UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUB-REGION 24

IN RE SPARTAN PRODUCTS, LLC, **Employer,** **-- against --** **INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,** **Petitioner,**	)	**Case No. 12-CA-192417**

EMPLOYER SPARTAN PRODUCTS, LLC'S POST-HEARING MEMORANDUM

Employer Spartan Products, LLC (Spartan) submits this post-hearing memorandum of law and accompanying exhibits in opposition to the Complaint of the National Labor Relations Board (NLRB) dated June 30, 2017, charging Spartan with "failing and refusing to bargain collectively with the exclusive bargaining representative of its employees in violation of Section 8(a)(l) and (5) of the [National Labor Relations] Act." (Exh. A (Complaint) ¶ 8, at 5.) Spartan filed its Answer denying the NLRB's allegations on July 20, 2017. (Exh. B.)[1]

[1] Spartan, a St. Croix ready-mix concrete manufacturer and wholly-owned subsidiary of U.S. Concrete, Inc., combined its business with that of sister subsidiary Heavy Materials, LLC on July 1, 2018. Spartan's former employees now work for Heavy Materials, a rock quarry and aggregate-crushing business also on St. Croix, the surviving entity, at the same terms of employment they enjoyed at Spartan. Heavy Materials has an existing collective bargaining agreement with the United Industrial Workers of the Seafarers International Union of North America, AFL-CIO (UIW) which includes job classifications covering all ex-Spartan workers that expires on December 31, 2021. Heavy Materials filed a UC petition on July 1, 2018, Case 12-UC-223147, seeking the NLRB's supervision of its employees' election of either IAMAW or UIW to represent them. Today, Spartan itself is only a shell organization and has transferred its assets to Heavy Materials.

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PROCEDURAL HISTORY

The charges against Spartan, amended on several occasions over a five-month period in 2017, have been a moving target. This is highly relevant to their lack of substance, as explained in detail below.

First, on February 3, 2017, Spartan was accused of terminating the employment of welder Ramon Murrain Benjamin and yard man Benson Morton "because of their membership and activities in behalf of International Association of Machinists and Aerospace Workers, AFL-CIO, a labor organization, and at all times since such date the Employer has refused and does now refuse to employ, the above-named employee(s)" and "[o]n or about January 30, 2017, the above-named Employer, by its officers, agents and representatives, terminated the employment of Ramon Murrain-Benjamin and Benson Morton, because they gave testimony under the Act." (GC Exh. 1(a).)

On March 3, 2017, the IAMAW filed a first amended charge against Spartan. (GC Exh. 1(c).) The allegations were modified. The second, about the alleged giving of testimony, now appeared as the first, and the second charge now claimed that "[s]ince on or about January 30, 2017, the above-named Employer has made changes to terms and conditions of work without bargaining with the Union and refused to meet and allow the above-named employees to be represented by the Union. The Company is now and continues to bargain in bad faith." (*Id.*) The "terms and conditions" were not specified.

Spartan filed a Position Statement denying the charges on March 24, 2017. On March 30, 2017, the NLRB sent Board Agent Enrique Gonzalez Quinones to interview Spartan's General

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Manager Dion Alibocas at Spartan's St. Croix office. Agent Quinones took Alibocas' Confidential Witness Affidavit in which addressed the then-pending allegations.

Next, on April 28, 2017, the IAMAW changed course again. In its second amended charge, the IAMAW reinstated its claim in the original charge that Benjamin and Morton were laid off "because of their membership and activities in behalf of" the IAMAW. (GC Exh. 1(e).) As before, exactly what this meant was left unexplained. Next, for the first time, the IAMAW claimed that "since on or about February 3, 2017, the above-named Employer, by its officers, agents, and representatives, has bargained in bad faith with the Union, by refusing to provide the Union with relevant and necessary information regarding the financial status of the Company." Finally, the IAMAW alleged, also for the first time, that "[s]ince on or about March 10, 2017, and continuously thereafter, the above-named Employer, by its officers, agents, and representatives, unilaterally outsourced the bargaining unit position of Welder and unilaterally outsourced bargaining unit welding work, without giving the Union notice or an opportunity to bargain." (*Id.*)

Finally, on May 31, 2017, the IAMAW filed a third amended charge. (GC Exh. 1(g).) The union now claimed—for the first time—that "[o]n or about January 30, 2017, the above-named Employer, by its officers, agents, and representatives, terminated the employment of Ramon Murrain-Benjamin and Benson Morton without giving the Union notice or an opportunity to bargain." Next, the IAMAW repeated its allegation about "refusing to provide the Union with relevant and necessary information regarding the financial status of the Company." (*Id.*)

The NLRB did not send Agent Quinones back to interview Alibocas or any other Spartan employee concerning the shifting charges. Rather, on June 30, 2017, the NLRB filed a formal Complaint and Notice of Hearing.

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The manner in which the IAMAW's claims morphed over the five months between the original charge and the filing of the Complaint undercut the NLRB's main—present and presumably final—version of Spartan's liability.

The main charge against Spartan in the Complaint—that it laid off Benjamin and Morton "without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct"—did not appear in the original February 3, 2017, charge. Nor was it made in the amended charges filed on March 3, 2017, or April 28, 2017. It did not in fact occur to the IAMAW to make this allegation until May 31, 2017—a full four months after Morton and Benjamin were laid off for economic reasons. The reason is obvious—the IAMAW and Spartan had not yet even started negotiating the terms of a collective bargaining agreement when the layoffs took place. Clearly, the IAMAW was under the impression—the correct impression—that it did not yet have grounds on which to bargain concerning the layoffs. Instead, the IAMAW insisted for months that Spartan had terminated Morton and Benjamin because of their "membership and activities in behalf of" the IAMAW. It was only after Agent Quinones took Alibocas' statement at the end on March 2017 and ruled out this theory that the IAMAW changed its tune. Actions, as the saying goes, speak louder than words. There was no unfair labor practice committed as a result of the layoffs. Even the IAMAW did not think so.

The layoff of Benjamin and Morton could not constitute an unfair labor practice for another obvious reason, one unique to the Virgin Islands. Under V.I. Code Ann. tit. 24, § 76(a), commonly known as the Wrongful Discharge Act, an employee has a cause of action against her or his employer for wrongful termination unless the employer can prove by a preponderance of the

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evidence that it had at least one of nine specific grounds to justify its decision. *See Bellot v. Cardow, Inc.*, Case No. ST–2012–CV–297, 2017 WL 1738265, *3 (V.I. Super. Ct. May 1, 2017) ("The Virgin Islands Wrongful Discharge Act ('WDA') provides that an employer can lawfully discharge an employee for only one of nine enumerated reasons."). A prevailing plaintiff is entitled to back pay, reinstatement and other damages and attorney's fees—a greater range of remedies, in fact, than found in most collective bargaining agreements. It is not the fault of Spartan that neither Benjamin nor Morton chose to pursue such a claim. It does seem obvious, though, that the IAMAW did not inform them of this option.

For these reasons and those that follow, the Complaint should be dismissed.

FACTS

An evidentiary hearing was held in St. Croix, U.S. Virgin Islands, on June 12 and 13, 2018, before Administrative Law Judge Elizabeth Tafe. Witnesses Dion Alibocas, Javier Almazan, Sr., Angel Rexach Ramos, and Benjamin were called by the NLRB on its direct case. Spartan recalled Alibocas in its defense, and also called Spartan's Accountant Shirley Winslow. The NLRB called no rebuttal witnesses.

At the hearing the following material facts were established.

A. Spartan and the Union

On or about October 3, 2016, the International Association of Machinists and Aerospace Workers, AFL-CIO (IAMAW) was elected as the exclusive bargaining representative of qualified (*i.e.*, non-exempt) Spartan workers.

The Spartan/IAMAW relationship got of to a bumpy start. Shortly after the election, IAMAW filed a charge against Spartan, Case 12-CA-187586, alleging that it had unfairly put

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security cameras in the small break room in the office trailer and had failed to bargain when it was forced to reduce work hours due to a slowdown in the local economy. The charge was later withdrawn by IAMAW. This was followed by grievances in Case 12-CA-200481 (a dispute over the dispatchers' qualification for union membership; charge withdrawn); 12-CA-192489 (alleged coercion of members; charge withdrawn); and 12-CA-185349 (alleged unilateral change of company handbook and intimidation of union members; charges settled).

Surprisingly, however, the IAMAW did not commence negotiating the terms of a collective bargaining agreement with Spartan—the *raison d'être* for the union's election—until late winter of 2017. Part of the delay may have been that IAMAW representatives Mervyn Constantine and David Porter both suffered serious illnesses in late 2016-early 2017. (6/12/18 Transcript at 52:2-54:15.) IAMAW's lead negotiator Almazan testified that the first negotiating session took place in St. Croix on March 1, 2017:

> Q. Yeah, you beat me to it. I was going to say, when did that start? When did the negotiations start?
>
> A. The first session I believe was March 1st.
>
> Q. Of 2017?
>
> A. Of 2017.
>
> Q. Okay. Where was it held?
>
> A. At the Office of Collective Bargaining in Christiansted.

(*Id.* at 51:3-14 [J. Almazan].)

The very first draft collective bargaining agreement (CBA) was sent by Spartan to Almazan on or about February 21, 2017, the date that appears on its cover. (Respondent Exh. R-1 [Spartan

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draft CBA]. *See* 6/12/18 Transcript at 141:21-142:4 [D. Alibocas] (draft exchanged on February 21, 2017).)

IAMAW sent its first counterproposal to Spartan on March 8, 2017. (Respondent Exh. R-2 [3/8/17 J. Almazan email to G. Dudley with IAMAW's proposed modifications of non-economic terms]; *see* 6/12/18 Transcript at 73:22-74:1 [J. Almazan] ("Q. Is this the Union's first written proposal to Spartan for non-economic terms? ... THE WITNESS: Yes.").) IAMAW's proposal contained language giving Spartan sole discretion to determine whether a workforce layoff was necessary:

> e. Effective December 1, 1995, in the event it becomes necessary to reduce the working force, other than a seasonal layoff as where the work to be performed does not require the services of all employees, the Company has the right to make layoffs, based on seniority, qualifications and ability of each employee within each classification affected. If the Company deems that the qualifications and ability are equal then Classification Seniority shall prevail.

(Respondent Exh. R-2 at S01336.)

IAMAW's proposal was not materially different that Spartan's February 21, 2017, proposal, except that Spartan would also consider skill and cross-training factors in determining whom to lay off:

> Section 5.3. Layoffs. The Company, in its discretion, shall determine whether a layoff of an employee or employees is necessary. If the Company determines that layoffs are necessary, then the Company will consider skill, ability, attendance, cross-training, and other job-related performance and ability factors when deciding which employee or employees to lay off. If all job-related performance and ability factors are equal, the least senior employee shall be laid off first.

(Respondent Exh. R-1 at 7.)

Therefore, if the parties had entered into a CBA as of March 8, 2017, Spartan, under either the IAMAW's draft language or its own, would clearly have the sole discretion to decide when a

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layoff was necessary and whom to lay off—and would not have to "bargain" with the IAMAW concerning its actions.

Spartan and IAMAW engaged in additional negotiating sessions over the terms of a CBA, including in St. Croix in May 2017 (6/12/18 Transcript at 55:8-13, 80:3-81:2 [J. Almazan]), but the hurricanes of September 2017 prevented further negotiations until after January 1, 2018. To date, although proceedings are ongoing, no CBA has been entered into between Spartan and IAMAW.[2]

B. The Disastrous Local Economy's Toll on Spartan in 2016-2017

In St. Croix, the local economy is suffering, compounded by the catastrophic effects of Hurricanes Irma and Maria in September 2017. Spartan's ready-mix concrete business was particularly hard-hit. As Ms. Winslow explained in detail:

> Q. When you came to your position in 2012, were you familiar with the Hovensa Oil Refinery?
>
> A. Yes, sir. I had worked there, actually, prior to being employed by Spartan.
>
> Q. Do you know if they were a customer of Spartan's?
>
> A. Yes, they were.
>
> Q. Based on the books and records, were they a significant customer?
>
> A. Well, that's hard to say simply because we would be -- we would bill Hovensa directly for some things, but other contractors did work there. So then we would bill those contractors and it wouldn't necessarily show as Hovensa.
>
> Q. Okay. Hovensa-related business --
>
> A. Absolutely.

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[2] As explained previously, Spartan has ceased operations on July 1, 2018, and its employees now work for Heavy Materials, LLC, a separate wholly-owned subsidiary of Spartan's corporate parent. (*See supra* at 1 n.1.)

Q. -- was a significant amount, right?

A. Yes.

Q. Hovensa went bankrupt in 2012 -- '11, right?

A. Well, the first -- I was in the first wave of layoffs, and that was October of 2010. And I believe the next one was February 2011.

...

Q. Would it be fair to say that you're familiar with the local economy?

A. Yes, sir.

Q. How's it been since Hovensa closed?

A. Well, personally, you know, our house prices dropped. And yet things have gotten more expensive. Raises have not happened. You know, and I'm saying before I worked for Spartan, after they closed, it really hurt the economy a lot.

Q. Unemployment's gone up significantly?

A. Unemployment unbelievable.

Q. I don't want to get too far into this but -- how about once you came to Spartan? How about Spartan's business the last couple of years?

A. When I first got there, it was really pretty decent even with the closing of Hovensa. But we, Spartan, whether it was Spartan Concrete or Spartan Products, tends to be healthier if we have a lot of other projects like the Henry Rohlsen Airport and the fire station out there. And we had a couple, let's see, it was Anna's Hope Villas, which is a residential community, Louis Brown Villas, I know they did both of those.

Q. Let me put a date for the Court on that. What year were those projects happening?

A. Anna's Hope, I believe -- I really am 1 not in that part of the business, but from what I know about the financials --

Q. That's all I want you to testify about.

A. Okay. I believe that that would have been -- let's see, this is 2018. I would say 2015 to 2016. And ending somewhere around June or July of 2016.

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Q. And that project came to an end around that time?

A. Yes.

Q. Was that a lot of money, that project?

A. Yes.

Q. How about the airport project that you mentioned?

A. They ended about the same time.

Q. Did anything significant take their place?

A. No, not in 2016.

...

Q. BY MR. QUINN: By November [2016], how many cubic yards were we selling?

A. Well, we -- Dion and I started talking about the economic conditions in probably August, September, October. But it wasn't as significant. In November, November was the lowest month I'd ever seen. It was under 1,000 cubic yards. And the average selling price had gone down as well, because when we don't have projects, then you're just doing residential. And so the type of concrete is less expensive. So that's what happened. November was -- that's when we went, there's really an issue here.

Q. And has -- between then and the end of January 2017, did it get any better?

A. No, no, significantly not at all better.

Q. Between that and the hurricanes in September.

A. No.

Q. Since the hurricane?

A. No, it's -- I mean, we're hoping now that people are getting their insurance and maybe some FEMA money or whatever, that it will get better. We're hoping that that's going to happen.

Q. How would you characterize the last 6 months?

A. Not good. Not good financially.

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(6/13/18 Transcript at 195:1-199:7. *See also* 6/12/18 Transcript at 138:2-11 ("Q. In early 2017 what was the economic outlook for St. Croix? A. 2017? Q. Early, January, just the turn of the year. A. Bleak. Q. Okay. And how about for Spartan in particular? What was its business outlook? A. Bleak as well. Q. Was demand going down? A. Yes, exponentially.").)

Beginning in 2016, in addition to the dismal state of the local economy, Spartan was also facing unfair competition from a company called High Quality Concrete, who was undercutting Spartan's prices by as much as $25.00 per yard. (6/13/18 Transcript at 161:23-163:14 [D. Alibocas].)

C. The January 30, 2017, Layoffs of Adams, Benjamin and Morton

In economic distress and lacking work for its employees to do, Spartan came to the realization in late January 2017 that its business no longer could justify or support three of its existing positions. (6/12/18 Transcript at 138:12-21 [D. Alibocas].)

Spartan determined to lay off its Head Mechanic—and non-union employee—Denroy Adams, Benjamin and Morton. Spartan determined that it could better survive the economic downturn with employees who had mechanic skills in addition to their regular duties. (*Id.* at 138:12-16 [D. Alibocas].) Welding work had virtually dried up and the need for a welder was sporadic at best; there certainly was no business justification for a full-time staff welder. (*Id.* at 139:6-8 [D. Alibocas].) Benjamin, paradoxically, was the highest-paid employee of Spartan's staff. (*Id.* at 140:10-22 [D. Alibocas].) Finally, Spartan examined the skill sets of the yard men on staff and determined that of the three, only Morton had no other transferrable skills, such as mechanical ability. (*Id.* at 139:18-140:9 [D. Alibocas].)

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As of the date of Spartan's decision, there was no CBA in place between Spartan and IAMAW. In fact, the IAMAW had not yet initiated negotiations over the terms of a CBA, even though it had been elected in October 2016.

Spartan's intent was to lay off Adams, Morton and Benjamin on January 30, 2017. Since the latter two were members of the IAMAW, Spartan planned to notify the union of its decision before informing the workers. The IAMAW, however, had not so much as designated Shop Stewards for its Spartan members, and therefore no one "on the ground," so to speak, was available for this purpose. Spartan decided to contact the union's executives Constantine, Porter and Almazan, each of whom received a copy by email of counsel's letter stating Spartan's decision and the reasons for it. (JX-1 [1/30/17 email from M. Quinn to D. Porter, J. Alamazan and M. Constantine].)[3]

On January 31, 2017, Constantine wrote back via email expressing a desire to speak with Spartan's counsel or its "management team" about the previous day's email. (JX-3 [1/31/17 email from M. Constantine to M. Quinn].) IAMAW representatives did have discussions with Regional Manager Kurt Nose concerning the layoffs at or shortly after it received notice of Spartan's decision:

> Q. Were you [union member Angel Rexach] present when Morton was laid off?
>
> A. Yes.
>
> Q. Did you discuss his layoff -- I'll strike that. Who notified Morton of his layoff?
>
> A. The general manager, Mr. Alibocas.
>
> Q. And you already stated you were present. So --

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[3] Citations in the form "JX-__" are to the Joint Exhibits entered into evidence at the June 12-13 hearing.

> A. Yes.
>
> Q. Did you discuss the layoffs with Mr. Alibocas when he notified Morton?
>
> A. He told me that -- when he told me that they were going to be suspended -- terminated, I asked him if they had notified the Union, and that means that they were supposed to cease and desist because that has to go to negotiations with the Union. And so he told me that Kurt Nose had spoken with the Union, and they told him that they were going to look at the firings -- that they were going to do the firings, and that in the Company's opinion, that they were within their 10 rights to do that.

(6/12/18 Transcript at 89:18-90:10 [A. Rexach]. *See also* 6/13/18 Transcript at 164:14-165:18 [D. Alibocas]; 6/12/18 Transcript at 63:3-64:6 [J. Almazan] (discussions with Nose about Morton and Benjamin, possibly by telephone).)

On January 31, 2017, apparently in light of these events, IAMAW finally appointed Shop Stewards to work with its members at Spartan. The union designated employees Angel Rexach and Cristino Gonzalez. (JX-2 [1/31/17 email from M. Constantine to D. Alibocas with attached letter].) As stated above, IAMAW had not appointed Shop Stewards at the time of the layoffs, and Spartan therefore had no union representative or official at its facility to communicate with when the layoffs were announced.

On February 3, 2017, the IAMAW mailed Spartan a letter notifying it that is was filing charges with the NLRB. (JX-6 [2/3/17 letter from R. Garcia to D. Alibocas with draft charges attached].)

The same day, the NLRB mailed a letter to Spartan notifying it that IAMAW had filed administrative charges. (JX-7 [2/3/17 letter from I. Ramos to D. Alibocas with attached charge].) Curiously, the NLRB only conveyed a copy of one of the two draft charges that had been sent that day by the IAMAW—alleging that Spartan had terminated Morton and Benjamin for their

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"membership and activities" in the union and "because they gave testimony under the [National Labor Relations] Act." (*Id.* at S0321.)

These charges, of course, had no factual justification.

D. IAMAW's Demand for Confidential Information from Spartan

Also on February 3, 2017, the IAMAW mailed Spartan a letter requesting access to an extensive list of its books and records. (JX-17 [2/3/17 letter from J. Almazan to D. Alibocas].) The IAMAW made no mention or protest at all of Spartan's alleged "failure to bargain" with the union over the layoffs:

> This is in response to your recent indication to us that due to financial difficulties, the company is proposing changes in the work force for which we are the exclusive and certified collective bargaining representative. The IAM has a vital stake in being able to assess the economic justification of the company's decision to terminate two employees, the effects that any company decision may have on the affected employees we represent, and to consider all available alternatives.

(*Id.* at 1.)

The IAMAW's demand, however, was onerous:

> Accordingly, the following is information that we feel is necessary for us to properly represent our members.
>
> 1) Financial statements for this facility:
>
> a) The audited Statement of Income for the past five fiscal years.
>
> b) The Statement of Income for the current fiscal year year-to-date and the comparable period for the prior year.
>
> c) The audited Balance Sheet for the past five fiscal years.
>
> d) The Balance Sheet for the current fiscal year year-to-date and the comparable period for the prior year.
>
> e) All notes associated with the above financial statements.

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f) If not included in the Statement of Income or notes to the financial statements, a breakdown by major category for the past five fiscal years and for the most recent accounting period for the current fiscal year of sales, cost of goods/services sold, and selling, general & administrative expenses.

g) Material Loss in Revenue for 2016 year.

2) Business Plans/Studies/Reviews.

a) Copies of all plans, studies or reviews made regarding the future ongoing economic viability of this facility.

b) Copies of all plans, studies, reviews, forecasts and budgets on the expected performance of this facility.

c) Copies of all plans, studies, or reviews related to the restructuring, reorganizing, or other efforts to respond to the financial problems.

d) Copies of all plans, studies or reviews showing the justification for the proposed changes to the current Status Quo.

e) Details concerning any cuts in wages and/or fringe benefits to other employee groups, both unionized and non-unionized, as a result of the current situation.

f) Breakdown of labor costs as a percentage of Spartan Products total costs of operations.

g) [*sic*]

3) Discussion of Competition

a) Data regarding Spartan Products competition, primarily relating to the New Competitor and their operations at all U.S Virgin Islands.

b) Data supporting the company's position that New Competitor is able to maintain a cost advantage over Spartan Products.

c) Information regarding any advantages conferred by New Competitor due to Foreign Trade Zone status.

4) Bargaining Unit Work and Benefits

a) Company plan on how the welding, yardman and maintenance work will be performed.

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> b) Company needs to explain who will be performing the welding, yardman and maintenance work.
>
> c) Company needs to provide all amounts of accrual benefits and total compensation payout.
>
> d) Company needs to provide recall language for affected employees.

(*Id.* at 1-2.)

Virtually all of the information IAMAW sought is proprietary and highly confidential. Alibocas immediately directed the letter to Spartan's counsel. (6/12/17 Transcript at 44:13-22 [D. Alibocas].)

There is no evidence that the parties further communicated about IAMAW's demand until April 28, 2017. That day, Almazan wrote to Spartan's counsel George Dudley, Esq., of this firm to discuss arrangements for a May 2017 face-to-face bargaining session:

> Hello George,
>
> I hope this communication finds you in good spirits.
>
> Back In early March we agreed to set aside the week of May 8 -12, 2017, but we never set identified specific dates. This was done during the last day the parties bargained.
>
> We are rapidly approaching that time. That being said, I would like for the parties to define the bargaining dates ASAP. This will allow me to begin to work on making my travel arrangements.

(JX-8 {4/28/17 email from J. Almazan to G. Dudley copying K. Nose and M. Constantine].)

In the last line, Almazan mentioned the outstanding records request:

> I would also like remind [*sic*] the company that the union have [*sic*] not received the information it requested.
>
> Kind Regards,
>
> Javier

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(*Id.*)

Almazan brought up the subject with Nose at the May 2017 bargaining session. (6/12/18 Transcript at 80:22-81:17 [J. Almazan].)

Almazan's email and conversation with Nose triggered a reaction. On May 15, 2017, Dudley's partner Quinn wrote to Almazan via email with a proposed confidentiality agreement, a necessary prerequisite to IAMAW's access to the company's highly sensitive information. (JX-9 [5/15/17 email from M. Quinn to J. Almazan with draft non-disclosure agreement].) On May 23, 2017, Almazan wrote back to Quinn with IAMAW's proposed edits. (JX-13 [5/23/17 email from J. Almazan to M. Quinn].) On June 1, 2017, Almazan wrote to Dudley stating that "[t]he union is happy to learn that the company has accepted to modify the language in the Confidentiality Agreement. As soon as the modified agreement is received, I will sign and return it to you." (JX-14 [6/1/17 email from J. Almazan to G. Dudley].)

On June 2, 2017, Almazan emailed Dudley a signed copy of the Confidentiality and Non-Disclosure Agreement. (JX-15 [6/2/17 email from J. Almazan to G. Dudley with attachment].) On July 21, 2017, Dudley began sending confidential material to the IAMAW. (JX-16 [7/21/17 email from G. Dudley to J. Almazan with attachments].) The exchange of information has continued to date, with no registered complaints from the union.

E. Welding Work at Spartan Since Benjamin's Layoff

As expected, Spartan had some welding work that needed to be performed after Benjamin was laid off, primarily on an emergency basis. (6/12/18 Transcript at 32:11-21 [D. Alibocas].) Spartan acknowledged by stipulation with the NLRB that "[o]n February 23, 2017, two dates in mid-April 2017, May 11, 2017, July 24, 2017, October 20, 2017, November 15, 2017, February

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13, 2018, February 27, 2018, and March 7, 2018, a welder from Heavy Materials, LLC, an entity separate from Respondent at all material times, performed welding tasks at Respondent's facility." (JX-18 [Joint Stipulation] ¶ 6, at 2.)

As indicated, this work was performed by Heavy Materials' own welder Evelle Walters (6/12/18 Transcript at 36:16-38:8 [D. Alibocas] (describing Walter's work at Spartan).) When an emergency arose, Alibocas would contact Heavy Materials and request Walters' services:

> Q. When we were speaking yesterday about welding, am I correct that you characterized that as done on an emergency basis after Mr. Benjamin left?
>
> A. Yes.
>
> Q. Explain to the Court what you mean by an emergency basis.
>
> A. Unforeseen event, accident.
>
> Q. Am I right that when a welding situation arose, when you needed HM's welder, you would call them?
>
> A. Correct.
>
> Q. Let me explain for the Court how it happened. Did you make a phone call or what?
>
> A. Yes, I did.
>
> ...
>
> BY MR. QUINN: Procedure, yes. There's an emergency, and then you would call Heavy Materials?
>
> A. Correct.
>
> Q. You personally?
>
> A. Yes.
>
> Q. What happened next?
>
> A. I would call the -- I would call down to Heavy Materials operation, inquire if a welder is available ASAP to deal with an emergency repair at Spartan.

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> Q. Other than the times that you've indicated through your testimony on Exhibit R-3, were there any other times that you remember having to do that?
>
> A. I can't recall at this point in time.
>
> Q. Well, might there have been?
>
> A. There may have been.
>
> Q. If there may have been, would it have been more than five more times? I mean, are we talking about a limited amount?
>
> A. Limited, yes.
>
> Q. And this is for the year and a half now since -- well, almost a year and a half since Mr. Benjamin was laid off.
>
> A. Correct.
>
> Q. So that's a dozen, 13, 14 times since then. Would that be a fair estimate?
>
> A. Fair.

(6/13/18 Transcript at 160:5-161:23 [D. Alibocas].)

Spartan did not pay Walters. (*Id.* at 38:14-18 [D. Alibocas].)

Alibocas determined the number of welding jobs Walters undertook for Spartan by examining the daily Dispatcher Log, which contained descriptions from which he could tell that welding work had been performed. (*Id.* at 144:24-148-4 [D. Alibocas] (testifying to Respondent Exh. R-3, a document Alibocas prepared by selecting relevant pages from the Dispatcher Log).) [4]

[4] There was testimony by Shop Steward Rexach that there was extensive welding activity in the May 2017 timeframe. However, as Alibocas explained, this work was performed by Spartan vendor Cemex, as partial compensation for selling Spartan a large number of defective concrete storage bags. (6/13/18 Transcript at 157:5-160:4 [D. Alibocas].) Rexach's substantive duties for Spartan are driving a cement mixer truck, and he is "constantly coming and going" to and from Spartan's facility. (6/12/18 Transcript at 100:14-17 [A. Rexach].) To the extent he purports to have specific, detailed knowledge of exactly how many times welding was performed after Benjamin was laid off, his testimony is unreliable.

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ARGUMENT

None of the conduct Spartan is accused of committing constitutes an unfair labor practice. The Complaint against it should be dismissed.

Spartan is charged with violating subsections 8(a)(1) and (5) of the National Labor Relations Act (the Act). They provide: "It shall be an unfair labor practice for an employer— (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title; ... [and] (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title." 29 U.S.C.A. § 158(a)(1), (5). In turn, Section 157 provides: "Employees shall have the right 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, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title." *Id.* § 157.

Spartan's decision to lay off Morton and Benjamin did not violate the law.

First, Spartan's decision was motivated by economic reality. The St. Croix economy has suffered greatly since the shutdown of the Hovensa refinery in 2012. Not only was Hovensa a major customer of Spartan, but in 2016 the company lost its other major clients as well—and faced unfair competition from a new competitor engaged in predatory pricing to drive Spartan out of the market. Even the NLRB does not seriously contest these facts.

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Second, IAMAW itself did not consider Spartan's decision to lay off the two union (and one non-union) employees a refusal to bargain. Rather, its initial reaction on February 3, 2017, was to demand proof of Spartan's dire financial condition—it made no accusation that Spartan's conduct interfered with its members' representational rights. Further, while the IAMAW did file charges at that time, it accused Spartan of retaliating against Morton and Benjamin for engaging in union activities and "testifying" against it under the Act. This position persisted through several iterations of IAMAW's charges, changing only on May 31, 2017—a full five months after the layoff, and after an investigation by the NLRB into the original charges by Agent Gonzalez turned up nothing. The IAMAW's ever-changing position on Spartan's alleged misconduct belies the truth—there wasn't any.

Small wonder the IAMAW reacted in this fashion. It had not yet begun to negotiate a CBA when the layoffs occurred, even though it had been elected in October 2016. It had not even appointed a Shop Steward for its Spartan members. When it did start "bargaining" on behalf of its members—for a CBA, in March 2017—it encountered a cooperative company who engaged in several in-person negotiation sessions with its representatives. IAMAW is in no position to claim now that Spartan refused to bargain with it. The NLRB should not take up the cudgel against Spartan on behalf of the union.

Third, as the respective drafts of the CBA exchanged between IAMAW and Spartan in February and March 2017 make clear, Spartan, even under the union's draft, would have sole discretion to decide if conditions demanded a layoff. To hold here that Spartan is liable for refusing to bargain over layoffs dictated by the economy in the complete absence of a CBA, when the CBA itself would have given it the right to do so, stands reason on its head.

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Finally, Morton and Benjamin were actually better off under the Virgin Islands Wrongful Discharge Act than they would otherwise have been had a CBA been in place at the time they were let go. The statute, described above, does not apply if the plaintiff is a party to a "union contract." V.I. Code Ann. tit. 24, § 76(a). Morton and Benjamin had the option—and they may still—of pursuing a claim of wrongful discharge. Any injury the IAMAW now claims they have suffered is vapor.

Spartan's treatment of the IAMAW's document demand does not merit a finding that the company engaged in an unfair labor practice.

"In determining whether an employer has unlawfully delayed responding to an information request, the Board considers the totality of the circumstances surrounding the incident. Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow. In evaluating the promptness of the response, the Board will consider the complexity and extent of information sought, its availability and the difficulty in retrieving the information." *In re E.I. DuPont de Nemours & Co.*, 346 N.L.R.B. 553, 581 (2006) (citations and internal quotations omitted).

Here, there was a delay between the request and the response. But the totality of the circumstances show that the delay was not unreasonable. The parties met to negotiate a CBA in March 2017; there is no evidence that the February 2017 demand was so much as mentioned. When Almazan started making inquiries in April and May 2017, the process of granting access to Spartan's sensitive books and records began in earnest. Not once since then has the IAMAW

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complained about a lack of access. The NLRB's claim of unreasonableness, under the circumstances, should be rejected.

Finally, neither does Spartan's use of Heavy Materials' welder on an emergency basis constitute an unfair labor practice. There is simply no need for a full-time welder, let alone the highest-paid member of Spartan's workforce. The use of the sister company's welder on an as-needed basis for no compensation—he was paid by Heavy Materials—does not constitute unfair subcontracting of Spartan's welding work.

In sum, none of the charges against Spartan violate subsections 8(a)(1) and (5) of the Act. The Complaint of the NLRB must be dismissed.

CONCLUSION

The NLRB's Complain should be dismissed with prejudice.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: August 3, 2018

By: s\Michael C. Quinn
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Attorneys for Employer Spartan Products, LLC

Certificate of Service

It is hereby certified that on this 3rd day of August, 2018, I served a copy of the foregoing motion upon the following by the NLRB's ECF system, First Class U.S. Mail and e-mail:

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EXHIBIT A

6541-4

RECEIVED 9/5/17

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 24

SPARTAN PRODUCTS, LLC

and

Case 12-CA-192417

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by International Association of Machinists and Aerospace Workers, AFL-CIO (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Spartan Products, LLC (Respondent) has violated the Act as described below.

1.

(a) The charge in this proceeding was filed by the Union on February 3, 2017, and a copy was served on Respondent by U.S. mail on the same date.

(b) The first amended charge in this proceeding was filed by the Union on March 2, 2017, and a copy was served on Respondent by U.S. mail on the same date.

(c) The second amended charge in this proceeding was filed by the Union on April 28, 2017, and a copy was served on Respondent by U.S. mail on the same date.

(d) The third amended charge in this proceeding was filed by the Union on May 31, 2017, and a copy was served on Respondent by U.S. mail on the same date.

2.

(a) At all material times, Respondent has been a U.S. Virgin Islands limited liability company with an office and place of business in St. Croix, U.S. Virgin Islands, and has been engaged in the manufacture and delivery of ready mixed concrete and aggregates.

(b) During the past 12 months, Respondent, in conducting its operations described above in paragraph 2(a), purchased and received at its St. Croix, U.S. Virgin Islands facility, goods valued in excess of $50,000 directly from points outside the U.S. Virgin Islands.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Dion Alibocas	-	General Manager
Halvoy Berg	-	Dispatch Manager

5.

(a) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time truck drivers, mechanics, welders, painters, laborers, and loaders or loader operators; excluding: All office clerical employees,

professional employees, managerial employees, confidential employees, guards, and supervisors as defined in the Act.

(b) On October 3, 2016, the Board certified the Union as the exclusive collective-bargaining representative of the Unit.

(c) At all times since October 3, 2016, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6.

(a) On or about January 31, 2017, Respondent laid off employee Ramon Murrain-Benjamin.

(b) On or about February 1, 2017, Respondent laid off employee Benson Morton.

(c) On or about March 10, 13, and 20, 2017, and April 21, 2017, Respondent subcontracted the work of unit employees.

(d) The subjects set forth above in paragraphs 6(a) through 6(c) relate to wages, hours, and other terms and conditions of employments of the Unit, and are mandatory subjects for the purposes of collective bargaining.

(e) Respondent engaged in the conduct described above in paragraphs 6(a) through 6(c) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

7.

(a) Since on or about February 3, 2017, the Union has requested, in writing, that Respondent furnish the Union with the following information:

> (1) Financial statements for this facility, including the audited statement of income for the past five years; the statement of income for the current fiscal year year-to-date and the comparable period for the prior year; the audited Balance Sheet for the past five fiscal years; the balance sheet for the current fiscal year year-to-date and the comparable period for the prior

year; all notes associated with the above financial statements; and, if not included in the statement of income or notes to the financial statements, an economic viability of this facility.

(2) Business plans/studies/reviews, including copies of all plans, studies or reviews made regarding the future ongoing economic viability of this facility; copies of all plans, studies, reviews, forecasts and budgets on the expected performance of this facility; copies of all plans, studies, or reviews related to the restructuring, reorganizing, or other efforts to respond to the financial problems; copies of all plans, studies or reviews showing the justification for the proposed changes to the current status quo; details concerning any cuts in wages and/or fringe benefits to other employee groups; both unionized and non-unionized, as a result of the current situation; and a breakdown of labor costs as a percentage of Respondent's total costs of operations.

(3) Discussion of competition, including data regarding Respondent's competition, primarily relating to the new competitor and their operations at all U.S Virgin Islands; data supporting the company's position that the new competitor is able to maintain a cost advantage over Respondent; and information regarding any advantages conferred upon the new competitor due to Foreign Trade Zone status.

(4) Bargaining unit work and benefits, including Respondent's plan on how the welding, yardman and maintenance work will be performed; Respondent's explanation as to who will be performing the welding, yardman and maintenance work; and all amounts of accrual benefits and total compensation.

(b) The information requested by the Union, as described above in paragraph 8(a)(1) through 8(a)(4) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) From on or about February 3, 2017, to on or about May 15, 2017, Respondent unreasonably delayed in furnishing the Union with the information requested by as described in paragraph 8(a)(1) through 8(a)(4).

8.

By the conduct described above in paragraphs 6(a) through 6(c), 6(d), and 7(c), Respondent has been failing and refusing to bargain collectively with the exclusive bargaining representative of its employees, in violation of Section 8(a)(1) and (5) of the Act.

9.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, in order to fully remedy the unfair labor practices set forth above, the General Counsel seeks an order requiring that the employees named above in paragraphs 6(a) and 6(b) be made whole, including, but not limited to, payment for consequential economic harm they incurred as a result of Respondent's unlawful conduct. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before July 14, 2017, or postmarked on or before July 13, 2017.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is

unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT **on a date and time to be designated, at a location to be determined in the vicinity of St. Croix, U.S. Virgin Islands,** and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form

NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: June 30, 2017.

David Cohen

David Cohen, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, Florida 33602-5824

Attachments

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case 12-CA-192417

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Dion Alibocas, General Manager
Spartan Products
10D Estate Cottage
Christiansted
St. Croix, VI 00820

Ramon A. Garcia, Grand Lodge Representative
International Association of Machinists and Aerospace Workers, AFL-CIO (IAM)
690 East Lamar Boulevard, Suite 580
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Michael C. Quinn, Esq.
PO Box 756
St. Thomas, VI 00802-6736

Form NLRB-4668
(6-2014)

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- Special Needs: If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.

- Pre-hearing Conference: One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- Witnesses and Evidence: At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- Exhibits: **Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered**

(OVER)

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUB REGION 24

IN RE SPARTAN PRODUCTS,	)	
Employer.	)	
	)	**Case 12-CA-192417**
- and -	)	
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,	)	
Petitioner.	)	

ANSWER OF EMPLOYER SPARTAN PRODUCTS, LLC

SPARTAN PRODUCTS, LLC, Employer in the above-caption proceeding, provides the following as its Answer to the NLRB's Complaint and Notice of Hearing dated June 30, 2017.

¶ 1(a). Admitted.

¶ 1(b). Admitted.

¶ 1(c). Admitted.

¶ 1(d). Admitted.

¶ 2(a). Admitted.

¶ 2(b). Admitted.

(No ¶ 2(c) in Complaint)

¶ 2(d). Admitted.

¶ 3. Paragraph 3(a) states a conclusion of law which can neither be admitted nor denied. To the extent a response is deemed necessary, the allegation is denied.

¶ 4. Admitted that the title of the Spartan Employee Dion Alibocas is correct, deny that the title of Havor Berg is correct in that his title is Batch Plant Manager.

¶ 5(a). Paragraph 5(a) states a conclusion of law which can neither be admitted nor denied. To the extent a response is deemed necessary, the allegation is denied.

¶ 5(b). Admitted.

¶ 5(c). Admitted.

¶ 6(a). Admitted

¶ 6(b). Admitted

¶ 6(c). Denied.

¶ 6(d). Paragraph 6(d) states a conclusion of law which can neither be admitted nor denied. To the extent a response is deemed necessary, the allegation is denied.

¶ 6(e). Denied.

¶ 7(a). Admitted.

¶ 7(b). Denied.

¶ 7(c). Denied.

¶ 8. Denied.

¶ 9. Denied.

AFFIRMATIVE DEFENSES

A. Economic conditions on St. Croix have been deteriorating rapid since the closure of the HOVENSA oil refinery in 2011. HOVENSA was one of Spartan's most significant customers. The current economic climate of St. Croix has forced Spartan to reduce its expenses of operation in order to survive the economic crisis generally and the low demand for Spartan's construction products generally.

B. There is presently no collective bargaining agreement in place between Spartan and Petitioner. Without waiving any defense or compromising any position taken above, Spartan

has negotiated and Petitioner has recently executed a confidentiality agreement that will permit Petitioner to review Spartan's proprietary and highly confidential financial and other data in connection with negotiations with Petitioner over the terms of a new collective bargaining agreement. These negotiations are ongoing.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: July 20, 2017

By: _____

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