

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

GLASS FABRICATORS, INC. AND) CASE 08-CA-174567
GLASS AND METAL SOLUTIONS, INC.,)
NOT ALTER EGOS)
AND)
INTERNATIONAL UNION OF PAINTERS) REPLY BRIEF BY GLASS AND METAL
& ALLIED TRADES DISTRICT COUNCIL 6) SOLUTIONS, INC.

I. GLASS AND METAL SOLUTIONS, INC. HAS A SIGNIFICANTLY SMALLER
WORKFORCE THAN GLASS FABRICATORS, INC.

Respondent's Brief pointed out that Glass and Metal Solutions has a significantly smaller workforce than Glass Fabricators, Inc. In reply, Complainant's Reply Brief argues, in contradiction to the very records it cites, that Glass and Metal Solutions, Inc. "has a workforce that is similar in size" to Glass Fabricators, Inc. [Page 5 of Complainant's un-numbered Reply Brief].

The records cited by Complainant, however, have Glass Fabricators, Inc. employing, when at its lowest point, five (5) employees. It seems that when employment was at its lowest point that Complainant could find in the records, "GFI employed around four union employees," plus non-union Patricia Dotson. [Complainant's Reply, at 5]. Then, the records cited by Complainant reflect that in 2013 Glass Fabricators, Inc. employed six (6) employees.

[Complainant's Reply, at 5]. Then, in 2014, according to the records cited by Claimant, Glass Fabricators, Inc. employed nine (9) employees. [Complainant's Reply, at 5].

The records cited by Complainant, therefore, are reflective of the fact that Glass Fabricators, Inc. had multiple Lead Foremen and a Project Manager, in addition to a Controller, all of who were capable of and did run crews simultaneously as business demanded it. This was testified to not only by Patrician Dotson, but also by Anthony Augustine (who Complainant is fond of referencing). [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 198:17 to 199:3), (Pages 234:10 to 235:25); Anthony Augustine Hearing Trans. 8.14 – Vol. 1, (Pages 66:12 to 68:17), (Pages 69:12 to 69:25)]. Again, both Patricia Dotson and Anthony Augustine confirmed that each crew would have four (4) to eight (8) employees working within it, depending upon the size of the project that particular crew was assigned to work. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 234:10 to 235:25); Anthony Augustine Hearing Trans. 8.14 – Vol. 1, (Pages 66:12 to 68:17), (Pages 69:12 to 69:25)].

In fact, according to Mr. Augustine, if a Glass Fabricators, Inc. job entailed “really big glass,” one crew might even be as large as eight (8) to twelve (12) workers. Anthony Augustine Hearing Trans. 8.14 – Vol. 1, (Pages 69:7 to 70:10)

Even under the numbers urged by Complainant, Glass Fabricators, Inc. had grown from a company of five (5) employees, to at six (6) employees in 2013, and then nine (9) employees in 2014. In contrast, Glass and Metal Solutions, Inc. has a significantly smaller workforce. Glass and Metal Solutions, Inc.'s significantly smaller operation consists of Dale Dotson, his son and a helper working as a single, and solitary, crew. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 534:3 to 534:19)].

Glass and Metal Solutions, Inc. has consisted of only three (3) employees on a single crew, and at one time had as many as four (4) total employees, including Dale Dotson, when Dale Dotson's daughter helped out in the office for a period of time:

- 3 Q. All right. At any given time, how
4 many employees does Glass and Metal Solutions
5 have, including yourself?
6 A. Including myself, probably the
7 maximum at one time was four, when my daughter
8 was working in the office.
9 Q. Okay. And when your daughter is
10 not working in the office, how many?
11 A. Two to three.
12 Q. Okay. And who are the two to
13 three?
14 A. Myself, my son, Dale, Junior, and
15 then a variety of different guys that we've
16 used as helpers.
17 Q. But at any given time there would
18 usually be just one helper?
19 A. Yes.

[Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 534:3 to 534:19)].

Therefore, at its highest point of four (4) employees, if you include Dale's daughter who helped him with bookkeeping for a period, Glass and Metal Solutions, Inc. still did not employ as many people as Glass Fabricators, Inc. did at its lowest point. If you look at the size of Glass Fabricators, Inc. as it stood in 2014, using Complainant's Reply as a reference, Glass Fabricators, Inc. employed nine (9) individuals, which is three times the workforce of the significantly smaller Glass and Metal Solutions, Inc.

II. GLASS AND METAL SOLUTIONS, INC. HAS A DIFFERENT CORE BUSINESS FROM GLASS FABRICATORS, INC.

The significant difference in size of workforce is a direct result of the significant differences in the core businesses of the two companies.

Not finding the information elicited from the witness to be helpful, Claimant looks for procedural cover in criticizing the form of cross-examination of Patricia Dotson allowed by the Judge at the Hearing. However, Claimant had ample opportunity to develop whatever testimony it found interesting from this witness, who was called to the stand by the Claimant, and Claimant also had ample opportunity to re-direct if so desired. Nonetheless, Fed. R. Evid. 611(c) provides that “the court should allow leading questions: (1) on cross-examination.” Fed. R. Evid. 611(c)(1). “The rule also conforms to tradition in making the use of leading questions on cross-examination a matter of right.” *Notes of Advisory Committee on Rules*, Fed. R. Evid. 611(c)(1).

The Sixth Circuit rejects the position argued by Claimant, with the following reasoning:

It was not error for the trial court to permit the defense to use leading questions when cross-examining its own employees, who had been called by plaintiff on direct examination as part of her case-in-chief. While Federal Rule of Evidence 611(c) permits the use of leading questions when a party calls a witness identified with an adverse party, there is no complementary provision requiring such a witness to be cross-examined without the use of leading questions by the party to whom that witness is friendly. This matter is within the court's traditional discretion to control the mode of interrogation. We find no abuse in this case.

Morvant v. Constr. Aggregates Corp., 570 F.2d 626 (6th Cir.1978).

Regardless of the form of the questions, the information gleaned in this case is that the operations and business purposes of the two companies are not substantially identical, but are markedly different. Regardless of who is asking the questions, the information provided by the witnesses in this case was that “very little” of the business of Glass Fabricators, Inc. was based upon installation, as the business “main accounts” of Glass Fabricators, Inc. required “mostly” fabrication and “very little was installation.” As an example, following is the testimony of Ms. Patricia Dotson in response to the direct examination of Complainant’s counsel:

1 Q. And how much of your business was

2 the glass installation?

3 A. Very little.

4 Q. Can you explain what you mean by

5 "Very little"?

6 A. Well, I had a beveling machine that

7 we ran, and that's where we would make mirrors

8 and pieces of little glass that we would bevel

9 and everything. And by "we" I'm talking about

10 my employees that worked for Glass Fabricators.

11 So like DGI was one of my main accounts and

12 that. And that's what we would do. We mostly

13 cut glass, cut and fabricate, which was

14 drilling holes, shapes, that kind of thing.

15 Very little was installation.

[Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 192:1 to 192:15)].

While it is understandable why Complainant would want to leave the area of examination undeveloped, as it is factually unhelpful to Complainant's argument, the information she provided in response to the questions of Complainant's counsel is consistent with the information confirmed upon direct examination. The "main profit center" of Glass Fabricators, Inc. was in the fabrication of the products it sold. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 225:3 to 226:5), (Pages 233:23 to 234:1)]. Glass Fabricators would take huge, raw sheets of glass and cut them down to size, beveling them, polishing them and otherwise fabricating them into a final product, with machine driven processes. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 225:3 to 226:5)]. Glass Fabricators, Inc. would also fabricate, in its facility, the aluminum framing and components that went into the exterior glass systems it sold. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 232:20 to 234:9)].

The installation of its fabricated products was "incidental to the fabrication." [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 225:3 to 226:5), (Pages 233:23 to 234:1)]. "Very little" of the business of Glass Fabricators, Inc. would consist of jobs to install glass. [Patricia

Dotson Hearing Trans. (Page 223:1 to 223:15). As elicited from Patricia Dotson by Complainant's counsel on direct examination, "very little" of the company's business was installation as the main customers of Glass Fabricators, Inc., would come to it for large quantities of fabricated glass, involving cutting, drilling, shaping and beveling of glass. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 192:1 to 192:15)].

At that, to the extent Glass Fabricators, Inc. installed the glass systems it fabricated, the systems and installation were exterior, weather barriers. Her testimony, that the primary business operations and purpose of Glass Fabricators, Inc. was devoted to the exterior glass systems was also consistent with the testimony of the other witnesses in the case as well. Although Glass Fabricators, Inc. had, at one-time, half a decade previously, also installed some prefabricated storefront glass, even those were exterior glass systems. [Anthony Augustine Hearing Trans. Vol. I, (Pages 106:10 to 107:7)]. The mainstay of Glass Fabricators, Inc.'s business was exterior glass. [Anthony Augustine Hearing Trans. Vol. I, (Page 85:18 to 85:22)]. The systems fabricated and installed by Glass Fabricators, Inc. were exterior systems, built with methods designed to be weather barriers as well. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 544:23 to 545:15)].

Patricia Dotson testified that Glass Fabricators, Inc. used specialized equipment to fabricate the glass it sold as its core business purpose, like power cups, CNC beveling machines, glass cutting tables for fabricating large sheets of glass, polishing machines, metal punch machines for curtain wall metal, and metal turning lathes. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 232:20 to 234:9)]. This testimony by Patricia Dotson was consistent with, and confirmed by the testimony Anthony Augustine, who is preferred by Complainant:

2 And this is because when glass
3 fabricators would fabricate a piece of glass,
4 they have to finish the edges of the glass so
5 that they that could be installed properly on
6 the site, they would use bevels?
7 A. It's what the customer ordered.
8 Q. Okay.
9 A. How the customer ordered it.
10 Q. What are glass cutting tables at
11 Glass Fabricators?
12 A. They're basically -- I guess you
13 would say -- I don't know if they were exactly
14 fully square, but they're tables that you could
15 bring glass, plate glass, that you could cut.
16 You can cut plate glass, you can't cut
17 tempered. So when you get big pieces of the
18 plate glass, and then you can set it on there,
19 then you can measure and cut it to the size
20 that you would order to or he would order to.
21 Q. And how big are these tables, these
22 glass cutting tables?
23 A. I don't know. I don't know the
24 exact size. A plate of glass, you can have
25 some that are, say 144 by 120, and I think the
1 glass would fit on that, so --
2 Q. 10 feet by 12 feet, approximately?
3 A. Yeah. That sounds --
4 Q. Okay. If I'm way off base, let me
5 know. But --
6 A. I don't know. I've never
7 measured --
8 Q. You've seen it.
9 A. Yeah. I've seen it, but I never
10 measured it.
11 Q. If you were to look at it -- I
12 mean, am I talking 10 inches or 10 feet?
13 A. Feet, you're talking. You're
14 probably talking, I don't know, eight-, nine-,
15 10-foot wide.
16 Q. Okay. Big tables?
17 A. Yeah. They're big tables.
18 Q. And the raw materials the glass
19 fabricators would purchase would be sheets of
20 glass, and they would take those raw materials

21 and fabricate them into glass for the customer?
22 A. You would cut it. Yeah. You use
23 that to cut.

7 Q. And the metal punch machine that's
8 used for putting holes in metal for curtain
9 walls and storefronts at Glass Fabricators --

10 A. Yeah. I know what you're talking
11 about.

12 Q. Fill us in. What is it?

13 A. Basically that machine is for
14 storefront, where you can -- you put the jamb
15 in or the horizontal or the sill, and it
16 punches it so it makes it -- it's easier --
17 it's less fabrication time than drilling the
18 holes. There's holes, and then you can get it
19 so you can attach the screw spline, and you can
20 make your frame.

21 Q. Okay. So we're talking about
22 window frames?

23 A. Yes.

[Anthony Augustine Hearing Trans. Vol. I, (Pages 78:3 to 80:23), (Page 82:7 to 82:24)].

Patricia Dotson testified that, when installation was being performed by Glass Fabricators, Inc., the primary form of installation was putting its fabricated products on the outside of buildings high in the air, many stories up from the ground. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 225:3 to 226:5)]. She testified that Glass Fabricators, Inc. used special equipment for the high-level installation of the glass it fabricated as its core business purpose, like cranes, lifts, scaffolding, swing stage equipment, huge platforms suspended from cables from the tops of skyscrapers, and rappelling equipment for mountain climbing to repel down the sides of buildings. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 226:6 to 226:19), (Page 227:13 to 227:22), (Page 228:4 to 228:7)].

Again, her testimony was consistent with and confirmed by Claimant's preferred witness,

Anthony Augustine:

- 18 Q. There were jobs that Glass
19 Fabricators, Inc. would use rappelling?
20 A. Yeah. I know that. I couldn't
21 tell you what jobs.
22 Q. Can you tell the court what
23 rappelling is?
24 A. Basically you're -- you got a
25 harness on, and then you're going down --
1 something I couldn't do. Kyle did --
2 Q. What is it?
3 A. What's that?
4 Q. The judge needs to know what it is.
5 A. Just, when you got the harness on,
6 and then you got, I guess, the strap into the
7 rope and you're going up and down --
8 Q. Like mountain claiming?
9 A. Yeah. Like mountain climbing.

[Anthony Augustine Hearing Trans. Vol. I, (Pages 75:18 to 76:9)]. Her testimony was also consistent with and confirmed by the testimony of Dale Dotson:

- 22 Q. We saw a picture of a suction cup,
23 but it's my understanding from earlier
24 testimony that Glass Fabricators, Inc., an Ohio
25 corporation, also used something called power
1 cups for the high-level work.
2 A. A power cup is -- if you look on
3 your -- the pictures he submitted here, they
4 said there was one suction cup on the glass. A
5 power cup is made up of multiple suction cups
6 on a metal frame with a vacuum pump built into
7 the frame, and it's usually battery charged,
8 and you can also plug a cord into it. So when
9 you've got a big piece of glass going up, like
10 on the Galleria across the street, like on that
11 big glass barrel wall, you use a crane, you put
12 the power cup on there, you turn it on, it
13 vacuums on, and then it's lifted into place
14 with a crane or -- there's also -- I'm trying

15 to think. It's the same motor that runs a
16 swing stage, but you can run cables off the
17 building, from the top of the building, run it
18 down and hook your power cup up that way, too.
19 There's a lot of different ways to use that
20 power cup to lift glass up high.

21 Q. And the power cup is used rather
22 than a suction cup simply due to the sheer size
23 and weight of the materials that Glass
24 Fabricators, Inc., is installing --

25 A. Oh , yes.

1 Q. -- in the course of its business?

2 A. Yes.

Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 546:22 to 548:2)].

In contrast to the fabrication work of Glass Fabricators, Inc. and the exterior and high level work of Glass Fabricators, Inc., the uncontroverted testimony in this case is that Glass and Metal Solutions, Inc. does not fabricate, and does not use any equipment related to fabrication, and uses simple hand tools for installing interior floor level glass. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 546:3 to 546:12); Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 548:11 to 550:4)].

Dale Dotson had no difficulty whatsoever in conveying the differences between the business purpose and operations of the two different companies. Complainant has searched long and low for a question that Mr. Dotson had in his mind as to whether he had ever even done work for Forest City Enterprises as an employee of Glass and Metal Solutions, Inc. Here is the exchange that Complainant had with Mr. Dotson at the Hearing on a minor entry on an entry on an invoice list amounting to an infinitesimal fraction of work performed by Glass and Metal Solutions, Inc.:

25 Q. So Forest City Enterprises is a
1 customer of GMS, correct?

2 A. I don't believe so.
3 Q. Never has been?
4 A. I can't honestly say. I might have
5 done something for them at one point, but
6 they're not an active customer that I would
7 consider a customer.
8 Q. So you said you might have done
9 something for Forest City Enterprises?
10 A. Yes.
11 Q. What would that have been?
12 A. Most likely a door repair on Public
13 Square there.
14 Q. What is Forest City Enterprises?
15 A. They're a real estate holding
16 company, I believe.
17 Q. How about Zaremba?
18 A. Zaremba, I might have did a door
19 repair for them, too.
20 Q. Is that yes, you did do a door
21 repair or no, you didn't?
22 A. I'm not sure. Here is the thing:
23 I worked at Glass Fabricators and we done work
24 for those companies, and I couldn't tell you if
25 it was -- I mean, I gave you my invoices. I
1 know I haven't done anything for either one of
2 those companies for -- maybe when I first
3 started I might have done something.
4 Q. What you're saying is, that time
5 when Glass Fabricators went out of business and
6 GMS started up, there were some customers that
7 you had from Glass Fabricators that they needed
8 work from GMS, and you can't recall from your
9 memory whether that was for GFI or GMS?
10 A. Exactly.

[Dale Dotson Hearing Trans. 10.17 - Vol. 2, (Pages 285:25 to 287:10)]. It is from this exchange about a minor entry on a customer invoice list that Complainant's Reply Brief intends to support a statement that Mr. Dotson had "difficulty distinguishing work he performed for GFI with work he performed for GMS." [Complainant's Reply].

The reality of the record is that Mr. Dotson had no difficulty whatsoever in contrasting the core business of Glass and Metal Solution, Inc. as it is the low-level installation of interior storefront glass using materials fabricated by other sources, usually owner supplied. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 565:9 to 566:3)]. Specifically, he testified that more than ninety percent (>90%) of the business of Glass and Metal Solutions, Inc. is installing owner supplied material in single-story, interior-type work for Cahil, a specific general contractor. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 565:9 to 566:3)].

Dale Dotson had no difficulty explaining that, unlike the fabrication business of Glass Fabricators, Inc., the core business of Glass and Metal Solutions, Inc. has the three-man crew installing pre-fabricated materials on the ground level inside a shopping mall [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 533:8 to 533:24), (Pages 533:25 to 534:2) (Pages 540:17 to 542:22) (Pages 543:10 to 544:22)]:

8 What's different about the
9 installation, if anything?

10 A. Most of the stuff we do is
11 owner-supplied materials. They come out
12 prefabricated. And it's their own design of
13 their own system. And we're supplying labor.

14 Q. Okay.

15 A. They have drawings and everything
16 is done according to what their company's --
17 we're not doing any fabrication. Everything is
18 prefabricated. We're just installing whatever
19 they ship us from wood trim, carpentry, break
20 metal, polycarbonate panels. A lot of the
21 stores, they don't have glass in them, they're
22 called ACM panels, aluminum composite metal
23 panels, and they have designs printed on them,
24 and we install those.

[Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 533:8 to 533:24)]. He had no difficulty explaining that these are not weather resistant systems at all, as they are simply at walking level inside a shopping mall. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 544:23 to 545:15)]

Both Dale Dotson and Patricia Dotson were clear in explaining the differences in both size, scope, value and nature of the work performed by the two companies with regard to the, literally, miniscule overlap of a few small odd jobs for some early customers of Glass and Metal Solutions, Inc. Consistent with the core business purpose of Glass Fabricators, Inc. the work by that company usually involved fabrication of quantities of glass and/or high-level work, whereas the work performed by Glass and Metal Solutions, Inc. was more along the lines of odd-job repairs or ordering of a part from some other supplier as a favor. None of the examples cited by Claimant would support a finding of continuity between the businesses, even as to the small fraction of work represented by those customers. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 188:17 to 191:25); Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 551:10 to 554:4), (Pages 554:8 to 556:10), (Pages 556:11 to 558:1), (Page 558:9 to 558:13), (Page 560:4 to 560:18), (Pages 560:19 to 561:8), (Pages 561:9 to 562:1), (Page 562:2 to 562:22), (Pages 562:23 to 563:12)]

Dale Dotson had no difficulty whatsoever in describing the differences in the geographical locations of the work performed by the disparate companies. On the one hand, the work performed by Glass Fabricators, Inc. was in Northern Ohio, and mostly in the downtown of the City of Cleveland, which is consistent with its core business purpose of fabricating exterior glass systems for tall high-rise buildings. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 184:14 to 184:22)]. On the other hand, Glass Fabricators, Inc. has never performed work in the

many states across the country that have formed the mainstay of Glass and Metal Solutions, Inc. incessant travel, namely New Hampshire, Montana, New Orleans, Texas, Utah, West Virginia, Indiana or Colorado. [Patricia Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 587:11 to 588:2); Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 567:16 to 568:8)]. More than ninety percent (>90%) of the work performed by Glass and Metal Solutions has been outside the State of Ohio, requiring travel all across the country to New Hampshire, Montana, New Orleans, Texas, Utah, West Virginia, Indiana and Colorado.. [Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 367:25 to 368:7), 10.17 - Vol. 3, (Pages 566:25 to 567:15)]. Very unlike Glass Fabricators, Inc., almost all of the income generated by Glass and Metal Solutions, Inc. is generated from work outside of the State of Ohio. [Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 372:8 to 374:3)].

III. THE EMPLOYEES AT GLASS AND METAL SOLUTIONS, INC. HAVE DIFFERENT DUTIES THAN GLASS FABRICATORS, INC

Here is exactly the sentence that appeared in Respondent's Brief, at page 17, discussing the fact that the jack-of-all-trade duties of Dale Dotson at Glass and Metal Solutions, Inc. had been performed by *a plethora of different employees* at Glass Fabricators, Inc.:

The supervision of other crews, as well as the management of payroll, banking, etc. was all handled by other employees, a Lead Foreman, a Project Manager or the President/Controller/Office Manager and sometimes crew supervisor Patricia Dotson. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 185:17 to 185:25), (Pages 198:17 to 199:3), (Page 221:11 to 221:15), (Pages 234:10 to 235:25); Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Page 309:15 to 309:18); 10.17 - Vol. 3, (Pages 535:18 to 536:10); Michael Turkal Hearing Trans. 10.17 - Vol. 3, (Page 448:3 to 448:10), (Page 455:4 to 455:15); Anthony Augustine Hearing Trans. 8.14 – Vol. 1, (Pages 67:1 to 68:17), (Pages 69:12 to 69:25)].

[Respondent's Brief, at p. 17].

The fact that Patricia Dotson (who has never worked for Glass and Metal Solutions, Inc. in any capacity whatsoever) was the “President/Controller/Office Manager and sometimes crew supervisor” at Glass Fabricators, Inc. is without dispute or controversy the record of this case. As to Ms. Dotson’s “sometimes crew supervisor” hat, it was Complainant’s counsel who elicited the testimony in its case in chief:

19 Q. And if there was more than one job
20 site, Mr. Dotson also supervised GFI's foremen
21 at the other job sites, correct?

22 A. No, he did not.

23 Q. Who would supervise the other
24 foremen at other job sites?

25 A. Kyle Conway.

1 Q. What if there were two or more job
2 sites?

3 A. I have gone out there, myself.

[Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 185:17 to 185:25), (Pages 198:17 to 199:3)].

The effectiveness of her supervision, when made necessary, remains undeveloped in the record. What is well developed in the record, however, is that the job functions that she spent most of her time doing at Glass Fabricators, Inc. are instead performed at Glass and Metal Solutions, Inc. by Dale Dotson. At Glass and Metal Solutions, Inc., it is Dale Dotson who manages the billing, payroll, ordering, banking and estimating:

20 Q. All right. So, Dale, what if any
21 are the differences in what you actually did as
22 an employee of Glass Fabricators, Inc., an Ohio
23 corporation, when compared with what you do now
24 as an employee of your company, Glass and Metal
25 Solutions, Inc.?

1 A. There's a lot.

2 Q. Take your time because it's
3 important and that's what we're here for.

4 A. I do bookkeeping. I do bidding. I
5 do payroll. I pay the bills. I make sure my
6 taxes are paid. Plus I, you know, go out to
7 jobs and look at them, do field measuring. You
8 know, I book the hotels for everybody, for us
9 when we're traveling. I write the per diem
10 checks. I pay all the credit card bills. I
11 mean, I have a lot on my plate. I do every
12 day.

13 Q. So there's all the organizational
14 operations and the management things that
15 you've described?

16 A. Yes.

17 Q. And you never did any of those at
18 Glass Fabricators as part of your core job
19 responsibilities?

20 A. Never, no.

21 Q. Instead, those were performed by
22 Patricia Dotson?

23 A. Yes.

[Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 538:20 to 539:23)].

At Glass and Metal Solutions, Inc., Patricia Dotson has never held any position,
responsibilities, performed work or helped out in any manner whatsoever:

20 Q. Now, does Patricia Dotson have a
21 membership interest in Glass and Metal
22 Solutions, Inc.?

23 A. No, she doesn't.

24 Q. Has she ever loaned money to Glass
25 and Metal Solutions, Inc.?

1 A. No, she hasn't.

2 Q. Does she have any shares in it?

3 A. No, she doesn't.

4 Q. Is she a partner with it in any
5 capacity?

6 A. No.

7 Q. Has she ever been employed by it?

8 A. No.

9 Q. Has she ever done bookkeeping for
10 it?

11 A. No.

- 12 Q. Has she ever called for workers for
13 it?
14 A. Never.
15 Q. Has she ever done hiring or firing?
16 A. Never.
17 Q. Has she ever stuffed an envelope
18 for it?
19 A. Never.

IV. THE RECORD DOES NOT SUPPORT A FINDING OF SUBSTANTIALLY IDENTICAL
MANAGEMENT, BUSINESS PURPOSE, OPERATION, EQUIPMENT, CUSTOMERS,
SUPERVISION, AND OWNERSHIP

It is without dispute that the Complaint, insofar as it pertains to Glass and Metal Solutions, Inc., is wholly dependent upon a finding that Glass and Metal Solutions, Inc. is not truly a separate corporation but is, instead, merely the alter ego of Glass Fabricators, Inc. On the other hand, if Glass and Metal Solutions, Inc. is not merely the alter ego of Glass Fabricators, Inc., then Glass and Metal Solutions, Inc. would not have any obligations to the Union related to the Contract.

If the companies are not alter egos, Digital is correct and we do not have jurisdiction, as the case no longer involves the interpretation of a CBA... If, on the other hand, they are alter egos, we have jurisdiction and, based on that finding, Digital is subject to the provisions of the CBA...

In re Staying the Arbitration & Vacating a Notice of Intention to Arbitrate Between Armen Digital Graphics, Ltd. & Amalgamated Lithographers of Am., Local One, S.D.N.Y. 96 Civ. 5844 (LBS), 1997 U.S. Dist. LEXIS 11938, at * 6 (Aug. 8, 1997), and at * 22 (“Since Local One has failed to prove that Digital is the alter ego of Graphics, Digital cannot be viewed as a party to the CBA between Local One and Graphics”).

In analyzing the record of a case, the standards utilized by the court decisions cited in Respondent’s Brief are not novel. Quite the opposite, the standards applied by the courts cited by Respondent are well established, and are supported by voluminous citation to decisions

involving the Board throughout the courts' reasoning. There is no question, in the Board's decisions, or in the court decisions involving the Board, that demonstration of "similarities" is not sufficient to a finding of alter ego. Complainant may bristle under the weight of the task, but it is a difficult thing to establish that two companies should be "alter egos." The standard would require proof that the two companies are "*substantially identical*" under not only a District Court's review where the Board is a party, but also under the Board's review and the 6th Circuit's review.

The NLRB utilizes a seven-prong test to determine whether a new business is a disguised continuance of the old business in Crawford Door Sales Co., 226 NLRB Dec. 144 (1976). Two entities will not be held to be alter egos unless they have "substantially identical" ownership, business purpose, management, supervision, customers, operation, and equipment. Id.; T. E. Elevator Corp. of Connecticut, 268 NLRB Dec. 227 (1984). **"Many similarities" is insufficient; the Crawford Door factors must be "substantially identical" between the two entities.** T. E. Elevator Corp. of Connecticut, 268 NLRB Dec. 1461 (1984). While the Eleventh Circuit has not specifically adopted it, eight other Circuits have cited the Crawford Door criteria with approval. Crest Tankers, Inc. v. National Maritime Union, 796 F.2d 234, 237 (8th Cir. 1986); NLRB v. Dane County Dairy, 795 F.2d 1313, 1321 (7th Cir. 1986); NLRB v. Allcoast Transfer, Inc., 780 F.2d 576, 579 (6th Cir. 1986); Goodman Piping Products, Inc. v. NLRB, 741 F.2d 10, 11 (2d Cir. 1984); Fugazy Continental Corp. v. NLRB, 233 U.S. App. D.C. 310, 725 F.2d 1416, 1419 (D.C. Cir. 1984); Alkire v. NLRB, 716 F.2d 1014, 1018 n.4 (4th Cir. 1983); NLRB v. Al Bryant, Inc., 711 F.2d 543, 553-54 (3rd Cir. 1983); cert. denied, 464 U.S. 1039, 104 S. Ct. 699, 79 L. Ed. 2d 165 (1984); Carpenters Local No. 1846 v. Pratt-Farnsworth, Inc., 690 F.2d 489, 507-98 (5th Cir. 1982), cert. denied, 464 U.S. 932, 104 S. Ct. 335, 78 L. Ed. 2d 305 (1983).

Gen. Longshore Workers, Local 1988 v. Pate Stevedore Co., N.D.Fla. CASE NO. 91-30292-RV, 1993 U.S. Dist. LEXIS 18638, at *14-15 (Dec. 30, 1993)(emphasis added). *See also*, Rd. Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO v. Dorn Sprinkler Co., 669 F.3d 790, 795 (6th Cir. 2012); Kenmore Contracting, 289 N.L.R.B. No. 56, 1988 WL 213821, at *1; Advance Electric, 268 N.L.R.B. No. 151, 1984 WL 36068, at *3; All Kind Quilting, Inc., 266 N.L.R.B. No. 202, 1983 WL 25107, at *8-*12 (1983); Crawford Door, 226 N.L.R.B. No. 174,

1976 WL 7566, at *12; Crest Tankers, Inc. v. National Maritime Union, 796 F.2d 234, 237 (8th Cir. 1986); NLRB v Dane County Dairy, 795 F.2d 1313, 1321 (7th Cir. 1986); NLRB v. Allcoast Transfer, Inc., 780 F.2d 576, 579 (6th Cir. 1986); Goodman Piping Products, Inc. v NLRB, 741 F.2d 10, 11 (2d Cir. 1984); Fugazy Continental Corp. v. NLRB, 233 U.S. App. D.C. 310, 725 F.2d 1416, 1419 (D.C. Cir. 1984); Alkire v. NLRB, 716 F.2d 1014, 1018 n.4 (4th Cir. 1983); NLRB v. Al Bryant, Inc., 711 F.2d 543, 553-54 (3rd Cir. 1983); cert. denied, 464 U.S. 1039, 104 S. Ct. 699, 79 L. Ed. 2d 165 (1984); Carpenters Local No. 1846 v. Pratt-Farnsworth, Inc., 690 F.2d 489, 507-98 (5th Cir. 1982), cert. denied, 464 U.S. 932, 104 S. Ct. 335, 78 L. Ed. 2d 305 (1983).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 23, 2018, due to the closure of the government on prior days, a copy of the foregoing was filed electronically through the National Labor Relations Board's e-filing system. Additionally, copies were served upon each of the following by e-mail and regular U.S. Mail:

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