management. Certainly not their fellow workers. And each
2 person so testified. No one put them up to it. No one
3 promised them anything. No one threatened them with anything.
4 They did it because they wanted to do it, in their own words.

5 The majority felt the way they did in July, 2014, and
6 they do today. The math is simple. In each case, it was 60
7 percent, roughly, of the work force, based upon the testimony
8 here today and the petition in July, 2014. They do not wish
9 to be represented, and they took that step on their own. And
10 they presented that petition to the employer requesting the
11 employer to withdraw recognition, and the employer honored
12 that request.

13 And, then, enough of them -- 20 of them -- felt so
14 strongly about this that they gave up a day of work to come
15 here, be sworn and testify. And they gave up -- they wandered
16 between the 2nd Floor cafeteria, the witness room and the
17 hallways up and down the 12th Floor all day long waiting a
18 turn to come in and have their voice heard for the very first
19 time. And I'm glad they did at long last. And I thank the
20 Court for your patience and courtesy in allowing us and
21 indulging us the opportunity to present these many witnesses.
22 Far more, of course, than we would otherwise have chosen to
23 do.

24 THE COURT: Is there any evidence in the record of
25 how many employees there are working there now?

1 MR. MIOSSI: Yes.

2 THE COURT: Not management, but --

3 MR. MIOSSI: Yes. Mr. Orłowski testified 34.

4 THE COURT: Okay.

5 BY MR. MIOSSI:

6 Another comment. I made a note to myself during the
7 closing by the labor board. This wasn't Arlington Metals
8 ridding itself of a union. That had nothing to do with it in
9 any way. And there's certainly no evidence to it. I
10 understand it's an argument and maybe somebody feels that way,
11 but there's no evidence to support it.

12 Yet in their effort to urge the Court to enter an
13 injunction granting what really is final relief -- the order
14 in the petition, excuse me, that they request, it's the final
15 relief that they seek in this case. There's nothing interim
16 about it. The only thing is, put us back in over the
17 employees; go back to the bargaining table, despite the fact
18 that a majority don't want it; and, turn over a bunch of
19 records -- private financial records; and, in so doing
20 bypass -- literally bypass -- the normal process by which
21 these cases are appealed and challenged.

22 And we're well into that process. The case is now
23 before the Board. And depending upon how the Board acts, it
24 may go before a federal court of appeals.

25 But it comes here seeking this final relief,

1 asserting for the first time that this petition was tainted,
2 yet they offer exactly no evidence to support that assertion.
3 Absolutely no evidence. They rest on a conclusory assertion
4 that the employees who signed that petition were too feeble
5 minded to act in their own best interest and a fact-free
6 conclusion that the petition was "tainted" based upon
7 Arlington Metals' alleged conduct in bargaining on October 31,
8 2013, and December 11, 2013. That's it.

9 By the way, that was Meeting No. 38 and 39 out of 39
10 meetings between the parties over the preceding six years. We
11 certainly weren't playing hard to get, yet not a single
12 employee -- not a single witness, I should say; certainly, an
13 employee -- provided any evidence that their decision to sign
14 a petition to decertify the union was motivated in any way,
15 shape or form by these October and December, 2013, alleged
16 unfair labor practices concerning bargaining. Nobody
17 testified about it. The labor board didn't even ask them
18 about it.

19 THE COURT: Is there any evidence that they even knew
20 about it?

21 MR. MIOSSI: No, ma'am. And it wasn't even in the
22 back of their mind, according to any evidence that certainly
23 was presented in court yesterday.

24 BY MR. MIOSSI:

25 And, so that they -- it was interesting to see a

1 group of individuals -- and I said to my partner Dan
2 Rubinstein, now I know what it's like to be a DA putting
3 witnesses on you've never seen before. It's a little -- it's
4 a high-wire act and there's no net.

5 But they were impressive. And they were plain
6 spoken. And they were direct. And they were clear. And in
7 their own words, they said one thing: We do not want to be
8 represented. Some of them said they didn't want to pay dues.
9 Some of them had stories that go back to their life in Poland.
10 It doesn't matter. That isn't the province of the government
11 to inquire why. They don't want it.

12 And they were unyielding on cross-examination --
13 utterly unyielding -- in terms of their sentiment and feeling
14 regarding representation.

15 There was no testimony that anyone was influenced to
16 sign the petition because of anything that the company did or
17 did not do in bargaining in late 2013. Nothing.

18 And, by the way, that's exactly -- that "nothing" is
19 exactly -- what the administrative law judge rested his
20 conclusory assertion upon, which we will and are contesting on
21 appeal.

22 But their testimony, it's no wonder -- I compliment
23 the Board on opposing the employees from the outset. I
24 compliment them as a litigation strategy. I wouldn't want
25 them testifying against me either. I don't blame them. But

1 they did. At long last, they did get their voice heard in
2 this case.

3 The only cross-examination boils down to these
4 authorization cards -- not cross-examination, pardon me. If
5 you want to call it counter evidence.

6 You know, those authorization cards are interesting.
7 Anywhere else, you'd call it a contract of adhesion where the
8 stronger party imposes upon the weaker party, sign it; it's a
9 take it or leave it. And each one of them testified they
10 signed it literally as the ticket of admission. It was, sign
11 this or you can't come in; you can't get information; you
12 can't vote for or against whatever contract they were
13 proposing.

14 And many of them went not as a show of support, but
15 in an effort to protect their interests and vote against
16 whatever they were proposing.

17 When I go to a school board hearing or when I go to a
18 zoning board of appeals hearing because my neighbor's about to
19 build something, it's not because I support the zoning board
20 of appeals. I'm there to protect my interests or to protect
21 the interests of children in the school.

22 So, just the fact that they showed up is not enough.

23 The NLRB's only witness in the case was Mr. Shubert.
24 And he was presented to you, your Honor, to support the theory
25 that the unlawful -- alleged unlawful -- activities in

1 bargaining of the company are the reason the support for the
2 union was eroding; that's the reason, and that's the reason
3 why the Court should impose the union on these people -- to
4 protect this erosion that is measured, allegedly, from the
5 date the petition was withdrawn in July -- excuse me,
6 recognition was withdrawn in July -- 2014. That's when this
7 supposedly began to fall apart.

8 But Union President Shubert actually turned out to be
9 our witness, to be candid. His testimony did exactly the
10 opposite of what I think they hoped to do, because he
11 testified on cross-examination -- haltingly, but sure enough
12 -- that the union was losing support from 2009, not 2014.
13 There wasn't some change that could plausibly be laid at the
14 door or blamed upon Arlington Metals' conduct in bargaining in
15 late 2013. Nothing.

16 There was no other evidence or effort to explain or
17 justify the extraordinary delay or their changed theory of
18 liability. I know it's not in the record, but, yeah, the
19 board did indefinitely postpone this case in November, 2014.
20 And since there was some dialogue on it, I can tell you why:
21 Because another charge was filed challenging the validity of
22 the petition. It was investigated and found to be of no
23 merit.

24 The government has brought this petition --

25 THE COURT: Did the ALJ know that?

1 MR. MIOSSI: No, your Honor, I don't think that was
2 in evidence. To my knowl- -- I don't -- I don't believe so.

3 THE COURT: Because that seems somewhat inconsistent
4 with his ruling about the signatures.

5 MR. MIOSSI: Yeah. It was -- there was nothing at
6 issue. That charge did not come forward at all in the
7 hearing.

8 THE COURT: Okay.

9 BY MR. MIOSSI:

10 The government, we submit, has brought this petition
11 expecting the Court to simply bow. An exercise, perhaps,
12 among its most extraordinary powers -- other than sentencing a
13 convict -- or excuse me, sentencing a felon -- to prison, to
14 deprive a majority of employees at Arlington Metals their
15 Section 7 rights -- to deny them, and to require that they be
16 represented by a union they don't want to be represented by.

17 And, two, to deprive Arlington Metals and its family
18 of its privacy interests and due process rights to a full
19 appeal. Its privacy interests in its private financial
20 records.

21 And, by the way, there's nothing in the ALJ's
22 recommended decision, and there's nothing in the petition,
23 ordering or suggesting or conditioning the disclosure of these
24 records upon a confidentiality or protective order. Nothing.
25 If we were to resist the production of those records on that

1 basis, we would have no grounds. None.

2 THE COURT: That is certainly something this Court
3 could order, though.

4 MR. MIOSSI: I don't deny the Court could do that.

5 BY MR. MIOSSI:

6 But the petition doesn't request it, and the ALJ made
7 no mention of it whatsoever. And I think from Mr. Orłowski's
8 testimony, it was clear that the records they seek simply have
9 no bearing on the issues of the parties in Franklin Park,
10 Illinois, at one plant we're talking about. Nothing.

11 To disclose four years of state and federal tax
12 returns, my good Lord, what possibly could you legitimately
13 seek to discern from such records that might help you possibly
14 articulate an argument in a bargaining session? I have never
15 seen it before. I'm thinking they expected to ram this
16 through. And it is nothing, if not astounding and
17 disappointing, to see a federal agency behave as it has here
18 in this proceeding.

19 But they didn't meet their burden, your Honor, as
20 established under NLRB vs. Electro Voice or this Court's
21 decision in Triumph Packaging Group vs. Ward, by any possible
22 stretch. And I'm happy to address the four requirements for
23 equitable relief, but I think the Court understands the case
24 and understands how to apply those principles very adequately.

25 And if the Court would bear with me, I want to close

1 by quoting from McKinney vs. NLRB, which was issued by the
2 Eighth Circuit in 2015. We've cited it in our brief.

3 THE COURT: I am familiar with it.

4 BY MR. MIOSSI:

5 There the Court, in reversing the district court's
6 entry of a 10(j) injunction, said the following -- and the
7 reason I am asking the Court's indulgence is because the
8 parallel here is stunning -- "There is no indication in this
9 case that allowing the ordinary adjudicatory process to run
10 its course would significantly undermine the Board's ability
11 to remedy the alleged unfair labor practices. The
12 extraordinary relief granted by the August 14, 2014,
13 preliminary injunction did not act to preserve the status quo.
14 Rather, it accelerated what at this point only may be the
15 ultimate remedy. Because the union had long been out of favor
16 when, if ever, Southern Bakeries is ordered to recognize the
17 union, the union would have to perform largely the same work
18 to rebuild support from employees.

19 "The employees' lack of union representation while
20 awaiting the Board's action is not enough to make this a
21 'serious and extraordinary' case that requires injunctive
22 relief. It would be contrary to our precedent to find
23 irreparable harm whenever employees could be without the
24 non-monetary benefits of collective bargaining while awaiting
25 the Board's action. As here, where objective evidence

1 indicates the union lacks majority support and the company has
2 not acted to oust and replace union members or reduce employee
3 benefits, the Court cannot find temporary absence of a union
4 representative automatically presents the rare situation that
5 the Board's broad remedial powers cannot later justify."

6 That is this case.

7 The petition should be denied, your Honor. It is
8 unwarranted and unprecedented in the extreme.

9 Thank you very much.

10 THE COURT: Thank you.

11 Do you want a brief rebuttal? It is up to you. I do
12 not feel like I need it, but you are welcome to do a brief
13 one, if you would like.

14 MS. HENSEL: Just one second, your Honor.

15 (Brief pause.)

16 THE COURT: Whenever you are ready, Ms. Hensel.

17 MS. HENSEL: Thank you, your Honor.

18 CLOSING ARGUMENT ON BEHALF OF PETITIONER

19 BY MS. HENSEL:

20 I understand that the Court is well aware of the
21 Southern Bakeries decision that Mr. Miossi just referred to,
22 but I do feel the need to point out a couple of important
23 facts about that case.

24 One of the key differences between what we have in
25 our case and what we have in Southern Bakeries is in our case,

1 we have majority support at the time of the settlement and the
2 status quo that we're seeking to preserve. Again, we were an
3 extended certification year; majority status is irrebuttable;
4 and, the union had just won a decertification election.

5 In Southern Bakeries, the Court points out because
6 the union had long been out of favor, when, if ever, Southern
7 Bakeries is ordered to recognize the union, the union would
8 have to perform largely the same work. There was evidence in
9 Southern Bakeries that the union lacked majority support for
10 two years or more prior to the commission of the ULPs and the
11 injunction petition.

12 Secondly, I'd like to point out there is a great
13 difference between the Seventh Circuit's standard for issuing
14 a 10(j) injunction and the Eighth Circuit.

15 THE COURT: I do not think it is great. I understand
16 there is a difference --

17 MS. HENSEL: Okay. Well, it's --

18 THE COURT: -- with the sliding scale. But I think
19 to say --

20 MS. HENSEL: It's --

21 THE COURT: -- it is great might be a stretch.

22 MS. HENSEL: Okay.

23 Well, it's noted in Footnote 6.

24 THE COURT: Yes.

25 MS. HENSEL: The Seventh Circuit utilizes the sliding

1 scale, whereas the Eighth Circuit starts with the irreparable
2 harm inquiry.

3 THE COURT: Correct.

4 MS. HENSEL: Okay.

5 So, that's all I wanted to point out, your Honor.

6 THE COURT: Okay.

7 MS. HENSEL: Thank you.

8 THE COURT: Thank you.

9 I am going to take this under advisement. I do not
10 believe I need additional full-out briefing. There might be a
11 discrete issue or two that I ask you to submit some
12 supplemental authority on; in particular, this issue of what
13 triggers the burden of an employer to verify the authenticity
14 of a petition. You differ on that. I am not sure how much,
15 if anything, you have given me on that.

16 But do not give me anything yet. I will strike
17 briefs if you submit them. So, do not give me anything yet.
18 If I want something, I will ask you for it; and, I will ask
19 you for it early next week if I feel like I need something.

20 Unless either of you has a strong argument why you
21 think you want to give me something else. This has been fully
22 briefed. I have done a lot of research in advance of the
23 hearing. I have the ALJ's opinion that cites a lot of law. I
24 do not feel like I need anything else, unless you have some
25 strong reason you want to give it me something. Now is your

1 time to raise that.

2 MR. MIOSSI: No, your Honor. We'll wait for your
3 inquiry.

4 MR. MURPHY: No.

5 THE COURT: Okay.

6 So, if I need something, you will hear from me via a
7 short minute entry next week. I will let you know early next
8 week. I am aware of the Thanksgiving holidays. It is never
9 my goal to ruin somebody's holiday. So, you do not have to
10 worry about that.

11 I will take this under advisement, and I will rule
12 via written opinion.

13 MR. MURPHY: Would you like a submission of proposed
14 finding of facts?

15 THE COURT: No, thank you.

16 MR. MURPHY: Okay.

17 THE COURT: I have --

18 MR. MURPHY: Yes.

19 THE COURT: -- everything you have given me, and I
20 think you have addressed everything in your briefs that were
21 filed in advance.

22 Anything else for the Court this afternoon?

23 MR. RUBINSTEIN: No. Thank you, your Honor.

24 THE COURT: Anything else?

25 MR. MURPHY: No.

1 THE COURT: Okay. Thank you.

2 I will take this under advisement, and you will hear
3 from me at some point.

4 MR. MURPHY: Thank you, your Honor.

5 MR. MIOSSI: Thank you, your Honor.

6 MR. MURPHY: Your Honor, just -- I think everyone
7 will probably thank you for getting us in quickly, and thank
8 you for your courtesy during the hearing and for your helpful
9 hints and everything like that.

10 Thank you. Appreciate it.

11 THE COURT: Thank you.

12 * * * * *

13

14 I certify that the foregoing is a correct transcript from the
15 record of proceedings in the above-entitled matter.

16 /s/ Joseph Rickhoff
17 Official Court Reporter

November 20, 2015

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Exhibit C

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

DO NOT WRITE IN THIS SPACE

Case No 13-RD-068844 Date Filed 11/15/2011

INSTRUCTIONS Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA

- 1 PURPOSE OF THIS PETITION (if box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made) (Check One)
RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees
RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner
RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded
UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees (Check one) In unit not previously certified In unit previously certified in Case No
AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No Attach statement describing the specific amendment sought

2 Name of Employer Arlington Metals Corporation Employer Representative to contact Tim Orlowski Tel No 847-451-9100

3 Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 11355 Franklin Avenue, Franklin Park, IL 60131 Fax No 847-451-9676

4a Type of Establishment (Factory, mine, wholesaler, etc) Factory 4b Identify principal product or service Steel processing Cell No e-Mail

5 Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification) Included All full-time and regular part-time production, maintenance, and shipping and receiving employees employed at 11355 Franklin Avenue, Franklin Park, Illinois Excluded Office clerical employees and guards, professional employees and supervisors as defined in the Act 5a Number of Employees in Unit Present 22 Proposed (By UC/AC) 6b Is this petition supported by 30% or more of the employees in the unit? Yes No

7a Request for recognition as Bargaining Representative was made on (Date) and Employer declined recognition on or about (Date) (If no reply received, so state) 7b Petitioner is currently recognized as Bargaining Representative and desires certification under the Act

8 Name of Recognized or Certified Bargaining Agent (If none, so state) USW International Union, AFL-CIO Affiliation Address 7218 West 91st Street Bridgeview, IL 60455 Tel No 708-233-0800 Date of Recognition or Certification 10/10/2007 Fax No 708-233-0837 e-Mail

9 Expiration Date of Current Contract if any (Month, Day, Year) 10 If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year) 11a Is there now a strike or picketing at the Employer's establishment(s) Involved? Yes No 11b If so, approximately how many employees are participating?

11c The Employer has been picketed by or on behalf of (Insert Name) a labor organization, of (Insert Address) Since (Month, Day, Year)

12 Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above (If none, so state)

13 Full name of party filing petition (If labor organization, give full name, including local name and number) Dallas Wright

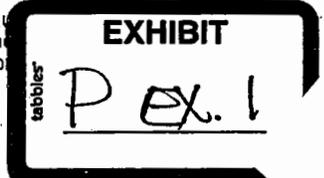
14a Address (street and number, city, state, and ZIP code) 25 King Arthur Court, Apt 8 Northlake, IL 60164 14b Tel No EXT 708-938-5333 14c Fax No 14d Cell No 14e e-Mail

15 Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization)

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief. Name (Print) Dallas Wright Signature Dallas Wright Title (if any) Individual Address (street and number, city, state, and ZIP code) 25 King Arthur Court, Apt 8 Northlake, IL 60164 Tel No 708-938-5333 Fax No Cell No eMail

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the Federal Register, 71 Fed. Reg. 74942-43 (Dec 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information, however, failure to supply the information will cause the NLRB to decline to invoke its processes



UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 13

ARLINGTON METALS CORPORATION Employer and DALLAS WRIGHT Petitioner and UNITED STEEL PAPER AND FORESTRY RUBBER MANUFACTURING ENERGY ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION AFL-CIO (USW) Union	Case 13-RD-068844
--	-------------------

TYPE OF ELECTION: STIPULATED

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots have been cast for

UNITED STEEL PAPER AND FORESTRY RUBBER
MANUFACTURING ENERGY ALLIED INDUSTRIAL AND
SERVICE WORKERS INTERNATIONAL UNION AFL-CIO (USW)

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

~~All full-time and regular part-time production, maintenance, and shipping and receiving employees employed by the Employer at its facility currently located at 11355 Franklin Avenue, Franklin Park, Illinois; but excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.~~

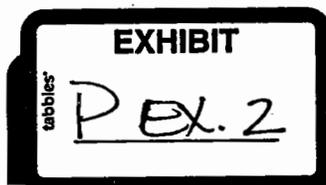


Signed in Chicago, Illinois on July 31, 2012

/s/ Gail Moran

GAIL MORAN

Acting Regional Director, Region 13
National Labor Relations Board





District 7

Jim Robinson
District Director

September 24, 2013

Dear Employee of Arlington Metals and Member of USW Local 7773:

You are invited and encouraged to attend a very important meeting regarding negotiations with Arlington Metals and to take action on a collective bargaining agreement (contract).

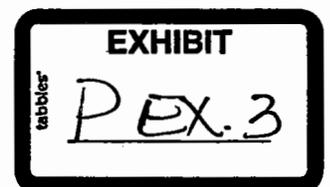
This meeting will be held as follows:

DATE: SUNDAY, SEPTEMBER 29, 2013
TIME: 10:00 AM
PLACE: Franklin Park - Park District Building
Pine Room
9560 Franklin Avenue
Franklin Park, IL 60131

We look forward to seeing you at this very important meeting.

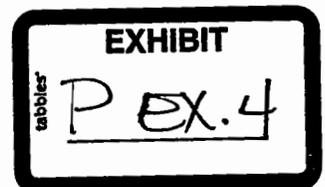
In solidarity,

Frank Shubert
President, USW Local 7773



Arlington METALS - Contract Meeting
Sunday September 29, 2013 - 10:00A

- 1) Asken Galk
- 2) Jozef Koralkowski
- 3) Wlodek Karoos
- 4) Stanislaw Rood
- 5) Z B Jan
- 6) R Hyniewicki
- 7) A Payo
- 8) Pety
- 9) ~~John~~ Mike
- 10) ~~Robert~~ Chow
- ✓ 11) Tony Merotti
- ✓ 12) Brandon Terzo
- ✓ 13) Andres Coronel
- ✓ 14) Chris Keiler
- ✓ 15) Jose M. ~~Yuan~~
- 16) Boguslaw K Fudala
- 17) ~~Federico~~ Gr
- 18) C.W.



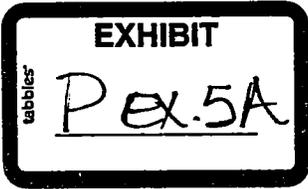
YES! I WANT UNITED STEELWORKERS UNION REPRESENTATION!

I HEREBY AUTHORIZE THE

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC
(also known in short as United Steelworkers or USW)

TO REPRESENT ME IN COLLECTIVE BARGAINING.

Name (Print) Andres Gomez (630) 210-6307
Home address 15227 dillon Phone
City Village Park State IL Zip Code 60181
Date 9/29/13 Signature (Do Not Print Name) [Signature] Location Franklin Park
Employed by Arlington Metals Shift 1st Job Title Welder Rate _____
Department _____
Witness _____ Email address _____
Are you interested in joining the Organizing Committee? Yes 601 505-4333
(see other side)



This card will be used to secure Union recognition and collective bargaining rights. Initiation fees are waived for all current employees and no dues will be paid until your first contract has been accepted.

You have the absolute democratic right, protected by Federal Law, to organize and join the United Steelworkers.

By signing this card, you are taking an important step toward achieving a genuine voice in workplace decisions that affect you and your family.

YES! I WANT UNITED STEELWORKERS UNION REPRESENTATION!

I HEREBY AUTHORIZE THE

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC

(also known in short as United Steelworkers of USW)

TO REPRESENT ME IN COLLECTIVE BARGAINING.

Name Brandon DeLoise Phone _____

(Print) _____

Home address 469 W. Central Street or Rural Route

City Wood State Ic Zip Code 60191

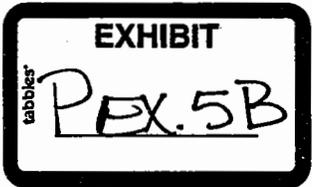
Date 09-29-13 Signature (Do Not Print Name) [Signature]

Employed by: Alinter Metals Location Ben Seville

Department IC Shift 1 Job Title Helper Rate _____

Witness _____ Email address _____

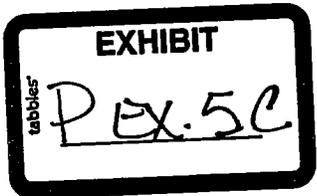
Are you interested in joining the Organizing Committee? Yes No (see other side)



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United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC

(also known in short as United Steelworkers or USW)

TO REPRESENT ME IN COLLECTIVE BARGAINING.

Name (Print) Steve Hill Phone 630-350-7572

Home address: 469 N Lee Ave

City: Wood Dale State: IL Zip Code: 60191

Date: 7-29-13 Signature (Do Not Print Name): [Signature]

Date: Amington Signature (Do Not Print Name): [Signature]

Employed by: Phillips Shift: 1st Location: Phillips

Department: _____ Job Title: _____ Rate: _____

Witness: _____ Email address: _____

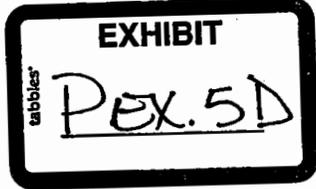
Are you interested in joining the Organizing Committee? Yes No

601 505 (see other side)

This card will be used to secure Union recognition and collective bargaining rights. Initiation fees are waived for all current employees and no dues will be paid until your first contract has been accepted.

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United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied
Industrial and Service Workers International Union, AFL-CIO-CLC
(also known in short as United Steelworkers or USW)

TO REPRESENT ME IN COLLECTIVE BARGAINING.

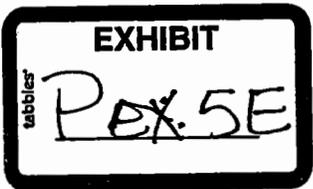
Name (Print) Chris Keiser Phone 630-889-9094
Home address 614 E. Jefferson St.
Bensenville IL 60106
City State Zip Code
Date 9/29/13 Signature (Do Not Print Name) Chris Keiser
Employed by Arlington Metals Erect/In Park Location
Department Packaging Job Title Packager Rate 9.50
Skill

Witness _____ Email address _____
Are you interested in joining the Organizing Committee? Yes No
601 5/05 Registration Fee
(see other side)

This card will be used to secure Union recognition and collective bargaining rights. Initiation fees are waived for all current employees and no dues will be paid until your first contract has been accepted.

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I HEREBY AUTHORIZE THE

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC

(also known in short as United Steelworkers or USW)

TO REPRESENT ME IN COLLECTIVE BARGAINING.

Name (Print) Jose W. Alvarez Phone _____
Home address 1728 N. 40th Ave
Street or Rural Route _____
City Stone Park State IL Zip Code 60158
Date 9-29-2013 Signed (Do Not Print Name) _____
Employed by Arlington Metals Location _____
Department Helper 2 Shift _____ Job Title Helper Rate _____
Witness _____ Email address _____
Are you interested in joining the Organizing Committee? Yes No
601 5/05 © 2005 USW
(see other side)

This card will be used to secure Union recognition and collective bargaining rights. Initiation fees are waived for all current employees and no dues will be paid until your first contract has been accepted.

You have the absolute democratic right, protected by Federal Law, to organize and join the United Steelworkers.

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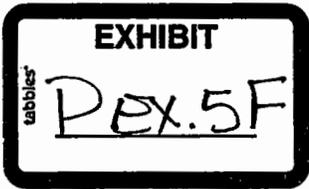
YES! I WANT UNITED STEELWORKERS UNION REPRESENTATION!

I HEREBY AUTHORIZE THE

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC
(also known in short as United Steelworkers or USW)

TO REPRESENT ME IN COLLECTIVE BARGAINING.

Name (Print) Anthony memo m Phone 630 509 2080
Home address 341 N. edgewood Street or Rural Route
City Wood Dale State IL Zip Code 60191
Date 9-25-13 Signature (Do Not Print Name) [Signature]
Employed by: Arlington Metals Location
Department Packaging 1st Shift line Job Title line Rate 9.50
Witness _____ Email address _____
Are you interested in joining the Organizing Committee? Yes No
(see other side)



This card will be used to secure Union recognition and collective bargaining rights. Initiation fees are waived for all current employees and no dues will be paid until your first contract has been accepted.

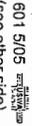
You have the absolute democratic right, protected by Federal Law, to organize and join the United Steelworkers.

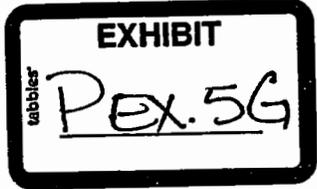
By signing this card, you are taking an important step toward achieving a genuine voice in workplace decisions that affect you and your family.

YES! I WANT UNITED STEELWORKERS UNION REPRESENTATION!

HEREBY AUTHORIZE THE

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC
(also known in short as United Steelworkers of USW)
TO REPRESENT ME IN COLLECTIVE BARGAINING.

Name Borden Terzo Phone 630 347 4111
(Print)
Home address 244 Mill Creek Ln Street or Rural Route
Bloomington IL City State Zip Code
6189113 Date Borden Terzo Signature (Do Not Print Name)
Employed by: Alington Motors Corp Location Frauklin Park
1st Shift Job Title Packing Rate 12.00
Department _____
Witness _____ Email address _____
Are you interested in joining the Organizing Committee? Yes No
601 505  (see other side)



This card will be used to secure Union recognition and collective bargaining rights. Initiation fees are waived for all current employees and no dues will be paid until your first contract has been accepted.

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I HEREBY AUTHORIZE THE

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC
(also known in short as United Steelworkers or USW)
TO REPRESENT ME IN COLLECTIVE BARGAINING.

Name (Print) B. S. M. Clark Phone _____

Home address 1709 Cleveland Street or Rural Route

City Park Ridge State IL Zip Code 60068

Date 9-29-13

Signature (Do Not Print Name) [Signature]

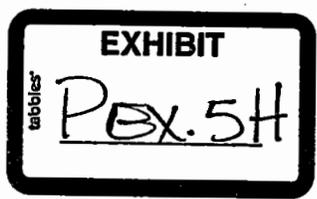
Employed by: AMC Location Franklin Park

Department _____ Shift _____ Job Title _____ Rate _____

Witness _____ Email address _____

Are you interested in joining the Organizing Committee? Yes No

601 505-5555 (see other side)



This card will be used to secure Union recognition and collective bargaining rights. Initiation fees are waived for all current employees and no dues will be paid until your first contract has been accepted.

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By signing this card, you are taking an important step toward achieving a genuine voice in workplace decisions that affect you and your family.

UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting Oct 13, 2013 Place of Meeting Franklin Pk. IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	<u>Alfred Rourke</u>		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20	[REDACTED]		20
21			21
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23			23
24			24
25			25
26			26
27			27
28			28
29			29
30			30

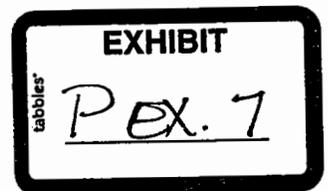
EXHIBIT
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Pex. 6

Local 7773

Monthly Meeting Minutes

October 13th, 2013

We began the meeting with the pledge of allegiance. Roll Call was taken and the minutes were read from the September 8th meeting. [REDACTED]



Arlington Metals: Frank said they had a discharge meeting a couple of weeks ago for Frederico. They talked about the insurance issue with Ziggy and the issue with Boguslaw. The meeting they had a couple Sundays ago had 8 new people in attendance sign union cards. The group took a vote and it was 8 yes and 8 no. for accepting the proposals from the company. Some people said they were happy making \$9.00 an hour. Luis said he received a phone call from a guy working at Arlington and they talked about current issues.

A motion to Adjourn was made by [REDACTED] and seconded by [REDACTED]

The motion carried.

UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting Nov. 10 - 2013 Place of Meeting Franklin Pk. 11

BADGE/CK. OR LEDGER NO.

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE	BADGE/CK. OR LEDGER NO.
1	[REDACTED]	[REDACTED]	1	[REDACTED]
2	[REDACTED]	[REDACTED]	2	[REDACTED]
3	[REDACTED]	[REDACTED]	3	[REDACTED]
4	[REDACTED]	[REDACTED]	4	[REDACTED]
5	[REDACTED]	[REDACTED]	5	[REDACTED]
6	[REDACTED]	[REDACTED]	6	[REDACTED]
7	[REDACTED]	[REDACTED]	7	[REDACTED]
8	[REDACTED]	[REDACTED]	8	[REDACTED]
9	[REDACTED]	[REDACTED]	9	[REDACTED]
10	[REDACTED]	[REDACTED]	10	[REDACTED]
11	[REDACTED]	[REDACTED]	11	[REDACTED]
12	[REDACTED]	[REDACTED]	12	[REDACTED]
13	[REDACTED]	[REDACTED]	13	[REDACTED]
14	[REDACTED]	[REDACTED]	14	[REDACTED]
15	[REDACTED]	[REDACTED]	15	[REDACTED]
16	[REDACTED]	[REDACTED]	16	[REDACTED]
17	[REDACTED]	[REDACTED]	17	[REDACTED]
18	[REDACTED]	[REDACTED]	18	[REDACTED]
19	[REDACTED]	[REDACTED]	19	[REDACTED]
20	[REDACTED]	[REDACTED]	20	[REDACTED]
21	[REDACTED]	[REDACTED]	21	[REDACTED]
22	[REDACTED]	[REDACTED]	22	[REDACTED]
23	[REDACTED]	[REDACTED]	23	[REDACTED]
24	[REDACTED]	[REDACTED]	24	[REDACTED]
25	[REDACTED]	[REDACTED]	25	[REDACTED]
26	[REDACTED]	[REDACTED]	26	[REDACTED]
27	[REDACTED]	[REDACTED]	27	[REDACTED]
28	[REDACTED]	[REDACTED]	28	[REDACTED]
29	[REDACTED]	[REDACTED]	29	[REDACTED]
30	[REDACTED]	[REDACTED]	30	[REDACTED]
31	[REDACTED]	[REDACTED]	31	[REDACTED]
32	[REDACTED]	[REDACTED]	32	[REDACTED]
33	[REDACTED]	[REDACTED]	33	[REDACTED]
34	[REDACTED]	[REDACTED]	34	[REDACTED]
35	[REDACTED]	[REDACTED]	35	[REDACTED]
36	[REDACTED]	[REDACTED]	36	[REDACTED]
37	[REDACTED]	[REDACTED]	37	[REDACTED]
38	[REDACTED]	[REDACTED]	38	[REDACTED]
39	[REDACTED]	[REDACTED]	39	[REDACTED]
40	[REDACTED]	[REDACTED]	40	[REDACTED]
41	[REDACTED]	[REDACTED]	41	[REDACTED]
42	[REDACTED]	[REDACTED]	42	[REDACTED]
43	[REDACTED]	[REDACTED]	43	[REDACTED]
44	[REDACTED]	[REDACTED]	44	[REDACTED]
45	[REDACTED]	[REDACTED]	45	[REDACTED]
46	[REDACTED]	[REDACTED]	46	[REDACTED]
47	[REDACTED]	[REDACTED]	47	[REDACTED]
48	[REDACTED]	[REDACTED]	48	[REDACTED]
49	[REDACTED]	[REDACTED]	49	[REDACTED]
50	[REDACTED]	[REDACTED]	50	[REDACTED]

EXHIBIT
Pex. 8

Alfred Kumbas

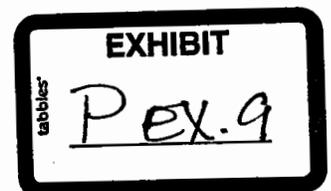
Paul M...
Chris K...

Local 7773

Monthly Meeting Minutes

November 10th, 2013

We began the meeting with the pledge of allegiance. Roll Call was taken and the minutes were read from the October 13th meeting. [REDACTED]



Arlington Metals: Frank said they met with the members and lawyers and the legal team is preparing a lawsuit. Frank said the members joined the union to protect their rights and have a grievance procedure. We tried to get the company to agree to a third party and they refused. The Plant in Michigan gave the workers a raise. The company asked for another negotiation date for December 11th. Nearly 50% of the employees take home pay is going towards insurance. The OSHA citations were \$15,300 and they were then given a reduced rate of \$7560. There are 19 more citations potentially and a press release coming.

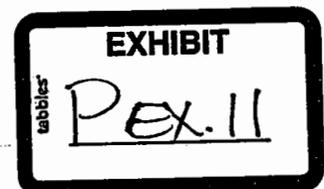
A motion to adjourn was made by [REDACTED] and seconded by [REDACTED]. The motion carried.

Local 7773

Monthly Meeting Minutes

December 15th, 2013

We began the meeting with the pledge of allegiance. Roll Call was taken and the minutes were read from the November 10th meeting. A motion to accept the



Arlington Metals: Frank said that the NLRB dismissed charges and new charges were filed. OSHA citations had 16 serious and 8 less serious totaling \$117,600. The issues covered a lot of problems within the plant. On October 31st the union handed over proposals to the company. On December 11th, there was another meeting and the company is standing on their last best and final offer.

A motion to Adjourn was made [REDACTED]

The motion carried. [REDACTED]
[REDACTED]

UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting Jan 12, 2014

Place of Meeting Franklin PK IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	Brooklyn & Phelps		19
20	Atwood (Revoc)		20
21	Alan Carl		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25	[REDACTED]		25
26	[REDACTED]		26
27	[REDACTED]		27
28	[REDACTED]		28
29	[REDACTED]		29
30	[REDACTED]		30

EXHIBIT
tabbles PEX-12A

Meeting Attendance Record Book

Local Union No. ~~7773~~ 7773

Date of Meeting Feb 9 2014

Place of Meeting Franklin PR IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20	[REDACTED]		20
21	[REDACTED]		21
22			22
23			23
24			24
25			25
26			26
27			27
28			28
29			29
30			30

EXHIBIT
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UNITED STEELWORKERS
AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773 Place of Meeting Franklin Pk. 11

Meeting March 9, 2014

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE	MEMBER	BADGE/CK. OR LEDGER NO.
	[REDACTED]		1	[REDACTED]	
	[REDACTED]		2	[REDACTED]	
	[REDACTED]		3	[REDACTED]	
	[REDACTED]		4	[REDACTED]	
	[REDACTED]		5	[REDACTED]	
	[REDACTED]		6	[REDACTED]	
	[REDACTED]		7	[REDACTED]	
	[REDACTED]		8	[REDACTED]	
	[REDACTED]		9	[REDACTED]	
	[REDACTED]		10	[REDACTED]	
	[REDACTED]		11	[REDACTED]	
	[REDACTED]		12	[REDACTED]	
	[REDACTED]		13	[REDACTED]	
	[REDACTED]		14	[REDACTED]	
	[REDACTED]		15	[REDACTED]	
	[REDACTED]		16	[REDACTED]	
	[REDACTED]		17	[REDACTED]	
	[REDACTED]		18	[REDACTED]	
	[REDACTED]		19	[REDACTED]	
	[REDACTED]		20	[REDACTED]	
	[REDACTED]		21	[REDACTED]	
	[REDACTED]		22	[REDACTED]	
	[REDACTED]		23	[REDACTED]	
	[REDACTED]		24	[REDACTED]	
	[REDACTED]		25	[REDACTED]	
	[REDACTED]		26	[REDACTED]	
	[REDACTED]		27	[REDACTED]	
	[REDACTED]		28	[REDACTED]	

Robustyn R. Pindol
 [REDACTED]
 [REDACTED]
 [REDACTED]
 Andrew Gork

EXHIBIT
 PEX-12C
 Bobles

UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting APRIL 13, 2014 Place of Meeting Franklin Pk, IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	[REDACTED]		14
15	Borghese, R. F. [REDACTED]		15
16	Armed Karol [REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20	[REDACTED]		20
21	[REDACTED]		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25	[REDACTED]		25
26	[REDACTED]		26
27	[REDACTED]		27
28	[REDACTED]		28
29	[REDACTED]		29
30	[REDACTED]		30

EXHIBIT
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UNITED STEELWORKERS

AFI-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting May 18, 2014 Place of Meeting Franklin Park, IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	Abinowicz J. M.owski		8
9	Mac Kawa [unclear]		9
10	Dobyslaw R. Fudala		10
11	Atreol - Rancos		11
12	Stanimir [unclear]		12
13	Andri Gelyk		13
14	Ryszard [unclear]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20	[REDACTED]		20
21	[REDACTED]		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25			25
26			26
27			27
28			28
29			29
30			30

EXHIBIT

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UNITED STEELWORKERS

AFL-CIO · CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting June 8, 2014 Place of Meeting Franklin Pk. IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	Chris Klidger		17
18	Bohdan R. Kuchta		18
19	Stephen Symonides		19
20	[REDACTED]		20
21	[REDACTED]		21
22	Alfred Kovacs		22
23	Edward [REDACTED]		23
24	[REDACTED]		24
25	Andreas Coronel		25
26	[REDACTED]		26
27	[REDACTED]		27
28	X		28
29	X		29
30	X		30

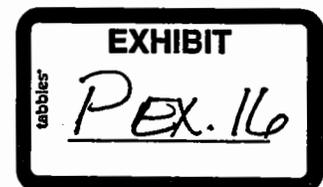
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Local 7773

Monthly Meeting Minutes

June 8th, 2014

[REDACTED]
[REDACTED] We said the pledge of allegiance, and then Roll Call was taken. Minutes were read from the May meeting. [REDACTED]



New Business:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Frederico Ceja was awarded

back pay from the NLRB ruling, however; Arlington Metals is refusing to accept

the ruling.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A motion to adjourn was made

[REDACTED]

[REDACTED]

To be filed with the appropriate
National Labor Relations Board Regional Office.

PETITION TO REMOVE UNION AS REPRESENTATIVE

Tim Oriowski

The undersigned employees of Arlington metals (employer name) do not want to be represented by united still worker 7773 (union name), hereafter referred to as "union".

Should the undersigned employees constitute 30% or more, but less than 50%, of the bargaining unit represented by the union, the undersigned employees hereby petition the National Labor Relations Board to hold a decertification election to determine whether the majority of employees also no longer wish to be represented by the union.

In addition, should the undersigned employees constitute 50% or more of the bargaining unit represented by the union, the undersigned employees hereby request that our employer immediately withdraw recognition from the union, as it does not enjoy the support of a majority of employees in the bargaining unit.

Andres Coronel

[Signature]

7/9/14

Name (Print)

Signature

Date

Tony Scattery

[Signature]

7/9/14

Name (Print)

Signature

Date

Brandon Trezzo

[Signature]

7/9/14

Name (Print)

Signature

Date

MIKE J. KRASOWSKI

[Signature]

7/9/14

Name (Print)

Signature

Date

Anthony Menotti

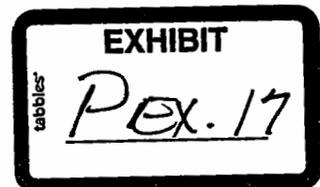
[Signature]

7/9/14

Name (Print)

Signature

Date



**To be filed with the appropriate
National Labor Relations Board Regional Office.**

PETITION TO REMOVE UNION AS REPRESENTATIVE

Tim Oriowski

The undersigned employees of Arlington metals (employer name) do not want to be represented by united still worker 7773 (union name), hereafter referred to as "union".

Should the undersigned employees constitute 30% or more, but less than 50%, of the bargaining unit represented by the union, the undersigned employees hereby petition the National Labor Relations Board to hold a decertification election to determine whether the majority of employees also no longer wish to be represented by the union.

In addition, should the undersigned employees constitute 50% or more of the bargaining unit represented by the union, the undersigned employees hereby request that our employer immediately withdraw recognition from the union, as it does not enjoy the support of a majority of employees in the bargaining unit.

Brandon Delacruz

Brandon Delacruz

7/9/14

Name (Print)

Signature

Date

Chris Keiler

Chris Keiler

7/9/14

Name (Print)

Signature

Date

Steve Hill

Steve Hill

7-9-14

Name (Print)

Signature

Date

HARVE NEACE

Harve Neace

7-9-14

Name (Print)

Signature

Date

EMIL STERCZEK

Emil Sterczek

07-09-14

Name (Print)

Signature

Date

DALLAS WRIGHT

Dallas Wright

07-09-14

UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773-01

Date of Meeting July 13, 2014

Place of Meeting Franklin Pk. IL.

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19			19
20			20
21			21
22			22
23			23
24			24
25			25
26			26
27			27
28			28
29			29
30			30

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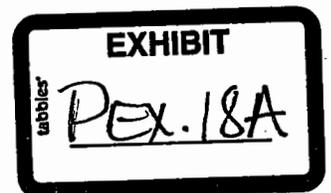
PEX. 18

Local 7773

Monthly Meeting Minutes

July 13th, 2014

We began the meeting with the Pledge of Allegiance. Roll Call was taken. Minutes were read from the June meeting. A motion to accept the minutes as read was made [REDACTED]



Frederico Ceja will have a formal hearing in September with the NLRB. There is a petition at Arlington from 16 members to not be affiliated with the USW. 2 of the signatures were from management. Our legal department says that the company still needs to recognize the union.

[REDACTED]

[REDACTED]

[REDACTED] was made by Lee Frazier and
[REDACTED]

A motion to Adjourn was made by [REDACTED] The
motion carried.

UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting Sept 14, 2014 Place of Meeting Franklin Pk. IL.

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	Joseph R Fudda,		11
12	Street Kerocis		12
13	[REDACTED]		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20	[REDACTED]		20
21	[REDACTED]		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25	[REDACTED]		25
26	[REDACTED]		26
27	[REDACTED]		27
28	[REDACTED]		28
29	[REDACTED]		29
30	[REDACTED]		30

EXHIBIT
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UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting Oct. 12, 2014

Place of Meeting Franklin PK IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	Albert Ramos		18
19	Dariusz K. Kudala		19
20	[REDACTED]		20
21	[REDACTED]		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25	[REDACTED]		25
26	[REDACTED]		26
27	[REDACTED]		27
28	[REDACTED]		28
29	[REDACTED]		29
30	[REDACTED]		30

EXHIBIT
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UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7723

Meeting NOVEMBER 9, 2014 Place of Meeting Franklin Pk. IL.

DE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE	MEMBER	BADGE/CK. OR LEDGER NO.
	[REDACTED]		1	[REDACTED]	
	[REDACTED]		2	[REDACTED]	
	[REDACTED]		3	[REDACTED]	
	[REDACTED]		4	[REDACTED]	
	[REDACTED]		5	[REDACTED]	
	[REDACTED]		6	[REDACTED]	
	[REDACTED]		7	[REDACTED]	
	[REDACTED]		8		
	[REDACTED]		9		
	[REDACTED]		10		
	[REDACTED]		11		
	[REDACTED]		12		
	[REDACTED]		13		
	[REDACTED]		14		
	[REDACTED]		15		
	[REDACTED]		16		
	[REDACTED]		17		
	[REDACTED]		18		
	[REDACTED]		19		
	[REDACTED]		20		
	[REDACTED]		21		
	[REDACTED]		22		
	[REDACTED]		23		
	[REDACTED]		24		
	[REDACTED]		25		
	[REDACTED]		26		
	[REDACTED]		27		
	[REDACTED]		28		

EXHIBIT
 PEX.19C
 Boblet

ANTHONY KOUIDZINSKI

BOGUSLAW K. FURBOLD,
 ANTHONY GOSLIK
 WARET KARTOS

UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting Dec. 14, 2014

Place of Meeting Franklin Pk. IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20	[REDACTED]		20
21	[REDACTED]		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25	[REDACTED]		25
26	[REDACTED]		26
27	[REDACTED]		27
28	[REDACTED]		28
29	[REDACTED]		29
30	[REDACTED]		30

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UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7723

Date of Meeting Jan. 11, 2015 Place of Meeting Franklin Pk, IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	Alfred Karos		14
15	Boguslaw K. Kudala		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20	[REDACTED]		20
21	[REDACTED]		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25	[REDACTED]		25
26	[REDACTED]		26
27	[REDACTED]		27
28	[REDACTED]		28
29	[REDACTED]		29
30	[REDACTED]		30

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UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting Feb. 08, 2015 Place of Meeting Franklin PK. IL.

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	Albrecht Raros		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20	[REDACTED]		20
21	Boguslaw K Hudala		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25	[REDACTED]		25
26	[REDACTED]		26
27	[REDACTED]		27
28	[REDACTED]		28
29	[REDACTED]		29
30	[REDACTED]		30

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UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Meeting March 8th, 2015 Place of Meeting *Franklin Pk. 12.*

BADGE/CK. OR LEDGER NO.	MEMBER	DATE	MEMBER	BADGE/CK. OR LEDGER NO.
	[REDACTED]	1	[REDACTED]	
	[REDACTED]	2	[REDACTED]	
	[REDACTED]	3	[REDACTED]	
	[REDACTED]	4	[REDACTED]	
	[REDACTED]	5	[REDACTED]	
	[REDACTED]	6	[REDACTED]	
	[REDACTED]	7	[REDACTED]	
	[REDACTED]	8	[REDACTED]	
	[REDACTED]	9	[REDACTED]	
	[REDACTED]	10	[REDACTED]	
	[REDACTED]	11	[REDACTED]	
	[REDACTED]	12	[REDACTED]	
	[REDACTED]	13	[REDACTED]	
	[REDACTED]	14	[REDACTED]	
	[REDACTED]	15	[REDACTED]	
	[REDACTED]	16	[REDACTED]	
	[REDACTED]	17	[REDACTED]	
	[REDACTED]	18	[REDACTED]	
	[REDACTED]	19	[REDACTED]	
	[REDACTED]	20	[REDACTED]	
	[REDACTED]	21	[REDACTED]	
	[REDACTED]	22	[REDACTED]	
	[REDACTED]	23	[REDACTED]	
	[REDACTED]	24	[REDACTED]	
	[REDACTED]	25	[REDACTED]	
	[REDACTED]	26	[REDACTED]	
	[REDACTED]	27	[REDACTED]	

William R. Hund...

Abner Lano...

EXHIBIT
PEX-196

UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting April 12th 2015 Place of Meeting Franklin Pk., IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20	[REDACTED]		20
21	[REDACTED]		21
22	[REDACTED]		22
23			23
24			24
25			25
26			26
27			27
28			28
29			29
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UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting May 17, 2015 Place of Meeting Franklin Pk. IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	<u>B. Fisher R. F. Howell</u>		18
19	<u>Cheryl Farof</u>		19
20	[REDACTED]		20
21	[REDACTED]		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25	[REDACTED]		25
26	[REDACTED]		26
27	[REDACTED]		27
28	[REDACTED]		28
29	[REDACTED]		29
30	[REDACTED]		30

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UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting Aug 9th 2015 Place of Meeting Franklin Pt. IL.

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	<u>Bogushuk, Hilda L.</u>		11
12	<u>Chad Koros</u>		12
13	[REDACTED]		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17			17
18			18
19			19
20			20
21			21
22			22
23			23
24			24
25			25
26			26
27			27
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29			29
30			30

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Local 7773 - Arlington Metals

Meeting Notice

Sunday
August 30, 2015
10:00 a.m.

Franklin Park Community Center
(25th and Franklin Ave)

**The recent NLRB decision will be reviewed and explained by
representatives who will be available to answer all questions.**

Union Meeting Notice

EXHIBIT

tabbies

PEX. 20

NOTICE - ARLINGTON METALS EMPLOYEES

Judge finds Arlington Metals violated Federal Labor law and is guilty of a number of unfair labor practices that affect all bargaining unit employees of Arlington including:¹

- **Failing to bargain in good faith with the Union.**
- **Failing and refusing to provide the Union with necessary and relevant information. This includes financial reports, tax returns and other financial information necessary for good faith bargaining.**
- **Withdrawing recognition from the Union.**
- **Denying the Union access to its facility to conduct safety and health inspection.**

As bargaining unit employees are aware, Arlington Metals has imposed pay cuts, based wage increases on unreasonable and unattainable measures, imposed unreasonable health insurance premium increases and cut your benefits. The Judge has determined that the Union was, and is entitled to relevant financial information so the Union can negotiate on behalf of the employees to resolve these matters; to rescind the pay cuts, and get good pay and benefit increases. The Judge found that the Company has not, but now must bargain in good faith with the Union over these and other matters.

¹ The above are summaries from the Judge's decision the entire decision will be available for review and discussion at the scheduled meeting with the employees.

OGLOSZENIE DLA PRACOWNIKOW ARLINGTON METALS CORPORATION

Sad stwierdził że AMC złamało Federalne Prawa Pracownicze.
Sad również uznał że firma AMC używa wielu niesprawiedliwych praktyk robotniczych które mają wpływ na pracę każdego z Was!

AMC nie negocjowało w 'dobrej wierze'

AMC odmówiło udostępnienia unii ważnych i istotnych dokumentów takich jak: raporty finansowe, co roczne podatki i innych informacji finansowych koniecznych do negocjacji w 'dobrej wierze'

AMC odstąpiło od uznawania unii!

Tak jak wiedza wszyscy pracownicy z jednostki negocjacyjnej, Arlington Metals Corporation obniżyło zarobki, i uwzględniło możliwość podwyżek na nieosiągalnych środkach produkcji, Firma również podniosła cene składek ubezpieczeniowych.

Sad uznał że unia ma prawo do wglądu w dokumentację finansową firmy AMC aby negocjować w imieniu wszystkich pracowników i odwołać się od cięcia płac, wywalczyć podwyżki i obciążyć koszty za ubezpieczenie zdrowotne. Sędzia orzekł że firma AMC musi przystąpić do negocjacji w dobrej wierze aby rozwiązać wszystkie te sprawy.

Arlington Metals Unit Meeting

(Sunday August 30, 2015 - 10:00am)

Boguslaw Kudala
Edward Hryniewicki

April Kurax

Stanislaw Raszka

John Roberts

~~STANISLAW RASZKA~~

EXHIBIT
tabbles®
PEX. 21

To be filed with the appropriate
National Labor Relations Board Regional Office.

PETITION TO REMOVE UNION AS REPRESENTATIVE

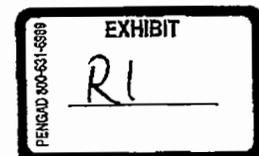
Tim Oriowski

The undersigned employees of Arlington metals (employer name) do not want to be represented by united still worker 7773 (union name), hereafter referred to as "union".

Should the undersigned employees constitute 30% or more, but less than 50%, of the bargaining unit represented by the union, the undersigned employees hereby petition the National Labor Relations Board to hold a decertification election to determine whether the majority of employees also no longer wish to be represented by the union.

In addition, should the undersigned employees constitute 50% or more of the bargaining unit represented by the union, the undersigned employees hereby request that our employer immediately withdraw recognition from the union, as it does not enjoy the support of a majority of employees in the bargaining unit.

<u>Andres Corneal</u>	<u>[Signature]</u>	<u>7/9/14</u>
Name (Print)	Signature	Date
<u>Tony Slattery</u>	<u>[Signature]</u>	<u>7/9/14</u>
Name (Print)	Signature	Date
<u>Brandon Trezzo</u>	<u>[Signature]</u>	<u>7/9/14</u>
Name (Print)	Signature	Date
<u>MIKE J. KRASINSKI</u>	<u>[Signature]</u>	<u>7/9/14</u>
Name (Print)	Signature	Date
<u>Anthony Menotti</u>	<u>[Signature]</u>	<u>7/9/14</u>
Name (Print)	Signature	Date



AR000877

Respondent's Exhibit 1

**To be filed with the appropriate
National Labor Relations Board Regional Office.**

=====

PETITION TO REMOVE UNION AS REPRESENTATIVE

Tim Oriowski

The undersigned employees of Arlington metals (employer name) do not want to be represented by united still worker 7773 (union name), hereafter referred to as "union".

Should the undersigned employees constitute 30% or more, but less than 50%, of the bargaining unit represented by the union, the undersigned employees hereby petition the National Labor Relations Board to hold a decertification election to determine whether the majority of employees also no longer wish to be represented by the union.

In addition, should the undersigned employees constitute 50% or more of the bargaining unit represented by the union, the undersigned employees hereby request that our employer immediately withdraw recognition from the union, as it does not enjoy the support of a majority of employees in the bargaining unit.

Tomas Rabelo Tomas Rabelo 07-09-14

Name (Print) Signature Date

Marcin Mikus Marcin Mikus 07.09.14

Name (Print) Signature Date

Lando wstac Stanislaw Lando wstac Stanislaw 07-09-14

Name (Print) Signature Date

CASEY WAZ Casey Waz 7-09-14

Name (Print) Signature Date

FRANCISZEK BISIRON FRANCISZEK BISIRON 7.09.2014

Name (Print) Signature Date

=====

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting Jan 13, 2013 Place of Meeting Franklin Pr. IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	[REDACTED]		14
15	[REDACTED]		15
16	Barth K Hudak		16
17	Loren W Seymour		17
18	Robert Zoroc		18
19	[REDACTED]		19
20	[REDACTED]		20
21	Hymenike P.		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25	[REDACTED]		25
26	[REDACTED]		26
27	[REDACTED]		27
28	[REDACTED]		28
29	[REDACTED]		29
30	[REDACTED]		30

PENGAD-Bygonis, N. J.
EXHIBIT
R-10

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting Feb 10, 2013

Place of Meeting Franklin Park, IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	<i>Wojciech Kuzniarski</i>		11
12	<i>Robert K. Kudala</i>		12
13	[REDACTED]		13
14	[REDACTED]		14
15	<i>Wesley Karoc</i>		15
16	<i>Alan [unclear]</i>		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20	[REDACTED]		20
21	[REDACTED]		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25	[REDACTED]		25
26	[REDACTED]		26
27	[REDACTED]		27
28	[REDACTED]		28
29	[REDACTED]		29
30	[REDACTED]		30

EXHIBIT
R-10

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting March 10, 2013 Place of Meeting Franklin Park, IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20	[REDACTED]		20
21	[REDACTED]		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25	[REDACTED]		25
26	[REDACTED]		26
27	[REDACTED]		27
28	[REDACTED]		28
29	[REDACTED]		29
30	[REDACTED]		30

Handwritten notes in the Member column:
9: [REDACTED]
10: [REDACTED] Karsel
11: [REDACTED] Ranyard
12: [REDACTED] [REDACTED]
13: [REDACTED]
22: [REDACTED] Symonide

EXHIBIT
12-10

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting April 14, 2013 Place of Meeting Franklin Pk, IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	<i>Robert R. Furdell</i>		13
14	<i>Lorraine Kymanski</i>		14
15	<i>Bonnie G. Galt</i>		15
16	[REDACTED]		16
17	<i>Walter Kuroci</i>		17
18	[REDACTED]		18
19	<i>Esther Foster - Staff</i>		19
20			20
21			21
22			22
23			23
24			24
25			25
26			26
27			27
28			28
29			29
30			30

EXHIBIT
R-10

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting May 05, 2013 Place of Meeting Franklin Pk. IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	[REDACTED]		12
13	[REDACTED]		13
14	[REDACTED]		14
15			15
16			16
17			17
18			18
19			19
20			20
21			21
22			22
23			23
24			24
25			25
26			26
27			27
28			28
29			29
30			30

EXHIBIT
R-60

PERCOCO-Byronne, N. J.

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting June 9, 2013 Place of Meeting Franklin Park, IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	[REDACTED]		11
12	<u>Boysen K Fluri</u>		12
13	[REDACTED]		13
14	<u>Alfred Kovacs</u>		14
15	<u>Andrzej Goforn</u>		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20			20
21			21
22			22
23			23
24			24
25			25
26			26
27			27
28			28
29			29
30			30

PENGAD-Byronia, N. I.
EXHIBIT
R-10

UNITED STEELWORKERS

AFL-CIO • CLC

Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting August 11, 2013

Place of Meeting Franklin Park IL

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	Bryant R-T Liddell		8
9			9
10	Alfred Rano S		10
11	Damon Gank		11
12	John P. [REDACTED]		12
13	Blomgren Symonides		13
14	[REDACTED]		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20	[REDACTED]		20
21	[REDACTED]		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25	[REDACTED]		25
26	[REDACTED]		26
27	[REDACTED]		27
28	[REDACTED]		28
29	[REDACTED]		29
30	[REDACTED]		30

PENGAD-Boyd, N. J. EXHIBIT R-10

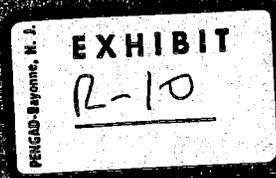
Meeting Attendance Record Book

Local Union No. 7773

Date of Meeting Sept. 9-2013

Place of Meeting Franklin PK 12

DATE	MEMBER	BADGE/CK. OR LEDGER NO.	DATE
1	[REDACTED]		1
2	[REDACTED]		2
3	[REDACTED]		3
4	[REDACTED]		4
5	[REDACTED]		5
6	[REDACTED]		6
7	[REDACTED]		7
8	[REDACTED]		8
9	[REDACTED]		9
10	[REDACTED]		10
11	<u>Almond, George J.</u>		11
12	<u>Robert F. Fudala</u>		12
13	[REDACTED]		13
14	<u>John P. Galk</u>		14
15	[REDACTED]		15
16	[REDACTED]		16
17	[REDACTED]		17
18	[REDACTED]		18
19	[REDACTED]		19
20	[REDACTED]		20
21	[REDACTED]		21
22	[REDACTED]		22
23	[REDACTED]		23
24	[REDACTED]		24
25	[REDACTED]		25
26	[REDACTED]		26
27	[REDACTED]		27
28	[REDACTED]		28
29	[REDACTED]		29
30	[REDACTED]		30


EXHIBIT
12-10