UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

MICHIGAN LABORERS DISTRICT COUNCIL, AN AFFILIATE OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO,

Case #07-CD-221111

and

RAM CONSTRUCTION SERVICES OF MICHIGAN, INC.,

and

LOCAL 324, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,

and

LOCAL 2, INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS (BAC), AFL-CIO,

and

LOCAL 149, UNITED UNION OF ROOFERS, WATERPROOFERS AND ALLIED WORKERS, AFL-CIO

and

MICHIGAN REGIONAL COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO.

_____/

RAM CONSTRUCTION SERVICES, INC.'S
10(K) RE: SCOPE OF AWARD, "PLAN" COVERAGE
AND EXISTENCE OF CLAIM AND COERCION

INDEX

I. GEOGRAPHIC SCOPE OF DISPUTE.

II. SCOPE OF AWARD.

III. OVERWHELMING EVIDENCE OF HISTORICAL AND CONTINUING OPPOSITION TO COMPOSITE CREWS.

IV. THE OPERATING ENGINEERS' OPPOSITION SINCE ELECTION OF DOUG STOCKWELL HAS BEEN RELENTLESS.

V. HISTORY OF COMPOSITE CREWS AT RAM AND EFFICIENCIES OBTAINED.

A. ROBERT MAZUR CLEARLY EXPLAINED THE BASIS OF RAM'S USE OF COMPOSITE CREWS.

VI. IN ALL EVENTS, A GENUINE JURISDICTIONAL DISPUTE REMAINS IN EXISTENCE.

VII. STOCKWELL'S RESPONSES ON MAY 11TH, 14TH AND 17TH TO NOVEMBER 25, 2015.

VIII. RAM'S SHORT-SIGHTED SOLUTION – MAY 25, 2018 (E #17).

IX. CONCLUSION AS TO JURISDICTIONAL DISPUTE.

X. NO "PLAN" FOR BINDING ADJUSTMENT IS APPLICABLE; NO "PLAN FOR SETTLEMENT OF JURISDICTIONAL DISPUTES IN THE CONSTRUCTION INDUSTRY IS REFERENCED IN E #12; NO IMPARTIAL JURISDICTIONAL BOARD (IJDB) EXISTED ON AUGUST 21, 2006.

XI. RAM CONSTRUCTION SERVICES, INC.'S POSITION IS THAT LIUNA AND IUOE WORK CLAIMS ARE CONTINUING ON MANY BASES, AND HAVE NOT GONE AWAY.

XII. CONCLUSION AS TO LIUNA COERCION AND "PLAN".

XIII. IF THE 10(K) DETERMINATION IS NOT CO-EXTENSIVE WITH IUOE LOCAL #324 CONTRACT GEOGRAPHY AS TO RAM COMPOSITE CREW WORKERS, ... PROGNOSTICATION.

RAM CONSTRUCTION SERVICES, INC.'S
10(K) RE: SCOPE OF AWARD, "PLAN" COVERAGE
AND EXISTENCE OF CLAIM AND COERCION.

Now comes RAM CONSTRUCTION SERVICES, INC. (hereinafter "**RAM**") and offers the following Brief and analysis regarding the above questions.

The issues addressed are:

1. The 10(k) geographical scope of the composite crew dispute extends statewide in Michigan. The joint exhibits and testimony establish the Operators Local #324 contract is statewide; the LIUNA National Specialty Agreement ("NSA") is nationwide; and Bricklayers Local #2 and predecessor, Local #1, is a statewide contract, as is the MRCC. Roofers Local #149, except for a small section belonging to Roofers Local #70, is statewide in Michigan. The Laborers' "work local" contracts are administered by its statewide affiliate, i.e. Michigan Laborers District Council and are governed by the International Specialty Agreement. With the exception of a 2006 IUOE Short-Form Agreement (E #12), no above union contract references adherence to any "Plan for Settlement of Jurisdictional Disputes in the Construction Industry" (E #32).
2. No agreed-upon dispute resolution mechanism extends to RAM, thus, no party is bound to any AFL-CIO "Plan" process.
3. Competing claims remain in existence, with, or without, the AFL-CIO "Plan" for resolution.
4. RAM is coerced, not only by LIUNA, but by IUOE continuing work acquisition actions. This composite crew dispute is historical and continuing, mandating a 10(k) order covering all RAM employees working in Local #324's jurisdiction.

I. GEOGRAPHIC SCOPE OF DISPUTE.

The Operators contend this 10(k) dispute is site specific. Co-extensive with IUOE Local #324's jurisdiction, RAM says it is a multi-trade, composite crew dispute over IUOE exclusive claims, to operation of "large equipment". At the end of the hearing, the Operators curiously withdrew any objection to Carpenters, Roofers and Bricklayers as part of composite crews operating their equipment. This case, and this 10(k) record, is not about who operated a Bobcat at the "*Free Press*" jobsite on or about April 17, 2018 (TR, p. 103). Even without RAM's testimony, the transcript demonstrates routine visits to RAM jobsites, as testified to by David Honaker,[1] and Kermit Burke, regarding IUOE work acquisition objectives leading to the grievance dated May 3, 2018. In point of time, IUOE issues with composite crews only began with the uncompromising entrance into the affray by Doug Stockwell, the new IUOE Business Manager, in about 2012 or 2013, who challenged composite crew and work assignments among RAM trades, including Operators, Laborers, Roofers, Carpenters and Bricklayers in Michigan. As Stockwell testified, he told RAM in July 2015, Local #324 does not do composite crews (TR, p. 600).

II. SCOPE OF AWARD.

In circumstances where there is an indication that the "dispute" likely remains and will repeat, it is NLRB policy to issue an award broad enough to encompass the geographic area in which RAM does business, and the Union contracts coincide, and, in RAM's case, all unions effectively claim coverage by their contracts in the State of Michigan. All unions, not just the LIUNA under current RAM practice, perform the work at issue. All RAM employees who are union tradesmen perform the disputed work on all "large" equipment, except RAM's boom

[1] Honaker says he could call the IUOE Local #324 business agent two (2) or three (3) times a week (TR, pp. 502-503), but, Burke says it was ongoing every month (TR, p. 526) and weekly (TR, p. 527), and a continuing problem (TR, p. 580).

trucks. All unions, except IUOE Local #324 support current use of composite crews, ... the *status quo*.

IUOE Local #324's current officers took office four (4) to six (6) years ago. Prior to that, no union took issue with composite crews, noting the BAC contract provided recognition for shared composite crews as the RAM operations, both large and small and duration used each trades' skills in mixed use, necessary to the type and kind of work required (JT #1, Art XII, §17, p. 21). No dispute exists that Operators, many of whom come from other trades, (including foreman and superintendents), today participate in composite crew job performance. No dispute exists that prior IUOE officers accepted composite crew assignments. See *Carpenters Local #480 (Chevy Chase Project 9), 204, NLRB 444 (1974).* (*Note*: Local #480 dealt with a rejected claim of an oral argument to submit the dispute to the erstwhile National Joint Board.)

In this case, there is not only a recent historical pattern of IUOE Local #324 work claims at RAM projects, sometimes accompanied by the coercion (TR, p. 395), there is the continuing prospect of IUOE work claims from the IUOE, and fringe claims in an audit seeking all hours on all "large" equipment not operated by Local #324. That LIUNA and IUOE Local #324 claims will persist after issuance of any 10(k) award, is also likely, and satisfies the test of continuing economic jurisdiction coercion. The scope of the IUOE Local #324 claims are co-extensive with its contract coverage, as well as the interested party unions. *See Local 98, Pipefitters (Darin and Armstrong), 185 NLRB 854 (1970)*; *Local 1191, LIUNA (The Morrison Company), 209 NLRB 310 (1974).* The LIUNA naturally claims the work, and, has only "conditionally withdrawn its threat at its International mandate based on "Plan" coverage.

In this case, the *status quo* is all trades working on composite crews. The IUOE seeks to change the *status quo* to the detriment, specifically of the LIUNA, as well as others. The IUOE is not seeking to preserve, but expand and acquire more. *See* *Chicago & Northern Illinois District Council of Carpenters, 341 NLRB 543, 544-45 (2004) cited approvingly by the Sixth Circuit in Int'l Union of Operating Engineers, Local 18 (Donley's Inc.), 6th Cir. #16 – 800/1969) (10/31/17).*

In this case, the 10(k) award and determination meets the prerequisite for a broad, area-wide, State of Michigan award covering RAM's employees. Composite crews under the new Local #324 regime has been 1) a "continuous source of controversy"; and, 2) the LIUNA and IUOE Local #324 and its fringe funds have shown a proclivity to engage in both unlawful conduct, and naked claims to obtain work at issue, and wages and fringe hours for work past and present. *IBEW Local 104 (Standard Sign and Signal Co.), 248 NLRB 1144, 1148 (1980)*; *Laborers District Council of Western Pennsylvania (Paschen) Contractors/Dick Enterprises), 270 NLRB 327 (1984).*

III. OVERWHELMING EVIDENCE OF HISTORICAL AND CONTINUING OPPOSITION TO COMPOSITE CREWS.

The tipping point. The history of composite crews only became the 10(k) issue when RAM sent, on April 20, 2018, to the IUOE its November 25, 2015 letter (OE #2), and, when LIUNA, on May 22, 2018, sent its letter to IUOE reaffirming its historical (non-exclusive) (TR, p. 434) right to operate "large" listed equipment (E #22). RAM's President, Robert Mazur, made it clear the assignment was not exclusive, but a re-affirmation of composite crew practices (TR, p. 169).

Stockwell was unaware of his predecessors' agreements and years of acquiescence regarding RAM's use of composite crews (TR, p. 101). This longstanding letter caught the Operators in disbelief. Stockwell's reaction to the November 25, 2015 letter might have been an overreaction, because, had he talked to the LIUNA business manager, he would have learned the November 25, 2015 letter was a non-exclusive letter of assignment (TR, p. 434) (TR, Mazur, p. 169). Beginning with Stockwell's election to Local #324 business manager, Kermit Burke (Business Agent), Derrick Sanders, and now Doug Stockwell, had demanded its few RAM members, if on a job, to run all "large equipment", in fact ... exactly the equipment listed in the November 25, 2015 letter (OE #2). Naturally, if an Operator was not on a job, the Operators still demanded an Operator be put on it. Prior to Stockwell's regime, for decades, no jobsite hassles or a written grievance was ever filed and all prior business managers acquiesced in composite crews (TR, Robert Mazur, p. 101). Composite crews represent the *status quo* which all unions consent to, ...except the IUOE. The grievance sought to change the *status quo*.

Based on the number of jobs, and hundreds of "large" pieces of equipment, every year the Operators did not likely see it had a tiger by the tail, *i.e.* a practical, and a historical, problem in Michigan, namely, first, already employed were over one hundred thirty (130) Bricklayers (E #7B), and, over one hundred eighty (180) LIUNA members (E #6B). Second, the Operators were historically less than seventeen (17) (E #9), and, of that number, many came to the IUOE from the LIUNA, or worked out of Detroit, or Michigan (John Miller, TR, p. 127), or, how are often in a foreman position, or above capacity. Third, RAM's IUOE Operators were multi-faceted workers.

#	Name	Prior Trade	Type of Work	Trial citation
1.	Boyd	LIUNA	Multiple/Right-hand guy	388
2.	Carr	LIUNA	Crane; does it all	415
3.	Craft	Operating Engineers	Foreman/out-of-town; oversees job	386
4.	LeProwski	LIUNA	Recent retiree; everything	416
5.	Miller	LIUNA	DOT; out-of-town	127
6.	Ratlif	Operating Engineers	Quiet; not much time on equipment	362
7.	Sasser	LIUNA	Does everything.; runs small jobs	417
8.	Smail	LIUNA	Foreman; oversees jobs	367
9.	Thompson	LIUNA	Foreman; oversees jobs	389
10.	Rushlow	Warehouse	Oiler (new) from RAM warehouse	417

It is for this reason alone, the NLRB must take note of the RAM composite crew business model. Brief attachment #1 is a three (3)-year workforce analysis (also E #5).

In the record are sample fringe reports which corroborate the usual and customary employee census by Union. For 2018, in May 2018, the below current Michigan profiles are uncontested:

Michigan Laborers: (May 2018) - 182 employees (E #6B)

Michigan BAC: (May 2018) - 157 employees (E #7B)

Michigan Operating Engineers: (April 2018) - 11 employees (E #9)

Michigan Roofers: (May 2018) - 17.employees (E #8B).

Issue: Fourth, are there enough Operators to run RAM equipment (E #11)?

Question: As of May 31, 2018, what was RAM's "Large Equipment" Inventory? See E #11.

Answer: 417 pieces of "large" equipment, of which 289 are in Michigan = sixty-nine percent (69%). See attached Brief Attachment #2, (which was part of E #11).

RAM's Solution: For thirty (30) years RAM has been utilizing composite crews of all trades to perform work, with its trades interacting, including as necessary, working on its "large equipment".

IV. THE OPERATING ENGINEERS' OPPOSITION SINCE ELECTION OF DOUG STOCKWELL HAS BEEN RELENTLESS.

The Operating Engineers called three (3) witnesses. The first was David Honaker. He states he called to his business agents continuously about LIUNA on equipment, until he quit in 2016 (TR, pp. 502-503), two or three times a week (TR, pp. 502-503). He states all three business agents were aware of his concerns (TR, p. 513) as was Doug Stockwell, the business manager since 2012. Stockwell himself met with Robert Mazur in July 2015 and told Mr. Mazur his contract did not provide for composite crews (TR, p. 600). Stockwell, in his short employment with RAM, says he policed the IUOE contract, and often called his union. Kermit Burke was the replacement business agent for Derrick Sanders, who had a "pretty bitter" relationship with RAM (T, p. 525). For Burke, RAM's use of LIUNA on his equipment was a "continuing problem" for three (3) or four (4) years (TR, p. 526). Burke was often called to RAM job sites weekly and two (2) or three (3) times a week (TR, p. 527). He euphemistically acknowledged it was "quite a bit" (TR, p. 527). At another point, Burke said it was "ongoing every month." Naturally, in this context, Burke was frustrated dealing with his members' complaints, his job, and RAM's foreman and superintendents, and Mike McNab, Director of Operations. Knowing how business agents operate, it is certain Burke did

threaten in 2016 to "shut the job down" (at 777 Eisenhower Parkway in Ann Arbor) (TR, Dan Canedo, p. 395).

All witnesses confirm RAM's use of composite crews.

Naturally, the IUOE would like some portion of the 180,000.00 fringe hours paid by RAM annually to the LIUNA funds (TR, p. 444). Importantly, Geno Alessandrini asserted his contract had no restriction of LIUNA work, and, his claim for equipment was not exclusive, (TR, p. 439), a reaffirmation of the *status quo*, not work acquisition, unlike the IUOE Local #324 (TR, p. 327), (TR, Honaker, pp. 502, 513), (TR, Burke, pp. 526, 527, 534, 580), and (TR, Stockwell, pp. 599, 600).

V. HISTORY OF COMPOSITE CREWS AT RAM AND EFFICIENCIES OBTAINED.

Witness Name/Title	Trial Cite	Reasons for Composite Crew: Efficiency, Training, Nature of Work, Teamwork, Experience
Robert Mazur, RAM President	123-124	A lot of trades incorporating (skills) and working toward some end. There's training incorporated. Many work facets are made more efficient. The nature of the work does not support an Operating Engineer, nor full-day on equipment – all must work together on RAM work.
Robert Mazur, RAM President	155-156	Question: How do you determine a composite crew? Answer: It depends on the scope of the work. Put right trades and people on the job. Different trades have different disciplines. It is a combination of what I need done on the job and then also how long a person may be on the equipment, and, the efficiencies obtained. It is not fair to have a man operating equipment and then send him home.
Mike McNab, RAM Director of Operations	202, 351-352	Trades overlap. RAM uses BAC, LIUNA, Carpenters, Operators, Roofers or composite crews because it is more efficient to do so. There normally is not a full eight (8) hours of work for IUOE.

Geno Alessandrini, Business Manager-Michigan LIUNA District Council	431	RAM's methods are most efficient. Everybody does everything. Everyone learned to do everything on a job. It works out perfectly. Everyone does everyone else's work, including the Operators. LIUNA provides training to assist this.
Bruce Hooker, LIUNA Foreman	474-475	Operator usually does not spend 100% of his time on machine. Helps out.
Travis Tiernan, RAM Superintendent	358-359	Carpenter by trade. Nine (9) years. Concrete Restoration. Composite crews are selected by trade, with knowledge usually not a full-day's work for each trade specialty.
Dan Canedo, Superintendent	383-384	Not from a trade. Eight (8) years a Superintendent. Concrete Restoration. Criteria for composite crew selection listed based on type of work.
Tony Dorenzo, Superintendent	410-412	Eighteen (18)-year employee; Superintendent for seven (7) years. Vertical Restoration. Began as a Laborer. Selects crew. Looks at scope of work, who is available and does work effectively. Does not single source from one trade and does what is needed.
David Honaker, (Operating Engineer witness)	517	Began as a Laborer. Mostly Boom truck. Worked with other trades.
Kermit Burke, IUOE Business Agent	556	1) No contract provision for composite crews.
	584	2) Composition crews – some will get off a machine and some will not.
	586	3) He only became aware of the term "composite crew" in the last three (3) or four (4) years.
	586	4) Other restoration contractors do not use composite crews.

Doug Stockwell, IUOE Business Manager	600	1) IUOE contract does not have composite crews. 2015 was the "first" he heard of it.
	648	2) Stockwell did not know from his prior officers, when he became Business Manager, that RAM used composite crews. Occasionally – yes. Even that was a "problem".

A. ROBERT MAZUR CLEARLY EXPLAINED THE BASIS OF RAM'S USE OF COMPOSITE CREWS.

All witnesses, except Stockwell, testified in some fashion that RAM uses all trades in composite crews. Robert Mazur, RAM President for thirty (30) years, explained it perfectly, beginning at pp. 122-124.

14 Q. Now, just as far as we've gone, does the RAM way of
15 organizing and assembling workers for this work have a name?
16 A. Yes, sir.
17 Q. What do you call it?
18 A. Composite crews.
19 Q. On all your field work?
20 A. Yes, sir.
21 Q. Do you know why, Mr. President, RAM uses composite crews
22 and not one trade group?
23 A. It's deemed to be more efficient for our operation, and
24 we've been doing it that way for plus or minus 30 years, and
25 it's worked out extremely well.

[(TR, p. 123) – continued]

1 Q. Does the notion of composite crew have a litmus test
2 that, of <u>how many hours on that day's job</u> you're going to
3 have this set of tradesmen and more or less days you're going
4 to have <u>another set of tradesmen</u>?
5 A. No, sir.
6 Q. Are you a principal <u>proponent of composite crews</u>?
7 A. Yes, sir.
8 Q. In fact, <u>are you the architect</u>?
9 A. I was.
10 Q. Have you ever considered single sourcing it? One trade
11 group, no headaches, one size fits all?
12 A. The thought's crossed my mind, but it wouldn't work.
13 Q. You're too far down the road, aren't you?
14 A. Yes, sir.
15 Q. Now, what is gained from that mix rather than a single
16 track or a single purpose crew?
17 A. <u>Efficiencies</u>.
18 Q. Explain what you mean by efficiencies. Is it training,
19 is it experience, is it their schooling, is it your
20 schooling?

21 The Government wants to know why is it more efficient in
22 your opinion to do it this way?
23 A. Well, again, it's more efficient because you have a lot
24 of trades incorporating and working towards the same end
25 goal. There's training that's incorporated. When we get

(Emphasis added)

[(TR, p. 124) – continued]

1 younger people they get a lot of onsite training on the job,
2 so there's a lot of facets that go into the efficiencies that
3 we see.
4 Q. And is there also trade advancement within the groups?
5 A. Oh, yes, sir.
6 Q. How does that work and why does it work that way?
7 A. Well, it just, it works that way depending on their
8 knowledge and depending on their production and their skill
9 levels.
10 Q. So what is entry level?
11 A. Apprentice.
12 Q. Okay. And then the apprentice goes through all of the
13 process, however it is that you've just described?
14 A. Yes, sir.
15 Q. Now, are composite crews assembled for both large and
16 small jobs?
17 A. Yes, sir.
18 Q. Regardless of duration?
19 A. Yes, sir.
20 Q. Okay. Does the nature of the Employer's work support an
21 operating engineer usually at a full-time, full day
22 assignment operating equipment as may be suggested in a
23 contract or a claim?
24 A. No, sir.

The LIUNA, on May 22, 2018, made it clear in its threat it would not budge on any job on which its members were asked to operate equipment (E #22), and May 29, 2018 (E #24) (by all methods and means). A summation of Messrs. McNab and Mazur's testimony, reveals the IUOE wants RAM to employ more Operators, or, failing that, to use its Operators exclusively on its large equipment. Examples in support are numerous.

1. April 2018 trial testimony, pages 103-104. Kermit Burke calls Robert Mazur. Burke wanted Operators on equipment and was "pushing us to have more Operators."

a. When asked the impact of consenting to IUOE demands, Robert Mazur stated at page 133:

10 Q. In this case, is RAM seeking to change the way it does
11 business in all its facets?
12 A. No, sir.
13 Q. Would awarding to the operators the work as described in
14 the contract, as described in the contract, change an
15 employer's way of doing business as you have described?
16 A. Yes, sir.
17 Q. Would anyone gain hours, if you were forced to do it, if
18 that was what this Hearing Officer decided?
19 A. Yeah, one trade, the operators.
20 Q. No, they'd gain hours.
21 A. They'd gain hours. That's what you asked me.
22 Q. Yeah, what would happen to the rest of the trades?
23 A. The rest of the trades would lose hours.

(Emphasis added)

Kermit Burke, the IUOE Local #324 Business Agent, explained his understanding of required RAM contract compliance from his four (4) years' experience, and, what action was needed beginning on pages 558-559.

22 Q. [R. Day] But, see, you've got 4 years of experience of jobs where
23 they haven't either had operators or they haven't had an
24 operator on the job, you can get them operators. Certainly,
25 you can give me an idea of a range that might be a good step

(Con't. to p. 559)

1 forward.
2 A. Well, I'm sure they don't have the same amount of work
3 every year. Just enough to cover the work.
4 Q. Would it be fair to say they don't have enough operators
5 to cover the work at present?
6 A. Yep, that would be fair.
7 Q. Okay. So give me an estimate of how many more operators
8 they need.
9 A. I would say probably 8 to 10 maybe.
10 Q. Noting that each season can be different and each year
11 is different, would that be a good number for 2017 also would
12 you think?
13 A. Possibly.
14 Q. 2016, would you think?

15 A. Possibly.
16 Q. 2015, would you think?
17 A. Possibly.

(Emphasis added)

Kermit Burke reaffirmed the above testimony, stating his intentions, and acknowledging the adverse consequences in the case to the LIUNA (TR, pp. 577-578).

24 Q. [R. Day] In your testimony, you -- and we've discussed the view
25 that RAM doesn't have enough operators. Is that a fair

1 statement?
2 A. Yes.
3 Q. Thank you. Now are you -- is it your intent that RAM
4 change the way in which it does business?
5 A. I think they need to get enough operators to man the
6 equipment.
7 Q. If that means fewer laborers, so be it?
8 A. Just our guys man the -- man the powered equipment.
9 Q. You're not concerned with the consequences on any other
10 trade so in the event RAM were to secure more operators?
11 A. Yeah. I wouldn't want them to, you know.
12 Q. No, I don't know. I thought I was fairly clear. If it
13 meant less -- more operators and less laborers that would
14 just be a consequence of RAM of fulfilling the contractual
15 requirements that it's your job to police. Is that a fair
16 statement?
17 A. Yes.

(Emphasis added)

Burke's views are not his unadorned opinion. He submits weekly reports logging his jobsite visits. In four (4) years, he submitted weekly logs that annually chronicle his visits to twelve (12) to twenty-four (24) RAM jobsites (TR, p. 576).

IUOE Business Agent Kermit Burke's testimony lays out why. For four (4) years, he policed jobs involving RAM. Without securing his weekly IUOE records, it is undisputed that the IUOE repeatedly went to RAM job sites to request other trades not to do Operating Engineers' work. Apart from Kermit Burke's testimony and his weekly logs, specific examples are in the record revealing a pattern like:

a) November 24, 2016: Red Wing stadium. RAM had a hi-lo, but no Operator. The solution was to use another employer's jobsite Operator. RAM would not put a RAM Operator on site (E #125).

b) October 14, 2016: 777 Eisenhower Deck, Ann Arbor, Michigan. Kermit Burke wanted the shotblast machine run by an Operator, or, as Canedo said "he would shut the job down" (TR, p. 395, line 2). Let's be clear. It was an empty threat since there was not an Operator on the site, only Laborers, Bricklayers, or maybe Roofers, who would do the work (E #26).

c) June 28, 2016: Hill Street Parking Deck. Complaint by tradesmen that RAM does not use an Operator on its Bobcat (E #27).

The inevitable 10(k) point is: this is IUOE work acquisition. Why? Answer: The Operators think eight (8) to ten (10) more Operators are needed regardless of time on equipment.

Trial Exhibit #11 (TR #11) is a list of RAM equipment as of May 31, 2018. (417 pieces of large equipment.) It identifies how many pieces are in Michigan (289 of 417 = 69%). The Operating Engineers' fringe reports for 2010, 2016, 2017 and 2018 (E #9) shows an average Operating Engineer's census from the Summer of 2017 to 2018 = 15 to 17 men. To the IUOE, that number is too few. To the IUOE, it does not matter if RAM has a thirty (30)-year history of using composite crews. Composite crews, as established historically, such as in this case, have received explicit NLRB approval, as a *status quo*: *IUOE Local 18 (Donley's Inc.), 363 NLRB #184 (2016).* RAM is not seeking to change its business model (TR, p. 133).

Nor, is any other trade, except the IUOE. Of course, overall RAM has jobs of all sizes. In 2017, RAM had 2,700 jobs (TR, p. 72) (In Michigan, 1900 jobs). On some jobs there will be more hours for an Operating Engineer, than others. Regardless, ... the issue still is the

composite crew size, not the IUOE contract language. That is why RAM called as witnesses its superintendents to discuss the work role of men who happened to be IUOE members. As previously shown, many Operators were formerly members of LIUNA.

The "*Detroit Free Press*" site laid bare RAM's overall work assignment practices and justifications. What caused the May 3rd grievance was Mike McNab providing Kermit Burke, in his April 20th and 27th e-mail (E #20), RAM's November 25, 2015 letter of assignment. That November 25, 2015 letter caused the kerfuffle. It may be the IUOE had never seen this written, non-exclusive letter of assignment which was only intended, in 2015, to be an affirmation of RAM composite crews (TR, Robert Mazur, p. 163).

From the tipping point, *i.e.* after April 20, 2018 (E #20), operation of any pieces of equipment, *i.e.* composite crews using "large equipment" listed in the letter of November 25, 2015, became the battleground for a grievance, an audit and a 10(k). The equipment can be listed as follows:

1. Bobcat with use of forks, buckets, or sweeping attachments.
2. Forklifts.
3. Shotblasting machine.
4. Ride-on sweepers.

Testimony added Gradall, mini excavators, as well as fueling, starting and stopping (TR, p. 642).

A natural question arises: Is there a way to see clearly, *i.e.* a business reason for composite manpower assemblage and equipment?

First, see Brochures, E #16 of Mike McNab's testimony (TR, pp. 202-226).

E #16 shows the NLRB what RAM does when it does Concrete Restoration, Vertical Restoration, or Building Facades. On occasion, it will need an Operating Engineer for lifts, but not all of the time. A jobsite may also need a Bobcat/Skid steer to move debris, but only when there is debris. It will need Laborers to jackhammer, but not all the time. It will need concrete waterproofers/sealant, but only when necessary. And Bricklayers when needed. Work tasks and timing is dictated by the job, and its timing.

To permit the Operating Engineers to prevail, based solely on its contract, and its parallel audit seeking all hours on all "Large Equipment", would result in a restructure of the composite *status quo*, and trigger LIUNA coercion, as well as other trades impacted. RAM will lose the skill, experience and availability of tradesmen who are not Operators, who run the power-driven, and power-generated equipment at present, in contravention to the Operators' language cited in the 10(k) Notice of Hearing.

VI. IN ALL EVENTS, A GENUINE JURISDICTIONAL DISPUTE REMAINS IN EXISTENCE.

Kermit Burke testified this IUOE Local #324 dispute would be ameliorated with more Operators. He opined eight (8) to ten (10) (TR, p. 559). That is a work acquisition motive to RAM. All unions other than the IUOE, agree with the current status of composite crews. RAM seeks to continue current operations unchanged.

E #5 is the RAM three (3)-year workforce analysis (Brief attachment #1). By now it is obvious there are insufficient Operators to work on all equipment. That issue has existed for thirty (30) years.

Composite Crews. For decades and decades, RAM has performed restoration and construction services with COMPOSITE crews, composed mainly of Laborers, Bricklayers, Roofers, Carpenters,

and, then occasionally, Operating Engineers.

Except for IUOE Local #324, until May 3, 2018, RAM and all its unions have interacted and accepted working together for decades on a composite-crew basis. Until May 3, 2018, all IUOE #324 business managers, before Doug Stockwell, had accepted RAM's composite crews.

Doug Stockwell, on May 11th, 14th and 17th, says he was not aware of composite crews. What he meant, was he had not seen the November 25, 2015 letter. It was demonstrated, by way of RAM evidentiary examples, that since 2015, there have been many instances involving IUOE Local #324 jobsite work claims initiated by the Operators Local #324, and examples, to-wit:

a) Red Wings Arena – Detroit, Michigan, November 9th and 10, 2016.

   Issue: Non-Operators on a forklift involving IUOE agents Derrick Sanders, Kermit Burke and Doug Stockwell (E #25).

b) 777 Eisenhower Parking Deck - Ann Arbor, Michigan (E #26).

   Issue: October 14, 2016: non-Operator on shot blaster protested by IUOE agent Kermit Burke (E #27).

c) University of Michigan Hill Street parking deck – Ann Arbor, Michigan.

   June 28, 2016: Non-Operator on a Bobcat (E #28).

   Issue: Protest by Walbridge IUOE foreman/steward that RAM did not have Operator on equipment.

VII. STOCKWELL'S RESPONSES ON MAY 11TH, 14TH AND 17TH TO NOVEMBER 25, 2015.

This takes RAM to Exhibit #21. Exhibit #21 are the Local #324 e-mails on May 11th, 14th and 17th, to RAM, wherein Doug Stockwell, its President, repeats his demand that RAM prove that the LIUNA has not "excepted" ("except" is his word, understood to mean, as in turned down) any assignment of

his work. At that hour, Stockwell is falsely asserting on May 11th, 14th and 17th, he never knew, or now first heard, IUOE work was being assigned to other trades. Strangely the facts suggest by May 17, 2018, Stockwell was secure in the belief RAM could not have demonstrated that the LIUNA has "excepted" (*sic*) his work. At no time does Stockwell clarify his grievance as to hours or scope. Stockwell's belief the LIUNA will not declare "exceptance" (*sic*) of equipment assignment as history teaches, and RAM's letter of November 25, 2015 declares.

To the contrary, RAM thought it had sufficiently demonstrated by May 17th that it had been making such assignments to LIUNA, and the IUOE was well aware of these assignments and Stockwell was in error, believing the LIUNA had "excepted" (*sic*) the work. [Stockwell is on the Redwing Area e-mail.]

Because of Doug Stockwell's grammatical malapropism, the difference between contract claim versus a jurisdictional dispute to Mike McNab was still up in the air as of May 17, 2018.

Let us review the e-mails at arm's length here. On May 11th, the Business Manager, Douglas Stockwell, the IUOE principal officer, replaced Kermit Burke, Business Agent, in discussions with Mike McNab, RAM's Director of Operations. Beginning on May 11th, Stockwell claimed, as a former, albeit short-term 2006 employee of RAM, that he had operated all IUOE at-issue, "large" equipment; that he had only just learned for the very first time that RAM assigned non-Operators to his claimed equipment. As Exhibit #21 shows, Doug Stockwell repeats his view of first knowledge in three e-mails: May 11th, May 14th and May 17th. To RAM's concern and amazement, the IUOE does not contact the LIUNA. Stockwell repeatedly asks RAM for evidence that the Laborers International Union of North America ("LIUNA") has "excepted" (*sic*), the assignment of their equipment.

To RAM, his grammatical use of "except" (*sic*) was purposeful. On each of these days, *i.e.* May 11th, 14th and 17th, Stockwell says his inquiry is to determine whether he has a jurisdictional dispute or a

grievance. Up to May 17th, he says he does not know if a *bona fide* jurisdictional dispute exists.

Up until June 1st, no reference is made to any AFL-CIO "Plan" for jurisdictional resolution. On May 17th, Stockwell again repeats his demand for evidence of LIUNA "exceptance" (*sic*) four (4) times, unlike only once on May 11th and 14th re: "exceptance" (*sic*). To RAM, "exceptance" (*sic*) connotes a belief that LIUNA has disclaimed the work. RAM is forced to move this circular e-mail chatter forward, so RAM does so, and so does its attorney (OE #3; E #19). See e-mails dated May 11th and May 22nd (E #19) from Mike McNab to LIUNA.

To RAM, Stockwell's choice of the word "except" is absolutely befuddling, as is his claim of no "knowledge". After all, he has at least thirty-seven (37) Business Agents, whose job is to police jobsites (TR, pp. 560, 645). In asking whether or not the Laborers have "excepted" his work, he is asking whether it has been disclaimed, or refused, not whether it has been assigned and agreed to, as in embraced. Naturally, if disclaimed, the IUOE proceeds with its contract breach claim, not its jurisdictional dispute claim. The IUOE never quantifies the scope of its grievance. The LIUNA dissipates this fog by its letter dated May 22, 2018 (E #22).

Obviously, intuitively RAM knew it had no more than seventeen (17) IUOE members and over 289 pieces of Livonia, Michigan-based equipment to monitor. The grievance along caused RAM to send the May 3, 2018 grievance to the Michigan Laborers District Council ("MLDC") on May 11th and again on May 22nd, as Mike McNab states in his letter dated May 25, 2018 (E #17), which did result in the LIUNA correspondence to IUOE dated May 22nd and the IUOE reply dated May 23rd (E #23).

The LIUNA May 22nd letter, which was forwarded to RAM's Michael McNab, did cause an excited grammatical outburst in a text from Doug Stockwell (E #23). Stockwell expresses surprise and disgust that a jurisdictional dispute does exist and that the "game is on" and decrying that, in the past, the Operators have had the Laborers' "back". This clarified for RAM that there existed an IUOE

work acquisition jurisdiction dispute and a potential double back pay issue, as well as fringe obligation (E #10; E #24).

VIII. RAM'S SHORT-SIGHTED SOLUTION – MAY 25, 2018 (E #17).

***Bona Fide* Dispute.** RAM initiated a poorly thought-out business decision motivated by not wishing to pay wages and fringes twice. It sent a letter to the Laborers May 25th, with copies to everyone (E #17). RAM did nothing behind anybody's back. Whether the letter was a good idea, or a bad idea, it was a reaction to the Operators' own e-mails, behavior and intransience. No employer in its right mind, with approximately 17 Operators and over 215 pieces of Michigan equipment, would want to pay wages and fringes twice. RAM's letter dated May 25, 2018 possibly hoped that the Laborers would disclaim the listed equipment, disputed assignments, although it was a mystery exactly how the RAM's Operator replacement staffing would take place in the future.

Casting an ominous shadow, emphasizing the economic blood bath RAM is facing, the IUOE initiated a fringes audit on April 30, 2018 sought an audit of all hours worked in Michigan, on all RAM "large" equipment (E #6). In that regard, note should be taken that RAM and LIUNA's view as to scope of the work at issue is not contradicted by the BAC, Roofers or Carpenters (TR, p. 278).

To RAM's disappointment, on May 29th, the LIUNA dug in, and, stated it did claim all disputed work, had for years accepted the work, and would defend its claim for all of the work (Exhibit #24).

That LIUNA's declaration was spontaneous and unsolicited.

Of course this affray arose in the context of all RAM union workers working composite crews, and the now-for-the-first-time a work acquisition grievance arriving from the Operators. RAM filed its jurisdictional dispute charge in #7-CD-22111 invoking the jurisdiction of the NLRA to sort this out. The very next day, the Operating Engineers filed an internal AFL-CIO jurisdictional claim with the AFL-CIO "Plan" in Washington, D.C., claiming that the parties' actions impede resolution of the

jurisdictional dispute, *i.e.* the Employer's Unfair Labor Practice, the IUOE grievance and LIUNA threat of May 29, 2018.

IX. CONCLUSION AS TO JURISDICTIONAL DISPUTE.

In this context, it is pure posturing to entertain any claim LIUNA/RAM collusion, or, to suggest that there exists no true labor dispute, or that this 10(k) is a manufactured or contrived dispute. The evidence in this case demonstrates that RAM has:

a) for decades, operated with composite crews;

b) that, for decades, all unions have accepted composite crews, until the Operating Engineers' grievance of May 3, 2018;

c) that IUOE work acquisition grievance claiming contract coverage represents a seismic shift in RAM workforce composition and is an unadorned attack on composite crews at RAM; and

d) It is to be expected that the Laborers, for their own members, and, on their own volition, did not "except", as in turn down, the at-issue work.

Any union would refuse to accede to the Operators, and the LIUNA so states, upon receiving notice of the Operators' representations on May 11th, 14th and 17th. All Employer efforts were necessary to determine the *bona fide* existence of an historically based jurisdictional dispute, and/or defend a claim which sought to upend a decades-long practice, which had not been in dispute prior to May 3, 2018, and, which neither the LIUNA, and presumably BAC or Roofers or MRCC "except".

X. NO "PLAN" FOR BINDING ADJUSTMENT IS APPLICABLE; NO "PLAN FOR SETTLEMENT OF JURISDICTIONAL DISPUTES IN THE CONSTRUCTION INDUSTRY IS REFERENCED IN E #12; NO IMPARTIAL JURISDICTIONAL BOARD (IJDB) EXISTED ON AUGUST 21, 2006. [3]

The "Plan" requires RAM to not impede access to a job award. This is the "Plan" mandating RAM withdraw the ULP leading to this 10(k) hearing. The attempts of the "Plan" to impose an arbitration award on RAM, and associated arbitrator invoicing, are in the record (E #s 15, 30 and 31), and, are also simultaneously the subject matter of three (3) pending RAM Unfair Labor Practice Charges and alleged Section 8(b)3, 8(b)1B violations.

a) 07-CB-222350 (IUOE-International) (06/18/18);

b) 07-CB-222387 ("Plan" as agent for IUOE) (06/18/18); and

c) 07-CB-222367 (IUOE, Local #324) (06/18/18).

The case law also would permit an 8(B)1(A) allegation, which, to date, has not been filed.

For decades and decades, RAM has performed restoration and construction services with COMPOSITE crews. This case arose by an IUOE written grievance dated May 3, 2018, and withdrawn June 5, 2018, per a "Plan" directive (E #28).

On May 3, 2018, the IUOE Local #324, which is one (1) of the five (5) 10(k) listed unions, filed, for its first time in RAM's history, a written grievance (E #18). The grievance referenced a jobsite, but no at-issue equipment was specified, but, cited was the Operating Engineers' work jurisdiction and contract language, which the 10(k) notice recites. Also filed on April 20, 2018 via e-mail, before the grievance, was an IUOE cosmic fringe fund audit request for all hours on all equipment (E #10). The audit derives one hundred percent (100%) of its claim from contract language which is at issue in this 10(k) proceeding. These two (2) documents arose because RAM submitted, on April 20, 2018 (E

[3] "Plan" denotes Plan for the Settlement of Jurisdictional Disputes in the Construction Industry. The "Plan" has been in effect since 1984. It replaced the IJDB (E #15, p. 10; Exhibit 32).

#20), to IUOE Local #324 a letter dated November 25, 2015 assigning IUOE-claimed equipment to LIUNA. As referenced, the letter listed certain equipment.

To subvert NLRB 10(k) proceedings, on June 1, 2018, the Operating Engineers initiated a jurisdictional claim with an AFL-CIO "Plan" in Washington, D.C., requiring all parties not impede "Plan" access, and asserted that a LIUNA letter dated May 29, 2017 impedes resolution of the IUOE jurisdictional dispute, and, as did an Employer Unfair Labor Practice in 7-CD-22111. Accordingly, by June 5th, the Operators withdrew their May 3rd grievance, because it impeded "Plan" resolution (E #28). However, not resolved, and very much pending is the Operator's objection to RAM's November 25, 2015 letter of assignment in conflict with IUOE claim for work as described in both 10(k) Notices.

When the Employer was told by the "Plan" Administrator that it was "Plan" bound, it was news and offered a path forward of no interest. That Plan Administrator determination was based on an April 21, 2006 one (1)-page, Short-Form Agreement, which tied RAM to a full AGC Agreement with the Operators (E #12). The short-form document references an Impartial Jurisdictional Disputes Board ("IJDB") (E #12). RAM opposed this Determination in writing before the Plan Administrator, and, again in a June 11th letter to the Arbitrator because:

a) RAM signed, at the IUOE's request, an IUOE Local #324 agreement. In 2006, there was no IJDB;

b) There had been no functioning IJDB since 1981, see *Modern Acoustics, Inc., 260 NLRB, 883 (1982)*, and, unlike E #29, no short-form language references "successors" to the IJDB. Further, no RAM agreement exists binding it to any successor iteration of the IJDB, including any "Plan" which the Arbitrator says was widely known to replace the IJDB, as stated by the Arbitration Panel.

c) It is absurd to accept the contention that E #12 references any "Plan" other than IJDB.

IUOE Business Agent Kermit Burke was shown E #29. Speaking for itself, it was a Short-Form Agreement with a revision date of April 2011. He became a Business Agent in 2013 or 2014. He said he had seen and sent out something similar to the exhibit, *i.e.* a similar version of E #29 to Employers to sign by fax (TR, p. 563). As he said, E #29 looked "similar" to what he had seen,, but he couldn't say for sure. The point of E #29, is it is a 2011 version short-form document similar in many ways to E #12, but with a revised jurisdictional paragraph, now explicitly referencing the "Plan for Settlement of Jurisdictional Dispute in the Construction Industry, or its successor plan." No longer do subsequent short-form versions reference the defunct "IJDB", which had not been in operation since 1981, and, which in 1984, was replaced by the aforesaid Plan for Jurisdictional Disputes in the Construction Industry of its Successor ("Plan") (OE #21).

The validity of E #29 being tied to a "Plan", not IJDB, loses all trappings of speculation, when Doug Stockwell testified that the current short-form version of E #12 and #39 does reference the "Plan" (TR # pp. 637-638). The Operating Engineers declined the Hearing Officer's Request to provide the current Short-Form Agreement in use.

Continuously hoping to avoid 10(k) proceedings, the Operating Engineers advanced its theory of "Plan" coverage before Arbitrator Paul Greenberg. Greenberg's Decision found RAM to be bound, not because RAM had ever signed on to the "Plan", but, because it was "widely" known that the "Plan" replaced the IJDB. E #18 at p. 10, was not cited in the Operating Engineer's Motion to Quash (OE #15). It should have been.

Here it is:

> The IJDB was replaced by the current Plan, which dates to 1984.
>
> * * * *
>
> Although the series of predecessor adjudication bodies (including the Impartial Jurisdictional Disputes Board) has ceased to function years earlier, I agree with the Plan Administrator that it was widely understood within the construction industry that the Plan was the successor to these prior bodies. Although it is unfortunate that the parties in Michigan still had not updated the text of the Short-Form Agreement by 2006 to remove the long-outdated reference to the Impartial Jurisdictional Disputes Board, it nonetheless is evident that the Short-Form Agreement's reference to "the plan adopted by the Building Trades Department of the AFL-CIO" plainly points to the Plan, which was *the* official jurisdictional disputes mechanism endorsed by the Department.
>
> For these reasons, I find that the "Jurisdictional Disputes" clause of the 2006 Short-Form Agreement between RAM and IUO L. 324 (*sic*) constitutes a stipulation to the Plan.

RAM contends the "Plan" in E #12 can only refer to the document's IJDB, not an unspecified ADR with a different name. E #32 is a summary stating that the "Plan", in 1984, replaced the IJDB. It was prepared by the AFL-CIO Building and Construction Trades Department. It is only a four (4)-page summary, but it reveals two (2) obvious features, in addition to describing the "Plan" as a replacement to the IJDB. First, all parties must not impede "Plan" resolution. Second, a party must undertake Court enforcement of an award. As to the close of the 10(k) hearing, no suit to enforce has been filed or authorized (TR, pp. 655-656). Both "Plan" barriers remain here; accordingly, if RAM is not bound or constrained by "Plan" impeding restrictions, no one is bound, and 10(k) proceedings are appropriate. Not to be disregarded, are E #12's execution. RAM signed a document prepared by the IUOE in 2006, and providing for an IJDB. RAM signed at IUOE's request, agreeing to the non-existent IJDB as proposed by the IUOE Local #324. It is Local #324's document. No language in Exhibit #12, provides for IJBD successorship. No legal doctrine, such as applicable to the Employer successorship

corporate transformation is applicable to Union jurisdictional clause(s). To repeat:

First: RAM is not contractually bound to something widely known as the IJDB replacement; and

Second: As of the close of hearing, no lawsuit has been filed by any IUOE entity to enforce the award in Federal and District Court, which would lay bare the above. Stockwell, the IUOE Local #324 business manager, so acknowledges (TR, pp. 655-656).

It follows RAM is not bound to any "Plan" mandate to withdraw ULP impediments. Moreover, pending are three (3) NLRB Charges alleging 8(B)(3) and 8(B)(1)(B) against the "Plan", IUOE and Local #324 for forcing an arbitration decision on RAM through a tribunal it had not agreed to, and then the "Plan" rendering two (2) invoices for $1,000.00 to RAM for payment for services rendered, but not requested (E #s 30 & #31).

Conclusion regarding "Plan".

RAM's position is, if it is not "Plan"-impediment bound, no party is bound. Additionally, the IUOE/AGC agreement superseded the 2006 Short-Form Agreement, which, in any event, is not perpetual. Having lost both protestations due to AFL-CIO home court disadvantage, resolution of RAM's contract adherence is in the hands of the NLRB. Separately, RAM has initiated ULPs alleging the violation of 8(b)3 against the "Plan" as an agent of the Operators, Local #324 of the Operators and the International Union.

XI. RAM CONSTRUCTION SERVICES, INC.'S POSITION IS THAT LIUNA AND IUOE WORK CLAIMS ARE CONTINUING ON MANY BASES, AND HAVE NOT GONE AWAY.

If **RAM** is not a party to the "Plan", there exists no "Plan" jurisdiction over RAM. IF ALL PARTIES ARE NOT BOUND, NO ONE IS BOUND. Thus, the *status quo* of May 29, 2018 remains.

On May 29, 2018, the LIUNA stated it would protect its *status quo* "by any method and means

necessary." This was in response to RAM's May 25th letter seeking to resolve the financial exposure of competing claims by assigning power-driven and power-generating equipment operation to IUOE Local #324.

Again, at that exact hour and time, there was, and remains, a pending IUOE audit for all hours on all "large" equipment, bottomed upon the same covered employment contract language IUOE Local #324 relies on (TR, pp. 59, 81). That audit was initiated on April 30, 2018 by a phone call and e-mails to Kevin Houle. This request arrived out of the blue, and, was an add-on to an ongoing payroll audit which had already been completed up to December 31, 2017. It remains in place today and again, ... seeks "all hours on all equipment" of an employer with hundreds of said equipment. As debate over the Petition to Revoke demonstrates, no employer tracks hours on and off equipment for payroll purposes (TR, p. 60).

The Audit.

Doug Stockwell sits on the Operating Engineers Delinquency Committee (TR, p. 653). He says he did not know the name of his audit firm (TR, p. 652). Kevin Houle received the audit request dated April 30, 2018 simultaneously, as evidenced by Mike McNab's e-mails dated April 20th and 27th (E #20), where Mike McNab reveals the November 25, 2015 assignment to the LIUNA of listed equipment. The new audit arrives while Kevin Houle was awaiting the already-completed standard audit results from December 31, 2017. The April audit added the first quarter of 2018 AND, for the first time requested:

> FRINGE AUDIT REQUEST: APRIL 30, 2018
> For the years 2017 and 2018 to date:
>
> - Complete job listing with all equipment being utilized on each job.
> - Clock hour reports for all equipment listed above.
> - Any journals or notes kept by job Foreman which tracks equipment usage and operators of such equipment on all jobs.

Kevin Houle testified he does not keep hours worked on equipment or by whom. In his entire twenty-five to twenty years at RAM, he never has received such a request (TR, p. 82). RAM asserts that Doug Stockwell learned of Mike McNab's e-mails and the November 25, 2015 letter. Doug Stockwell called Chuck Nichols and ordered the audit for all hours by all persons on his "large" equipment. Nichols was told to do it.

Conclusion: The audit is completely intertwined with Local #324's contract claims seeking to undo a history of composite crews. Stockwell's claims of May 11th, 14th and 17th, and the audit request, are designed to alter the current proceeding, and *status quo* ... meaning composite crews and now present the curious question of work acquisition.

Thus, it is irrefutable that the audit fringe inquiry coincides with the LIUNA's claim for work, which exists only by virtue of IUOE contract language. Both remain unimpaired. *District 15, IAM (Hudson General Corp.), 326 NLRB 62 (1998)* says withdrawal of coercion does not negate evidence of a continuing jurisdictional dispute without a disclaimer.

Additionally, notwithstanding the LIUNA threats on May 29, 2018, it happens the "Plan" has engaged in coercion because:

1. The May 29, 2018 LIUNA (E #24) coercion has not been validly rescinded. The LIUNA, on May 29, 2018, wrote RAM that it would not abandon the November 25, 2015 comprehensive work assigned and accepted. The "Plan" mandated the LIUNA suspended its "coercion" and submitted to the "Plan".

   On June 7th, LIUNA did so. However, it only did so because of the "Plan" and, so long as the Operating Engineers withdrew its May 3rd grievance. LIUNA did not abandon its claim and acceptance of the assigned work for composite crew.

   So how has the LIUNA really withdrawn its threat? RAM says it has not. It is still out there.

It is either suspend, pending Board determinations on "Plan" coverage, or, it is there all along because there is no "Plan" jurisdiction.

2. Then, there is the Arbitrator's Decision and his billings. The Arbitrator's Decision is coercive, and, in violation of 8(B)(3) and 8(B)(1)(B) because RAM is not bound to the "Plan" or the Arbitrator's authority.

3. The two invoices, E #s 30 and 31, mandate RAM pay for services not authorized, or requested. Presumably the Board understands what is flavored by the "Plan" seeking payment for services rendered outside contract obligations, and, in opposition to NLRB statutory 10(k) proceedings.

4. The audit is concise, as it is in support of IUOE's contract claim.

5. The IUOE work acquisition strategy will not go away and is now continuing.

XII. CONCLUSION AS TO LIUNA COERCION AND "PLAN".

With, or without, the contrivance of the "Plan", and its directives, the "Plan" has issued its arbitration award and fee on RAM. The "Plan", and its imperatives (E #15) have coerced the parties, and have merely suspended the IUOE contract grievance regarding RAM equipment, as well. The LIUNA's intent to not lose hours worked and paid on said equipment remains, even if suspended.

XIII. IF THE 10(K) DETERMINATION IS NOT CO-EXTENSIVE WITH IUOE LOCAL #324 CONTRACT GEOGRAPHY AS TO RAM COMPOSITE CREW WORKERS, ... PROGNOSTICATION.

If RAM is required to change its composite crew practices, the IUOE goal of contract enforcement prevails as does its "work acquisition" objectives.

New breach of "*status quo*" claims will emerge. The LIUNA now, along with the BAC Local #2 and Roofers Local #149, ALL could initiate either coercion or contract claims for lost hours of any amount, based on either contract breach or unilateral change in past practices regarding historical job

assignments for work done by others.

There is no way to know the financial and operational impact of such change on RAM's business.

It is for the NLRB to uphold the RAM historical use of composite crew. RAM does not seek to change the way it uses its composite crews or equipment on any Michigan jobsite.

Respectfully submitted,

ROBERT E. DAY, P.C.

By Robert E. Day

Robert E. Day (P12579)
Attorney for:
RAM Construction Services of Michigan, Inc.
300 River Place-Suite 5600
Detroit, Michigan 48207-4291
Phone: (313) 259-1770
Fax: (313) 259-1605
E-mail: rday@rdaypc.com

Date: August 24, 2018

CERTIFICATE OF SERVICE

I, **Robert E. Day**, counsel for **RAM Construction Services of Michigan, Inc.**, hereby certifies that on August 24, 2018, I electronically filed RAM Construction Services, Inc.'s Brief to the NLRB Re: 10(k) re: Scope of Award, "Plan" Coverage and Existence of Claim and Coercion and served the parties delineated below in the following manner:

National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570
Via electronic filing at the NLRB website (www.nlrb.gov)

Counsel of Record:

Daniel G. Helton, Esq. (P43758)
Law Offices of Daniel G. Helton
300 Stroh River Place - Suite #5600
Detroit, Michigan 48207
Via e-mail: dan@danielghelton.com

David J. Selwocki, Esq.
Sullivan, Ward, Asher & Patton, P.C.
1000 Maccabees Center
25800 Northwestern Highway
Southfield, Michigan 48075
Via e-mail: dselwocki@swappc.com

John R. Canzano, Esq. (P30417)
McKnight, Canzano, Smith, Radtke & Brault, P.C.
423 North Main Street – Suite# 200
Royal Oak, Michigan 48067
Via e-mail: jcanzano@michworkerlaw.com

J. Douglas Korney, Esq. (P16155)
Law Offices of J. Douglas Korney
32300 Northwestern Highway – Suite 200
Farmington Hills, Michigan 48334-1501
Via e-mail: dkorney@dkorneylaw.com

Continued on next page

David A. Malinowski (P72076)
Novara Tesija & Catenacci, PPLC
2000 Town Center – Suite #2370
Southfield, Michigan 48075-1314
Via e-mail: dam@ntclaw.com

and:

National Labor Relations Board
Region 7
McNamara Federal Building
477 West Michigan Avenue
Detroit, Michigan 48226
Attn: Terry A. Morgan, Regional Director
Via facsimile: (313) 226-2090

Dynn Nick, Attorney
National Labor Relations Board
Region 7
McNamara Federal Building
477 West Michigan Avenue
Detroit, Michigan 48226
Via e-mail: Dynn.Nick@nlrb.gov

Robert E. Day

ROBERT E. DAY

2018	CINCINNATI	CLEVELAND	MINNESOTA	MICHIGAN	Grand Total
BL	26	12	0	157	195
CM	0	5	1	14	20
LA	30	18	47	182	277
RO	0	8	10	17	35
CA	0	0	0	5	5
OP	0	0	0	11	11
ALL	56	43	58	386	543

2017	CINCINNATI	CLEVELAND	MINNESOTA	MICHIGAN	Grand Total
BL	21	13	1	170	205
CM	0	5	0	14	19
LA	20	29	53	242	344
RO	0	14	8	21	43
CA	0	0	0	6	6
OP	0	0	0	17	17
ALL	41	61	62	470	634

2016	CINCINNATI	CLEVELAND	MINNESOTA	MICHIGAN	Grand Total
BL	16	17	2	138	173
CM	0	7	2	19	28
LA	19	38	56	223	336
RO	0	16	15	27	58
CA	0	0	0	6	6
OP	0	0	0	17	17
ALL	35	78	75	430	618

Exh 5

Attachment #1 to RAM brief.

Large Equipment – As of May 31, 2018		
Page	**#**	**Livonia, Michigan**
Page 1 (206)	30	22
Page 2 (880268)	27	16
Page 3 (268)	31	18
Page 4 (3011634)	31	23
Page 5 (11485)	6	4
Page 6 (2626)	19	12
Page 7 (1842)	33	20
Page 8 (883908)	33	27
Page 9 (2105)	28	16
Page 10 (240)	5	2
Page 11 (9285)	16	14
Page 12 (374)	29	22
Page 13 (13892)	4	4
Page 14 (211)	4	4
Page 15 (2210)	29	22
Page 16 (3500)	7	2
Page 17 (8020)	7	7
Page 18 (491)	25	13
Page 19 (305)	28	20
Page 20 (304)	25	21
TOTAL	**417**	**289** **Michigan = 69%**

#2 -- Attachment to RAM brief to NLRB - 10(k)

E #11