Nos. 18-2283 & 18-2380

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ERICKSON TRUCKING SERVICE, INC.,

Petitioner/Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent/Cross-Petitioner.

On Appeal from the National Labor Relations Board
Agency Case No. 07-CA-178824

CORRECTED JOINT APPENDIX

(Volume 1 of 7)

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[1] Counsel for the Board did not agree to include these documents in the Joint Appendix.

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Erickson Trucking Service, Inc. d/b/a Erickson's Inc. *and* Local 324, International Union of Operating Engineers (OPEIU), AFL–CIO. Case 07–CA–178824

August 27, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, KAPLAN, AND EMANUEL

On August 11, 2017, Administrative Law Judge Ira Sandron issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] only to the extent consistent with this Decision and Order.[4]

At a meeting on June 20, 2016, the Respondent, through President Steven Erickson, discharged employees Erin Baerman, Jason Baerman, and Nicholas Willer, informed them that they were being discharged because of the Union's actions on their behalf, and implicitly promised them that they could be reinstated if they convinced the Union to change the manner in which it represented them. The judge found that the discharges violated Section 8(a)(3) and (1) and that Erickson's statements, as described above, violated Section 8(a)(1), and we agree.[5]

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[1] The Respondent has requested oral argument. The request is denied because the record, exceptions, and briefs adequately present the issues and the positions of the parties.

The General Counsel moved to strike the Respondent's Exhs. A and B to its supporting brief. The Respondent filed an opposition and, in the alternative, a motion to reopen the record. We deny the Respondent's motion to reopen the record, as the Respondent has not demonstrated that the exhibits constitute evidence that is newly discovered or previously unavailable. See Sec. 102.48(c)(1) of the Board's Rules and Regulations. Further, in R. Exh. A the Respondent impermissibly attempts to attack the judge's credibility resolutions. See *Hagar Management Corp.*, 313 NLRB 438, 438 fn. 1 (1993), enfd. 55 F.3d 684 (D.C. Cir. 1995). And in R. Exh. B, the Respondent seeks to proffer evidence concerning an alleged event that occurred after the close of the hearing. See *Allis-Chalmers Corp.*, 286 NLRB 219, 219 fn. 1 (1987). Accordingly, we grant the General Counsel's request to strike the exhibits.

No exceptions were filed to the judge's conclusions that the Respondent: (1) did not violate Sec. 8(a)(1) when payroll clerk Nancy Tejchma told Keith Stephenson not to speak with his union representative during a conversation about wages; (2) did not violate Sec. 8(a)(1) when Owner Steven Erickson told Matthew Rowe he was being discharged because Erickson knew some employees were not happy there anymore; and (3) did not violate Sec. 8(a)(5) when Erickson told recently discharged employees that they could get their jobs back if they got the Union to change its conduct.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. In addition, some of the Respondent's exceptions allege that the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that the Respondent's contentions are without merit.

The Respondent also excepts to some of the judge's evidentiary rulings. It is well established that the Board will affirm an evidentiary ruling of a judge unless that ruling constitutes an abuse of discretion. See *Aladdin Gaming, LLC*, 345 NLRB 585, 587 (2005), review denied sub nom. *Local Joint Executive Board of Las Vegas v. NLRB*, 515 F.3d 942 (9th Cir. 2008). After a careful review of the record, we find no abuse of discretion in any of the challenged rulings.

[3] In affirming the judge's conclusions we do not rely on *PPG Aerospace Industries*, 355 NLRB 103 (2010), a decision that issued at a time when the Board lacked a quorum. In addition, the judge cited *Alton H. Piester, LLC*, 353 NLRB 369 (2008), a case that was also issued by a two-Member Board. However, prior to the issuance of the Supreme Court's decision in *New Process Steel v. NLRB*, 560 U.S. 674 (2010), the United States Court of Appeals for the Fourth Circuit enforced the Board's Order, see *NLRB v. Alton H. Piester, LLC*, 591 F.3d 332 (4th Cir. 2010), and there is no question regarding the validity of that court's judgment.

[4] We shall amend the judge's conclusions of law to conform to the violations found. Also, in his remedy, the judge ordered reinstatement and make-whole relief for the discriminatees both because the Respondent discharged them and purportedly because it refused and failed to recall them. However, there was no allegation in the complaint that the Respondent unlawfully refused and failed to recall the employees, nor was this issue litigated at the hearing. Therefore, we correct the remedy to eliminate the reference to such an allegation. We shall modify the judge's recommended Order to conform to our findings, and we shall substitute a new notice to conform to the Order as modified.

[5] We further agree with the judge's findings that the Respondent violated Sec. 8(a)(3) and (1) of the Act by discharging employees Carlos Ocampo, Matthew Rowe, and Keith Stephenson, and Sec. 8(a)(1) of the Act by threatening E. Baerman with discharge and by informing Stephenson that he was being discharged because of the Union's actions.

In affirming the judge's finding that the Respondent independently violated Sec. 8(a)(1) of the Act by informing the employees that they were being discharged in part because of the Union's actions on their behalf, Members Kaplan and Emanuel note that the Respondent's exceptions to these findings challenge only the judge's credibility determinations and that there is no basis for reversing those determinations. However, in the view of Members Kaplan and Emanuel, the issue of whether advising employees that the reason for their discharge is due to protected concerted or union activity independently violates Sec. 8(a)(1) or, rather, is subsumed by an unlawful discharge violation warrants reconsideration in a future appropriate case. See, e.g., *Triple Play Sports Bar & Grille*, 361 NLRB 308, 316 fn. 2 (2014) (Member Miscimarra, dissenting in part, citing former Chairman Hurtgen's par-

During the same meeting, Erickson stated that the Union's business manager was "the most arrogant son of a bitch I've ever met who wants to run your union like Hitler." The judge found that this statement disparaging the Union was an additional violation of Section 8(a)(1). We disagree.[6] "[A]n employer may criticize, disparage, or denigrate a union without running afoul of Section 8(a)(1), provided that its expression of opinion does not threaten employees or otherwise interfere with the Section 7 rights of employees." *Children's Center for Behavioral Development*, 347 NLRB 35, 35 (2006). Erickson's remark was merely ancillary to the unlawful conduct during the meeting. Although flip and intemperate, the remark did not convey a threat, imply a sense of futility,[7] or otherwise interfere with the employees' Section 7 rights. See *Trailmobile Trailer, LLC*, 343 NLRB 95, 95 (2004). It was therefore a lawful expression of Erickson's opinion, which is protected by Section 8(c) of the Act. See 29 U.S.C. § 158 (c); *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969). Accordingly, we reverse the judge and dismiss this allegation.

AMENDED CONCLUSIONS OF LAW

Delete Conclusion of Law 3(c), and reletter the subsequent paragraph.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Erickson Trucking Service, Inc. d/b/a Erickson's Inc., Grand Rapids and Muskegon, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(d) and reletter the subsequent paragraphs accordingly.

2. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs accordingly:

"(c) Compensate Erin Baerman, Jason Baerman, Carlos Ocampo, Matthew Rowe, Keith Stephenson, and Nicholas Willer for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee."

3. Substitute the attached notice for that of the administrative law judge.

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tial dissent in *Benesight, Inc.*, 337 NLRB 282, 285 (2001)), review denied sub nom. *Three D, LLC v. NLRB*, 629 Fed.Appx. 33 (2d Cir. 2015). Member Emanuel further notes that the credited statements at issue here expressly identified the Union as a reason for the Respondent's adverse action and thus would be unlawful on their face. This distinguishes them from the *Triple Play* employer's statements that it was discharging the employees because of their Facebook activity, statements that were not unlawful on their face; rather, to find those statements unlawful, the Board needed to make an intervening legal finding that the Facebook activity was protected.

[6] Member Pearce dissents. He agrees with the judge that Erickson's June 20 statement to the employees that Union Business Manager Doug Stockwell was "the most arrogant son of a bitch I've ever met who wants to run your union like Hitler" violates Sec. 8(a)(1). Employer statements disparaging a union are unlawful when, in context, they have a reasonable tendency to interfere, restrain, or coerce employees in the exercise of their Sec. 7 rights. See, e.g., *Turtle Bay Resorts*, 353 NLRB 1242, 1278 (2009), incorporated by reference 355 NLRB 706 (2010), enfd. 452 Fed.Appx. 433 (5th Cir. 2011). Statements that might otherwise be lawful in isolation, violate the Act if "uttered in a context of other unlawful unfair labor practices that 'impart a coercive overtone' to the statements." *Shamrock Foods Co.*, 366 NLRB No. 117, slip op. at 14 (2018), citing *Reno Hilton*, 319 NLRB 1154, 1155 (1995). See also *Fred Meyer Stores*, 362 NLRB No. 82, slip op. at 3–4 (2015), enf. denied 865 F.3d 630 (D.C. Cir. 2017). Member Pearce finds that Erickson's disparagement of Stockwell occurred in just such an unlawful, coercive context.

The majority ignores this context, and in so doing ignores the coercive nature of this statement. Erickson uttered the disparaging statement about Stockwell *after* terminating Erin and Jason Baerman and Willer and telling them it was because of the Union and *before* informing the three that the situation could be reversed if they convinced the Union to back down. Sandwiched in a single conversation between laying the blame on the Union for the terminations and the implied promise of benefits, the disparaging statement was part and parcel of the Respondent's attempts to undermine the Union and convey to employees that continued reliance on their union representatives would be futile. Thus, in conjunction with the very conduct that the majority finds unlawful—telling employees they are being terminated because of the Union, the discharges, and the implied promise of benefits—Erickson stated that he was "done dealing with [Business Representative] Brandon [Popps]" and was "not going to answer his calls or texts" and he was likewise done dealing with Stockwell (who he immediately termed an s.o.b. comparable to Hitler). Viewed contextually, the statements about the two union representatives, including the disparagement of Stockwell, conveyed "an implicit threat that employees' representation by the Union would be futile (i.e., that the Respondent would not fulfill its statutory obligations)" unless the employees change their representatives or the way the Union interacts with the Respondent. See *Regency House of Wallingford, Inc.*, 356 NLRB 563, 567 (2011).

Member Pearce finds that viewed from the employees' perspective, Erickson's disparagement of Stockwell was inextricably intertwined with his other unlawful actions and would reasonably tend to coerce the employees in the exercise of their Sec. 7 rights. See, e.g., *Cayuga Medical Center at Ithaca, Inc.*, 365 NLRB No. 170 slip op. at 7 (2017). And, contrary to his colleagues, Member Pearce finds Sec. 8(c) is no defense to the Respondent's threat of futility in employees' union representation if they did not heed to his advice and its implicit threat of reprisal. The majority's decision to wrap its 8(c) defense around a statement cherry picked from its unlawful context flies in the face of Board jurisprudence and gives license to coercive conduct. See *Southern Bakeries, LLC*, 364 NLRB No. 64, slip op. at 2 (2016), enf. granted in part, denied in part 871 F.3d 811 (8th Cir. 2017). Accordingly, the disparaging statement violates Sec. 8(a)(1).

[7] We note that, contrary to the dissent's implication, the General Counsel's complaint did not allege that the statement at issue conveyed a sense of futility or implicitly threatened reprisal.

Dated, Washington, D.C. August 27, 2018

Mark Gaston Pearce, Member

Marvin E. Kaplan Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT terminate or otherwise discriminate against you because Local 324, International Union of Operating Engineers (OPEIU), AFL–CIO (the Union) acted to secure you higher wages or otherwise represented you.

WE WILL NOT threaten you with termination because of the Union's conduct on your behalf.

WE WILL NOT tell you that you are being terminated because of the Union's conduct on your behalf.

WE WILL NOT implicitly promise you that you can get your job back if you get the Union to change the way that it represents you.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Erin Baerman, Jason Baerman, Carlos Ocampo, Matthew Rowe, Keith Stephenson, and Nicholas Willer full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Erin Baerman, Jason Baerman, Carlos Ocampo, Matthew Rowe, Keith Stephenson, and Nicholas Willer whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest, and WE WILL also make such employees whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Erin Baerman, Jason Baerman, Carlos Ocampo, Matthew Rowe, Keith Stephenson, and Nicholas Willer for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Erin Baerman, Jason Baerman, Carlos Ocampo, Matthew Rowe, Keith Stephenson, and Nicholas Willer, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

ERICKSON TRUCKING SERVICE, INC. D/B/A ERICKSON'S INC.

The Board's decision can be found at https://www.nlrb.gov/case/07-CA-178824 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Colleen J. Carol, Esq., for the General Counsel.
Keith E. Eastland and *Matthew M. O'Rourke, Esqs. (Miller Johnson),* for the Respondent.
Amy Bachelder, Esq. (Sachs Waldman, PC), for the Charging Party.

DECISION

STATEMENT OF THE CASE

IRA SANDRON, Administrative Law Judge. This matter is before me on a complaint and notice of hearing (the complaint) issued on November 30, 2016,[1] arising from unfair labor practice charges that Local 324, International Union of Operating Engineers (OPEIU), AFL–CIO (the Union or the Local) filed against Erickson Trucking Service, Inc. d/b/a Erickson's Inc. (the Respondent or the Company) on June 20.

Pursuant to notice, I conducted a trial in Grand Rapids, Michigan, on April 26–28, 2017, at which I afforded the parties a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. I left the record open on April 28, 2017, for the parties to file joint exhibits regarding the Respondent's daily work orders. On May 26, 2017, the General Counsel and the Respondent filed a joint motion to admit Joint Exhibits 2 through 11 (consisting of over 3500 work orders for the period from July 1, 2016, through April 21, 2017), along with factual stipulations regarding them. The Charging Party had no objections. On June 2, 2017, I granted the motion, admitted the stipulated documents and factual stipulations, and closed the record.

Issues

(1) Did Steven Erickson, the Respondent's Owner/President, on May 16, when he terminated Matthew Rowe and Keith Stephenson, violate Section 8(a)(1) by stating that they were being terminated because of the Union's conduct in representing them?[2]

(2) Did Erickson, in about late May, violate Section 8(a)(1) by threatening Erin Baerman with termination because of the Union's conduct in representing employees?

(3) Did Erickson, on June 20, when he terminated Erin Baerman, Jason Baerman, and Nicholas Willer, violate Section 8(a)(1) by disparaging the Union; stating that they were being terminated because of the Union's conduct in representing them; and implicitly promising that they could get their jobs back if they got the Union to change the way it was representing them?

(4) Did Nancy Tejchma, the Respondent's payroll clerk, in about late December 2015, violate Section 8(a)(1) as an agent of the Respondent, by threatening Stephenson with unspecified consequences if he continued to communicate with Union Business Representative Brandon Popps on wage rate issues?

(5) Did the Respondent violate Section 8(a)(3) and (1) by terminating the following employees because they sought the Union's assistance on wage rate issues and/or because the Union acted to secure them higher wages or otherwise represented them?

A. Matthew Rowe and Keith Stephenson on May 16.

B. Erin Baerman, Jason Baerman, and Nicholas Willer on June 20.

C. Carlos Ocampo on July 8.

(6) Did Erickson violate Section 8(a)(5) and (1) by bypassing the Union and engaging in direct dealing with Erin Baerman, Jason Baerman, and Willer when he terminated them on June 20; more specifically, implicitly promising that they could get their jobs back if they got the Union to change the way it was representing them?

For purposes of deciding the issues in this case, I concur with the Respondent (R. Br. at 82) that determining whether the Respondent recognizes the Union as a Section 8(f) construction industry bargaining agent, or a 9(a) bargaining agent, is unnecessary. Both the Respondent (R. Br. 82) and the General Counsel (GC Br. at 18) agree that regardless of which it is, the Respondent was obliged to avoid bypassing the Union and dealing directly with employees.

On June 1, 2017, I granted the General Counsel's unopposed motion to withdraw the allegations in the complaint that the Respondent violated Section 8(a)(5) and (1) by, on about May 17, unilaterally discontinuing its practice of laying off employees by seniority.

Wtnesses and Credibility

The General Counsel called Union Business Representative Brandon Popps; all of the six terminated employees named above; Cody Velat, who was laid off in December 2015; and current employee Jamey Foster.

The Respondent called Owner/President Steven Erickson (Erickson); Controller Brent Erickson, his son; and Payroll Clerk Nancy Tejchma, whose testimony was limited to denying that she had conversations about payroll with Erin Baerman in 2014 or 2015, or with Stephenson in December 2015.

Collectively, the General Counsel's witnesses were generally consistent and credible.

None of them appeared to make any apparent efforts to embellish their testimony in their favor or to leave out information that might help the Respondent's case.

Willer and brothers Erin and Jason Baerman all testified that at their June 20 layoff meeting, Erickson stated that he was going to sell the smaller cranes—consistent with Erickson's account and defense, leading me to believe that they were candid. Moreover, all three gave somewhat similar but not identical accounts of what was said at that meeting, causing me to conclude that they testified from genuine recall rather than from a script. I note that Erin Baerman gave the most detailed recall of the three—perhaps due to his prior position as a police officer—and I find his version the most reliable.

Significantly, the Baerman brothers, Ocampos, Foster, Rowe, Stephenson, and Willer all attributed statements to Erickson—over a period of months—that demonstrated express or implied animus toward them for seeking the Union's assistance with their wage rates, and/or toward Popps or union officials in general for seeking higher wage rates for them. I simply cannot believe that all of them concertedly conspired to fabricate such testimony. Moreover, their credibility is buttressed by Erick-

[1] All dates hereinafter occurred in 2016 unless otherwise indicated.

[2] Despite Erickson's use of the term "layoff," all of the layoffs herein were permanent layoffs or terminations, as opposed to the short-term temporary layoffs that were a standard part of the Respondent's business operation in the construction industry.

son's own statements expressing anger at the Union, in a December 23, 2015 email to union attorney Andrew Nickelhoff (GC Exh. 17): "It seems the current Local 324 representation wants to circumvent our company's policy as punishment for not signing a bogus contract they delivered to me a couple of months ago . . . I would expect that our Union would be better served if the representatives were trying to convert non-union contractors instead of pissing off the longstanding union contractor?."

I will now address rejected evidence that the Respondent sought to introduce to bear negatively on Erin Baerman's and Rowe's credibility. I precluded the Respondent's counsel from delving into what he proffered was Erin Baerman's termination as a police officer from the North Muskegon Police Department. In this regard, when I asked counsel for any documentation relating thereto, to review in camera, he responded that he had none and that he was unaware of any adjudication finding merit to the termination. In such circumstances, I stated, I would not allow the Respondent's counsel to go on a "fishing expedition." At the outset of the hearing, I cited, inter alia, Rule 611 (a) of the Federal Rules of Evidence, which provides that the court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as (1) make the interrogation and presentation effective for the ascertainment of the truth; (2) avoid needless consumption of time; and (3) protect witnesses from harassment or undue embarrassment. I adhere to my ruling on all three grounds.

On the same grounds, I adhere to my ruling barring the Respondent's counsel from introducing evidence of Rowe's prior felony conviction,[3] which occurred within the last 10 years. I reviewed the documentation in camera and determined that the conviction was not of the kind that would bear on Rowe's propensity for truthfulness and veracity.

The Respondent's counsel cited Rule 609 of the Federal Rules of Evidence for the proposition that a felony conviction within 10 years must be admitted. However, this is not necessarily so.

Rule 609 (a)(1)(A) provides that evidence of a prior conviction (within 10 years) to attack a witness' character for truthfulness must be admitted, subject to Rule 403, in a civil case in which the witness is not a defendant, if the crime was punishable by death or imprisonment for more than 1 year. Rule 403, which I also cited at the opening of the trial, provides that relevant evidence may be excluded if its probative value is substantially outweighed by, inter alia, the danger of unfair prejudice or confusion or the issues, or by considerations of undue delay and waste of time. Under that caveat, evidence of the conviction was properly excluded under Rule 609(a)(1).

Rule 609(a)(2) alternatively provides for admission of prior convictions for crimes involving dishonest acts or false statements, regardless of the potential punishment. As the Sixth Circuit of Appeals stated in *U.S. v. Washington,* 702 F.3d 886, 893 (6th Cir. 2012):

> A crime of dishonesty or false statements involves some element of active misrepresentation. The 'dishonesty or false statement' language excludes 'those crimes which, bad though they are, do not carry with them a tinge of falsification.' See *United States v. Ortega,* 561 F.3d 803, 806 (9th Cir. 1977). . . . The rule is intended to inform fact-finders that the witness has a propensity to lie, and , as morally repugnant as some crimes may be, crimes of violence or stealth have little bearing on a witness's character for truthfulness.

Inasmuch as the conviction was not for a crime entailing any element of dishonesty or falsification, I appropriately rejected evidence thereof.

Based on my observations of Erickson's demeanor and the manner in which he testified, I have no doubt that he is a seasoned, strong-willed businessperson with a forceful personality, as reflected by the times he had to be reminded to wait until the Respondent's counsel finished his question before answering, and his demonstrable annoyance when pressed to give direct answers. By his own testimony and that of other witnesses, Erickson maintains sole personal control over the Respondent's business decisions and obviously has a great deal of personal stake in the Company, which his family has owned since the early or mid-1920s. To the extent that his testimony downplayed his irritation at Popps and the other union officials for injecting the Union into employee wage disputes that he and Tejchma had previously handled internally, I do not credit him.

Erickson has owned the business and been its sole owner and officer since 1983. During that time, he has had collective-bargaining agreements not only with the Operating Engineers but also with the Iron Workers and International Brotherhood of Teamsters. He himself was a member of the Local from 1974–1983. According to his own testimony, disputes with operators over contractual pay rates have been a common occurrence. In these circumstances, I find quite implausible his claim that when Popps attempted to talk to him about employee wage disputes in late 2015, he believed that he was prohibited from doing so by privacy rules unless employees gave their express permission. Moreover, such a contention flies in the face of logic—if an employee seeks the Union's assistance in a wage dispute, the Union obviously needs to know the circumstances of the dispute in order to ascertain whether the employee has been properly paid.

Other factors undermined the reliability of his testimony. Firstly, Erickson was very confident and detailed when he was testifying on general business matters, such as the nature of his business or the types of cranes the Company has used. In contrast, when Erickson addressed matters going to the heart of the allegations herein, he had a much shakier, shifting, and uncertain recall. The following demonstrate this pattern.

When asked on direct examination about a telephone conversation he had with Popps in early January, Erickson first testified that Popps asked about resolving some outstanding issues, and he replied that he did not have the time to do at the moment.[4] However, when his counsel then asked further questions, Erickson expanded his answer:[5]

[3] R. Rejected Exh. 1 (sealed).

[4] Tr. 577.

[5] Tr. 578.

Q: Anything else you can recall about that discussion with Mr. Popps?
A: Not that I recall.

Q: Was there any discussion about the Union potentially filing a legal action as an unfair labor practice?
A: I think that was—his initial conversation was we need to resolve some outstanding issues or there could be charges brought.

Q: Did he say that in that discussion?
A: Yes, that was the question he asked, yeah.

In describing his conversation with Foster in January, after Foster had taken over the position of shop steward, Erickson only later added that he told Foster that it was not good to have two camps in the shop, one for Foster, and the other for the previous steward.[6] Moreover, in describing that conversation, Erickson first said, "I didn't say anything about Brandon Popps," but then testified, "I said I don't think Brandon's helping you by appointing you steward . . . I think Brandon's putting you in a bad position."[7]

When asked on direct examination if Stephenson said anything on May 20 in response to Erickson's statements about the reasons for his layoff:[8]

A: I don't remember what his—There wasn't a lot of conversation. It was short. He was a little bit surprised and the conversation was pretty much over.

Q: Did he ask you what the real reason for the layoff was, anything like that?
A: He may have, yeah. I think he did ask me that question. . . And I explained. . . .

Q: Did Mr. Stephenson ask you if it had anything to do with the Union?
A: He may have asked if it had anything to do with him transferring to the Operating Engineers.

Athough Erickson's testimony on direct examination concerning the June 20 layoff meeting made no mention of Popps, on cross-examination, he testified that he did say "it wasn't helping that Brandon Popps was 'out taking the work away from us."[9]

Although Erickson was evasiveness in answering whether the Associated General Contractors agreement, which the Union wanted to apply, paid higher wages than his shop agreement, the August 3 position statement submitted on the Respondent's behalf (GC Exh. 15) stated that the AGC rates resulted in a 30—40 percent increase in labor costs. When the General Counsel asked if he had had a concern that the demand for higher wages could result in a strike, he replied "no,"[10] again contrary to the position statement.

Finally, in describing the reasons the six terminated employees in 2016 were selected for layoff, Erickson said nothing on direct examination about their not having an assigned crane being considered. However, on cross-examination, he brought this up, stating that the six employees operated either 40 or 60-ton cranes "[o]r didn't have a crane assigned to them."[11] This is curious in in light of Respondent Exhibit 26, according to which five of the eleven crane operators who remained after the layoffs are listed as "not assigned." Furthermore, he did not give a clear, coherent description of the criteria that he uses for short-term layoffs. Instead, he gave only a very nonspecific answer when asked if he has a general methodology that he uses to assess qualifications based on experience and other factors.

For all of the above reasons, I credit the General Counsel's witnesses where their testimony conflicted with his.

Brent Erickson has been the controller only since March, after the Union had already filed grievances and unfair practice charges related to employees' wage rates. He played no role in the decisions to terminate any of the six employees at issue. To the extent that his testimony primarily related to documents concerning the overall financial status of the Respondent, such documents were admitted without objection, and I find them reliable as far as their contents.

Payroll Clerk Nancy Tejchma's testimony was so brief that I cannot base any credibility findings on its content or her demeanor. Stephenson was a credible witness and testified in much greater detail. He further testified that about 3 weeks after Tejchma spoke with him about payroll, in about late December 2015, Erickson made a remark to him that was very similar to hers. Accordingly, I credit his account of what she said. I note that although Stephenson had to be refreshed by his affidavit on what Erickson said to him at the time of his termination, his testimony concerning what Tejchma and Erickson told him in December 2015 and January was steady and unequivocal.

Facts

Based on the entire record, including testimony and my observations of witness demeanor, documents, written and oral stipulations, and the helpful posttrial briefs that the General Counsel, the Respondent, and the Charging Party filed, I find the following.

At all times material, the Respondent has been a C corporation with offices and places of business in Grand Rapids and Muskegon, Michigan, engaged in providing crane, rigging, and heavy hauling services to the construction industry. During the calendar year ending December 31, 2015, a representative period, the Respondent performed services valued in excess of $50,000 in States other than the State of Michigan. The Respondent has admitted the facts necessary to establish Board jurisdiction, and I so find.

The Respondent performs numerous services to its clients, including crane service, rental, and assembly; transportation of machinery; trucking and heavy transportation; moving machinery in and out of buildings; building modules, and rigging.

In 1983, Steven Erickson (Erickson) became the owner of the business, which his grandfather started in 1922. He is the

[6] Tr. 586–589.
[7] Tr. 587–588.
[8] Tr. 522, et. seq.
[9] Tr. 640.
[10] Tr. 607.
[11] Tr. 634.

sole shareholder and the sole officer (president and secretary/treasurer). Prior to assuming ownership, he was a member of the Local from 1974.

Erickson maintains a personal office at the Muskegon facility but not at the Grand Rapids location. The Company has four administrative departments: (1) accounting headed by Controller Brent Erickson, his son, with three other employees, including Payroll Clerk Nancy Tejchma; (2) engineering three employees; (3) operations Operations Manager Brian Sharp, who handles that Grand Rapids facility's day-to-day operations, and one other employee; and (4) sales three employees.

The Respondent currently employs about 70 employees total, with about 62 based in Grand Rapids and the remainder based in Muskegon. Three unions represent units of its employees: the Union, the International Brotherhood of Teamsters (Teamsters), and the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (Iron Workers).

Of the current employees, 18 or 20 are permanent full-time operating engineers (operators) represented by the Union. All but one or two of them work out of Grand Rapids. The Union has represented employees for several decades, going back at least as far as May 1973 when Joseph Willer was hired. (GC Exh. 13 at 1; R. Exh. 16 at 2.)

Sixteen of the employees are represented by the Teamsters. Half of them drive trucks, and the other half are involved in performing maintenance on all of the equipment in the Respondent's fleet, including trucks, cranes, and facilities. The Respondent employs about 25-30 Iron Workers, who are engaged primarily in rigging services, moving machinery in and out of plants, and most crane assembly.

The Respondent and the Union are parties to a collective-bargaining agreement effective from May 1, 2014, through April 3, 2017 (GC Exh. 3), covering a number of counties in west Michigan, including those where Grand Rapids (Kent County) and Muskegon (Muskegon County) are situated. The unit description (art. I sec., 1) is:

> All full-time and regular part-time Operating Engineers, including equipment operators, oilers, apprentices and on the job trainees employed within the State of Michigan in building, heavy, underground, highway, bridge and airport construction work, employed by the Employer at or out of their facilities located at [the Grand Rapids and Muskegon facilities].

Article I Section 2 provides:

> The Employer agrees to inform the Union of its manpower requirements within the bargaining unit when additional manpower is required and will give the Union an opportunity to furnish applicants. Present employees shall be given first opportunity for new jobs.

Pursuant to this article, the Union operates a non-exclusive hiring hall, which gives the Respondent the right to hire "off the street." Erickson has generally directly hired permanent full-time employees, and then notified the Union of their hire. On the other hand, for short-term job-specific work, he has generally gone to the hiring hall. Additionally, as a matter of practice, the Union has allowed the Company to use its retirees for up to 39 hours a month through direct hire. In the period from approximately late March to late July, the Respondent utilized six retirees. (GC Exh. 14 at 1, 10.)

Work for the operators is seasonal, with the summer months being the busiest, and the winter months the slowest. Many of the Respondent's permanent full-time operators have also had short-duration layoffs following the completion of a job, after which Erickson directly called them back to work.

As far as layoffs, nothing in the contract addresses the criteria that the Respondent should use. Moreover, the provision (Article 13(b)) that the Respondent furnish slips stating the reason for discharge or layoff and whether the termination is temporary or permanent has never been enforced or followed.

The grievance and arbitration procedure is contained in article 8. Step 1 is between the supervisor and the union steward; step 2, in writing, is between the supervisor and the union business representative; step 3 is between the Union's business manager or president and a company officer; step four is nonbinding mediation; and step five is binding arbitration. There is no evidence that prior to 2015, the Union ever filed a grievance under the terms of the collective-bargaining agreement.[12]

Classifications and wage rates are at pages 21, et. seq. The three classifications, in descending order of qualifications and pay rate, are crane operators, forklift (or high-lo) operators, and oilers. Crane operators are the highest paid of the Company's unionized employees. Crane operator rates are based on the size of the crane. The 500 ton plus base rate is the highest rate; each 50 ton increment below that decreases, with the 1–20 ton crane being paid at the same rate as forklift operator. The lowest paid classification is crane oiler (only for new hires after May 1, 2004). All crane operators must possess a valid commercial driver's license (CDL), have safety training, and be a certified crane operator (CCO) for the crane that they are operating. All forklift operators must possess a valid CDL and forklift certification. The Union's training facility administers the tests and practical examinations that operators are required to pass to obtain certifications to operate particular pieces of equipment.

When members of the unit work outside the geographic area described in the contract, they come under the provisions of the "short-form" agreement into which the Respondent and the Union entered on November 12, 1984 (GC Exh. 4), which by its terms has been automatically renewed with each new contract between the Union and the Respondent. It provides that the Respondent agrees to abide by the wage rates, fringe benefits, and all other provisions in seven named multi-contractor collective-bargaining agreements, including the Associated General Contractors of America (AGC).

Events Involving Other Employees

Preliminarily, I will address conduct of the Respondent in 2015 that was the subject of an informal Board settlement agreement with a nonadmission clause, which was closed on compliance.

A settlement agreement with a nonadmission clause "'may

[12] See Tr. 599 (Erickson).

not itself be used to establish anti-union animus.'" *Steves Sash & Door Co.,* 164 NLRB 468, 476 (1967), enfd. in pertinent part 401 F.2d 676, 678 (5th Cr. 1968), quoting *Metal Assemblies, Inc.,* 156 NLRB 194, 194 fn. 1 (1965). Nevertheless, although such a settlement agreement itself is not admissible evidence that a respondent violated the Act, *Steves Sash & Door Co.* also stands for the proposition that presettlement conduct underlying the settlement agreement is properly permitted into evidence as background evidence establishing the motive or object of a respondent in its postsettlement activities. See *Northern California District Council (Joseph's Landscaping Service),* 154 NLRB 1384, 1384 fn. 1 (1965), enfd. 389 F.2d 721 (9th Cir. 1968); see also *Host International,* 290 NLRB 442, 442 (1998); *Electrical Workers Local 13 (*M.H.E. Contracting*),* 227 NLRB 1954, 1954 fn. 1 (1977). In other words, the facts underlying the allegations that were settled may be admitted into evidence and considered to shed light on postsettlement conduct.

Erickson's relationship with the Union changed for the worse in 2015, when he and the Union had a dispute regarding applicability of the AGC.[13] More specifically, the Union came to him in 2015 and wanted him, during the term of the contract, to increase the pay rates of operators whom he dispatched to do work under AGC, from the rates in his shop agreement to those in the AGC. This would have resulted in a 30 to 40 percent increase in his labor costs.

Additionally, prior to 2015, employees represented by the three unions to some degree performed interchangeable work for the Company. However, in 2015, the Union insisted on "jurisdictional rigidity," i.e., that only its members perform operator work under their contract.[14]

The Union first became involved in operators' wage issues in December 2015. The policy and practice before then was that employees with questions about whether they were properly paid, according to the appropriate contract, type of work they performed, or number of hours they worked, generally went to Payroll Clerk Tejchma. She would investigate and adjust their pay if there was a clerical error or she could otherwise resolve the matter. Otherwise, she would refer the issue to Erickson, or the employee would contact him. There is no evidence that prior to December, any operators who could not resolve their pay disputes with Erickson contacted the Union or took any other steps.

In approximately the first week of December 2015, Crane Operator Jamey Foster and Oiler Cody Velat had a dispute with the Respondent, contending that they were entitled to additional pay and fringe benefits for work they performed under the geographical jurisdiction of the Great Lakes Fabricators and Erectors Association (one of the seven contractor associations set out in the short-form agreement). After they could not resolve the matter with the Company, they contacted Popps and informed him of the situation.

On about December 16, 2015, during a phone conversation on a separate topic, Popps mentioned to Erickson that Velat and Foster had the above pay rate issue. Erickson replied that he refused to talk about wages to a business representative and that Popps did not have the right to receive such information without the employees' permission. Popps responded that he believed he had that right. He further stated that Erickson was on the verge of an unfair labor practice, and Erickson told him to file it.

On December 18, 2015. Erickson sent almost identical texts to Foster and Foster, stating that if they could not resolve a wage issue with Tejchma, they needed to contact him, and "I refuse to discuss wages with a business agent." (GC Exhs. 9, 8.)

By a letter dated December 22, 2015, to Erickson, Union Attorney Andrew Nickelhoff threatened the filing of unfair labor practices if the Company persisted with the above conduct. (GC Exh. 16.) Erickson responded by email on December 23. (GC Exh. 17.) He said, inter alia, the following:

> (1) "The only statement that I have made regarding employee pay question is 'our employees need to follow our written policy regarding any payroll questions, if they cannot follow simple rules they made need to find other employment.'. . . . "
> (2) "Our employees have always followed the company rules regarding payroll questions and these questions have been resolved internally every time during my 40+ year tenure here. I have attached a copy of our policy concerning payroll questions for your review. . . . No payroll issue has ever went [sic] beyond step C. . . . "
> (3) "Ericson's [sic] has employed union labor since 1923 (currently 14+ separate union contracts) without any issues, until recently. It seems the current Local 324 representation wants to circumvent our company policy's [sic] as punishment for not signing a bogus contract they delivered to me a couple of months ago (note: I have also been told that she should not expect to be sent any men when we call the hall, due to this same issue) I thought these bully tactics went out long ago"
> (4) "I would expect that our Union would be better served if the representatives were trying to covert non-union contractors instead of pissing off the longstanding union contractor?."

The attached company rules (CP Exh. 1), entitled "Reminder," states that employees with payroll questions "must follow the following steps, in order":

> A. First discuss with Tejchma,, to verify the time cards are correct and make sure the issue is not a simple data entry error.
> B. If not resolved with her, contact Erickson and discuss the issue by phone.
> C. If not resolved by phone, Erickson will set up a meeting with you to review the applicable union contract.
> If there is still no agreement, Erickson will schedule an appointment with your business representative and meet with both of you.

On December 28, 2015, the Union filed grievances on behalf of Foster and Velat concerning their dispute over proper pay. (GC Exh. 5.)[15] On the same day, it filed unfair labor practice

[13] Tr. 599, et. seq. (Erickson); see also GC Exh. 17.
[14] Tr. 606–607 (Erickson).

[15] The grievances resulted in pay adjustments for Foster and Velat, and resolution of their disputes.

charges alleging violations of Section 8(a)(5) and (1) (GC Exh. 6, Case 07–CA–166694), based on the Respondent's conduct above.

The Union withdrew some of the charges on March 14, 2016 (R. Exh. 4), and on March 31, the Regional Director of Region 7 approved an informal Board settlement agreement with a nonadmission clause. (R. Exh. 5.) In the settlement agreement, the Respondent agreed it would:

> (1) Not prohibit employees from seeking assistance from the Union regarding wages and/or other terms and conditions of employment.
> (2) Rescind the December 18, 2015 text messages sent to employees on the subject.
> (3) Not Unilaterally impose preconditions, limitation or new procedures on enlisting the Union's assistance with payroll questions or other disputes concerning terms and conditions of employment.
> (4) Rescind the "Remind" issued on about December 24, 2015 on the subject.
> (5) Not Refuse to furnish the Union with requested information that is relevant and necessary to its role as bargaining representative.

The Regional Director closed the case on compliance on February 28, 2017. (R. Exh. 24.)

Both Erickson and Foster both testified that they spoke in Erickson's office in Muskegon after work hours in about early January 2016 and that their conversation started with Foster's job for the following day. However, because their accounts were so different, I cannot determine with certainty that it was the same conversation.

According to Foster, Erickson turned to the subject of Foster's grievance, stated that Popps was "playing games" and Erickson would play games back with him, Popps was leading employees down the wrong path and could jeopardize Foster's employment, and there would be a hostile work environment if Erickson had to "start laying guys off that[sic] worked there." (Tr. 180.)

I take into account that '"the testimony of current employees which contradicts statements of their supervisors is likely to be particularly reliable because these witnesses are testifying adversely to their pecuniary interest.'" *PPG Aerospace Industries,* 355 NLRB 103, 104 (2010), quoting *Flexsteel Industries,* 316 NLRB 745, 745 (1995), enfd. mem. 83 F.3d 419 (5th Cir. 1996). Thus, current employee status may serve as a "significant factor," among others, on which reliance can be placed in resolving credibility issues. *Avenue Care & Rehabilitation Center,* 360 NLRB 152, 152 fn. 2 (2014); *Flexsteel,* above. Foster's status as union steward since early 2016 does not lessen his economic reliance on the Respondent. Foster appeared candid, and he answered questions without hesitation and with no apparent attempt to slant his testimony either for or against the Respondent. Erickson was not a full reliable witness. Accordingly, I ordinarily would credit Foster's account over Erickson's.

However, there is a complication. Foster gave an affidavit to the Board on January 21, 2016, so presumably he related his account of what Erickson told him. One of the allegations that the Union subsequently withdrew in March 2016 was that the Respondent threatened employees with termination (which logically includes permanent layoff) if they communicated with and sought assistance from the Union regarding wages and other terms and conditions of employment; any such violation was not encompassed by the settlement agreement.

Paradoxically, Erickson's account of the relevant portion of their conversation, although quite different, also reflects his displeasure at Brandon and the Union, albeit for a different reason. According to Erickson, after discussing Foster's work assignment, he brought up the subject of the Union's recent appointment of Foster as union steward, replacing the previous steward, who had been elected: "I don't think Brandon is helping you by appointing you steward . . . I think Brandon's putting you in a bad position."[16]

Because of the uncertainties concerning Foster's account of the conversation vis-à-vis the unfair labor practice charges and settlement agreement, and whether Foster and Erickson were indeed addressing the same conversation, I will find as a background fact only that they had a conversation in early January 2016 in which Erickson made statements reflecting displeasure with Popps' conduct (whether related to the filing of a grievance or to the Union's appointment of a steward).

The 2016 Terminations

Prior to 2016, permanent, full-time operators who completed a job were subject to temporary layoffs, ranging from a day to weeks, depending on the season and what work was available. They retained their company keys and credit cards, and Erickson called them back to work directly after their layoffs.

The record does not reveal any occasions prior to 2016 when Erickson told any regular full-time employees who were laid off that they had to turn in their company keys and credit cards. However, he instructed all six employees "laid off" in 2016 to surrender all of their company property. Three of them were later called back for temporary, short-term jobs, two through the union referral hall, but Erickson did not directly recall any of them to return on a permanent basis.

A. Keith Stephenson—May 16

Stephenson worked for the Respondent as a teamster from October 2005 until approximately August 2015, when he changed to being an operator, primarily out of Muskegon. He did so through contacting Popps and getting Erickson's approval. On an average of twice a month, he had pay issues, most of which he resolved through Tejchma or Erickson. In December 2015, he worked in Pennsylvania but did not get the paid the higher local rate that he believed applied. When he called Tejchma in about late December and told her this, she responded that Erickson would handle it and "You need to quit talking to Brandon."[17]

About 3 weeks later, Stephenson spoke in the evening with Erickson in the Muskegon facility warehouse. Erickson detailed what he was going to be paid for the Pennsylvania work and said that Tejchma had saved him money. He further stated

[16] Tr. 587, 588.
[17] Tr. 340.

that Stephenson should come to him with any further questions and "You need to quit talking to Brandon because he's going to get you in trouble."[18]

On Sunday, May 15, Erickson texted Stephenson and told him to report to Muskegon at 8 a.m. the following day. They met there in the lunchroom the next morning. Erickson stated that he had to let Stephenson go for lack of work and was letting him go first based on experience, qualifications, and certifications.

Stephenson first testified that he asked Erickson what the real reason was and asked if it had anything to do with the Union, and Erickson said no.[19] However, after the General Counsel refreshed his memory with his June 30 affidavit,[20] he testified that Erickson stated, "This has been in the works for a while. I asked what has been in the works. He said all this union stuff. He also said that there was [sic] a lot of unhappy people around here, and I seemed unhappy."[21]

I see no reason to depart from the normal presumption that statements in an affidavit given shortly after the pertinent events occurred are normally more reliable than unrefreshed recall at trial. See, e.g., *Hobson Bearing International,* 365 NLRB No. 73, slip op. at 1 (2017); *El Vocero de Puerto Rico,* 365 NLRB No. 29, slip op. 6 fn. 10 (2017). These statements were similar to the statements that other employees attributed to Erickson. Accordingly, I credit Stephenson's testimony, as refreshed.

The next day, Stephenson was referred through the union hiring hall to do a short-term job for the Respondent. He worked 3 days (Wednesday through Friday) and then was laid off on May 20 when the job was over. He has not since worked for the Company. Although the complaint alleges that this May 20 layoff was also a violation of Section 8(a)(3), his 3-day temporary employment was job specific and foreseeably terminated upon the job's completion. Accordingly, it cannot be equated to permanent, regular employment. Therefore, the only operative date for the cessation of his employment is May 16.

I note Erickson's testimony that at the time Stephenson wanted to change to the operator position, Erickson told him that operators were subject to layoffs. However, fully crediting him, Erickson did not say anything that indicated the layoffs would be anything more than short term and temporary.

B. Matthew Rowe—May 16

Rowe started with the Respondent in 2013 as an apprentice forklift operator and oiler but later also operated smaller cranes at times, primarily out of the Grand Rapids facility. At one point, Rowe voluntarily left employment for at most 3 months and then was directly hired back by Erickson. Rowe testified that he was never previously laid off (although he may have construed the question as permanently laid off).

Rowe had about five to ten pay disputes during his employment. Prior to 2016, he went to the Union once about pay, when he was still an apprentice, but nothing in the record shows that the Respondent knew of this.

In approximately late April or the beginning of May, Rowe was paid under the AGC for work he was performing in setting up a crane in downtown Grand Rapids. He believed that he should have been paid the higher rate in the shop agreement and called Erickson. After Rowe explained his position, Erickson replied that he was wrong and hung up on him. Rowe contacted Joe Shippa, a union business representative in west Michigan, who resolved the matter with the Company.

About 3 days after Rowe's conversation with Erickson, on May 15, Rowe received a typical Sunday evening text from Ericson. It told him to come in to the Grand Rapids yard the next day at noon, which was not a normal reporting time.

After Rowe arrived the next day, Erickson sent him another text, telling him to meet in the office. There, Erickson stated that the Company was going in a different direction, work was drying up in the Grand Rapids area, and he was selling all of the smaller cranes and laying people off according to seniority and ability; Rowe was one of the low men on the totem pole. Erickson also stated words to the effect that he guessed that Rowe knew this was coming and, toward the end of the conversation, that he felt that if some of the employees were not happy there anymore, there was no reason to keep them.

C. Erin Baerman, Jason Baerman, and Nicholas Willer—June 20

Erickson directly hired Willer in June 1998. Willer started as an apprentice and eventually became a full-fledged union member. He earlier ran high-lo cranes (forklifts), but for the past 4 or 6 years, he operated a 60-ton crane out of Muskegon most of the time. He was not qualified to run the crawler cranes. During duration of his employment, he was laid off several times, each for 2–4 days, and then recalled by Erickson, who would call him at night and tell him to report the following day. The last time that this occurred was a couple of years ago.

Jason Baerman (Jason) was an operator based out of Muskegon since April 2007. He had four crane certifications, and the tower crane was the only crane of the Respondent for which he was not certified. Although assigned a 60-ton crane, he had experience with larger cranes and at the time of his layoff had recently come off of a project where he used a 110-ton crane. He was laid off frequently in 2008 and 2009, usually for 1–2 days but as long as 2 weeks, and in those years was unemployed more than he worked. After 2009, his layoffs were mostly in the spring months. After all his layoffs, he was called back directly by Erickson or the dispatcher. Every couple of weeks, he had a payroll issue and contacted Tejchma. Most of the time, the check would be fixed, or he would have to call her again.

Erin Baerman (Erin) worked for the Respondent as permanent employee starting in 2013. He was an operator, generally out of Muskegon. He had no crane certifications when he started but later acquired them for all of the Company's vehicles but the tower crane. In approximately 2014, he was laid off for the whole month of February, and at other times, he was laid off for periods of 1–2 days. Following all of those layoffs, Erickson recalled him by sending a text to be at the shop the next

[18] Tr. 343.

[19] Tr. 344 345.

[20] The June 30, 2013 date in the transcript is obviously an inadvertent error.

[21] Tr. 346 347.

morning. At least once a month, he went to Tejchma with paycheck issues, which were usually resolved by the next paycheck.

One morning in approximately late May, Erin was in Erickson's office in Muskegon. They had the following conversation.[22] Erin jokingly asked, "I'm not next to get the ax, am I?" Erickson replied that "Carlos and I might be because we were 40-ton guys and would be the next to go "unless this stuff stops with the Union. . . . I'm going to keep letting guys go until I get the guy I want unless this stuff stops with the Union."

When Erin and Jason Baerman and Willer reported to work on the morning of June 20, their names were on a posted job continuation order. (GC Exh. 10.) For job number, it had "324,"and it said, "Meet with Steve after 8 a.m."

They met with Erickson in the break room at about 8 a.m. As might be expected, Erin and Jason Baerman and Willer did not give identical accounts of everything that was said in the meeting. However, on material points, they were fully consistent and in no way contracted one another. Thus, all of them testified:

> Erickson stated that he was selling the small cranes and laying them off because of the Union.
> Erickson stated that Popps and/or Business Manager Doug Stockwell (to whom Popps reports) were "tyrants."
> Erickson said that they could get their jobs back if they talked to Popps and Stockwell and got them to change the way they were dealing with the Respondent.
> Jason brought up seniority and questioned why operators with less seniority were not being laid off.
> Willer made a comment about his being there 18 years.

Erin provided the most detailed account, and I believe that his depiction was most likely the most complete. His great attention to details is not suspect in light of his training as a police officer. To the extent that Jason and Willer spoke, I believe that they would have the most precise recollection of what they said. Jason added some details not mentioned by Erin. They are consistent with other evidence of record, and I incorporate them into my factual findings. Based on these considerations, I find the following

Erickson stated that he was letting them go and that it was nothing personal,

> [B]ut it is what the Union is forcing me to do. I'm done dealing with the Union. I'm done dealing w. Brandon Popps. I'm not going to let the Union tell me how to run my business, so I'm selling these 40s and 60s and letting go of the guys that run them. They don't make me any money. I have to subsidize the 90s. They don't real start making any money until the 120 crane. I don't why the Union doesn't want to pay these work hours in but if they are going to force me out of business then I'm going to help them … but you guys can make this stop. You can go tell Stockwell that you don't want Brandon talking for you. I'm done dealing with Brandon. I'm not going to answer his calls or texts. I am done dealing with Stockwell also. He is about the most arrogant son of a bitch I've ever met who wants to run your union like Hitler. Brandon and Stockwell are costing you your jobs. I've tried talking to them. They won't listen. But if I get rid of you guys, you guys could go talk to them and this could be reversed. We could go back to doing business like we'd done around here for the last 40 yrs.[23]

When Erickson said not to be angry at him but at the Union, Erin interjected that the Union had not hired them, Erickson had. Jason asked why Erickson was letting him go after he had been there 9 years but was keeping guys with a year or less who were making mistakes. Willer stated that he was there for 18 years and then fired in 5 minutes. Erickson responded that he was basing layoffs on qualifications, not seniority. In talking against Brandon and Stockwell, Erickson said that "the new contract they were trying to shove down his throat was going to get more people let go."[24]

I credit Erickson's testimony about the meeting only to the extent that it was consistent with the credited composite account of the three layoffs. I do not credit his testimony that Jason was the one who used the terms "tyrant" and "Hitler," in describing the way Erickson made decisions and did things on his own.

Willer has not worked for the Respondent since he was terminated on June 20. In approximately March 2017, the Respondent hired Jason, directly and not through the Union, to perform work on a temporary basis for a customer that specifically requested him. As of April 27, 2017, Erin had been working for about 3 weeks for the Respondent through the union hiring hall.

Carlos Ocampo—July 8

Ocampo was an operator since 2005. He obtained his crane certification about 5 years ago and had certifications to operate all of the Respondent's cranes except the lattice crawler and tower cranes. He was regularly assigned a 40-ton crane but moved around and also operated large hydraulic and small hydraulic equipment. Prior to 2016, he was laid off about five times for short periods, the longest 2 or 3 weeks. Each time, he was directly recalled. Ocampo had pay issues approximately five times annually. Prior to 2016, he resolved all of them either directly with Tejchma or, if she told him to call Erickson, with Erickson .

His last payroll disagreement was in January. He followed the normal procedure of calling Tejchma. She told him to call Erickson. He did so and left a message at about noon. Erickson called him back late that afternoon, and he explained that he did not understand the pay. Erickson responded to the effect that both were right, and the paperwork with his check would explain. That same day, Ocampo called Popps and reported the situation. After that, his pay was adjusted.

Approximately a week or two after the Baerman brothers and Willer were terminated on June 20, Ocampo called Erickson on his cell phone about a work matter. After that subject, Ocampo asked if he could ask Erickson a question. Erickson said to go ahead, and Ocampo asked if he was next. Erickson replied,

[22] Tr. 312.

[23] Tr. 315.

[24] Tr. 261 (Jason Baerman).

"[N]ot right now."[25]

On July 7, Ocampo was working in the Grand Rapids yard when Erickson texted him to stop and see him before he went home. Ocampo met him in one of the offices at that facility at about 4:30 p.m. Erickson something to the effect that "[y]ou probably know why you're here."[26] Ocampo replied that he had an idea because of what had been going on with guys getting laid off. Erickson then said that it was nothing that Ocampo did, that he had done a great job, but Erickson had to play by the rules and was not running small cranes anymore. He also said something to the effect that "Brandon is relentless, and no one seems to care about that."[27]

After Ocampo's layoff, 11 crane operators remained.[28][28] No operators have been permanently laid off since then. General Counsel's Exhibit 7 shows that since 2010, the respondent requested referrals from the union hall 52 times: three in 2010, four in 2014, six in 2015, 26 in 2016 (all June 27 and after), and 13 in 2017 through April 18. The hours worked by operators decreased by approximately 11.4 percent from 2015 to 2016 (R. Exh. 16), but no records were provided to compare this change to previous years.

The Respondent's Economic Defense

The Respondent avers that the six terminations were layoffs motivated solely by legitimate business considerations and had nothing to do with the Union; more specifically, changing market conditions have led him to decide to sell his 40- and 60-ton cranes and shift to more profitable larger cranes, in part in anticipation of his seeking work in the "windmill sector" in geographic areas outside west Michigan.

The Respondent owns 36 cranes.[29] (R. Exh. 6.) They include: (1) three carrydecks—small cranes used in rigging operations to lift over another machine in factory settings; (2) 14 under 120 tons; (3) 17 over 120 tons; and (4) two tower cranes—for large projects, such as apartment buildings. The under 120-ton category includes two 40-ton, one 55-ton, four 60-ton, two 75-ton, one 80-ton, and three 90-ton.

Erickson testified that the larger cranes produce the most revenue because they receive the highest rental rate. Thus, the largest crawler crane (900-ton) rents for $125,000 a month and also requires considerable accessory equipment, thereby giving work to the Respondent's trucking department. Most of the fleet of cranes are used within the State of Michigan, but the largest are used out of the state. He further testified that the trend for at least 10 years has been toward less work for small cranes in the Respondent's geographic area and that he has been selling smaller cranes since 2003.

Respondent Exhibit 9, prepared in preparation for trial, is a summary of the hours and billing by category of crane from 2005 to 2016. It reflects a general trend since 2005 of lower billing and hours for the under 120-ton cranes, and higher billing and hours for the over 120-ton cranes.

Buying and selling equipment has always been part of the Respondent's business. Generally, when cranes reach 10 years of age or 10,000 hours of use, they are put up for sale. Respondent's Exhibit 7 shows that from 2005—2017, 22 cranes, or about 1.5 cranes per year, were sold (carrydecks are the smallest cranes, used in an ancillary fashion with other cranes):

(1) 2003—2 (1 carrydeck; 1 under 120-ton)
(2) 2005—1 (1 under 120)
(3) 2006—2 (1 over 120, 1 under 120)
(4) 2008—2 (2 under 120)
(5) 2009—9 (2 carrydecks, 7 under 120, 2 over 120)
(6) 2012—2 (both over 120)
(7) 2013—1 (over 120)
(8) 2015—1 (over 120)
(9) 2017—2 (1 carry deck, 1 under 120)

Respondent's Exh. 8(b) (sealed pursuant to a joint stipulation by the General Counsel and the Respondent) is a list of the Respondent's five most recent crane purchases, from November 2013 to September 2016. All but one were in the over 120-ton classification.

Respondent's Exhibit 15 is summary of the hours worked on each of the 40-ton and 60-ton cranes that were still for sale at the time of the hearing, from 2007 to 2015. With the exception of 2011, there was a continuous drop in hours each year for all four cranes. The Respondent also submitted time card average hourly pay reports for operators for March and April 2014 and for February 2016 (R. Exhs. 22, 23), which show a large drop in total hours worked. No such reports were furnished for any intervening months after April 2014 and before February 2016, or for the months of March to May 2016, so these time card records are of limited utility.

Erickson testified that in approximately March or April, he first discussed with Brent Erickson selling the smaller cranes. Based on the Respondent's analysis of all equipment at the end of fiscal year 2015 (April 30, 2016), he then made the decision to sell the 40- and 60-ton cranes. He subsequently contacted three equipment brokers.

Respondent Exhibit 21 consists of a series of emails between Erickson and Gene Landres of Utility Cranes and Equipment, LLC, an equipment broker, from May 13–June 6. In the first email, Landres asked if the Respondent had anything for sale. On May 14, Erickson responded that he would have six–ten machines for sale this year and would provide details in a couple of weeks, and the next day he stated that he would send a list of smaller cranes for sale when he got it done.

By an email of July 13 (GC Exh. 18) to Landres, Erickson attached a spreadsheet of the cranes and accessories that he had for sale. As far as cranes, their sizes were as follows:

(1) 14-ton—1
(2) 15-ton—1
(3) 40-ton—2
(4) 55-ton—1
(5) 60-ton—2
(6) 75-ton—2

[25] Tr. 208.

[26] Tr. 210.

[27] Tr. 210; see also Tr. 211.

[28] See R. Exh. 26 at 1–4. It does not include the four forklift operators who also continued their employment.

[29] The Respondent's brief (at 28 fn. 10) asserts that in June 2017, the Respondent sold two 40-ton, two 60-ton, and two-90 ton cranes. However, statements of counsel are not evidence. *Chicago Typographical Union 16 (Chicago Sun-Times),* 296 NLRB 180, 182 fn. 4 (1989).

(7) 82-ton—1
(8) 90-ton—1
(9) 275-ton—1
(10) 300-ton—3
(11) 500-ton—1

Landres replied by an email of July 14 (GC Exh. 19), saying that the market for those cranes was slow, and suggesting optimal sales prices and that the equipment be cleaned up before putting them up for sale.

General Counsel Exhibit 20 consists of further emails between Erickson and Landres, from August 29 to September 14. They include one from Landres to Erickson on August 29 (p. 5), in which he stated: "SALES LIST: July 13 you emailed a list, we replied on July 14 but did not hear back from you, are you still interested in selling?" Landres also stated that the market had further declined. Erickson replied that same day (p. 4), saying that he was interested in selling some machines but that "I am not in a hurry to sell anything and will wait for the right buyer that wants well maintained equipment." [30]

General Counsel Exhibit 21 consists of emails between Erickson and Landres on October 7 and 8, in which they confirmed the asking prices for certain cranes, and made arrangements for Landres to have sales photographs taken. As of the time of the trial, none of the 40- or 60-ton (or 75-ton) cranes referenced in GC Exh. 18 had been sold (see R. Exh. 14), and at least the four 40- and 60-ton cranes were still being used occasionally.

The Respondent's Selection of the Six Employees

Erickson was the sole decision maker in determining who would be permanently laid off in 2016. He testified at various points that he took into account certifications, skills, training, and qualifications, with experience on particular equipment, "extremely important,"[31]in laying off the six crane operators and retaining 11 others (15 adding forklift operators). As I earlier noted, only later in his testimony did he add the additional factor of whether the operator was assigned to a particular crane, and he gave a very nonspecific answer when asked if he has a general methodology that he uses to assess qualifications based on experience and other factors.

The contract does not provide for a seniority list or say anything about the role of seniority in layoffs, and Erickson did not consider it a factor. He testified that he did use hire date in determining to keep Bruce Springer (who was assigned to a 90-ton crane and qualified for all cranes smaller than that) over Jason Berman, inasmuch as he considered them similar in qualifications.

[30] GC Exhs. 19 and 20 contradict Erickson's testimony that he believed the cranes were put up for sale on the web in July. They also shed doubt on his testimony that the delay in putting them up for sale was due to logistics issues regarding Landre's getting professional photographs of the equipment, rather than in large measure to his own actions or inactions.

[31] Tr. 485.

Analysis and Conclusions

Independent 8(a)(1) Allegations

By Tejchma

In about early January, when Stephenson called Payroll Clerk Tejchma concerning a dispute of what contractual pay rate applied, she stated that Erickson would handle it and "You need to quit talking to Brandon." About 3 weeks later, Erickson told him, "You need to quit talking to Brandon because he's going to get you in trouble." Only Stephenson's conversation with Tejchma is alleged as a violation.

The General Counsel does not contend that Tejchma was a supervisory employee; rather, the General Counsel avers that she was a Section 2(13) agent as far as payroll matters were concerned. The Respondent disagrees. If she was an agent, then her statement to Stephenson violated Section 8(a)(1), because telling an employee during a conversation about a wage disagreement to stop talking to his business representative was clearly coercive of his Section 7 rights.

When agency status under section 2(13) is at issue, the Board applies common law principle of agency in examining whether an employee is an agent while making a particular statement or taking a particular action. *Cooper Industries,* 328 NLRB 145, 145 (1999). Using these common law principles, the Board may find agency based on either actual or apparent authority to act for the employer, with the latter resulting from "a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe that the principal has authorized the alleged agent to perform the acts in question. Ibid; *Southern Bag Corp.,* 315 NLRB 725, 725 (1994). The test is whether, under all the circumstances, employees would reasonably believe that the alleged agent "'was reflecting company policy and speaking and acting for management." *D & F Industries,* 339 NLRB 618, 619 (2003), quoting *Cooper Industries,* above.

Tejchma could on her own resolve payroll issues turning on errors in employee reporting or in the way the Respondent calculated their hours, but she had to refer to Erickson matters involving what contractual pay rate applied. Moreover, if she and the employee could not agree, the pay dispute went to Erickson. These policies were generally communicated to employees. In these circumstances, I conclude that operators would reasonably have considered her role to be essentially clerical rather than managerial. Her one statement to Stephenson strikes me as insufficient to have led him to reasonably believe that she was talking on Erickson's behalf. His conversation with Erickson, in which Erickson said the same thing, occurred later. Had it been earlier, an argument could be made that her reiteration would have indeed caused him to conclude that she spoke for Erickson. Such was not the case. I therefore find no violation by Tejchma.

By Erickson

The Respondent (R. Br. at 77–78) cites Section 8(c) of the Act as privileging Erickson to speak to employees about issues facing the Company and the industry. Section 8(c) provides that an employer's expression of views, argument, or opinion is not an unfair labor practice if it contains "no threat of reprisal or force or promise of benefit." 29 U.S.C. § 158(c).

Consistent with Section 8(c), threats to discharge employees, either express or implicit, for their protected concerted activity of voicing employment-related complaints are found to violate Section 8(a)(1). *Alton H. Piester, LLC,* 353 NLRB 369, 370 (2008); *Datwyler Rubber &Plastics, Inc.,* 350 NLRB 669, 669 fn. 2 (2007). Similarly, an employer's statements connecting displeasure with a steward's activities on behalf of employees to taking adverse actions against employees violate Section 8(a)(1). *Coyne International Enterprises Corp.,* 326 NLRB 1187, 1193 (1998).

The complaint alleges that Erickson committed four independent violations of Section 8(a)(1), three when he was terminating employees, and the fourth in a separate context. The Board has held that an employer's statements linking an unlawful discharge to the employee's protected activity independently violates Section 8(a)(1). *Three D, LLC,* 361 NLRB 308 fn. 2; *Benesight, Inc.,* 337 NLRB 282, 283–284 (2001).[32] Therefore, I will treat these incidents the same.

On May 16, when Erickson told Stephenson that he was permanently laid off, Erickson stated. "This has been in the works for a while. When Stephenson asked what had been in the works, Erickson replied "all this union stuff" and added that there were a lot of unhappy people around there, and Stephenson seemed unhappy.

Erickson's statements would reasonably have caused Stephenson to believe that there was a nexus between his termination and the way the Union was representing employees. Accordingly, Erickson violated Section 8(a)(1) by stating that Stephenson's layoff was connected to the Union.

On the same day, when Erickson terminated Rowe, he stated words to the effect that he guessed that Rowe knew this was coming and, toward the end of the conversation, that he felt that if some of the employees were not happy there anymore, there was no reason to keep them.

As opposed to Erickson's statements to Stephenson, his remarks to Rowe were too ambiguous and nonspecific to reasonably infer a connection between the layoff and the Union. Accordingly, I find no violation as to Rowe.

In approximately late May, in Erickson's office in Muskegon, when Erin Baerman jokingly asked, "I'm not next to get the ax, am I?" Erickson replied that "Carlos and I might be because we were 40-ton guys and would be the next to go "unless this stuff stops with the Union . . . I'm going to keep letting guys go until I get the guy I want unless this stuff stops with the Union."

Erickson's statements to Erin Baerman were explicit threats that the latter and other employees would be terminated because of his animus toward the Union for the way it was representing employees. Accordingly, this was a violation of Section 8(a)(1).

When Erickson terminated the Baerman brothers and Willer on June 20, he mentioned economic considerations but emphasized that they were being laid off because of the Union, which was telling him how to run his business, forcing him out of business, and "costing you your jobs." He used pejorative language, referring to Stockwell as "the most arrogant son of a bitch I've ever met who wants to run your business like Hitler." He said that they could get their jobs back if they got Popps and Stock well to change the way the Union was dealing with him. Finally, he threatened more layoff because of "the new contract that they were trying to shove down his throat."

I conclude that Erickson violated Section 8(a)(1) by (1) telling employees that they were being terminated because of the Union's conduct in representing them, and (2) disparaging the Union and its leadership,. As to the disparagement, Section 8(c) of the Act, protecting an employer's right of free speech to express an opinion, does not shield an employer's statements denigrating a collective-bargaining representative if they contain express or implicit threats of reprisal or force or promise of benefit in violation of Section 8(a)(1). *NLRB v. Gissel Packing Co.,* 395 U.S. 575, 617 (1969); *Regency House of Wallingford,Inc.,* 356 NLRB 563, 567 (2011). Here, they were integrally enmeshed with terminations that Erickson blamed on the Union.

The General Counsel alleges that Erickson's statement at the June 20 meeting, that the employees could get their jobs back if they got the Union to change its conduct, violated Section 8(a)(5) and (1) by amounting to a bypass of the Union and direct dealing with unit employees. See complaint paragraph 17.

A respondent violates Section 8(a)(5) and (1) when it bargains directly with employees outside the presence of their designated bargaining representatives. *Medo Photo Supply Corp. v. NLRB,* 321 U.S. 678, 683-685 (1944); *Georgia Power Co.,* 342 NLRB 199, 199 (2004), enfd. 427 F.3d 1354 (11th Cir. 2005); *Kens Building Supplies,* 142 NLRB 235, 235 (1963), enfd. 333 F.2d 84 (6th Cir. 1964).

Conceptually, I have a problem with this statement constituting any kind of "bargaining" over terms and conditions of employment. Nothing in his statement contained proposals or offers on their wages, or otherwise. Rather, Erickson was implicitly promising the employees re-employment if they got the Union to change the way that it was representing them. I therefore do not consider bypassing the Union to be the appropriate framework. Instead, I find that the statement was coercive and constituted another independent violation of Section 8(a)(1).

The Terminations

The framework for analyzing alleged violations of Section 8(a)(3) turning on employer motivation is *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). *General Motors Corp.*, 347 NLRB No. 67 fn. 3 (2006) (not reported in Board volumes). Under *Wright Line,* the General Counsel must make a prima facie showing sufficient to support an inference that the employee's protected conduct motivated an employer's adverse action. The General Counsel must show, either by direct or circumstantial evidence, that the employee engaged in protected conduct, the employer knew or suspected the employee engaged in such conduct, the employer harbored animus, and the employer took action because of this animus.

Under *Wright Line,* if the General Counsel establishes a pri-

[32] Now Chairman Miscimarra dissented on point in *Andronaco Industries*, 364 NLRB No. 142, slip op. at 1 fn. 1 (2016), taking the position that any such statement is essentially subsumed by the discharge itself..

ma facie case of discriminatory conduct, it meets its initial burden to persuade, by a preponderance of the evidence, that protected activity was a motivating factor in the employer's action. The burden of persuasion then shifts to the employer to show that it would have taken the same adverse action even in absence of such activity. *NLRB v. Transportation Corp.*, 462 U.S. 393, 399−403 (1983); *Kamtech, Inc. v. NLRB*, 314 F.3d 800, 811 (6th Cir. 2002); *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996), enfd. 127 F.3d 34 (5th Cir. 1997) (per curiam). To meet this burden, "[A]n employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct." *Serrano Painting,* 332 NLRB 1363, 1366 (2000), citing *Roure Bertrand Dupont, Inc.,* 271 NLRB 443 (1984).

If the employer's proffered defenses are found to be a pretext, i.e., the reasons given for the employer's actions are either false or not, in fact, relied on, the employer fails by definition to show that it would have taken the same action for those reasons, and there is no need to perform the second part of the *Wright Line* analysis. On the other hand, further analysis is required if the defense is one of "dual motivation," that is, the employer defends that, even if an invalid reason might have played some part in the employer's motivation, the employer would have taken the same action against the employee for permissible reasons. *Palace Sports & Entertainment, Inc. v. NLRB*, 411 F.3d 212, 223 (D.C. Cir. 2005).

As far as the terminated employees' engagement in union activity, this case is atypical. Erickson expressed displeasure at operators going to the Union with wage disputes instead of trying to resolve them directly with the Company. The violations listed in the earlier settlement agreement, as well as statements that Erickson made to Popps and various employees clearly show this. However, Erickson's statements to employees emphasized his frustration and anger at the Union's leadership for the actions it was taking on their behalf, as did his statements to union representatives. The record establishes that this was due primarily to the Union's conduct in: (1) taking steps, including the filing of grievances and/or unfair labor practices, to ensure that employees were paid higher wages when they were entitled to such; and (2) pressing the Respondent to agree to mid-term changes in the shop agreement that would provide the operators with higher wages.

Prior to their terminations, Ocampo, Rowe, and Stephenson had taken their pay disputes to the Union, which resolved them with the Respondent, thereby establishing union activity and employer knowledge. The record does not reveal whether the remaining three terminated operators also engaged in such activity. However, this is not a fatal flaw in the General Counsel's case. Firstly, employees are protected from discriminatory conduct by an employer due to their suspected union or other protected activity, even if the employer's belief is mistaken. See *NLRB v. Link Belt Co.,* 311 U.S. 584, 589–590 (1941); *Alternative Energy Applications, Inc.,* above at slip op. 4 fn. 8 (2014). Secondly, in mass layoff situations where the purpose is discouraging employees from engaging in union activity, or retaliating against them for such activity, the General Counsel does not need to establish each individual employee's union activity and knowledge, or that all union adherents were laid off. *ACTIV Industries, Inc.,* 277 NLRB 356, 356 fn. 3 (1985); *Pyro Mining Co.,* 230 NLRB 782, 782 fn. 2 (1977) ("The layoff itself, not the selection of employees, was unlawful."); *Birch Run Welding & Fabricating Inc. v. NLRB,* 761 F.2d 1175, 1179-1180 (6th Cir. 1985) ("The rationale underlying this theory is that general retaliation by an employer against the workforce can discourage the exercise of section 7 rights just as effectively as adverse action taken against only known union supporters." 761 F.2d at 1180). Finally, the Union's conduct on behalf of operators in general, and Erickson's knowledge thereof, are undeniable. I therefore find that the General Counsel has established the elements of union activity and employer knowledge.

Turning to animus, the events in December 2015 underlying the informal Board settlement agreement that the Region Director approved on March 31 can be considered as background evidence. The Respondent therein agreed it would:

> (1) Not Prohibit employees from seeking assistance from the Union regarding wages and/or other terms and conditions of employment.
> (2) Rescind the December 18, 2015 text messages sent to employees on the subject.
> (3) Not Unilaterally impose preconditions, limitation or new procedures on enlisting the Union's assistance with payroll questions or other disputes concerning terms and conditions of employment.
> (4) Rescind the "Remind" issued on about December 24, 2015 on the subject.
> (5) Not Refuse to furnish the Union with requested information that is relevant and necessary to its role as bargaining representative.

I have found that Erickson violated Section 8(a)(1) by:

> On May 16, telling Stephenson that he was being terminated because of the Union's conduct in representing employees.
> In late May, threatening Erin Baerman that he and other employees would be terminated because of the Union's conduct in representing employees.
> On June 20, disparaging the Union to the Baerman brothers and Willer; telling them that they were being terminated because of the Union's conduct in representing employees; and implicitly promising that they could get their jobs back if they got the Union to change the way it was representing them.

Furthermore, in early January, Erickson made statements to Foster reflecting displeasure with Popps' conduct as union business representative, and Erickson's December 2015 email to Union Attorney Nickelhoff expressed antagonism toward the Union's leadership.

In light of the above, I find express the element of animus satisfied.

Undeniably, the Respondent terminated all six employees on May 16, June 20, or July 7, so the final element of employer action is also satisfied. The General Counsel has therefore established a prima facie case that the layoffs were unlawful.

The Respondent's Defense

The Respondent asserts that all of the permanent layoffs

were economically motivated, more specifically the transition of the Company's business as a result of changing market conditions, resulting in selling smaller cranes and buying larger ones. In particular, the Respondent contends (and Erickson told the layoffs) that it was selling the 40- and 60-ton cranes. Based on the following factors, I conclude that the Respondent's economic defense is a pretext: (1) no regular full-time operators were ever permanently laid off or terminated in the several decades prior to 2016; (2) the terminations closely followed the Union's leadership taking a more proactive stance in representing employees' interests; (3) Erickson repeatedly made statements to employees that tied in terminations with the Union's conduct; and (4) Erickson, by his actions and his own words, was "in no hurry" to sell any of the cranes that he offered for sale, including the 40- and 60-ton cranes.

Assuming arguendo that this is treated as a dual motivation case, the Respondent's defense still fails for the following reasons.

Initially, it is important to keep in mind that the six layoffs in 2016 were permanent layoffs or terminations, in contrast to earlier short-term layoffs after which Erickson directly called the employee back to work. Of great significance, there is no evidence that this type of permanent layoff ever occurred at any time prior to 2016, even though the Respondent has recognized the Union for over 40 years.

In this regard, Erickson testified that the trend for at least 10 years has been toward less work for small cranes in the Respondent's geographic area and that he has been selling smaller cranes since 2003, yet he never permanently laid off employees until 2016. Moreover, Respondent's Exhibit 7 does not corroborate his testimony; rather it shows no pattern in recent years of selling smaller cranes. On the contrary, after 2009, four of the six cranes he sold were over 120 tons, one was under 120 tons, and one was a carrydeck (ancillary crane). Furthermore, of the 16 cranes that the Respondent put up for sale in 2016, only four were 40- or 60-ton, and nine were over 60-ton (the largest were 275, 300, and 500 tons).

Erickson's testimony that that in approximately March or April, he first discussed with Brent Erickson selling these smaller cranes was at odds with his testimony that divesting the Company of smaller cranes was a longstanding business decision due to changes in the industry going back at least a decade. He further testified that based on the Respondent's analysis of all equipment at the end of fiscal year 2015 (April 30, 2016), he then made the decision to sell the 40- and 60-ton cranes, and subsequently contacted three equipment brokers. However, none of them were up for sale at the time of the last layoff, on July 8. In fact, it appears from the email correspondence between Erickson and Landres of Utility Cranes (GC Exh. 21) that they were not actually put on the market until after October 8. They were still in use at the time of the trial.

The following, in and of itself, sheds considerable doubt on whether the timing of the layoffs was based on bona fide business considerations. By an email of August 29 to Erickson (GC Exh. 20), Landres stated: "SALES LIST: July 13 you emailed a list, we replied on July 14 but did not hear back from you, are you still interested in selling?" Erickson replied that same day and said he was "not in a hurry to sell anything. . . ."

It also is noteworthy that the Respondent markedly increased its use of the union hiring hall for temporary hires starting in mid-2016—during the period of the layoffs—and continued to do so into 2017. Thus, in 2016, the Respondent requested double the number of referrals than it had requested in all the years 2010–2015, and the number of referrals from January 1 through April 18, 2017 (approximately 3-1/2 months), equaled the number of referrals from 2010–2015. This undercuts the Respondent's claim that decreased work for operators in mid-2016 justified the six layoffs.

In sum, I do not doubt Erickson's contentions concerning general business trends in the industry and his long-term plans to adapt to them. However, the Respondent has not satisfactorily demonstrated that the timing of the layoffs in 2016 was based on specific economic conditions or events occurring in the months immediately preceding them, rather than on animus toward the Union for its increased assertiveness in representing unit employees. See *Rain-Ware, Inc.,* 263 NLRB 50, 55 (1982); enforced 732 F.2d 1349, 1354 (7th Cir. 1984).

I conclude that the terminations were motivated by Erickson's frustration and anger at the Union for the conduct of its officials in seeking to secure higher pay for the operators whom they represented, including the filing of grievances and unfair labor practice charges. The Respondent's selection of the six employees was due not to any particular union activity on their parts as individual individuals but rather was meant to send a message to the Union, and to unit employees to pressure the Union, to retreat from those efforts. Indeed, Erickson implied this to Erin Baerman in late May, and expressly said it to the Baerman brothers and Willer on June 20 ("You can go tell Stockwell that you don't want Brandon talking for you. . . . I've tried talking to them. They won't listen. But if I get rid of you guys, you guys could go talk to them and this could be reversed. . . ."). In light of this determination, I need not individually address the qualifications or experience of specific employees, including weighing Jason Baerman's possession of certifications to run all cranes under the tower crane, and his recent operation of a 120-ton crane; Erin Baerman's possession of certifications to run all cranes under the tower crane; or Willer's 18 years' employment with the Company.

As the owner of a long-established family business, Erickson's vexation with the Union's greater advocacy on behalf of unit employees might have been understandable, but it did not afford him the legal right to take out such displeasure on the employees.

The Respondent having failed to rebut the General Counsel's prima facie case, I conclude that it violated Section 8()(3) and (1) by terminating the six employees.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By the following conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(1) of the Act:

(a) Threatened employees with termination because of the conduct of the Union on their behalf.

(b) Told employees that they were being terminated because of the conduct of the Union on their behalf.

(c) Disparaged the Union in conjunction with telling employees that they were being terminated because of the Union's conduct on their behalf.

(d) Implicitly promised employees that they could get their jobs back if they got the Union to change the way it represented them.

4. By the following conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(3) of the Act:

(a) Terminated Matthew Rowe and Keith Stephenson on May 16, 2016.

(b) Terminated Erin Baerman, Jason Baerman, and Nicholas Willer on June 20, 2016.

(c) Terminated Carlos Ocampo on July 8, 2016.

REMEDY

Because I have found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent having discriminatorily terminated Erin Baerman, Jason Baerman, Carlos Ocampo, Matthew Rowe, Keith Stephenson, and Nicholas Willer, must make them whole for any losses of earnings and other benefits suffered as a result of their terminations.

Specifically, the Respondent shall make Erin Baerman, Jason Baerman, Ocampo, Rowe, Stephenson, and Willer whole for any losses, earnings, and other benefits that they suffered as a result of their unlawful terminations and, where applicable, the unlawful refusal and failure to recall them. The make whole remedy shall be computed in accordance with *F.W. Woolworth Co.,* 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). In accordance with *King Soopers, Inc.,* 364 NLRB No. 93 (2016), the Respondent shall compensate Erin Baerman, Jason Baerman, Ocampo, Rowe, Stephenson, and Willer for search-for-work and interim employment expenses regardless of whether those expenses exceed [his/her/their] interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons,* supra., compounded daily as prescribed in *Kentucky River Medical Center,* supra. In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas,* 361 NLRB 101 (2014), the Respondent shall compensate Erin Baerman, Jason Baerman, Ocampo, Rowe, Stephenson, and Willer for the adverse tax consequences, if any, of receiving lump sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.,* 363 NLRB No. 143 (2016), the Respondent shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 7 a report allocating backpay to the appropriate calendar year for each employee. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner.

The Respondent also having discriminatorily failed and refused to recall Erin Baerman, Jason Baerman, Ocampo, Rowe, Stephenson, and Willer must offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed. To the extent that the Respondent argues (R. Br. at 12, 80–82) that no work is available for the six employees, that would be a compliance matter.

The Respondent shall expunge from its records any and all references to the terminations of Erin Baerman, Jason Baerman, Ocampo, Rowe, Stephenson, and Willer.

The General Counsel requests the special remedy that Erickson be required to read the notice to employees on work time, in the presence of a Board agent, at a meeting or meetings scheduled to ensure the widest possible attendance of its employees. Alternatively, the General Counsel seeks an order requiring that Respondent promptly have a Board agent read the notice to employees during work time in the presence of all employees.

Such a special remedy is appropriate where a normal remedy is inadequate because the respondent's unfair labor practices are "so numerous, pervasive and outrageous" that the remedy is needed to "dissipate fully the coercive effects" of those unfair labor practices. *Fieldcrest Cannon, Inc.,* 318 NLRB 470, 473 (1995); see also *Federated Logistics & Operations,* 340 NLRB 255, 256 257 (2003). I recognize that the seriousness of the Respondent's violations, including six unlawful terminations and several unlawful statements by its sole owner and officer. However, the record does not indicate that prior to January 2016, any unfair labor practice charges have ever been filed against the Respondent in the approximately 34 years that Erickson has been the owner and dealt throughout this period with three labor organizations, including the Union. The charges relating to his conduct in December 2015 were the subject of a settlement agreement with a nonadmission clause, which was closed on compliance. Thus, this is not a situation where the Respondent has demonstrated a pattern of committing violations or has ever breached the terms of a settlement agreement. In these circumstances, I decline the General Counsel's request for a special remedy.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[33]

ORDER

The Respondent, Erickson Trucking Service, Inc. d/b/a Erickson's Inc., Grand Rapids and Muskegon, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating or otherwise discriminating against employees because Local 324, International Union of Operating Engi-

[33] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

neers (OPEIU), AFL-CIO (the Union), their collective-bargaining representative, acted to secure them higher wages or otherwise represented them.

(b) Threatening employees with termination because of the Union's conduct on their behalf.

(c) Telling employees that they are being terminated because of the Union's conduct on their behalf.

(d) Disparaging the Union in conjunction with telling employees that they are being terminated because of the Union's conduct on their behalf.

(e) Implicitly promising employees that they can get their jobs back if they get the Union to change the way it represents them.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Erin Baerman, Jason Baerman, Carlos Ocampo, Matthew Rowe, Keith Stephenson, and Nicholas Willer full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Erin Baerman, Jason Baerman, Carlos Ocampo, Matthew Rowe, Keith Stephenson, and Nicholas Willer, whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful terminations of Erin Baerman, Jason Baerman, Carlos Ocampo, Matthew Rowe, Keith Stephenson, and Nicholas Willer, and within 3 days thereafter notify them in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in Grand Rapids and Muskegon, Michigan, copies of the attached notice marked "Appendix."[34][34] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet set, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 16, 2016.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., August 11, 2017.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

Local 324, International Union of Operating Engineers (OPEIU), AFL–CIO (the Union) is the collective-bargaining representative of a unit of our employees.

WE WILL NOT terminate or otherwise discriminate against you because the Union has acted to increase your wages or other benefits, or has otherwise represented you.

WE WILL NOT threaten you with termination, or tell you that you are being terminated, because the Union has engaged in conduct on your behalf.

WE WILL NOT disparage the Union in connection with telling you that you are being terminated because the Union has engaged in conduct on your behalf.

WE WILL NOT implicitly promise you that you can get your jobs back if you get the Union to change the way that it represents you.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the Act, as set forth at the top of this notice.

WE WILL within 14 days from the date of the Board's Order, offer Erin Baerman, Jason Baerman, Carlos Ocampo, Matthew Rowe, Keith Stephenson, and Nicholas Willer full reinstate-

[34] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ment to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Erin Baerman, Jason Baerman, Carlos Ocampo, Matthew Rowe, Keith Stephenson, and Nicholas Willer whole for any loss of earnings and other benefits they suffered as a result of our discrimination, with interest.

WE WILL remove from our files any references to the terminations of Erin Baerman, Jason Baerman, Carlos Ocampo, Matthew Rowe, Keith Stephenson, and Nicholas Willer, and we will, within 3 days thereafter notify them in writing that this has been done and that the terminations will not be used against them in any way.

ERICKSON TRUCKING SERVICE, INC. D/B/A ERICKSON'S INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/ 07–CA–178824 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7

In the Matter of:

ERICKSON TRUCKING SERVICE, INC.,
d/b/a ERICKSON'S, INC.,

Respondent, | Case No. 07-CA-178824

and

LOCAL 324, INTERNATIONAL UNION
OF OPERATING ENGINEERS (OPEIU),
AFL-CIO,

Charging Party.

The above-entitled matter came on for hearing pursuant to notice, before IRA SANDRON, Administrative Law Judge, at the National Labor Relations Board, Gerald R. Ford Federal Building, 110 Michigan Street, S.W., Suite 299, Grand Rapids, Michigan, on Wednesday, April 26, 2017, at 10:00 a.m.

APPEARANCES

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APPEARANCES (cont.)

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PROCEEDINGS

(Time Noted: 10:15 a.m.)

JUDGE SANDRON: This is a formal trial before the National Labor Relations Board in Erickson's Trucking Services, Inc., d/b/a Erickson's, Inc., case 07-CA-178824. The presiding judge in this matter is Ira, I-r-a, Sandron, S-a-n-d-r-o-n, out of the Washington office of the Division of Judges.

Will counsel for the parties please state your appearances for the record? For the General counsel?

MS. CAROL: Colleen Carol, Counsel for the General Counsel.

JUDGE SANDRON: And for the Respondent?

MR. EASTLAND: Keith Eastland of the law firm Miller Johnson, with my friend and partner Matthew O'Rourke also of the law firm Miller Johnson, on behalf of Respondent, Erickson's, Inc.

JUDGE SANDRON: And for the Charging Party?

MS. BACHELDER: For the Charging Party/Union, Amy Bachelder of the law firm of Sachs Waldman.

JUDGE SANDRON: If at any point there's any change in the parties' positions regarding possible settlement, please let me know during the course of the trial. Also, if at any point counsel feels that there might be a possibility of stipulating certain facts and documents, then I will give you

an opportunity to discuss that with opposing counsels.

Several preliminary matters before we begin the evidentiary portion of the proceeding. My twin goals today and on the further hearing dates are to ensure efficient and effective use of our hearing time and minimize expense and effort required both to the government and other parties, and secondly, to ensure a fair hearing and full due process for all parties.

At the outset, please keep in mind the formal nature of this hearing. Proceedings before the National Labor Relations Board Administrative Law Judge shall, quote, "so far as practicable," closed quote, be conducted in accordance with the Rules of Evidence applicable in U.S. District Courts. See Section 10(b) of the Act, Section 160(b), and the Board's rules Section 102.39. In this regard, the Federal Rules of Evidence, or FRE, provide useful guidance but are not necessarily strictly applied. See International Business Systems, 258 NLRB 181, 185 footnote 5 (1981), enforcement 659 F.2d 1069 (3rd Cir. 1983).

In addition, Rule 403 of the Federal Rules of Evidence provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues whereby considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Rule 611(a) of the

Federal Rules of Evidence provides that the Court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of truth; (2) avoid needless consumption of time; and (3) protect witnesses from harassment or undue embarrassment. Consistent with this, Section 102.35(a)(6) of the Board Rules gives the Administrative Law Judge authority, quote, "to regulate the course of the hearing," close quote.

It's important that everyone speak loudly and clearly enough so that what is said is properly recorded. If the Court Reporter feels there's any problem with this as we go along, he has my authorization to interject because it's critically important that everything is properly recorded.

When we're on the record, also, phones should be turned off.

Only one person should speak at a time, and opposing counsel should wait until a question is finished before interposing an objection. If an objection is made to a question, then -- strike that.

Opposing counsel, as I said, should wait till the question is finished. Now, if an objection's made to a question, opposing counsel does not need to respond to that objection unless I request that you do so. If I feel that I can make the ruling, I will without any response from the

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1 I think, as counsel for the Respondent did point out and
2 I quoted authorities for that, the numerous subpoena issues
3 that were outstanding originally have for the most part been
4 resolved through the efforts of counsels.
5 So is there anything else before we begin the
6 testimonial portion of the trial?
7 MS. CAROL: I just wanted to raise one issue related to
8 the subpoenas. Like I -- like Mr. Eastland said, we worked
9 out what to be -- what was to be provided, and they did in
10 fact provide me with three boxes worth of documents today.
11 Due to, I think, time constraints or whatever, the three
12 boxes are not in any particular order as far as being
13 responsive to my subpoena, and I have not had sufficient time
14 to go through them to ensure that they are responsive. What
15 I think I recommended off the record, which I'm fine with
16 doing, is I think I can proceed with my case in chief under
17 the assumption that those are all responsive. I'd like to
18 reserve the right to revisit that issue if it turns out to be
19 true after I go through them. And as is -- also, too if
20 necessary, which I hope it won't be, but to recall a witness
21 that may need to be used to authenticate a document that are
22 in those documents. But as -- like I said, as for now, I'm
23 ready to proceed with my case in chief and deal with those
24 issues if necessary before I close my case at the end.
25 JUDGE SANDRON: Mr. Eastland, is there anything you

1 would like to add to that or state?
2 MR. EASTLAND: I guess I wouldn't have an objection in
3 the sense that certainly I think that production of over
4 11,000 documents, which were all requested by the Union and
5 the government, and we provided copies of each so that they
6 would have them, so to the extent that I understand that that
7 takes some time to review and that there may be some small
8 issue to revisit, but I would have an objection to the extent
9 that it goes beyond that such that this is somehow a
10 reservation that would result in the right of pretrial
11 discovery which doesn't exist for any parties in these
12 proceedings. So I guess with that qualification, that if for
13 some reason, you know, this goes on and we can preserve our
14 objections later, I don't anticipate that being a problem
15 with Ms. Carol, but I just want to reserve that.
16 JUDGE SANDRON: All right, that's on the record. You'll
17 give the Charging Party and General Counsel an opportunity in
18 due course to review the documents at an appropriate time.
19 So I think that concludes all of our matters in terms of
20 subpoenas.
21 Is there anything from any counsel before we begin the
22 testimonial portion?
23 MS. CAROL: No, Your Honor.
24 JUDGE SANDRON: All right, then I think we're ready,
25 Ms. Carol, for your first witness.

1 MS. CAROL: My first witness is Mr. Brandon Popps.
2 (Whereupon,
3 BRANDON L. POPPS
4 was called as a witness by and on behalf of the General
5 Counsel and, after having been first duly sworn, was examined
6 and testified as follows:)
7 JUDGE SANDRON: You can state and spell your full and
8 correct legal name for the record and provide us with an
9 address, either residence or business, whichever you prefer.
10 THE WITNESS: Brandon, B-r-a-n-d-o-n, Lewis, L-e-w-i-s,
11 Popps, P-o-p-p-s, 3751 Steiner Road, S-t-e-i-n-e-r,
12 Fruitport, Michigan 49415.
13 JUDGE SANDRON: Thank you.
14 DIRECT EXAMINATION
15 Q. BY MS. CAROL: All right, Mr. Popps, are you currently
16 employed?
17 A. Yes.
18 Q. And by whom are you employed?
19 A. The Operating Engineers Local 324.
20 Q. How long have you been employed by the Union?
21 A. May of 2015.
22 Q. And what's your position?
23 A. Business representative.
24 Q. And what does a business representative do? What are
25 your responsibilities generally speaking?

1 A. Just to represent the members of Local 324.
2 Q. Any specific members or any limitation on what employees
3 that you're responsible for representing?
4 A. Hoisting and portable, which is the construction side of
5 our Local.
6 Q. All right. And you said hoisting and portable. Is
7 there another type?
8 A. There is stationary. We also have police departments,
9 bus drivers.
10 Q. And so these hoisting and portable employees, is it all
11 employees in the state or a subset of employees in the
12 hoisting and portable industry or section?
13 A. All the construction industry for our signatory
14 contractors statewide.
15 Q. Okay.
16 JUDGE SANDRON: Okay, so Local 324 does that. Are there
17 other business representatives handling other -- people in
18 the other aspects?
19 THE WITNESS: Yes, sir.
20 JUDGE SANDRON: So there's more than one business
21 representative?
22 THE WITNESS: Yes, sir.
23 JUDGE SANDRON: I see. And Local 324 covers the whole
24 state?
25 THE WITNESS: Yes, and the UP.

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1 JUDGE SANDRON: And what?
2 THE WITNESS: Including the UP.
3 MS. CAROL: Upper peninsula.
4 JUDGE SANDRON: Upper peninsula.
5 THE WITNESS: Yeah.
6 MS. CAROL: Sorry.
7 JUDGE SANDRON: I figured that one out, but we should
8 put it on the record.
9 THE WITNESS: Fair enough.
10 Q. BY MS. CAROL: Oh, I'm sorry, who do you report to?
11 Like who's your supervisor sort to speak?
12 A. Sam Houston is my regional manager, and then Doug
13 Stockwell is my business manager.
14 JUDGE SANDRON: And they're spelled the way they sound?
15 THE WITNESS: Yes.
16 Q. BY MS. CAROL: And you had mentioned, when the Judge had
17 asked you, that there are other business representatives. Do
18 you have any idea of how many?
19 A. I believe there are 21 business representatives
20 statewide.
21 Q. And do you know somebody named Joe Shippa, S-h-i-p-p-a?
22 A. Yes.
23 Q. And who is he?
24 A. He is the business representative for Kent County,
25 Allegan County, and a couple other counties in the middle of

1 West Michigan.
2 Q. Okay.
3 JUDGE SANDRON: And he handles different --
4 THE WITNESS: He handles the same, we just --
5 JUDGE SANDRON: Oh.
6 THE WITNESS: -- we are assigned jurisdictions, county
7 specific in the areas we cover.
8 JUDGE SANDRON: I see. So how many business
9 representatives handle the same jurisdiction as you do? You
10 said there's about 21 all together.
11 THE WITNESS: Statewide.
12 JUDGE SANDRON: That handle what you do? Or handle
13 everything?
14 THE WITNESS: They handle everything.
15 JUDGE SANDRON: And so how many others are -- do what
16 you do? Or handle the same --
17 THE WITNESS: There's three in West Michigan.
18 Q. BY MS. CAROL: And what's your jurisdiction? Which
19 counties are in your jurisdiction?
20 A. Muskegon, Mecosta, Osceola, Manistee, Ionia; I think
21 there's eight counties.
22 JUDGE SANDRON: Does the Court Reporter have the
23 spelling of those counties?
24 Q. BY MS. CAROL: All right, and so is the Respondent,
25 Erickson's, in your jurisdiction?

1 A. Yes.
2 Q. Okay. So how many operators -- or I should say members
3 I guess are employed by Erickson's that are -- that you
4 represent?
5 A. Roughly right now, I think there's 16.
6 Q. Okay. And are these employees permanent employees or
7 are -- do they -- are they assigned by job?
8 A. Permanent employees. There are some that have been
9 dispatched through the hall, but they are job specific.
10 Q. And how many facilities does Erickson's have?
11 A. Two.
12 Q. And where are those located?
13 A. Muskegon and Walker.
14 JUDGE SANDRON: When you say -- how -- if you know, how
15 would the ones who are hired permanently hired? Because you
16 said there were some that were from the hiring hall referred,
17 well, the others, do you know how they were --
18 THE WITNESS: Typically all the employees Erickson's has
19 are -- that he does not refer through the hall are steady
20 employees.
21 MR. EASTLAND: I object as to foundation. Move to
22 strike.
23 JUDGE SANDRON: We'll go a little further because
24 hearsay's not automatically excluded in these proceedings.
25 What basis do you have for that?

1 THE WITNESS: It's all the employees -- just the way
2 that he set up. I mean the employees that he -- the
3 employees he has are steady unless he gets them from the hall
4 and there are time --
5 JUDGE SANDRON: All right, well, we'll --
6 MR. EASTLAND: Same objection.
7 JUDGE SANDRON: All right, well, we'll get that from
8 others.
9 MS. CAROL: I have some question about that going
10 forward that may --
11 JUDGE SANDRON: Okay, then --
12 MS. CAROL: -- that may provide some foundation for
13 that.
14 Q. BY MS. CAROL: So I'm sorry, you said there were roughly
15 16. You said that -- we were talking about the two
16 facilities. How many at each facility?
17 A. There's probably four to six operators in Muskegon, and
18 the remainder are out of his Walker facility.
19 JUDGE SANDRON: And just one thing for the witness,
20 you've probably been told this earlier, but if you don't know
21 the answer to something, then you don't have to guess at an
22 answer.
23 Q. BY MS. CAROL: And are there -- out of these employees
24 are there different classifications? Are there different
25 types of employees within the operating -- in the operator

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1 group?
2 A. Yes, you would have crane operators, hi-lo operators,
3 and oilers.
4 Q. And just kind of give a general picture of what the
5 difference is between those three jobs?
6 A. I would say his crane operators are his upper tier
7 employees. The forklift operators are secondary kind of mid-
8 level employees. And the oilers are the young guys that he's
9 bringing in to groom for the crane operation.
10 Q. And are there any wage differences for those three
11 particular classifications?
12 A. Yes.
13 Q. And what's the hierarchy of -- or the differences
14 between the wages?
15 JUDGE SANDRON: Do we have the contract itself?
16 MS. CAROL: Yes.
17 JUDGE SANDRON: It might be helpful to have the -- and
18 that may set out some of these facts.
19 MS. CAROL: Yes, that was my next question.
20 Q. BY MS. CAROL: So you're aware that there's a collective
21 bargaining agreement between the parties?
22 A. Yes.
23 Q. Okay. And those wage rates are reflected in there?
24 A. Yes.
25 Q. And those are going to be the classifications that -- as

1 they are set out, oiler, forklift operator, and crane
2 operator?
3 A. And size of crane.
4 Q. Okay.
5 (General Counsel's Exhibit 2 marked for identification.)
6 Q. BY MS. CAROL: All right, so I think it's probably as
7 good of time as any, I'm going to show you General Counsel's
8 2. See if you can -- if you recognize this. If you could
9 describe what that is for me?
10 A. This is the long form agreement or shop agreement
11 between Erickson's, Incorporated and the Operating Engineers
12 Local 324.
13 Q. All right, and so what we were talking about before is
14 reflected in this document, correct? I'm sorry, did you
15 say -- what -- did you answer?
16 A. Yes, it is.
17 JUDGE SANDRON: You know one thing in think, and we get
18 into this, I think it'd be helpful to maybe on the official
19 versions put, you know, page 1 of so-and-so on the first page
20 and then page so-and-so of so-and-so on the last page because
21 sometimes pages get separated, and to make sure that we --
22 all the copies have the full number of pages. Now, I know
23 that this starts off with a cover page, it doesn't have a
24 number, so you might want to just make that 1 of 26, and the
25 last page would be --

1 MS. CAROL: Twenty-six of 26.
2 JUDGE SANDRON: -- it's actually 1 of 27 because the
3 first page --
4 MS. CAROL: Correct.
5 JUDGE SANDRON: -- is the -- it's still part of the
6 exhibit is the index -- I mean the cover page and the last
7 page the signature page, but it's still a part of it, so it'd
8 be 1 of 27 and 27 of 27.
9 MS. CAROL: Okay, I'll make sure we do that on the
10 official --
11 JUDGE SANDRON: Yeah, you can do it on just the --
12 MS. CAROL: -- on the official copies.
13 JUDGE SANDRON: Right.
14 Q. BY MS. CAROL: Okay, so I'm sorry. The contract, the
15 wage rates that are in there are -- reflect these different
16 job classifications, right?
17 A. Yes.
18 Q. Okay. I thought you were going to --
19 JUDGE SANDRON: Can you tell us which paragraph? We
20 might as well just have that in the record, if you can --
21 THE WITNESS: What paragraph, Your Honor? Or what --
22 JUDGE SANDRON: Right, what section?
23 THE WITNESS: It would be page 22, 23 --
24 JUDGE SANDRON: And that will be the in internal
25 pagination page 22 and 23?

1 THE WITNESS: And 24, 25.
2 Q. BY MS. CAROL: All right, so there's these various
3 classifications. What is a certification? What does that
4 mean?
5 A. Crane certification is a crane operator that has had
6 training and testing for small hydraulic cranes, large
7 hydraulic cranes, lattice boom -- there's several different
8 classifications, but there's testing and a practical exam to
9 obtain them certifications.
10 MS. BACHELDER: Your Honor, may I make a point about
11 General Counsel's 2? I only have odd numbers. I'm thinking
12 maybe it was double sided and --
13 JUDGE SANDRON: Oh, I see --
14 MS. BACHELDER: I think so.
15 JUDGE SANDRON: I see.
16 MS. BACHELDER: And then they made a copy.
17 JUDGE SANDRON: I didn't catch it. Thank you for
18 bringing that up.
19 MS. BACHELDER: Yes.
20 MS. CAROL: So we'll do that --
21 JUDGE SANDRON: So -- well, I'll tell you what then what
22 we'll -- this is the full contract. Why don't you just
23 number the pages, you know, 1 of 1 -- you know, how many --
24 there will be more than one obviously, 1 of 20-whatever the
25 number is because as Ms. Bachelder points out it's confusing

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1 otherwise.
2 MS. CAROL: And I'll get the even numbers too. I -- the
3 original must have them so.
4 JUDGE SANDRON: Well, this is half the content.
5 MS. CAROL: Well, it looks like it's just the odd
6 numbers. When I had copies made --
7 JUDGE SANDRON: Yes, so --
8 MR. EASTLAND: It's incomplete, Your Honor.
9 MS. CAROL: It was incomplete --
10 JUDGE SANDRON: All right, we'll --
11 MS. CAROL: -- because there were double -- the original
12 apparently is double-sided so.
13 JUDGE SANDRON: All right, well, why don't you just --
14 MS. CAROL: I can do that next time we break, get it.
15 JUDGE SANDRON: Yeah, you can just substitute --
16 MS. CAROL: Yes.
17 MR. EASTLAND: Ms. Carol, I have copies of the contract
18 that should have that, and I'll give them to you and we
19 can --
20 MS. CAROL: Oh, okay, if we can do that as --
21 JUDGE SANDRON: All right, that'll be fine.
22 MS. CAROL: -- that'll work too.
23 JUDGE SANDRON: Well, we -- thank you, Ms. Bachelder.
24 MS. CAROL: I'm sorry about that.
25 MS. BACHELDER: Thank you.

1 JUDGE SANDRON: That's why it's important to look
2 through the whole document.
3 MS. CAROL: Yes.
4 Q. BY MS. CAROL: So I'm sorry, so for -- so you talked
5 about certification. Who administered these tests? You
6 said -- to operate certain equipment?
7 A. The Union's Local 324's training facility.
8 JUDGE SANDRON: Is there anything in the contract about
9 certification?
10 THE WITNESS: Yes.
11 JUDGE SANDRON: Do we have it in these -- in part?
12 THE WITNESS: Yes.
13 Q. BY MS. CAROL: Can you look through and see if it's in
14 any of the odd number pages?
15 MR. EASTLAND: Ms. Carol, do you want to --
16 MS. CAROL: Yeah, if he could have a look at it, that'd
17 be helpful.
18 MR. EASTLAND: Just --
19 MS. CAROL: Thank you.
20 JUDGE SANDRON: All right, we'll --
21 MR. EASTLAND: -- that way we can just get --
22 MS. CAROL: Yeah.
23 MR. EASTLAND: -- that taken care of.
24 MS. CAROL: Yeah.
25 THE WITNESS: I've got the prints.

1 MS. CAROL: You've got the right one? Got the original.
2 THE WITNESS: Page 24 is one of them.
3 MS. CAROL: Got to mark that as GC-2.
4 JUDGE SANDRON: Well, tell you what. I think it might
5 be easier because -- you know, to avoid confusion between
6 having the Court copy having different pages than the
7 original, why don't we just leave the pagination as it is?
8 We have the title page, we have the index, and then we have
9 the body of the document.
10 MR. EASTLAND: Your Honor, the total pages --
11 JUDGE SANDRON: Right.
12 MR. EASTLAND: -- are listed on the cover and the last
13 page.
14 JUDGE SANDRON: That's fine. This is --
15 MS. CAROL: I'll just mark this as General Counsel 2,
16 and make sure the Court Reporter gets two of them.
17 JUDGE SANDRON: Yes.
18 MS. CAROL: Okay.
19 JUDGE SANDRON: That's fine. So you were going to find
20 where the certification?
21 THE WITNESS: Page 24, Your Honor.
22 JUDGE SANDRON: Thank you.
23 MS. CAROL: And just to -- I don't know if Your Honor
24 was going to ask a follow up question.
25 JUDGE SANDRON: No, go ahead.

1 Q. BY MS. CAROL: Can you just describe what this reference
2 is? Like where the reference to certification is and what
3 that means.
4 A. This article in the contract basically states that any
5 crane operator that does not possess a CCO, a crane
6 certification, will be paid at the forklift rate, so he'll be
7 paid at a lower rate until he obtains a certification.
8 JUDGE SANDRON: So a equipment operator's the same as
9 forklift operator?
10 THE WITNESS: Yes. Yes, sir.
11 JUDGE SANDRON: Okay.
12 Q. BY MS. CAROL: All right, so are these certifications
13 required for -- to be an operator in the Local?
14 A. No.
15 Q. Okay. All right, so you had some testimony before and I
16 just wanted to clarify that a little bit. So this covers the
17 employees for Erickson's. Does the Union also operate a
18 referral hall?
19 A. Yes.
20 Q. Okay. And what's the general nature of the referral
21 hall? Like what is it for? What does the Union do?
22 A. For contractors to call with a request for employees,
23 certified crane operators, forklift operators, what have you,
24 they'll put in a work order with our dispatch office and we
25 will then dispatch a member to that jobsite.

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1 JUDGE SANDRON: And is there any provision for that in
2 the contract?
3 THE WITNESS: Well, it's -- let me find -- I believe
4 it's Section 2, page 4.
5 JUDGE SANDRON: Manpower requirements?
6 THE WITNESS: Yes. It states that, "The employee
7 agrees" --
8 JUDGE SANDRON: All right, that's fine. You don't
9 need --
10 THE WITNESS: Okay.
11 JUDGE SANDRON: -- to state what it says.
12 Q. BY MS. CAROL: All right, and so has Erickson's utilized
13 this referral hall before for employees?
14 A. Not until December -- well, I mean I'm sure --
15 JUDGE SANDRON: Well, from your knowledge.
16 THE WITNESS: From my knowledge not until December 2015
17 MR. EASTLAND: I'm going to object; lack of foundation.
18 I mean --
19 JUDGE SANDRON: Well, you were -- let's see, when did
20 you become the business representative?
21 THE WITNESS: May of 2015.
22 JUDGE SANDRON: But he was already the business
23 representative.
24 MR. EASTLAND: Right, but the answer, Your Honor,
25 suggests that he has some knowledge or information about what

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1 occurred prior to that time. Maybe rephrasing the answer
2 would be fine.
3 Q. BY MS. CAROL: Do you have any knowledge of how often
4 people were referred or whether they were referred before you
5 became the business representative?
6 A. Can you ask that again?
7 Q. Yeah. Sure. So before you became business
8 representative, did you know whether or not Erickson's used
9 the referral hall?
10 A. I just from the time I was employed there.
11 Q. Okay. I --
12 JUDGE SANDRON: Oh -- that's fine.
13 MS. CAROL: Okay.
14 JUDGE SANDRON: So -- but it's not an exclusive hiring
15 hall division?
16 THE WITNESS: No.
17 MS. CAROL: Right.
18 JUDGE SANDRON: So in other words it's optional --
19 THE WITNESS: Yes.
20 JUDGE SANDRON: -- basically the employer can ask for
21 people?
22 THE WITNESS: Yes.
23 JUDGE SANDRON: But it doesn't have to get help through
24 that, is that the way it works?
25 THE WITNESS: Yeah, I mean the manpower requirement says

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1 he's supposed to give the Union the first opportunity, but
2 that hasn't been the case.
3 Q. BY MS. CAROL: So under what circumstances would a
4 referral be sought in your -- you know, from your knowledge
5 as a business representative?
6 A. If he's got a crane job for a rough terrain crane or
7 somewhere in a powerhouse and his -- or anywhere and his
8 steady employees weren't able to -- they were too busy and
9 couldn't man the work, he would call the hall for.
10 JUDGE SANDRON: And would he put in -- would the order
11 specify the duration or would it be not specific?
12 THE WITNESS: There's usually a duration. I've never
13 seen Mr. Ericksons sheet to dispatch, you know, the text or
14 the call. I didn't take them calls, so I imagine he would
15 tell dispatch how long he figured the job would be.
16 Q. BY MS. CAROL: Okay. Can Respondent also hire people
17 from the street?
18 A. Yes.
19 Q. Can he directly hire people?
20 Okay. And out of its current complement of employees,
21 do you know how many employees were permanent -- or I'm
22 sorry, were directly hired?
23 A. I would say out of the current employees, I would think
24 that they were all hired by Steve off the street.
25 MR. EASTLAND: I'm going to object and move to strike;

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1 lack of foundation, speculation. The witness testified he
2 had never seen any of the referral sheets that Mr. Ericksons
3 or any referrals made or calls made to the hiring hall.
4 Q. BY MS. CAROL: Well, what makes you say that? How do
5 you know that they were hired off the street?
6 A. Because they've all been hired by résumés from
7 Mr. Erickson.
8 JUDGE SANDRON: Well --
9 MR. EASTLAND: Same objection; lack of foundation.
10 JUDGE SANDRON: -- well, do you know for a fact
11 whether -- from the Union's records whether they were
12 referred -- any of them were referred to you just are
13 thinking that was the way it was?
14 THE WITNESS: There would be no records of those
15 employees in the hiring hall because he hired them off the
16 street.
17 JUDGE SANDRON: Well, I assume there'd be a way to at
18 some point have records that would show that.
19 THE WITNESS: The fringe benefit records.
20 MS. BACHELDER: Your Honor, in fact hiring hall
21 documents to and from Erickson's have been provided pursuant
22 to subpoena.
23 JUDGE SANDRON: All right, then --
24 MR. EASTLAND: Your Honor, the objection is to the
25 witness testimony, not the documents.

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1 JUDGE SANDRON: All right, well, that's fine.
2 MR. EASTLAND: And this witness is testified he doesn't
3 know how that works, and there's no foundation for him to
4 testify about how individuals who he represents were hired
5 years before he represented them.
6 JUDGE SANDRON: All right, well, I think we'll get that
7 in through more definitive evidence later.
8 MS. CAROL: Yes.
9 JUDGE SANDRON: So.
10 Q. BY MS. CAROL: So -- okay, so let me ask you about
11 retiree -- employees who've retired from Erickson's. Can
12 those employees -- are those employees also allowed to work
13 for Erickson's?
14 A. Yes, they can work 39 hours a month.
15 Q. And does that have to go through the referral hall, or
16 can that be a direct communication?
17 A. Direct communication.
18 Q. Okay.
19 JUDGE SANDRON: And that's in the contract as well?
20 THE WITNESS: No.
21 JUDGE SANDRON: That's -- is that just a policy that
22 you're aware of?
23 THE WITNESS: Yes.
24 Q. BY MS. CAROL: And do you know if that's, in your
25 experience as business representative has that ever been done

1 at Erickson's?
2 A. Yes.
3 Q. And how do you know that?
4 A. Because I've been on jobs where I've seen retirees on
5 the jobs.
6 Q. All right, so we talked about the collective
7 bargaining -- current collective bargaining agreement. I
8 want to ask you how long that relationship has been in effect
9 to the best of your knowledge? Like how long has the Union
10 represented these guys?
11 A. Since the '80s, I believe.
12 Q. Okay.
13 (General Counsel's Exhibit 3 marked for identification.)
14 Q. BY MS. CAROL: So I'm going to show you what I've marked
15 as General Counsel's 3, which is one page, so it should be
16 fine. Let's see if you can recognize this document for me.
17 JUDGE SANDRON: You know it's good to put on here 1 of
18 1 --
19 MS. CAROL: Oh, okay.
20 JUDGE SANDRON: -- on the report.
21 MS. CAROL: I wasn't sure if we were doing it --
22 JUDGE SANDRON: Right, because --
23 MS. CAROL: -- if I was doing it on one-page document as
24 well.
25 JUDGE SANDRON: -- it doesn't say, sometimes pages get

1 separated, and it's better to know how many there are.
2 MS. CAROL: All right, I will do that as well.
3 JUDGE SANDRON: That's fine.
4 THE WITNESS: Yes, I recognize it.
5 Q. BY MS. CAROL: All right, so what is that?
6 A. It looks like a recognition agreement to classify
7 Erickson's as a 9(a) employer.
8 Q. Okay.
9 MS. CAROL: Oh, and Your Honor, I'm sorry, I don't think
10 I offered General Counsel's 2 into evidence, which is the
11 original contract, and I'd like to do that at this time.
12 JUDGE SANDRON: Any objection?
13 MS. BACHELDER: No objection.
14 MR. EASTLAND: To the contract? No objection.
15 JUDGE SANDRON: General Counsel Exhibit 2 is received.
16 (General Counsel's Exhibit 2 received in evidence.)
17 Q. BY MS. CAROL: All right, so in this particular
18 document, General Counsel's 3, do you recognize any of the
19 individuals listed under for the Union?
20 MR. EASTLAND: I'm going to object as to foundation.
21 JUDGE SANDRON: Was --
22 MR. EASTLAND: The date of this is before he --
23 MS. CAROL: That's why I'm asking him.
24 JUDGE SANDRON: All right, well, was -- is there any --
25 MR. EASTLAND: And he didn't sign the document, Your

1 Honor.
2 JUDGE SANDRON: All right, well, maybe we can get this
3 document in by stipulation. I assume there's not going to be
4 a dispute that the signature is Mr. Ericksons?
5 MR. EASTLAND: Your Honor, we have a relevance objection
6 to this.
7 JUDGE SANDRON: But not to authenticity?
8 MR. EASTLAND: I have -- this is the first time I've
9 seen the document so I need to confer with my client.
10 JUDGE SANDRON: Well -- all right, why don't you confer.
11 MR. EASTLAND: Well --
12 MS. BACHELDER: The document was provided to you in my
13 subpoenaed documents.
14 JUDGE SANDRON: Well, why don't you show it to your
15 client. If --
16 MR. EASTLAND: Well, let me make a few points on the
17 record, Your Honor. Whether the recognition was under 8(f)
18 or 9(a) is irrelevant to the matters in dispute. And to the
19 extent that our position is that it's an 8(f) recognition,
20 arguably this even agreement, if it was signed, is
21 insufficient as a matter of law because there has to be
22 actual majority support, and that's Novo Plumbing, a D.C.
23 Circuit Court decision, and none of those issues need to be
24 litigated in these proceedings because they're absolutely
25 irrelevant to the allegations.

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1 MR. EASTLAND: I'd like a moment to confer with my
2 client.
3 JUDGE SANDRON: Yes. Go ahead.
4 (Off the record from 11:20 a.m. to 11:22 a.m.)
5 MR. EASTLAND: Your Honor, the Respondent does not
6 contest the authenticity of Steven Erickson's signature on
7 the document, but we would like a complete version of the --
8 of what this was attached to, and the facts and all of the
9 documents related to this. We believe we're entitled to
10 that.
11 MS. CAROL: Your Honor, I don't have it. This is all
12 that I have from the file is this recognition agreement.
13 JUDGE SANDRON: And that was in the Union's files or --
14 MS. BACHELDER: Yes.
15 MS. CAROL: I assume so. It was in our General
16 Counsel's file.
17 JUDGE SANDRON: Well, apparently it's a standalone
18 document. Again --
19 MR. EASTLAND: If we had testimony from the witnesses
20 about that with knowledge, then I guess that would be fine.
21 JUDGE SANDRON: All right. Well, then General Counsel
22 Exhibit 3 is received, again, with the issue of relevance to
23 be determined later.
24 (General Counsel's Exhibit 3 received in evidence.)
25 MR. EASTLAND: Well, I still have a foundational

1 objection, Your Honor.
2 JUDGE SANDRON: And what's that?
3 MR. EASTLAND: That nobody has testified that this is a
4 standalone document.
5 JUDGE SANDRON: Well, I think if Ms. Bachelder can --
6 MR. EASTLAND: Ms. Bachelder didn't sign this.
7 JUDGE SANDRON: Right, but she --
8 MR. EASTLAND: She's not a witness.
9 JUDGE SANDRON: -- she can represent whether in the
10 Union's files this document is attached to anything or part
11 of anything or was --
12 MR. EASTLAND: But, Your Honor, whether it's maintained
13 that way or not, doesn't -- I mean we need a witness with
14 actual evidence of when this was signed.
15 MS. BACHELDER: Well, all we can do is give testimony or
16 determine how it is maintained in the Union's files, and I
17 will be glad during a break to check on whether this is
18 maintained as a standalone document, which I believe to be
19 the -- to be correct.
20 MR. EASTLAND: Your Honor, our position is that does not
21 cure the foundation objection, and I just want to make sure
22 that my objection is clear on the record.
23 JUDGE SANDRON: All right.
24 MR. EASTLAND: It's not waived.
25 JUDGE SANDRON: All right. It's on the record.

1 MR. EASTLAND: Thank you.
2 JUDGE SANDRON: Go ahead.
3 MS. CAROL: It's received in evidence?
4 JUDGE SANDRON: Yes, it's received.
5 MS. CAROL: Okay. All right.
6 Q. BY MS. CAROL: All right, so we talked about the General
7 Counsel's 2, the shop agreement. Are there any other types
8 of agreements that would cover the work done by the employees
9 for the Respondent?
10 A. Yes.
11 Q. And what types of agreements would cover those
12 employees?
13 A. There's the AGC out-state agreement.
14 Q. What's that?
15 A. That is an Association of General Contractors.
16 Q. Okay.
17 A. It's an association that bargains on behalf of
18 contractors.
19 Q. All right, so let me -- is that a -- what's the
20 nature -- is that a multi-employer --
21 A. Correct.
22 Q. Okay.
23 (General Counsel's Exhibit 4 marked for identification.)
24 Q. BY MS. CAROL: All right, so let me show you General
25 Counsel's 4 and see if you recognize this document.

1 A. Yes, I recognize this.
2 Q. And what is that?
3 A. This is a short-form agreement.
4 Q. All right, so explain that for us. What does that mean?
5 A. By a contractor signing this short-form agreement, he
6 agrees to abide by the terms and conditions in the collective
7 bargaining agreements that are stated at the top portion of
8 this document.
9 Q. Okay. So underneath where it has the typed portions,
10 there are a couple of indented paragraphs.
11 A. Yes.
12 Q. Okay. And this document would bind a contractor to all
13 of those agreements?
14 A. Correct.
15 Q. Okay. I notice that this one is dated from 1984. Do
16 you know if -- how this is renewed? Whether it's renewed
17 over time?
18 A. I don't believe a short form is ever renewed; it's
19 only -- yeah, no, it's not.
20 Q. Okay. So this would bind them to the agreements
21 themselves, which would then be negotiated separately?
22 A. Yes.
23 Q. Okay.
24 JUDGE SANDRON: Well, but this would, as far as you
25 know, would have expired?

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1 THE WITNESS: No.
2 JUDGE SANDRON: Are you saying it would continue
3 indefinitely?
4 THE WITNESS: Yes.
5 Q. BY MS. CAROL: And it would bind them to those
6 agreements and successive agreements?
7 A. Yes.
8 Q. Okay.
9 JUDGE SANDRON: Well --
10 MR. EASTLAND: And it hasn't been admitted, but to the
11 extent it is received over any objections, I would suggest
12 the document speaks for itself if it is admitted.
13 JUDGE SANDRON: Well, I assume we'll have more testimony
14 anyway from witnesses for the different parties.
15 MS. BACHELDER: I would note there is a termination
16 paragraph second to the last.
17 JUDGE SANDRON: Yeah, where is that?
18 MS. CAROL: Second to the bottom.
19 JUDGE SANDRON: Oh, I see.
20 MS. CAROL: "It is further agreed" --
21 JUDGE SANDRON: So it renews unless there's notice?
22 MS. CAROL: Yes.
23 MS. BACHELDER: Yeah.
24 MS. CAROL: Evergreen clause.
25 JUDGE SANDRON: And to your knowledge, has it ever

1 been -- either party ever given notice to terminate?
2 THE WITNESS: No.
3 Q. BY MS. CAROL: All right, so and again this is the type
4 of agreement that is kept at the Union hall?
5 A. Yes.
6 Q. In relation to its administration of contracts with
7 Respondent?
8 A. Yes.
9 Q. Okay.
10 MS. CAROL: So I'd like to offer General Counsel's 4 at
11 this time.
12 JUDGE SANDRON: Well, how does this bear on the contract
13 directly between the Respondent and the Union, because you
14 have that collective bargaining agreement. And then how does
15 this bear on that?
16 THE WITNESS: When -- if you look in the -- in what is
17 Exhibit 2, General Counsel Exhibit 2 --
18 JUDGE SANDRON: Right.
19 THE WITNESS: -- let's see, there is geographical --
20 it's Article 1, page 1, it lays out the jurisdiction of Mr.
21 Ericksons or Erickson's, Incorporated's long-form agreement
22 and where it's relevant and where it's not.
23 JUDGE SANDRON: Oh, I see. So this short-form
24 agreement, that would cover areas that are not included in
25 Article 1?

1 THE WITNESS: Correct.
2 JUDGE SANDRON: In the contract?
3 THE WITNESS: Correct.
4 Q. BY MS. CAROL: So can you explain -- oh, I'm sorry,
5 first I should --
6 MS. CAROL: -- again I was offering General Counsel's 4
7 into evidence at this time.
8 MS. BACHELDER: No objection.
9 JUDGE SANDRON: Mr. Eastland?
10 MR. EASTLAND: I object as to relevance. I don't know
11 that --
12 JUDGE SANDRON: All right.
13 MR. EASTLAND: -- I mean there's -- not relevant to the
14 allegations at issue here. There's undisputed recognition.
15 Our position is it's Section 8(f) so --
16 JUDGE SANDRON: So you're renewing basically your
17 objection --
18 MR. EASTLAND: Same objections, yes.
19 JUDGE SANDRON: -- to the earlier document?
20 MR. EASTLAND: Yes, Your Honor.
21 JUDGE SANDRON: Any objection as to authenticity?
22 MR. EASTLAND: No, Your Honor.
23 JUDGE SANDRON: All right. Well, again, I will receive
24 General Counsel Exhibit 4, noting the objection and not
25 determining at this point relevance.

1 (General Counsel's Exhibit 4 received in evidence.)
2 Q. BY MS. CAROL: All right, so now that -- what's the
3 difference? When would General Counsel's 4 apply as opposed
4 to when General Counsel's 2 would apply to the employees at
5 the Respondent?
6 A. General Counsel 4 would apply when they work out of the
7 county specific -- geographical description in General
8 Counsel 2.
9 Q. Okay.
10 JUDGE SANDRON: And I believe he answered that.
11 MS. CAROL: Okay. I just was making sure that --
12 JUDGE SANDRON: Yes.
13 MS. CAROL: -- I got it on there.
14 JUDGE SANDRON: I think it's clear on the record.
15 MS. CAROL: Okay.
16 Q. BY MS. CAROL: And you had also mentioned in your
17 testimony that the Local 324 is a statewide Local, correct?
18 A. Correct.
19 Q. Does it represent operating engineers in like the
20 Detroit Metro area?
21 A. Yes.
22 Q. Okay. And is there a -- there's a different contract
23 in -- covering employees who work in the Detroit area?
24 A. Yes.
25 Q. Okay. And are those wages different than the shop

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1 agreement?
2 A. Yes.
3 Q. Okay. And are they higher or lower?
4 A. Higher.
5 Q. And so if Erickson's employees do a job in the Detroit
6 Metro area, which contract applies? What wage rate applies?
7 A. Typically it would be the Great Lakes Fabricators and
8 Erectors Association of Michigan or the -- oh, where's it at,
9 the Association of General Contractors of America, Michigan
10 Detroit and Upper Peninsula Chapters.
11 Q. And that is listed in the short-form in General
12 Counsel's 4?
13 A. Correct.
14 Q. Okay. All right.
15 JUDGE SANDRON: So they the pay -- the pay of the Local
16 jurisdiction?
17 THE WITNESS: Yes.
18 JUDGE SANDRON: When they work in another area?
19 THE WITNESS: Yes.
20 Q. BY MS. CAROL: Okay, so other than being a business
21 representative for the Union, have you had any other
22 relationship with the Respondent in the past?
23 A. Yes.
24 Q. And in what capacity? What was that relationship?
25 A. I was an employee.

1 Q. And from what period of time?
2 A. 1997 to 2006.
3 Q. All right, and when you worked there, what was your
4 position?
5 A. I was a crane operator. Started as an oiler and now
6 worked into the crane operator role.
7 JUDGE SANDRON: When did you become the crane operator
8 as best as you remember?
9 THE WITNESS: 1999.
10 Q. BY MS. CAROL: So what was the nature of your departure
11 from the Company?
12 A. I just wanted to work out of the hall and make more
13 money.
14 Q. So it was voluntary?
15 A. Yes.
16 Q. Okay. And when you worked for the Respondent during
17 that time, we're talking the aughts, what was your
18 observation as to the relationship between the Company and
19 the Union?
20 A. It was nonexistent.
21 MR. EASTLAND: I object to relevance. We're talking
22 about 1997 to 2006.
23 JUDGE SANDRON: His observations about what?
24 MS. CAROL: About the relationship between the Union and
25 the Company.

1 JUDGE SANDRON: That's kind of ambiguous though, isn't
2 it?
3 MS. CAROL: Well, just if I may, Your Honor --
4 MR. EASTLAND: And it's --
5 MS. CAROL: -- part of --
6 MR. EASTLAND: -- it's 11 years ago.
7 MS. CAROL: -- part of my theory is that the
8 relationship changed suddenly in 2015 when Mr. Popps took
9 over. I'm just giving some background evidence as to what
10 that -- nature of that relationship was in the past. Well,
11 the other evidence as well.
12 JUDGE SANDRON: All right, it's kind of remote.
13 MS. CAROL: Yes.
14 JUDGE SANDRON: I mean 2006, anywhere over 10 years.
15 MS. CAROL: All right, so -- well, I'll let us see where
16 we go with this.
17 Q. BY MS. CAROL: So you said when you worked there -- were
18 these different agreements in place as far as having a shop
19 agreement versus a short-form agreement?
20 A. Yes.
21 Q. Okay. Different contract obviously, not General
22 Counsel's 2?
23 A. Correct.
24 Q. Okay. And were there ever any issues with the wage
25 rates being applied correctly when you worked there?

1 A. Yes.
2 Q. Okay. So when you took over as business representative
3 in 2015, did you become aware that there were any issues with
4 these wage rates being applied properly?
5 A. Yes.
6 Q. Okay. And how did you become aware of that?
7 A. Initially I received a call in December of 2015 by two
8 members that they had a payroll discrepancy for a job they
9 were working in Detroit.
10 Q. All right, and do you remember the names of the
11 employees?
12 A. Jamey Foster, J-a-m-e-y, Foster, F-o-s-t-e-r, and Cody
13 Velat, C-o-d-y, and I think Velat is V-e-l-a-t.
14 Q. I think that's right.
15 A. Yeah.
16 Q. I think that's right.
17 JUDGE SANDRON: Well, that shows you why you need
18 spelling because Jamey is spelled a little differently than
19 normal. I will add that to my --
20 Q. BY MS. CAROL: And what, if anything, did you do in
21 response to these reports?
22 A. Well, actually I was putting together all the contract
23 information to reach out to Steven Erickson, and he happened
24 to call me about a separate issue. So after we talked about
25 the issue --

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1 JUDGE SANDRON: Why don't you let counsel lay a
2 foundation for the content.
3 Q. BY MS. CAROL: Okay. So you said that Mr. Erickson had
4 called you. Did this topic of these two individuals come up
5 during that conversation?
6 A. Yes.
7 Q. Okay. And who brought it up?
8 A. I did.
9 Q. Okay. And what was said and by whom --
10 JUDGE SANDRON: All right, well, I think you need to --
11 MS. CAROL: -- during that conversation?
12 JUDGE SANDRON: -- you know, lay out how -- what kind of
13 conversation it was, whether it was in person, by phone, what
14 time of day.
15 MS. CAROL: Okay. I thought --
16 THE WITNESS: Yeah, I said called.
17 MS. CAROL: -- maybe he said that, but I'm sorry --
18 JUDGE SANDRON: Well --
19 Q. BY MS. CAROL: So he called by telephone?
20 A. Yes.
21 Q. Okay. And do you remember the exact date?
22 A. I want to say it was December 15th or 17th, I believe,
23 so the exact date no, but --
24 Q. Okay. And do you remember the time of day?
25 JUDGE SANDRON: Time --

1 THE WITNESS: Yes, it was I would say 9:00 a.m.
2 Q. BY MS. CAROL: All right. And I'm sorry, so he called
3 you and what was the nature of his inquiry to you?
4 A. He had an operating engineer that was working at Notre
5 Dame operating one of his cranes that he could not locate,
6 and he was hoping that I would be able to find a replacement
7 if he could not locate that employee.
8 Q. All right. And then how did this wage issue come up?
9 A. After that -- we were done talking about that, I
10 mentioned that Jamey and Cody had a payroll issue for the job
11 in Detroit, and I was told that he doesn't --
12 JUDGE SANDRON: As best as you can recall, can you put
13 it in his -- what he said?
14 THE WITNESS: Yeah, he -- well, like what he said what?
15 JUDGE SANDRON: Well, it's best when you give me the
16 conversation if you try to put it as like I said, he said,
17 you know, so it goes in order and you getting as exact as you
18 can with the words.
19 THE WITNESS: Okay. I told Steve Erickson that Jamey
20 Foster and Cody Velat had a payroll issue with the job that
21 they were on in Detroit. Steve told me that he refused to
22 talk about wages to a business representative, that I didn't
23 have legal jurisdiction to receive that information without
24 permission from his employees. I stated that I believed I
25 did have the right for that material, and he told me -- oh,

1 and I also told him that he was on the verge of a ULP and he
2 told me to file it, and that was the end of the conversation.
3 JUDGE SANDRON: About how long did you talk on that
4 subject with him?
5 THE WITNESS: A minute and a half, two minutes, if that.
6 Q. BY MS. CAROL: Okay. And after that conversation, what,
7 if anything, did you do in response to Mr. Ericksons
8 response?
9 A. I reached out to my regional director, Sam Houston. He
10 told me to get all the information together what I believed
11 was the discrepancy, the wages they should have been paid,
12 what the difference was, and he said he would get back to me
13 so I gave him that information. I sent a couple emails to
14 receive that information and didn't get -- from the Company.
15 I didn't receive a response so we filed --
16 MR. EASTLAND: I'm going to object to the extent that
17 he's commenting on the content of the document. I'm --
18 JUDGE SANDRON: Did you have any further communication
19 with the Company on that matter?
20 THE WITNESS: No.
21 JUDGE SANDRON: By correspondence or anything? Because
22 you said they were -- what were -- was there further contact
23 between the Union and the Employer on that?
24 THE WITNESS: Only paperwork for the filing of the
25 grievances to set up a grievance meeting and to file the ULP,

1 they would have been -- served the paperwork from the labor
2 board, but I never spoke with Mr. Erickson about this again
3 until the grievance meeting.
4 Q. BY MS. CAROL: That was my -- I was going to ask if you
5 had filed a grievance on these issues?
6 A. Yes.
7 Q. Okay.
8 (General Counsel's Exhibit 5 marked for identification.)
9 Q. BY MS. CAROL: And so I'll show you General Counsel's
10 5 --
11 JUDGE SANDRON: You're using this as background?
12 MS. CAROL: Yes. Yes, absolutely. Yeah, as I stated in
13 my opening, I think the evidence will show --
14 JUDGE SANDRON: Right.
15 MS. CAROL: -- this was taken care of.
16 JUDGE SANDRON: Okay.
17 Q. BY MS. CAROL: So it's -- General Counsel's 5 is two
18 pages. I think I got it right.
19 JUDGE SANDRON: Well, I think probably though you can
20 get some of this stipulated.
21 MS. CAROL: Sure.
22 JUDGE SANDRON: That might be more expeditious. I don't
23 think there'll be any dispute about certain documents that
24 were --
25 MR. EASTLAND: No. No, Your Honor, I think factually --

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1 JUDGE SANDRON: Right.
2 MR. EASTLAND: -- these were minor payroll disputes.
3 The grievances were filed and they were corrected and they
4 were withdrawn. I don't think there's any dispute about
5 those facts, so to the extent, can stipulate to that, I guess
6 that's fine.
7 MS. CAROL: Yeah, I mean that and the unfair labor
8 practice I was going to put in as background evidence.
9 JUDGE SANDRON: You can.
10 MS. CAROL: So if there's no objection, I'll offer them
11 indirectly through stipulation if possible.
12 JUDGE SANDRON: I mean basically it'll speak for itself,
13 right, the grievance report --
14 MS. CAROL: Correct.
15 JUDGE SANDRON: -- and the date?
16 MS. CAROL: Yup.
17 JUDGE SANDRON: So any objection to General Counsel
18 Exhibit 5? This was the grievance itself.
19 MR. EASTLAND: Nope, no objection to --
20 MS. CAROL: All right. I am --
21 MR. EASTLAND: -- grievances coming in.
22 JUDGE SANDRON: Actually there were two of them, but I
23 guess they were --
24 MS. CAROL: Yes.
25 JUDGE SANDRON: -- later. General Counsel 5 is

1 received.
2 (General Counsel's Exhibit 5 received in evidence.)
3 (General Counsel's Exhibit 6 marked for identification.)
4 MS. CAROL: And General Counsel 6, which is the unfair
5 labor practice charge also.
6 JUDGE SANDRON: Any objection?
7 MR. EASTLAND: Just on relevance ground and obviously,
8 you know, factually this was resolved in a settlement
9 agreement with a non-admissions clause.
10 JUDGE SANDRON: All right, well, we'll get that in the
11 record too.
12 MR. EASTLAND: I mean I'm not -- if you receive it then
13 we can move on.
14 MS. CAROL: Okay.
15 JUDGE SANDRON: All right, General Counsel Exhibit 6 is
16 received.
17 MS. CAROL: All right.
18 (General Counsel's Exhibit 6 received in evidence.)
19 Q. BY MS. CAROL: All right, so after these grievances were
20 filed and unfair labor practice, did the --
21 JUDGE SANDRON: Well, did you want the settlement
22 agreement in the record so I --
23 MS. CAROL: I wasn't planning submitting it. It's up --
24 Respondent can.
25 JUDGE SANDRON: Well, do you -- it probably should be in

1 the record.
2 MR. EASTLAND: Well, I mean if -- I can't put it in in
3 her case so I --
4 MS. CAROL: Yeah.
5 JUDGE SANDRON: All right.
6 MR. EASTLAND: We'll want it in.
7 JUDGE SANDRON: Unless you want to --
8 MS. CAROL: I'm not going to --
9 JUDGE SANDRON: This one --
10 MR. EASTLAND: We'll want -- we'll put it in in our
11 case, Your Honor.
12 MS. CAROL: Yeah.
13 MR. EASTLAND: We'll handle it then.
14 JUDGE SANDRON: Yeah, I mean we should have a complete
15 record of --
16 MS. CAROL: Yeah, that's fine. That's fine.
17 MR. EASTLAND: Yeah, we will. We'll put it in.
18 Q. BY MS. CAROL: So after these were filed, were there
19 any -- did -- were there any other wage issues into 2016 for
20 the employees that you represented?
21 A. Yes.
22 Q. Okay. And how do you know?
23 A. The employees would contact me.
24 Q. All right. And can you estimate how many employees
25 contacted you in early 2016 about these wage discrepancy

1 issues?
2 A. Over half.
3 Q. And how many employees were there at the time?
4 A. I would say 9 or 10.
5 Q. Okay.
6 JUDGE SANDRON: That contacted you?
7 THE WITNESS: Yes.
8 Q. BY MS. CAROL: And what, if anything, did you generally
9 do in response to these inquiries?
10 A. I would try to call Mr. Erickson or Nancy Tejchma to get
11 them resolved.
12 Q. And do you have any knowledge as to whether any other
13 business representative would do this for Erickson's
14 employees?
15 A. I believe Joe Shippa may have on a couple of occasions,
16 but I can't speak for him.
17 Q. Okay. So in your experience as a business
18 representative since 2015, were any of the employees at
19 Erickson's -- before 2016 so between 2016 the beginning of
20 2016 ever dealt with a layoff of an employee before?
21 A. No.
22 Q. So I want to turn your attention to May of 2016. Are
23 you familiar with an individual named Matt Rowe?
24 A. Yes.
25 Q. And who is he?

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1 A. Matt Rowe's a member of Operating Engineers Local 324.
2 Q. And he works for?
3 A. Right now he works for Grand Davo Crane.
4 JUDGE SANDRON: What's the name of the company?
5 THE WITNESS: Grand Davo, G-r-a-n-d D-a-v-o.
6 Q. BY MS. CAROL: And in May of 2016 where did he work?
7 A. May of 2016 he worked for Erickson's.
8 Q. Okay. And what about Keith Stephenson, do you know who
9 that is?
10 A. Yes.
11 Q. And who's he?
12 A. He's a member of Local 324.
13 Q. And did he ever work at Erickson's?
14 A. Yes.
15 Q. Okay. And do you know whether or not their employment
16 status changed in May of 2016?
17 A. Yes, they were laid off.
18 Q. And how'd you become aware of those layoffs?
19 A. They contacted me to tell me they were laid off.
20 Q. All right. And were you -- did anyone at Erickson's
21 contact you about the layoff either before or after?
22 A. No.
23 Q. And do you know if you or anyone at the Union got any
24 paperwork from the Company about their layoffs?
25 A. We did not.

1 JUDGE SANDRON: Are you supposed to get that?
2 THE WITNESS: Yes.
3 JUDGE SANDRON: Or is there anything in the contract
4 that says that?
5 THE WITNESS: Yes.
6 JUDGE SANDRON: Where is it? We'll give you a moment to
7 locate it.
8 THE WITNESS: I'd appreciate that.
9 It would be page 16, Article 13, subsection (b).
10 JUDGE SANDRON: I see.
11 Q. BY MS. CAROL: Okay. So after these layoffs, did you
12 speak with anyone at Respondent either about the layoffs or
13 about anything else?
14 A. Did I speak with the Company or the --
15 Q. With Mr. Erickson.
16 A. No.
17 Q. Okay. And do you recall ever discussing the nature of
18 the relationship between the Company and the Union after May
19 of 2016?
20 JUDGE SANDRON: With whom?
21 THE WITNESS: With Mr. Erickson?
22 Q. BY MS. CAROL: Yeah.
23 A. Yes, I reached out to him in -- well, it would have been
24 March. I reached out to him twice, once in March of 2016 and
25 once in June of 2016.

1 Q. Okay. So let's just go back to the March one. Do you
2 remember how you contacted him?
3 A. Yes, I contacted him by phone. I asked Mr. Erickson if
4 he would consider coming to terms on the ULP, the unfair
5 labor practice.
6 Q. And what did he say?
7 MR. EASTLAND: I'm going to object as to relevance and
8 this obviously is settlement privilege.
9 JUDGE SANDRON: Is there anything beyond --
10 MS. CAROL: No, it -- no, I just -- he mentioned two
11 conversations. I didn't want to --
12 JUDGE SANDRON: All right. If it didn't go beyond
13 settlement discussions, then we wouldn't --
14 MS. CAROL: Okay. No, that's fine. I --
15 Q. BY MS. CAROL: So let's talk about the June one.
16 A. Okay.
17 Q. What I'm asking about. So when in June did you speak to
18 Mr. Erickson?
19 A. I'm not exactly sure on the date; I just know it was
20 June.
21 Q. Okay. And did you contact him, or did he contact you?
22 A. I contacted him.
23 Q. And how did you do that?
24 A. I contacted him by telephone and once again asked him if
25 we could come to an agreement on the unfair labor practice;

1 that it was bad on -- bad for his business and bad for the
2 Local --
3 MR. EASTLAND: I'm going to --
4 THE WITNESS: -- and bad for the members.
5 MR. EASTLAND: Same objection, Your Honor. I'm sorry, I
6 didn't mean to interrupt you.
7 JUDGE SANDRON: That's all right. Going --
8 THE WITNESS: I'm sure it won't be the last time.
9 JUDGE SANDRON: -- going beyond discussing the
10 settlement, what -- was anything else said beyond that? I
11 know it's hard to demarcate, but you discussed settlement of
12 the ULP case?
13 THE WITNESS: Yes.
14 JUDGE SANDRON: And maybe Ms. Carol can -- who knows the
15 case better maybe you can --
16 MS. CAROL: Try to steer him around the settlement
17 discussions?
18 JUDGE SANDRON: -- where it got out of the settlement
19 discussion and went to something else.
20 Q. BY MS. CAROL: So you called to talk about the
21 settlement discussions. At any point during the conversation
22 did Mr. Erickson say something that did not involve settling
23 the charge, but was outside of that topic?
24 A. Yes.
25 MR. EASTLAND: I'm going to object, Your Honor, to the

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1 extent it's calling for the response that Mr. Ericksons --
2 you know, he -- foundation. I mean it's speculative what
3 Mr. Erickson thought was -- I mean was there evidence --
4 JUDGE SANDRON: Well, I don't --
5 MR. EASTLAND: -- that the -- I mean the witness -- I'm
6 sorry, let me slow down. The witness testified that it's a
7 settlement discussion.
8 JUDGE SANDRON: Right.
9 MR. EASTLAND: Unless there is some communication by
10 this witness to Mr. Erickson that would say that we're not in
11 settlement discussions anymore, our position would be that
12 the entire conversation is protected by the settlement
13 privilege.
14 JUDGE SANDRON: Well, I think we have to hear --
15 MS. CAROL: What it is.
16 JUDGE SANDRON: -- what it is. Now, if it is, then we
17 won't consider it.
18 MR. EASTLAND: Okay.
19 MS. CAROL: All right.
20 Q. BY MS. CAROL: So you talked about settlement. Was
21 there any statements made by Mr. Erickson that were not
22 related to the settlement of the charge?
23 A. Yes.
24 Q. Okay.
25 JUDGE SANDRON: That you construed as not being related

1 THE WITNESS: Yes.
2 Q. BY MS. CAROL: Yes. Okay. And what were those
3 comments?
4 A. I was told that --
5 JUDGE SANDRON: Yeah, what did he say?
6 THE WITNESS: He said that I was incompetent, that he
7 was going to diminish his relationship with the Local; I
8 personally attacked him and his staff with bogus NLRB
9 charges.
10 JUDGE SANDRON: That's what he said?
11 THE WITNESS: That's what he said.
12 JUDGE SANDRON: Well, do you remember what preceded
13 that, if you can recall?
14 THE WITNESS: The --
15 JUDGE SANDRON: Preceded his comments.
16 THE WITNESS: Me asking him to talk about settling.
17 JUDGE SANDRON: Well, did you have any other
18 conversation about settling -- you called him and you took --
19 you want -- said you wanted to talk about settling it?
20 THE WITNESS: Yes.
21 JUDGE SANDRON: Well, was that his reaction, or did
22 anything in between when you opened the conversation and when
23 he said that?
24 THE WITNESS: I -- well, that was in between. I had
25 said that, you know, this relationship is bad for everybody.

1 JUDGE SANDRON: Okay, you said that.
2 THE WITNESS: Yes.
3 JUDGE SANDRON: And that's -- then he --
4 THE WITNESS: Responded with --
5 JUDGE SANDRON: All right. Did you have any further
6 conversation with him after that point?
7 THE WITNESS: No, everything was by email after that I
8 believe.
9 MS. CAROL: Okay.
10 MR. EASTLAND: Continued objection on settlement
11 privilege, Your Honor.
12 MS. CAROL: And I guess --
13 JUDGE SANDRON: Well, actually I don't know if it was
14 really a settlement discussion because there was no --
15 MR. EASTLAND: It absolutely was, Your Honor. I mean --
16 JUDGE SANDRON: Well, settlement --
17 MR. EASTLAND: -- this all relates --
18 JUDGE SANDRON: All right.
19 MR. EASTLAND: -- to the -- I mean -- I'm sorry, go
20 ahead.
21 JUDGE SANDRON: You know -- I mean a settlement
22 discussion requires that both parties be talking about how to
23 settle it. If, according to him, there was no response to
24 his requests, then it wasn't a settlement discussion. It --
25 he -- it was meant to be a settlement discussion, but how can

1 it be a settlement discussion if one party won't discuss
2 settlement according to him?
3 So go ahead.
4 MR. EASTLAND: Just preserving my objection.
5 JUDGE SANDRON: Yes.
6 Q. BY MS. CAROL: Okay. So and you had mentioned this was
7 in June of 2016. Can you pinpoint it any more as to when?
8 Early, middle, end of June?
9 A. I want to say middle of June.
10 Q. Okay.
11 JUDGE SANDRON: And just as for foundation, do you
12 remember the time of day that you called him?
13 THE WITNESS: I believe it was -- because I remember I
14 was at the hospital parking lot, so it was probably -- my
15 appointment was at noon, so it probably would have been
16 11:20, 11:30.
17 Q. BY MS. CAROL: Okay. So on June 20th, did you become
18 aware of the change in employment status of any of the other
19 operators at Erickson's?
20 A. In June?
21 Q. Yes.
22 A. Let's see. June would have been -- I received a call
23 from Jason Baerman notifying me that himself, Erin Baerman,
24 and Nick Willer were terminated.
25 Q. Okay. And did you have any discussions or notice from

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1 the Respondent either before or after those layoffs took
2 place?
3 A. No.
4 Q. Okay. And did you get any documents about those
5 particular layoffs from Respondent?
6 A. No.
7 Q. So after those three were let go, did you know of any
8 other employees who were let go around that same time period?
9 A. Yes, in July Carlos Ocampo was let go.
10 Q. Okay.
11 JUDGE SANDRON: And how did you find that out?
12 THE WITNESS: Oh, Carlos contacted me by phone.
13 Q. BY MS. CAROL: Now, do you know -- do you personally
14 know all six of the individuals who were laid off at that
15 time?
16 A. Yes.
17 Q. Do you have personal knowledge as to how long each of
18 them had been working there?
19 A. A ballpark. I mean I would say Nick was 20 --
20 JUDGE SANDRON: Well, I would think we can --
21 MS. CAROL: Sure.
22 JUDGE SANDRON: -- check records so it wouldn't --
23 MS. CAROL: That's fine.
24 JUDGE SANDRON: That would be more reliable.
25 MS. CAROL: That's fine.

1 Q. BY MS. CAROL: So of these six employees that were let
2 go, what was their job classification that we had talked
3 about earlier?
4 A. Keith Stephenson was a forklift equipment operator, and
5 the rest of the guys were crane operators.
6 Q. Okay.
7 JUDGE SANDRON: Now, of the 20 that were there before
8 the layoffs -- approximately 20, how many were forklift
9 operators? That you're --
10 THE WITNESS: Four to five, the rest of them were
11 certified crane operator.
12 JUDGE SANDRON: And they didn't have any oilers --
13 THE WITNESS: Oh, yeah, I'm sorry. Yeah, they probably
14 had three -- I would say three steady oilers.
15 JUDGE SANDRON: And it was about four -- four or five
16 forklift operators, three oilers, and the rest were the --
17 THE WITNESS: Certified crane operators.
18 JUDGE SANDRON: -- crane operators?
19 Q. BY MS. CAROL: All right, so was there any similarity in
20 these six employees as to what type of work that they did?
21 A. Yes.
22 Q. Maybe that was not my most specific question.
23 What about type of equipment that they would regularly
24 operate? Was there any similarities between the types of
25 equipment that they would operate, these six guys?

1 A. Yes.
2 MR. EASTLAND: I object as to foundation, Your Honor. I
3 mean if we're going to have these witnesses testify, they can
4 testify about what they operated.
5 JUDGE SANDRON: Well, I think he can testify about his
6 knowledge.
7 MR. EASTLAND: Right, if he has knowledge, but my guess
8 is he doesn't know what --
9 JUDGE SANDRON: I mean --
10 MR. EASTLAND: -- what all of the operating engineers
11 across all of his jurisdiction are operating.
12 MS. CAROL: Well, that's why I asked the question. If
13 he knows the answer then --
14 JUDGE SANDRON: All right. Well, I'll allow him to --
15 THE WITNESS: Yes, I know what they run.
16 Q. BY MS. CAROL: Okay.
17 JUDGE SANDRON: And the basis of that knowledge is?
18 THE WITNESS: For working around them in the field and
19 talking to them.
20 MR. EASTLAND: Then that objection would be hearsay.
21 JUDGE SANDRON: Well --
22 MS. CAROL: I'm not trying to get a statement in.
23 JUDGE SANDRON: Well --
24 MS. CAROL: I'm sorry, I'm not trying to get a statement
25 into the --

1 JUDGE SANDRON: Well, hearsay's not automatically
2 excluded.
3 MR. EASTLAND: No, I'm just --
4 JUDGE SANDRON: And obviously --
5 MR. EASTLAND: I'm just trying to get accurate evidence,
6 Your Honor.
7 JUDGE SANDRON: Yes, and it needs to be evaluated based
8 on other evidence, but I'll allow it in.
9 Q. BY MS. CAROL: And did they -- did any of these six
10 employees operate -- well, you know what? I'm not going to
11 ask that question. I'll ask a different question.
12 After these employees were let go, do you know whether
13 or not the Employer utilized the hiring hall -- or I'm sorry,
14 I don't want to misstate it, the referral hall for any
15 additional help after they were let go?
16 A. Yes, he did.
17 Q. And how do you know that?
18 A. Because I would get emails every week on referral
19 orders.
20 Q. Okay.
21 A. For dispatch orders, I guess. The dispatcher sends out
22 an email that shows where operators were dispatched to.
23 Q. All right, so I'm going to show you General Counsel 7,
24 as soon as I mark it as such. Be patient with me if you
25 don't mind.

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1 (General Counsel's Exhibit 7 marked for identification.)
2 Q. BY MS. CAROL: All right. It's 18 pages. Let's see if
3 you can recognize this document.
4 A. Yes, I recognize this.
5 Q. What is that?
6 A. This is the work order that is in our computer system
7 for the contractors on the referral. They would -- this is
8 what our dispatcher puts into the computer after he talks to
9 a contractor to fill an order.
10 Q. Okay. All right, so let me just look at this document
11 to see if -- to make sure what every thing's -- so at the top
12 it says your name, and then who's Rich Killingback?
13 A. Rich Killingback is the Local 324's dispatcher.
14 Q. Okay. And he sent this to you what, a couple days ago
15 or --
16 A. Saturday.
17 Q. Saturday. Okay. And was this prepared in response to
18 the subpoena from the Respondent?
19 A. He printed it out --
20 Q. Okay.
21 A. -- in response to the subpoena.
22 Q. And this is the type of -- these documents are kept in
23 the regular course of your referral hall procedure?
24 A. Correct.
25 Q. Okay. So I just want to look at the first one as an

1 example so we know what everything is. So the job info work
2 order number, what's that number? Where does that come from?
3 A. That is our four-digit number to keep track of that
4 specific work order in the system.
5 Q. So that's the union work order number?
6 A. Yes.
7 Q. Okay. So the next line says order date, I assume, and
8 what does that reflect?
9 A. That is when the call or email was made to the dispatch
10 office that they need -- that they were -- requested
11 personnel.
12 Q. All right. And the next line, start date?
13 A. Start date would be the date that they need the operator
14 to arrive.
15 Q. Okay. And so the jobsite info is -- is that the
16 contractor or just the location?
17 A. That is the location.
18 Q. Okay. And then the contractor info is under that?
19 A. Yes.
20 Q. What is the requirements? Was -- is that something that
21 would be provided to the Union by the contractors or --
22 A. This is what they request the operator to have.
23 Q. Okay. All right, and then who chooses who the operators
24 dispatched is?
25 A. That would be our dispatcher.

1 Q. And --
2 A. He looks at the list and see who's on the list.
3 Q. -- and can that person be rejected by the contractor if
4 not -- if they don't want that person for some reason?
5 A. Only if there's -- in writing. They have to submit it
6 in writing that they don't want a member.
7 Q. Oh, okay. All right. So and that's what -- that's
8 basically the outline for all the records contained in
9 General Counsel's 7?
10 A. Yes.
11 Q. What those numbers mean.
12 MS. CAROL: Okay, Your Honor, I would like to offer
13 General Counsel's Exhibit 7 into evidence at this time.
14 JUDGE SANDRON: Do we know what period this represents?
15 Is it -- is this all the referrals from April 13th, 2010
16 until -- I think they're a little bit out of order, some of
17 them are --
18 MS. CAROL: Oh, through April 19th of 2017.
19 JUDGE SANDRON: -- '17 that involved members being
20 dispatched at Erickson's?
21 THE WITNESS: Yes.
22 Q. BY MS. CAROL: Is that correct?
23 A. That's my understanding these are all that we have.
24 MS. CAROL: All right.
25 JUDGE SANDRON: Did you have any voir dire because --

1 about the document?
2 MR. EASTLAND: No, I think you answered the only
3 question I had, which was the period. We don't -- these are
4 business records. We have no objection.
5 JUDGE SANDRON: All right, and I assume you're offering
6 it other than the heading on the top?
7 MS. CAROL: Yes. Yes, the email is just part of
8 gathering the documents, just for the actual quantitative
9 information contained in the records.
10 JUDGE SANDRON: All right, General Counsel Exhibit 7 is
11 received without objection.
12 (General Counsel's Exhibit 7 received in evidence.)
13 MS. CAROL: That is all I have on direct for this
14 witness, Your Honor.
15 JUDGE SANDRON: Did you get -- are you saying the
16 Employer is required to give you rejections in writing?
17 Didn't you say that?
18 THE WITNESS: He's supposed to notify the employee and
19 the Union in writing.
20 JUDGE SANDRON: To your knowledge during this period of
21 time that's contained in General Counsel's Exhibit 7, did
22 Mr. Erickson put in writing any rejections that you're --
23 which you're aware of from -- that were referred?
24 THE WITNESS: Not that I'm aware of.
25 JUDGE SANDRON: And, Ms. Bachelder, do you have any --

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1 MS. BACHELDER: I have just one --
2 JUDGE SANDRON: -- questions of the witness?
3 MS. BACHELDER: -- one question. We'll see if that is
4 really true.
5 DIRECT EXAMINATION
6 Q. BY MS. BACHELDER: Mr. Popps, do you know about how many
7 members Local 324 has in the state of Michigan?
8 A. Over 14,000.
9 MS. BACHELDER: That's all I have, Your Honor.
10 JUDGE SANDRON: All right. Cross-examination.
11 MR. EASTLAND: Yes. Affidavit?
12 MS. CAROL: Ah, yes, sorry.
13 JUDGE SANDRON: Maybe, Ms. Carol, you can state on the
14 record the date of the affidavit and how long it is.
15 MS. CAROL: Yup, I certainly will. There's two of them
16 actually.
17 JUDGE SANDRON: Two affidavits.
18 MS. CAROL: Two documents, the first of which is four
19 pages, and the second -- oh, yeah -- the second of which is
20 three pages.
21 JUDGE SANDRON: And the dates of the affidavits?
22 MS. CAROL: Oh, I'm sorry. January 21st of 2016 and
23 June 20th of 2016.
24 JUDGE SANDRON: All right, this might be a good
25 opportunity to take a short recess, and Mr. Eastland can

1 review it.
2 MR. EASTLAND: I could use a bathroom break. Thank you.
3 JUDGE SANDRON: Shall we come back say in -- it's now
4 12:00. Should we come back at 12:15?
5 MR. EASTLAND: Yes. Thank you.
6 JUDGE SANDRON: Off.
7 (Off the record from 12:00 p.m. to 12:17 p.m.)
8 JUDGE SANDRON: Okay. The Court Reporter brought it to
9 my attention that it's possible that Respondent's Exhibits 1
10 through 3 were not actually admitted, so to be on the safe
11 side, does the General Counsel or the Union have any
12 objections to them being received?
13 MS. CAROL: No objection for General Counsel.
14 MS. BACHELDER: No objection.
15 JUDGE SANDRON: Respondent's Exhibits 1 through 3 are
16 received. Crossed that one.
17 MR. EASTLAND: Thank you.
18 (Respondent Exhibits 1 through 3 received in evidence.)
19 CROSS-EXAMINATION
20 Q. BY MR. EASTLAND: Mr. Popps, a few questions for you.
21 Help me understand a little bit more. You mentioned you were
22 a business agent and you began being a business agent in May
23 of 2015; is that right?
24 A. Correct.
25 Q. Okay. And there are 21 business agents?

1 A. Roughly.
2 Q. Okay. Roughly. Is there more sometimes or less, I
3 mean?
4 A. I'm guessing. I believe that there's 20, 21 of us.
5 Q. Okay. So you don't know for sure how many there are?
6 A. No, sir.
7 Q. Okay. About around 20?
8 A. Yes.
9 Q. Okay. And they're assigned different counties
10 throughout the state?
11 A. Correct.
12 Q. Okay. And so when they're assigned counties, do you
13 have all the employers in those counties?
14 A. All the jobs that are going on in them counties.
15 Q. Okay. All the jobs?
16 A. Yes.
17 Q. Okay. And you stated that you have six counties that
18 you represent members in?
19 A. No, I got more than six. I think there's eight --
20 there's eight counties.
21 Q. What counties were those again?
22 A. I think it's Muskegon, Newaygo, Oceana, Osceola,
23 Mecosta, Mason, and Manistee. So that's probably more than
24 eight, but --
25 JUDGE SANDRON: What was the last one?

1 THE WITNESS: Manistee.
2 Q. BY MR. EASTLAND: I think I got seven.
3 A. Sounds about right.
4 Q. Okay. Those are all of them?
5 A. Yeah.
6 JUDGE SANDRON: And we'll get the spellings of those for
7 the record.
8 MR. EASTLAND: Sure.
9 Q. BY MR. EASTLAND: Did you ask for Muskegon County?
10 A. No.
11 Q. It was given to you?
12 A. Yes.
13 Q. Okay. But you're not the only bargaining -- or union
14 representative that works with Erickson's, correct?
15 A. That's correct.
16 Q. Okay. So, for instance, their bargaining representative
17 is different, isn't it?
18 A. Yes.
19 Q. And that's Jeff McCarthy, correct?
20 A. Correct.
21 Q. Okay. So what do you handle for Erickson's, then, if
22 they have a different bargaining representative?
23 A. Jeff is our financial secretary. He handles the
24 contract negotiations with the shop contractors so Erickson's
25 long-form falls under that, but the work is hoisting and

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1 portable, so therefore, it falls under my jurisdiction.
2 Q. Okay. So are you charged with knowing the contract
3 terms?
4 A. Yes.
5 Q. And the day-to-day operations with the Employer?
6 A. Yes.
7 Q. Did you ever tell Mr. Ericksons that you asked to be --
8 to represent Erickson's, Inc.?
9 A. No.
10 Q. And you mentioned you were a former employee of
11 Erickson's, Inc.?
12 A. Yes.
13 Q. Okay. And you quit, didn't you?
14 A. Yes.
15 Q. And you didn't explain to the Employer why you quit, did
16 you?
17 A. I gave him 2 weeks' notice; that was enough.
18 Q. But you didn't explain why, did you?
19 A. No.
20 Q. And the work at Erickson's and your understanding that
21 it's like project work? Project basis?
22 A. Yes.
23 Q. Right. It's a construction industry --
24 A. Yes.
25 Q. -- for the most part?

1 A. Yes.
2 Q. All right, so when there's a project, there's lots of
3 work?
4 A. Yes.
5 Q. And when there's less projects, there's less work?
6 A. Yeah, I -- yes.
7 Q. Okay. So the work fluctuates, correct?
8 A. Correct.
9 Q. And as I understand it, the Union's position here is
10 that Erickson's was required to make all layoffs by
11 seniority, correct?
12 MS. BACHELDER: Objection. That is not the Union's
13 position. It's the General Counsel's position.
14 JUDGE SANDRON: Right, and I don't think -- all right,
15 but I don't think he can answer a question about what the
16 theory of -- the Union has counsel and the General Counsel
17 obviously has counsel, so he's not really competent to be
18 able to talk I believe --
19 Q. BY MR. EASTLAND: You're a business agent of the Local
20 324, correct?
21 A. Yes.
22 Q. Okay. And Local 324 filed charges in this case,
23 correct?
24 A. Yes.
25 Q. And you're aware of those charges, aren't you?

1 A. Yes.
2 Q. And you understand what they are, don't you?
3 A. Yes.
4 MR. EASTLAND: He can answer the question, Your Honor.
5 MS. BACHELDER: Objection.
6 JUDGE SANDRON: Well, they speak for themselves.
7 MS. BACHELDER: Yes.
8 MR. EASTLAND: Okay.
9 JUDGE SANDRON: Are you objecting --
10 Q. BY MR. EASTLAND: You're not contending that Erickson's
11 can't lay off operators, are you?
12 A. No.
13 Q. Your position is that it's got to be done by seniority,
14 correct?
15 MS. BACHELDER: Objection.
16 JUDGE SANDRON: Sustained.
17 MR. EASTLAND: I asked him your position, Your Honor.
18 JUDGE SANDRON: Right, but his position is irrelevant.
19 We have the Union as a institutional party, and we have the
20 General Counsel as an institutional party. So his --
21 MR. EASTLAND: Well, Your Honor, the General Counsel, I
22 can't call them as a witness --
23 JUDGE SANDRON: Well --
24 MR. EASTLAND: -- and I'm allowed to explore the
25 allegations of the Union's charges with the Union's witness.

1 If you're not permitting me to do that --
2 JUDGE SANDRON: Well --
3 MR. EASTLAND: -- that's fine. I just want it clear on
4 the record.
5 JUDGE SANDRON: Well, he's not the person that is
6 representing the Union in this proceeding.
7 MR. EASTLAND: Okay. Then as long as we can have a
8 stipulation that his -- none of his testimony is relevant
9 because he's testifying on behalf of the General Counsel as a
10 union witness.
11 JUDGE SANDRON: Well, I think that you're dealing
12 with --
13 MR. EASTLAND: I mean --
14 JUDGE SANDRON: -- you're dealing -- I don't think your
15 analogous -- you're asking him basically what is his legal
16 theory, and he's not a lawyer --
17 MR. EASTLAND: No, I asked him -- I moved off of that
18 question, Your Honor. I honored your --
19 JUDGE SANDRON: Yes.
20 MR. EASTLAND: -- your ruling on the objection.
21 JUDGE SANDRON: Right.
22 MR. EASTLAND: And I moved off, and I asked him about
23 what the factual contention of the Union is. This witness
24 has testified that he's responsible for the day-to-day
25 operations, and he's responsible for knowledge of the

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1 contract, and now the Union's attorney is saying he can't
2 answer questions on that? That is ridiculous, Your Honor.
3 JUDGE SANDRON: You --
4 MS. BACHELDER: I agree, Your Honor, he's asking for
5 legal theory, and legal theory is the bailiwick of the
6 General Counsel.
7 JUDGE SANDRON: Sustained. Your objection is noted on
8 the record and your comments.
9 Q. BY MR. EASTLAND: You're familiar with the collective
10 bargaining agreement, right?
11 A. Yes.
12 Q. Okay. And that has a grievance procedure in it, doesn't
13 it?
14 A. Yes.
15 Q. Okay. And if you look at General Counsel's 2 -- does
16 the witness still have these, Your Honor?
17 A. Yes, I do.
18 Q. Thank you.
19 I believe it's Article 8, Mr. Popps, on page 11. Do you
20 see that?
21 A. Yes. Yes.
22 Q. That's the arbitration and grievance procedure, correct?
23 A. Correct.
24 Q. Okay. And Section 8(a), the initial portion, states,
25 "That it's mutually agreed that all grievances, disputes, or

1 complaints arising under and during the terms of the
2 agreement shall be settled in accordance with the procedure
3 herein provided." I read that correctly?
4 A. Yes.
5 Q. Okay. And you're familiar with that provision?
6 A. Yes.
7 Q. Okay. And so the grievance/arbitration procedures, they
8 cover more than grievances, don't they?
9 MS. BACHELDER: Objection; relevance.
10 MR. EASTLAND: I mean these are background questions.
11 If we could get through them, we would see the relevance
12 immediately. I'd ask for a little leeway to prove that it'll
13 become apparent.
14 JUDGE SANDRON: Go ahead.
15 THE WITNESS: I only handle the grievance portion of
16 this, but I guess arbitration would be something that, yes --
17 Q. BY MR. EASTLAND: Right, but the language says all -- it
18 says, "grievances, all disputes, or complaints," correct?
19 JUDGE SANDRON: All right, well, it speaks for itself.
20 MR. EASTLAND: Okay. Fair enough.
21 Q. BY MR. EASTLAND: The Union didn't file any grievances
22 concerning the six layoff at issue here today, did they?
23 A. No.
24 Q. Okay. And the Union didn't file any grievances
25 concerning any of the allegations here today?

1 MS. BACHELDER: Objection; relevance.
2 Q. BY MR. EASTLAND: Has the Union filed any grievances,
3 sir?
4 JUDGE SANDRON: Well, I'll allow it.
5 THE WITNESS: Could you ask again, please?
6 Q. BY MR. EASTLAND: Have they filed any grievances
7 concerning any of the allegations in the complaint?
8 A. No.
9 Q. Okay. But through this process, you could have done
10 that, correct, as the business agent?
11 MS. BACHELDER: Objection; relevance.
12 JUDGE SANDRON: What is the relevance?
13 MR. EASTLAND: Well, certainly it goes to the
14 witness's -- whether he's cooperating as required by the
15 contract.
16 JUDGE SANDRON: Well, are you saying that --
17 MR. EASTLAND: And it goes -- and, therefore, goes to
18 credibility.
19 JUDGE SANDRON: All right, well, are you saying that the
20 provisions of the contract are -- supersede the right to file
21 under the National Labor Relations Act?
22 MR. EASTLAND: I'm not making that legal argument, Your
23 Honor. I'm making a factual -- I'm asking the witness a
24 factual question whether or not they could have been resolved
25 through an agreed upon procedure.

1 MS. BACHELDER: He has the --
2 JUDGE SANDRON: Well, how should --
3 MS. BACHELDER: I'm sorry.
4 JUDGE SANDRON: Well, all right, how should that affect
5 a determination of the merits of whether an unfair labor
6 practices were committed?
7 MR. EASTLAND: Well, I think that it will show that this
8 witness is not complying with the contract and not working
9 with the Employer to do so, and, therefore, it goes to
10 whether or not his testimony is credible ultimately, which
11 I'm permitted to explore on cross-examination.
12 JUDGE SANDRON: All right.
13 MR. EASTLAND: Now, Ms. Bachelder can object to every
14 single question. We can be here for weeks, that's fine. But
15 I'm entitled to ask -- I'd ask for some -- a little leeway on
16 cross-examination.
17 JUDGE SANDRON: Well, I think you've made your point,
18 and you can argue it. Objection's sustained.
19 Q. BY MR. EASTLAND: There's nothing in the contract that
20 requires layoff by seniority, is there?
21 A. No.
22 Q. And the contract also contains language where the
23 parties had agreed to cooperate; is that correct?
24 JUDGE SANDRON: I think you've already asked him that,
25 haven't you?

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1 MS. CAROL: Oh, well, I mean I would maintain my
2 original position –
3 JUDGE SANDRON: Original --
4 MS. CAROL: -- that it's irrelevant because it's not a
5 defense even if it were in fact true.
6 JUDGE SANDRON: The proffer's on the record.
7 Q. BY MR. EASTLAND: Mr. Popps, how long have you been an
8 operating engineer?
9 A. Nineteen years.
10 Q. Nineteen years. You operate cranes?
11 A. Yes.
12 Q. Okay. And would you -- you would agree with me then
13 that safety is an important part of the construction work?
14 A. It is the most important.
15 Q. And it's usually important when you have individuals
16 operating large cranes?
17 A. Yes.
18 Q. Small cranes?
19 A. Any crane.
20 Q. Forklift operators?
21 A. Yes.
22 Q. All right. And you understand that all of Erickson's
23 employees and the Company has to comply with all of the
24 MIOSHA rules, correct?
25 A. Correct.

1 Q. And by MIOSHA I mean the Michigan --
2 A. Yeah.
3 Q. -- Occupational Health and Safety Administration?
4 A. Correct.
5 Q. Okay. And part of safe crane operation is to make sure
6 you have experienced, competent, and qualified operators,
7 correct?
8 A. Correct.
9 Q. Now, you testified on direct examination that Local 324
10 issues CCO?
11 A. Correct.
12 Q. And CCO stands for?
13 A. It's the National Commission for Certified Crane
14 Operators.
15 Q. Okay.
16 A. NCCCO.
17 Q. NCCCO?
18 A. Yeah.
19 Q. Okay. I just -- that's my understanding too. I wanted
20 to make sure that we're talking about the same thing.
21 A. Yeah.
22 Q. Okay. And so does NCCCO, is that a national
23 organization?
24 A. Correct.
25 Q. Okay. And do they have some sort of guidelines that

1 apply across the nation?
2 A. Yes.
3 Q. Okay. And so then does the national organization issue
4 a certification or is that done locally?
5 A. To be honest with you I'm only -- I only know about
6 our -- that our training center does it. I don't know if
7 the -- if they teach it.
8 Q. Okay, so --
9 A. I don't know.
10 Q. But your understanding of Local 324 operations are you
11 have a training center?
12 A. Correct.
13 Q. For the Local Union?
14 A. Yes.
15 Q. And that the -- I just want to make sure I have this
16 right, so then the employees -- your members go to that and
17 they sit through some sort of training class?
18 A. They take a written test and then a obstacle course with
19 the crane, a practical exam.
20 Q. Okay. So it's a practical exam and a written test?
21 A. Yes.
22 Q. Do you -- have you taken that?
23 A. Yes.
24 Q. Okay. Is it one day of testing or?
25 A. Usually the class -- yes, it's one day for each.

1 Q. Okay. And is there any educational requirements prior
2 to taking the exam?
3 A. You need 2,000 -- the NCCCO stipulates you need 2,000
4 hours in the seat.
5 Q. Okay, that's in the seat?
6 A. Yes.
7 Q. So that's kind of on the job, if you will?
8 A. Correct.
9 Q. Okay. But are there any classes like classroom
10 training?
11 A. We have crane classroom training, yes.
12 Q. Okay. And then the practical exam, what's that?
13 A. That's where you actually operate the crane through an
14 obstacle course and some depth perception testing.
15 Q. All right, and is there a crane on site then at the
16 Local that they do the testing?
17 A. Yes.
18 Q. And what type of crane is that?
19 A. We have several. We have a tower crane, a crawler
20 crane, a rough terrain crane, two truck cranes. We have --
21 Q. Okay. Do you have to take a practical exam on every
22 single one of those cranes?
23 A. If you want that certification, yes.
24 Q. Okay, so the certification is by crane type?
25 A. Yes.

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1 Q. Okay. And what size are all those cranes?
2 A. It's -- that we have or what the testing is?
3 Q. Yeah. Yeah, that you test them on. That's what I'm
4 interested in.
5 A. They're broke down into small hydraulic, large hydraulic
6 for the testing, but we've got a 15-ton Broderson, a 75-ton
7 rough terrain crane, a 90-ton truck crane, a triple-one
8 Manitowoc crawler crane, a tower crane, a Potain tower crane,
9 and I believe we have a P&H friction lattice boom crane.
10 Q. Okay.
11 JUDGE SANDRON: So when you say we, who --
12 THE WITNESS: The training center.
13 JUDGE SANDRON: Training center.
14 Q. BY MR. EASTLAND: The training center for the Local
15 Union?
16 A. Yes.
17 Q. Okay.
18 JUDGE SANDRON: Okay.
19 Q. BY MR. EASTLAND: And so just so I'm tracking there, I'm
20 not a crane guy, the largest, was it the 90-ton?
21 A. No, the largest is the triple-one. It's the lattice
22 boom truck crane.
23 JUDGE SANDRON: So --
24 MR. EASTLAND: Okay.
25 THE WITNESS: Or the lattice boom crawler, I'm sorry.

1 JUDGE SANDRON: So just going --
2 MR. EASTLAND: So -- I'm sorry.
3 JUDGE SANDRON: Going to the certifications, so you can
4 get certified for certain types of cranes only? Or is it you
5 need the training and the written test and the practical
6 demonstration, that's for -- qualifies you for all cranes?
7 THE WITNESS: It's not crane specific; there's different
8 types. There's lattice boom truck crane.
9 JUDGE SANDRON: Right.
10 THE WITNESS: There's lattice boom crawler cranes. So
11 any size of lattice boom crawler cranes fall into that
12 certification.
13 JUDGE SANDRON: I see so --
14 THE WITNESS: Then you have swing cab, which is a small
15 crane, and -- or a fixed cab and swing cab.
16 JUDGE SANDRON: So someone who receives the NCCCO can
17 operate any of those?
18 THE WITNESS: If -- yes, if they received the
19 certification.
20 Q. BY MR. EASTLAND: But --
21 JUDGE SANDRON: But -- well, I guess the question is, to
22 clarify, you said per -- you -- there's certain -- there's no
23 just one NCCCO certification? There's more than one?
24 THE WITNESS: Yes, there several.
25 Q. BY MR. EASTLAND: Right. So for instance if I was --

1 got an NCCCO certification, I might get it on a 15-ton crane?
2 A. That would be fixed cab, yes.
3 Q. Right. And there's a category that that applies to?
4 A. Yes.
5 Q. So just because you have an NCCCO qualification doesn't
6 mean you're qualified for every crane, correct?
7 A. No, sir.
8 Q. Thank you.
9 JUDGE SANDRON: So you could drive a crane that's
10 smaller, but not larger?
11 THE WITNESS: Correct.
12 Q. BY MR. EASTLAND: And the -- you said triple-one crane?
13 A. Yes.
14 Q. Is that a 100-ton?
15 A. Yes.
16 Q. I'm going to ask you a couple questions about -- sorry.
17 I'll find the right exhibit here.
18 General Counsel 3. Do you have that in front of you,
19 Mr. Popps?
20 A. Yes.
21 MR. EASTLAND: Your Honor, I just want to make the
22 record clear. I'm asking these questions and continue my
23 objections from before, but I feel the need to be able to ask
24 questions about this so that I can make the appropriate
25 arguments I need to make.

1 Q. BY MR. EASTLAND: Mr. Popps, you didn't sign this
2 agreement, correct?
3 A. No, sir.
4 Q. Okay. And you weren't employed by the Union at the time
5 it was signed?
6 A. No, sir.
7 Q. Okay. And so you have no knowledge of whether Local 324
8 actually provided any evidence of majority support among
9 operators, correct?
10 A. No, sir.
11 Q. And I understand on direct testimony you explained that
12 it's a -- I call it a union hiring hall, Ms. -- Counsel for
13 the General Counsel calls it a referral hall, so the hiring
14 hall/referral hall when it unionized an employer like
15 Erickson's, Inc. has a need for operating engineers, they
16 call dispatch, correct?
17 A. Correct.
18 MS. BACHELDER: Objection.
19 JUDGE SANDRON: What's the objection?
20 MS. BACHELDER: I withdraw that. Are you just trying to
21 get the general procedure, Mr. Eastland?
22 MR. EASTLAND: I don't have to tell you what I'm doing.
23 You can object to my questions if you'd like.
24 JUDGE SANDRON: All right. Go ahead.
25 MR. EASTLAND: Thank you.

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1 THE WITNESS: It's not a -- I mean not in this case. He
2 doesn't have to go through the referral hall.
3 Q. BY MR. EASTLAND: Right, but -- well, the contract says
4 you have to give the Union the first chance?
5 A. Correct.
6 Q. And so it's -- and it's optional for the Employer?
7 A. Correct.
8 Q. If the Union doesn't have somebody that meets the
9 qualifications, then --
10 A. Correct.
11 Q. -- obviously the -- they got to get the job done and the
12 Union guy -- you know --
13 A. Yeah.
14 Q. -- there isn't somebody from the hall?
15 A. It's -- yes.
16 Q. Okay. And dispatch, does the dispatcher make the
17 determination of which person to send?
18 A. For the most part, yes.
19 Q. Okay. All right. And you're not aware of any time that
20 Erickson's, Inc., has ever refused someone that dispatch
21 sent?
22 A. Yes, one.
23 Q. Who's that?
24 A. Jason Baerman.
25 Q. When?

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1 A. Progressive Mechanical, I want to say it -- well, Jason
2 would probably have the date, probably February of 2016.
3 January or February.
4 JUDGE SANDRON: And that was for a jobsite?
5 THE WITNESS: Yes.
6 JUDGE SANDRON: And what was the name of that one? The
7 jobsite?
8 THE WITNESS: The jobsite was at the Holland energy
9 plant for Progressive Mechanical, I believe.
10 MR. EASTLAND: As I understand it though, the Union has
11 produced all the hiring hall records, so to the extent that
12 that occurred, it would be in that production.
13 THE WITNESS: There wouldn't have been a request --
14 there would have been -- we would have -- we had Jason call
15 Erickson's dispatcher, and he was told that he had no need
16 for him.
17 MR. EASTLAND: Okay. I'm going to move to strike as
18 hearsay. I'm not sure that that's relevant either, but --
19 JUDGE SANDRON: Well --
20 MR. EASTLAND: -- so I guess my question is -- go ahead,
21 Your Honor, I didn't mean to interrupt.
22 JUDGE SANDRON: Well, as I said, hearsay's not
23 automatically excluded. It's a matter of whether it's tied
24 up, you know, based on other evidence in the record so it's
25 in the record. But I'm not sure --

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1 Q. BY MR. EASTLAND: Okay, but that's just one instance is
2 all you're --
3 A. That I know, yes.
4 Q. Okay. And you believe that was the dispatcher that said
5 that?
6 JUDGE SANDRON: It's --
7 Q. BY MR. EASTLAND: On behalf of Erickson's?
8 A. Yes.
9 Q. Did you --
10 JUDGE SANDRON: It is --
11 Q. BY MR. EASTLAND: -- did you have that conversation
12 though?
13 A. No.
14 Q. Okay.
15 JUDGE SANDRON: All right --
16 Q. BY MR. EASTLAND: So you don't know what was said?
17 A. No.
18 Q. Okay.
19 JUDGE SANDRON: Well, why -- you said most of the
20 referrals are by dispatch. Are there other situations where
21 they're not?
22 THE WITNESS: In an emergency situation, the agent can
23 fill the position if it's after hours.
24 JUDGE SANDRON: Oh, I see. And you can do that --
25 THE WITNESS: Yes.

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1 JUDGE SANDRON: -- in an emergency?
2 THE WITNESS: Yes.
3 Q. BY MR. EASTLAND: Okay.
4 JUDGE SANDRON: And you're not personally aware of what
5 happened with Jason Baerman in February of 2016?
6 THE WITNESS: I was not part of that conversation, no.
7 Q. BY MR. EASTLAND: So you were just explaining your
8 understanding from what you heard from others?
9 A. Correct.
10 Q. You've been working with Erickson's --
11 JUDGE SANDRON: Well --
12 MR. EASTLAND: I'm sorry.
13 JUDGE SANDRON: -- I'm going to say it's not technically
14 excludable, but it is rather weak if there's not more in the
15 record concerning that.
16 MR. EASTLAND: It certainly would be under the -- to the
17 extent we're applying the Federal Rules of Evidence to the
18 extent reasonably practical, I believe it would be excluded,
19 but your point's an excellent one, Your Honor, and that is
20 it's not probative of anything.
21 JUDGE SANDRON: Well, actually I don't have my citations
22 here, but there are Board decisions that rule the hearsay is
23 not treated as automatically excludable, but again I don't
24 think it's prejudicial at this point. If it becomes a bigger
25 issue, I can get my citations.

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1 MR. EASTLAND: May I proceed?
2 JUDGE SANDRON: Yes.
3 MR. EASTLAND: Thank you.
4 Q. BY MR. EASTLAND: Now, you have been working with
5 Erickson's since when?
6 A. '97.
7 Q. No, as a BA. I'm sorry.
8 A. Oh, as a BA since May of 2015.
9 Q. Okay. So since May of 2015 I take it there have been
10 layoffs, correct?
11 A. Yes.
12 Q. Okay. Of your union members, correct?
13 A. Correct.
14 Q. And --
15 JUDGE SANDRON: All right, I just wanted to interject I
16 did find what I was looking for. As the Board has stated,
17 quote, "Administrative agencies ordinarily do not invoke a
18 technical rule of exclusion but admit hearsay evidence and
19 give it such weight as its inherent quality justifies." And
20 that's in Midland Hilton & Towers, 324 NLRB 1141, 1141
21 footnote 1 (1997), enforcement on the grounds 598 F.2d 1267,
22 (2nd Cir. 1975). See also Alvin J. Bart and Company, 236
23 NLRB 242, 242.
24 And Midland Hilton & Towers holds that hearsay evidence
25 may be admitted, quote, "If rationally probative in force and

1 if corroborated by something more than the slightest amount
2 of other evidence," period, closed quote.
3 In the event that any of the hearsay evidence that we
4 get in the record in this proceeding do not meet those
5 standards, then it will be basically ignored. Go ahead.
6 MR. EASTLAND: I'm sorry?
7 JUDGE SANDRON: I just wanted to get it on the record;
8 that's fine.
9 MR. EASTLAND: Okay.
10 Q. BY MR. EASTLAND: I'm sorry. We were talking about
11 layoffs and --
12 A. Yes.
13 Q. -- I'm going to get to my point. Sorry, I'm belaboring
14 here. I know you're probably getting tired of being up
15 there.
16 Since you've been at Erickson's as a BA, you've --
17 there've been layoffs of your members, correct?
18 A. Yes.
19 Q. And in all those cases, in none of those cases did you
20 ever receive a layoff slip, correct?
21 A. Correct.
22 Q. Okay. And in connection with all those layoffs without
23 a layoff slip, the Union had never filed a grievance,
24 correct?
25 A. Correct.

1 Q. Okay. Now, I think on direct examination, and correct
2 me if I'm wrong here, but I think you had testified,
3 Mr. Popps, that there were some wage issues with some of the
4 employees -- some of your members that were brought to your
5 attention, correct?
6 A. Correct.
7 Q. Okay. And Ms. Carol asked you whether any of those
8 issues had ever involved layoffs; is that right? Do you
9 remember that question?
10 A. Not particularly.
11 Q. Okay. Did any of those prior issues involve layoffs?
12 A. No.
13 Q. None of them?
14 A. No.
15 Q. Okay. So prior to the layoffs in question here,
16 there've been no layoffs in dispute?
17 A. No.
18 Q. Okay. But isn't it true that the Union filed a charge
19 alleging that Cody Velat was laid off --
20 A. Oh, yes, you're correct. Yes.
21 Q. Right. And that was investigated, wasn't it?
22 A. Yes, I -- well, there was a --
23 Q. And --
24 A. -- yes, there was a settlement.
25 Q. Yeah, and the Union -- actually the Union withdrew that

1 charge, didn't they?
2 MS. BACHELDER: Objection; relevance.
3 JUDGE SANDRON: Well, we have it -- I think it was
4 brought up by the General Counsel.
5 MR. EASTLAND: Yeah, we have -- I didn't make it
6 relevant; the other side did, Your Honor. So I think -- I'd
7 ask the --
8 THE WITNESS: I would say yes.
9 MR. EASTLAND: Okay. So --
10 THE WITNESS: All right, I was under the impression
11 there was a settlement agreement.
12 JUDGE SANDRON: Well, I don't think there's any dispute
13 that, correct, that there was a settlement agreement?
14 MS. CAROL: Correct.
15 MR. EASTLAND: Okay, we can just put the withdrawal
16 letter in.
17 JUDGE SANDRON: That'd probably be good --
18 MR. EASTLAND: If that's sufficient?
19 JUDGE SANDRON: -- to have it in the record.
20 MR. EASTLAND: Okay. And we're Respondent -- are we --
21 JUDGE SANDRON: I think you're at 4.
22 COURT REPORTER: Respondent --
23 MR. EASTLAND: Are we, are we -- are you -- I'm sorry,
24 Your Honor. Would you like them sequential or sequential
25 within each party's markings?

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1 JUDGE SANDRON: Well --
2 MR. EASTLAND: So we're doing General Counsel 1, 2, 3,
3 4; Respondent's 1, 2, 3, 4?
4 JUDGE SANDRON: Right.
5 MR. EASTLAND: Okay.
6 JUDGE SANDRON: So this would be 4.
7 MR. EASTLAND: Thank you.
8 (Respondent Exhibit 4 marked for identification.)
9 JUDGE SANDRON: Because 1 to 3 were the subpoenas.
10 MR. EASTLAND: Yes.
11 JUDGE SANDRON: Or the subpoena matters. So this would
12 be Respondent's Exhibit 4.
13 MR. EASTLAND: And -- sorry.
14 MS. CAROL: It's all right.
15 MR. EASTLAND: Your Honor.
16 JUDGE SANDRON: Thank you.
17 MR. EASTLAND: Ms. Carol, we're also going to put the
18 settlement agreement in. Rather than ask the witness
19 questions, if you'll stipulate to have that come in, then we
20 can --
21 MS. CAROL: Yeah, I'll stipulate.
22 MS. BACHELDER: I'll stipulate.
23 MS. CAROL: Yeah. Do you have --
24 MS. BACHELDER: As to 4 also.
25 MS. CAROL: Yeah, 4 too. That's fine.

1 JUDGE SANDRON: All right. Do you have the settlement
2 agreement itself?
3 MR. EASTLAND: We do, Your Honor.
4 MS. BACHELDER: Okay.
5 MR. EASTLAND: We'll mark it as Respondent's 5.
6 JUDGE SANDRON: Five.
7 MS. CAROL: Yup.
8 (Respondent Exhibit 5 marked for identification.)
9 MR. EASTLAND: Or is this 4?
10 JUDGE SANDRON: Right.
11 MS. CAROL: The settlement -- this is 4. The settlement
12 agreement will be 5.
13 MR. EASTLAND: I was already thinking ahead in marking
14 mine 5. Did I mark yours correctly, Ms. Bachelder?
15 MS. BACHELDER: Yes.
16 MR. EASTLAND: Thank you.
17 JUDGE SANDRON: Well, there being no objections,
18 Respondent Exhibits 4 and 5 are received.
19 (Respondent Exhibits 4 and 5 received in evidence.)
20 JUDGE SANDRON: Yes?
21 MS. BACHELDER: If we're going to put in the settlement
22 agreement, I would request we put in the entire agreement,
23 which would include the notice.
24 JUDGE SANDRON: Do you have the notice as well?
25 MR. EASTLAND: We do. We'd have to make copies of it so

1 if it can be conditionally received upon the, you know --
2 JUDGE SANDRON: Yes.
3 MR. EASTLAND: -- supplying of that, we can move
4 forward.
5 MS. BACHELDER: Okay.
6 JUDGE SANDRON: That'd be fine.
7 MR. EASTLAND: Or we can stop the hearing and we can go
8 make copies, either way.
9 JUDGE SANDRON: Well, I think --
10 MS. CAROL: Do it at a break. I'll do it.
11 JUDGE SANDRON: I think we can wait on that.
12 MR. EASTLAND: So have 4 and 5 have been received then,
13 Your Honor?
14 JUDGE SANDRON: Yes.
15 MR. EASTLAND: Thank you.
16 JUDGE SANDRON: Actually you could -- you've already
17 paginated these, the documents. Well, it says 1 of 2 maybe
18 that was originally on it, 2 of 2. If you want to just make
19 the notice like -- well, however you want to do it. I don't
20 think it's going to be a real problem.
21 MR. EASTLAND: I think we'll work with Counsel and --
22 JUDGE SANDRON: All right.
23 MR. EASTLAND: -- put that in a -- we'll introduce it in
24 a way so that meets your requirements, Your Honor.
25 JUDGE SANDRON: I'm sure you can come up with an

1 appropriate approach.
2 Q. BY MR. EASTLAND: Now, Mr. Popps, you've also
3 testified -- well, you testified about some payroll issues
4 involving Jamey Foster and Cody Velat, correct?
5 A. Correct.
6 Q. Okay. And those were all resolved, correct?
7 A. Correct.
8 Q. So the Union filed a grievance --
9 A. Correct.
10 Q. -- on each of those payroll issues?
11 A. Correct.
12 Q. And they were resolved through communications with
13 Erickson's, correct?
14 A. Correct.
15 Q. So it's fair to say then Mr. Erickson did talk with the
16 Union about those pay issues, and they were resolved, weren't
17 they?
18 A. Yes.
19 Q. Okay. You had testified also that there were 9 or 10
20 other employees who had raised wage issues?
21 A. Yes.
22 Q. Correct? The Union didn't file any grievances on those,
23 did they?
24 A. No.
25 Q. Okay.

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1 JUDGE SANDRON: Just one thing I suppose just so
2 everything's complete. The General -- the Regional Director
3 never revoked approval for settlement agreement, correct?
4 MS. CAROL: No. They never --
5 JUDGE SANDRON: Yes.
6 MS. CAROL: -- she never revoked settlement. Sorry.
7 JUDGE SANDRON: It's in the evidence.
8 MS. CAROL: Yes.
9 Q. BY MR. EASTLAND: And, Mr. Popps, then I take it if
10 there was no grievance then those 9 to 10 issues were
11 resolved?
12 A. They weren't resolved. The employees didn't want to
13 file the grievance.
14 Q. Okay. But you didn't -- the Union --
15 A. We didn't file the grievance, no.
16 Q. Okay. You testified on direct about a June 2006 [sic]
17 discussion?
18 A. Yes.
19 Q. Where you contacted Mr. Erickson by telephone, correct?
20 A. Correct.
21 Q. And you wanted to explore with -- the purpose for that
22 call was to explore with him whether he would resolve the
23 pending unfair labor practices, correct?
24 A. Not only that, but address the issues that, you know, to
25 try to have some harmony between us.

1 Q. Right, but you told him -- you asked him whether he
2 wanted to try to resolve the ULPs, correct?
3 A. Correct.
4 Q. And that was the purpose for the call?
5 JUDGE SANDRON: Well, I think he's already answered
6 that. I think he said there were two reasons. So it's on
7 the record. But his earlier testimony is in the record.
8 Q. BY MR. EASTLAND: And how long did that telephone
9 discussion take?
10 A. Five minutes.
11 Q. Are you sure about that?
12 A. No, I'm not sure.
13 Q. Okay.
14 MR. EASTLAND: That's all I have for you.
15 THE WITNESS: Where do you want these?
16 JUDGE SANDRON: Oh, wait, wait.
17 MS. CAROL: You're not done.
18 THE WITNESS: Oh, we're not done.
19 MS. CAROL: Sorry.
20 THE WITNESS: Dang it.
21 MS. CAROL: Oh.
22 THE WITNESS: I was hoping.
23 MR. EASTLAND: You can be done from my perspective.
24 THE WITNESS: Wishful -- oh, believe me, I'm sure I'm
25 not because then it goes her, then you, then --

1 JUDGE SANDRON: Redirect.
2 MS. CAROL: Not too much, don't worry.
3 REDIRECT EXAMINATION
4 Q. BY MS. CAROL: So the conversation you had with
5 Mr. Erickson in June of 2016, right?
6 A. Yes.
7 Q. I think the question is 2006; I just want to make sure
8 it was 2016.
9 JUDGE SANDRON: Yes, I think that's correct.
10 MS. CAROL: Okay.
11 JUDGE SANDRON: 2016 you meant?
12 MR. EASTLAND: Oh, did I say two thousand --
13 MS. CAROL: Yeah.
14 THE WITNESS: I didn't catch it either.
15 MR. EASTLAND: Yeah. I apologize.
16 MS. CAROL: I knew what you meant, but --
17 Q. BY MS. CAROL: -- would you -- I know you said you
18 weren't sure it was five minutes. Would you characterize it
19 as a long conversation or a short conversation?
20 A. Short.
21 Q. Okay. I just had a couple questions about
22 certifications that you testified about a little bit. How
23 many types of certifications are there?
24 A. I think -- I'm not 100 percent sure. I'd have to look
25 at my CCO card, but I believe there's seven.

1 Q. And within those seven would be multiple types of
2 equipment, correct?
3 A. Yes.
4 Q. Okay. Out of those seven types of certification does
5 the Respondent operate or have cranes in all seven of those
6 certifications, do you know?
7 A. Not in all seven, no.
8 Q. Okay. Do you know -- well -- do you know which
9 certifications, or I'm sorry, which classifications that
10 Respondent does have cranes in?
11 A. Yes.
12 Q. Can you tell us what those are?
13 A. It would be fixed cab, swing cab, lattice boom crawler,
14 and I believe he's got a knuckle boom -- yeah, and he's got
15 knuckle booms, which there is a thing on the CCO now. A
16 certification for knuckle booms, so he's got four.
17 Q. Okay.
18 A. I might be missing -- oh, and tower crane.
19 Q. Okay.
20 JUDGE SANDRON: Tower crane?
21 THE WITNESS: Yes.
22 JUDGE SANDRON: And did he have all of these equipments
23 back in 2016 as well?
24 THE WITNESS: Yes, sir.
25 Q. BY MS. CAROL: And I think you testified testing is one

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1 day of written testing, correct?
2 A. Yes.
3 Q. And one day additionally for the -- what do they call
4 it? Field test?
5 A. Practical.
6 Q. Practical. Thank you. So it's -- it would be 2 days
7 total?
8 A. Yes.
9 Q. Okay. And would the 1 day for practical testing be for
10 just one of these types of certifications or for all seven?
11 A. You -- they run through all of them.
12 Q. Okay. So you could get, if you passed your practical
13 exam, all seven of these certifications in 1 -- in 2 days?
14 A. Yes.
15 Q. Okay. And you also said something about 2,000 hours on
16 the job as being a requirement for certification?
17 A. Yes.
18 Q. Does that have to be achieved before the testing,
19 after -- or when does that have to happen to get the
20 certification?
21 A. The criteria is before you receive the testing, but
22 the -- I believe the NCCCO is lax on that provision.
23 Q. Okay. So you could pass the test and continue to get
24 hours afterwards?
25 A. Yes.

1 Q. Okay.
2 JUDGE SANDRON: Now, if you were going to -- get a
3 certification to only one type of vehicle, I assume then that
4 you wouldn't be a whole day written?
5 THE WITNESS: No, you would take the core exam and
6 then --
7 JUDGE SANDRON: Just for that?
8 THE WITNESS: Yes.
9 JUDGE SANDRON: And then the same with the one day of --
10 on the practical if you were only going to do one
11 certification, it'd be shorter time?
12 THE WITNESS: Correct. And they're not -- the days
13 aren't sequence either. They're months -- they're a month
14 apart so.
15 MS. CAROL: Oh, okay.
16 That's all I have on redirect, Your Honor.
17 JUDGE SANDRON: Ms. Bachelder?
18 MS. BACHELDER: Nothing.
19 JUDGE SANDRON: Any follow-up recross?
20 MR. EASTLAND: No.
21 JUDGE SANDRON: Okay.
22 THE WITNESS: Well, can I go now?
23 JUDGE SANDRON: Well, you have to go sit over there.
24 You're not --
25 THE WITNESS: Yeah.

1 JUDGE SANDRON: You're the representative of General
2 Counsel, so you still have to stay.
3 (Witness excused.)
4 JUDGE SANDRON: Okay, it's now a little past 1:00. I
5 don't know in terms of your witnesses, Ms. Carol, do you --
6 if you have a very short on if there's any reason that he or
7 she would need to leave, you know, soon, we could take that
8 witness. If not, we could take a recess for our lunch hour.
9 MS. CAROL: How long of a break were you think --
10 because I could call -- there's one individual -- are we on
11 the record?
12 JUDGE SANDRON: It can be off the record.
13 (Off the record from 1:04 p.m. to 1:05 p.m.)
14 JUDGE SANDRON: Let's go back on the record.
15 We've had a discussion. We will now recess. It's 1:05.
16 We will now recess until 1:50 p.m. and resume. Have a good
17 lunch hour.
18 MS. CAROL: Thank you.
19 MR. EASTLAND: Thank you.
20 JUDGE SANDRON: Go off the record.
21 (Whereupon, at 1:05 p.m., a lunch recess was taken.)
22
23
24
25

1 AFTERNOON SESSION
2 (Time Noted: 2:07 p.m.)
3 JUDGE SANDRON: We're back on the record, right?
4 (Whereupon,
5 CODY L. VELAT
6 was called as a witness by and on behalf of the General
7 Counsel and, after having been first duly sworn, was examined
8 and testified as follows:)
9 JUDGE SANDRON: If you'll have a seat. If you'll kindly
10 state and spell your full and correct legal name for the
11 record, and provide us with an address, either residence or
12 business, at your preference.
13 THE WITNESS: All right. Cody Lee Velat, C-o-d-y L-e-e
14 V-e-l-a-t, 2515 Gary Road, Montrose, Michigan.
15 JUDGE SANDRON: And your zip code?
16 THE WITNESS: 48457.
17 JUDGE SANDRON: All right. Thank you.
18 DIRECT EXAMINATION
19 Q. BY MS. CAROL: Mr. Valet, are you currently employed?
20 A. No.
21 Q. Okay. And have you ever worked for Erickson's?
22 A. Yes.
23 Q. Okay. And during what time period?
24 A. It was I believe May 2014 through December 2014.
25 Q. 2014?

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1 A. I think it was '14. '14 or '15. '15.
2 Q. Okay. Well --
3 JUDGE SANDRON: Well, about how long did you work for
4 them?
5 MS. CAROL: Yeah.
6 THE WITNESS: About 8 months.
7 Q. BY MS. CAROL: And what was your position when you
8 worked there?
9 JUDGE SANDRON: Do we have the dates that we --
10 MS. CAROL: I think it was 2015 --
11 THE WITNESS: It might have been '15, yeah.
12 MS. CAROL: Okay. And I'll --
13 THE WITNESS: I know it was 2 years ago --
14 JUDGE SANDRON: Well, I assume they'll be records that
15 will show the dates.
16 MS. CAROL: Yes, I was going to say. I'll ask you about
17 that also.
18 Q. BY MS. CAROL: What was your position when you worked
19 there?
20 A. I was oiling on the 900-ton.
21 JUDGE SANDRON: You were what?
22 THE WITNESS: Oiling on the 900-ton. Eighteen.
23 Q. BY MS. CAROL: All right. And who was your supervisor
24 when you worked there?
25 A. Well, Steve was the owner, and then the other

1 dispatcher, Brian.
2 Q. And when you say Steve, what was his last name?
3 A. Erickson.
4 Q. All right. And are the employees --
5 JUDGE SANDRON: Wait, wait. Brian was -- do you know
6 his last name?
7 THE WITNESS: I can't remember his last name. He's the
8 dispatcher there.
9 JUDGE SANDRON: You know how he spelled his first name?
10 THE WITNESS: Brian?
11 JUDGE SANDRON: Yeah.
12 THE WITNESS: B-r-i-a-n, I think.
13 JUDGE SANDRON: Oh, wait, do we know what --
14 THE WITNESS: Not sure. Brian.
15 MS. CAROL: I don't think it's going to be --
16 JUDGE SANDRON: All right.
17 MS. CAROL: -- brought up again. I think --
18 JUDGE SANDRON: And what was --
19 MS. CAROL: Sorry.
20 JUDGE SANDRON: -- your classification?
21 THE WITNESS: I was -- I'm an operator, but I was
22 oiling, yeah.
23 JUDGE SANDRON: So you were employed as an oiler?
24 THE WITNESS: Yeah.
25 MS. CAROL: Okay.

1 JUDGE SANDRON: You've got to say yes.
2 THE WITNESS: Yes.
3 JUDGE SANDRON: No, just so the record --
4 THE WITNESS: Okay.
5 MS. CAROL: Yes.
6 JUDGE SANDRON: -- has it.
7 MS. CAROL: Yes, because they're recording so --
8 Q. BY MS. CAROL: So when you worked at -- do you know if
9 the Operators at Erickson's are represented by Local 324?
10 A. Yes.
11 Q. And are you a member of Local 324?
12 A. Yes.
13 Q. And were you at the time that you worked there?
14 A. Yes, ma'am.
15 Q. Okay. So when you were working there, did you ever have
16 any issues regarding your pay? Your wage rates?
17 A. Yes.
18 Q. Okay. And do you remember when that was?
19 A. Most of the time I was there.
20 Q. So more than one time?
21 A. Yes.
22 Q. Okay. Was there ever a time that you had an issue with
23 your wage rate that you brought it to the attention of the
24 Union?
25 A. Yes.

1 Q. Okay. And do you recall when that was?
2 A. December.
3 Q. Of 2015?
4 A. Yes.
5 Q. Okay. And so just generally speaking, what was the
6 dispute? What was the issue with your wages?
7 A. I had one day I wasn't paid for, and I believe there was
8 3 hours of double time I was not paid for.
9 Q. And when that happened what, if anything, did you do
10 about that?
11 A. I called Nancy, and --
12 JUDGE SANDRON: All right. Before you get to that did
13 you give me the second -- the notice in the case?
14 MS. CAROL: I don't know --
15 JUDGE SANDRON: I don't think I got --
16 MS. CAROL: -- if I did. I do have copies that I can
17 get, or I think I gave one to the reporter that if you need
18 to see -- if you can --
19 JUDGE SANDRON: Yeah. I'd like to have it just --
20 MS. CAROL: Yeah.
21 JUDGE SANDRON: -- make sure I have everything.
22 MR. EASTLAND: I'm sorry, what, Your Honor?
23 MS. CAROL: The notice --
24 JUDGE SANDRON: The notice.
25 MS. CAROL: -- copy of the notice.

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1 MR. EASTLAND: Oh, okay. The page three --
2 JUDGE SANDRON: Yes.
3 MR. EASTLAND: -- of Respondent's 5?
4 MS. CAROL: The page three. I do have it. I will get
5 it to you.
6 JUDGE SANDRON: Was --
7 MS. CAROL: Yeah. Okay. Thank you. I'll make another
8 copy if we need one for them. You're welcome.
9 Q. BY MS. CAROL: I'm sorry, so you said you called Nancy?
10 A. Yes.
11 Q. And do you know what Nancy's last name is?
12 A. I don't know right off hand --
13 Q. Is it --
14 A. -- it starts with T, I think.
15 Q. Is it --
16 JUDGE SANDRON: You can ask him.
17 Q. BY MS. CAROL: Tejchma?
18 A. Yes.
19 Q. Okay. And who is she?
20 A. She is the secretary -- or she does payroll, sorry.
21 Q. Okay.
22 JUDGE SANDRON: And I think her name's already spelled
23 in the record.
24 MS. CAROL: It is. It is.
25 Q. BY MS. CAROL: And were you able to get it rectified

1 with Nancy?
2 JUDGE SANDRON: All right. Well, I think he need to lay
3 more of a foundation for, if she's an agent --
4 Q. BY MS. CAROL: Do you remember when you spoke with her?
5 A. I want to say it was the first week of December.
6 Q. And so you said she was the payroll person I think is
7 what you said --
8 A. Yes.
9 Q. -- correct? Okay. So what does that mean? What, in
10 your experience, did she do at the Company?
11 A. Well, every time I have a problem I usually would call
12 her, and then she would say that she had to talk to Steve
13 about it, Erickson.
14 Q. And I'm sorry. So you said you called her the first
15 week of December. And did you get the matter rectified
16 speaking to Nancy?
17 A. No.
18 JUDGE SANDRON: Well, I think again, if -- if you claim
19 that she's an agent, you need to --
20 MS. CAROL: I have --
21 JUDGE SANDRON: -- if you want --
22 MS. CAROL: I'm sorry.
23 JUDGE SANDRON: -- you need to lay the foundation for
24 her, or we can't really give it any --
25 MS. CAROL: I have other testimony that I think will

1 speak to that. I'm mostly calling Mr. Velat to enter a
2 document into evidence, so it's not --
3 JUDGE SANDRON: You don't feel that the conversation's
4 going to be --
5 MS. CAROL: Correct.
6 JUDGE SANDRON: -- important then it's --
7 MS. CAROL: Correct. It's just to show the background
8 of this situation, so.
9 JUDGE SANDRON: All right.
10 Q. BY MS. CAROL: So you weren't able to get it rectified
11 with Nancy. What, if anything, did you do after that?
12 A. After that?
13 Q. Uh-huh.
14 A. I did talk to Steve.
15 Q. Okay. And how soon after you spoke with Nancy did you
16 speak with Steve?
17 A. I want to say it was a couple days after.
18 Q. Okay. And did you call him or speak to him in person,
19 or?
20 A. I called him.
21 Q. Okay. And what, if anything, was said during that
22 conversation?
23 JUDGE SANDRON: Are you claiming this conversation you
24 want the foundation for?
25 MS. CAROL: Sure. So --

1 JUDGE SANDRON: And if you're going claim the
2 conversation had any importance then --
3 MS. CAROL: It's mostly just background evidence, Your
4 Honor, of how the document I'm going to put in came to be.
5 JUDGE SANDRON: All right.
6 Q. BY MS. CAROL: I'm sorry, so you spoke with
7 Mr. Erickson --
8 A. Well, I called and he didn't answer. We text, that's
9 where the documentation --
10 Q. Okay. Thank you.
11 (General Counsel's Exhibit 8 marked for identification.)
12 Q. BY MS. CAROL: All right, so you didn't get a hold of
13 him and then there was a text message. So let me show you
14 what I've marked as General Counsel's Exhibit 8. It is a
15 one-page document.
16 JUDGE SANDRON: So those conversations were just
17 background?
18 MS. CAROL: Yes, sir.
19 JUDGE SANDRON: This is GC Exhibit 8.
20 Q. BY MS. CAROL: And do you recognize this document?
21 A. Yes.
22 Q. And what is it?
23 A. It's a text message between me and Steven Erickson.
24 Q. Okay. And so looking at this document, the very top
25 where it says 8:00 a.m., whose words are those?

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1 A. Them are Steve's.
2 Q. Okay. And then "Ok sounds good" is?
3 A. Me.
4 Q. And then the one below that is from?
5 A. Steve.
6 Q. And how were these printed out? Did you print these --
7 print this out?
8 A. Did I print these out?
9 Q. From your phone?
10 A. Yeah.
11 Q. Okay.
12 A. Well, I think Brandon --
13 Q. Okay.
14 A. -- and me.
15 Q. Brandon Popps?
16 A. I sent them to Brandon. I had them -- I saved also as
17 my -- for my documentation.
18 Q. Okay. And so this date of Friday, December 18th, is
19 that accurate to best of your recollection?
20 A. Yes.
21 Q. Okay. And --
22 JUDGE SANDRON: Wait just one second. The December
23 18th, is there're two -- actually there're three messages.
24 Do we know they -- were they all the same day? Because it's
25 not clear form this.

1 THE WITNESS: I think the 12/18 was the following day, I
2 do believe --
3 JUDGE SANDRON: So --
4 THE WITNESS: -- that's why it says Friday because that
5 was on a Thursday.
6 JUDGE SANDRON: So Mr. Erickson sent the first one you
7 believe on December 17th --
8 THE WITNESS: Yes.
9 JUDGE SANDRON: -- at 6:10 you answered at 6:11, and the
10 next day I assume that he sent you the one at the bottom?
11 THE WITNESS: I do believe so, yes.
12 JUDGE SANDRON: And do you remember the time that was?
13 THE WITNESS: I think it was in the morning. I don't
14 know the specific time.
15 Q. BY MS. CAROL: Okay. And I'm sorry, so you said that
16 these you had -- what'd you do with the messages? You sent
17 them to Mr. Popps?
18 A. Yes. And I saved them for myself.
19 Q. Okay. Is this an accurate copy of the text messages on
20 those dates?
21 A. Yes.
22 MS. CAROL: Okay. I'd like to offer --
23 JUDGE SANDRON: Before you get -- was there anything in
24 between this because? Did you have any conversation with him
25 between the first two texts and then when he sent you that

1 back?
2 THE WITNESS: No.
3 JUDGE SANDRON: So do you know why he -- well --
4 THE WITNESS: This is later on after I called about
5 the -- about me not getting paid for the one day and the
6 couple hours. This is after the fact.
7 JUDGE SANDRON: So did you talk to the bookkeeper or him
8 after you --
9 THE WITNESS: Prior to this.
10 JUDGE SANDRON: Oh, I see. Do you have any voir dire on
11 the documents, Mr. Eastland?
12 MR. EASTLAND: None, Your Honor.
13 JUDGE SANDRON: Do you have any objections to it?
14 MR. EASTLAND: No.
15 JUDGE SANDRON: All right. General Counsel Exhibit 8 is
16 received.
17 (General Counsel's Exhibit 8 received in evidence.)
18 MS. CAROL: All right. That's all I have for this
19 witness, Your Honor.
20 JUDGE SANDRON: Ms. Bachelder?
21 MS. BACHELDER: Nope.
22 JUDGE SANDRON: And Mr. Eastland, cross-examination?
23 MR. EASTLAND: Yes. Lawyers' last words, just a few.
24 CROSS-EXAMINATION
25 Q. BY MR. EASTLAND: Mr. Velat, is it?

1 A. Velat.
2 Q. Mr. Velat, you -- did you -- were you hired on May 6,
3 2015, does that sound right?
4 A. Yes.
5 Q. Okay. So you worked there at Erickson's approximately 8
6 months?
7 A. Yes.
8 Q. Okay. And were you hired through the Union hiring hall?
9 A. Yeah.
10 MS. CAROL: Objection. Beyond the scope.
11 MR. EASTLAND: She asked about his tenure employment,
12 I'm --
13 MS. CAROL: Simply for the state -- for the purpose of
14 background --
15 MR. EASTLAND: Well --
16 MS. CAROL: -- didn't ask him any questions of how he
17 was hired or --
18 JUDGE SANDRON: Well, his -- maybe it'd be a good time
19 to ask, is there an issue as far as the Employer hiring from
20 the referral list? Is that an issue? Does that make a
21 difference in the case, you know, how he hired people?
22 MS. CAROL: Not until after the -- after the layoffs in
23 later of 2016. Mr. Velat was hired regardless of how he was
24 hired a year before the incidents in question.
25 MR. EASTLAND: Sorry, Colleen.

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1 JUDGE SANDRON: Go ahead.
2 MR. EASTLAND: I didn't mean to interrupt.
3 MS. CAROL: No that's okay. Go ahead.
4 MR. EASTLAND: Are you finished?
5 MS. CAROL: Yes.
6 MR. EASTLAND: Your Honor, I mean how these employees
7 are hired is relevant throughout through a number of
8 different arguments from both sides, and so, I mean, and it's
9 not going to take very long and these questions --
10 JUDGE SANDRON: All right --
11 MR. EASTLAND: -- are directly related --
12 JUDGE SANDRON: Well --
13 MR. EASTLAND: -- so I ask for a little leeway.
14 JUDGE SANDRON: Yeah. It sounds hard during the course
15 as we're going to know exactly what is or is not going to be
16 important, but in the interest of making sure we have
17 everything in the record, I'll allow it. So go ahead.
18 Q. BY MR. EASTLAND: So you were hired through the hiring
19 hall?
20 A. Yes.
21 Q. Okay. Hired by Erickson's through the hiring hall?
22 A. Yes.
23 Q. Okay. And you were an oiler, correct?
24 A. Yes.
25 Q. So that's a classification within the Operating

1 Engineer's Union, correct?
2 A. Yes.
3 Q. And -- but you were not a crane operator, correct?
4 A. I'm a certified crane operator.
5 Q. But at the time you were not, correct?
6 A. I was.
7 Q. Okay. But you didn't perform any crane operating
8 services for Mr. Ericksons company, did you?
9 A. Yeah, I did. It was after I was hired.
10 Q. What did you perform?
11 A. I ran the 1-ton squirt boom inside the yard doing test
12 picks, ran fork truck. Form setting, they had a wall for MJ
13 Electric.
14 Q. Okay. Fork truck, that's like a hi-lo?
15 A. Yeah. I think it was 25,000 pounds.
16 Q. Okay.
17 JUDGE SANDRON: So you're saying you were in the oiler
18 classification, but you performed other work?
19 THE WITNESS: When that crane wasn't busy, when we have
20 no work for that 900-ton I did other jobs.
21 JUDGE SANDRON: And who normally performed those other
22 jobs? What classifications?
23 THE WITNESS: Operators do.
24 JUDGE SANDRON: And you were qualified to do that work?
25 THE WITNESS: Yes.

1 Q. BY MR. EASTLAND: Now, you mentioned you had a issue
2 with a wage rate issue; is that right?
3 A. Yes.
4 Q. In December of --
5 A. Multiple times but that was --
6 Q. But you testified about the initial on December of 2015,
7 correct?
8 A. Yes.
9 Q. Okay. And you spoke with Nancy Tejchma first?
10 A. Yes.
11 Q. Okay. And then you exchanged text message with Mr.
12 Ericksons, correct?
13 A. I -- she said that she was going to talk to Steve,
14 but --
15 Q. But you talked to her first?
16 A. Yes.
17 Q. And then you exchanged text message with Mr. Ericksons?
18 A. Yes.
19 Q. I'm sorry, Mr. Erickson?
20 A. Yep.
21 Q. Sorry. And that pay issue involved about $58, didn't
22 it?
23 A. Yes.
24 Q. Okay.
25 A. Right around there. I don't know of the exact amount

1 right now off hand, but yes.
2 Q. But roughly $58. And you -- that was corrected and that
3 adjustment was made in you favor wasn't it?
4 A. Yes.
5 Q. Okay. And you're aware that that adjustment was made
6 after the Union filed a grievance?
7 A. Yes.
8 Q. Okay. And so Erickson's -- were you aware that
9 Mr. Steve Erickson spoke with the Union and resolved that
10 grievance?
11 MS. CAROL: Objection.
12 JUDGE SANDRON: I think --
13 MR. EASTLAND: I asked him if he was aware, Your Honor.
14 There's no -- that's not a valid objection. He can answer
15 the question. If he's aware, he is.
16 MS. BACHELDER: But there's a relevance issue.
17 MR. EASTLAND: It --
18 JUDGE SANDRON: Well, go ahead.
19 MR. EASTLAND: Your Honor, it's an absolutely
20 relevant -- they put in on direct testimony.
21 JUDGE SANDRON: I mean I see -- I think it's pretty
22 obvious but if you want to ask him, I mean, you can ask him.
23 Q. BY MR. EASTLAND: Okay. Was it after Mr. Erickson spoke
24 with the Union that it was resolved, correct?
25 A. Yes.

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1 Q. Thank you.
2 JUDGE SANDRON: And you -- after these texts you never
3 spoke with him Mr. Erickson on the subject because it said,
4 "If you have a problem, you need to contact me." Did you
5 ever talk to him again on --
6 THE WITNESS: I don't believe so. No, I didn't. I went
7 through Brandon.
8 JUDGE SANDRON: Mr. Popps?
9 THE WITNESS: Mr. Popps, yes.
10 Q. BY MR. EASTLAND: And Mr. Velat, you were laid off in
11 January of 2015 -- I'm sorry, 2016?
12 A. Yes.
13 Q. Okay. And you're aware aren't you that the Union filed
14 a unfair labor practice charge alleging that your layoff was
15 improper, correct?
16 A. I don't think it was --
17 Q. Were you aware --
18 A. Can you say that one more time?
19 Q. Were you aware that the Union filed an unfair labor
20 practice charge related to your layoff?
21 MS. CAROL: Your Honor, I'm going to object only because
22 the charges in evidence, the settlement's in evidence --
23 JUDGE SANDRON: Well --
24 MS. CAROL: -- this is --
25 MS. BACHELDER: Can his --

1 MS. CAROL: -- his contention.
2 MS. BACHELDER: His awareness is irrelevant.
3 JUDGE SANDRON: Are you -- okay.
4 Yeah. I don't really -- Do we have -- do you have the
5 original? Maybe we should have the original charge in the
6 record.
7 MS. CAROL: It is. It's General Counsel's 6, I believe.
8 JUDGE SANDRON: Let me find that. Although it is pretty
9 self-explanatory.
10 MR. EASTLAND: Well, look, Your Honor, if there's no
11 dispute that the charge was filed on Mr. Velat's behalf and
12 that it was withdrawn after the Region conducted an
13 investigation, I'll withdraw that question.
14 MS. BACHELDER: No dispute.
15 MR. EASTLAND: I'll withdraw the question.
16 JUDGE SANDRON: We'll take that as a stipulation.
17 General Counsel join in?
18 MS. CAROL: Oh, yes. I'm sorry.
19 JUDGE SANDRON: That's -- we'll take that --
20 MS. CAROL: I agree.
21 JUDGE SANDRON: We'll take that as a stipulation.
22 Received.
23 MR. EASTLAND: That's all.
24 JUDGE SANDRON: Any redirect?
25 MS. CAROL: No, sir.

1 JUDGE SANDRON: Ms. Bachelder?
2 MS. BACHELDER: Yeah. Couple questions.
3 REDIRECT EXAMINATION
4 Q. BY MS. BACHELDER: Mr. Velat, do you know who John
5 Hartwell is?
6 A. Yes, ma'am.
7 Q. Who is that?
8 A. This is the apprentice coordinator.
9 Q. And is that the person who referred you to Erickson?
10 JUDGE SANDRON: If you know.
11 THE WITNESS: They --
12 JUDGE SANDRON: If you know.
13 THE WITNESS: Well, it's -- Mr. Erickson would have to
14 call the hall, and then the hall would send somebody out to
15 work for him when they needed somebody.
16 Q. BY MS. BACHELDER: Do you know what the JATF is?
17 JUDGE SANDRON: Do we have Hartwell spelled in the
18 record?
19 MS. BACHELDER: I don't think so. It's John, J-o-h-n,
20 Hartwell, H-a-r-t-w-e-l-l, right?
21 MR. EASTLAND: Yes.
22 Q. BY MS. BACHELDER: And you said he's the apprentice
23 coordinator?
24 A. Yes, ma'am.
25 Q. And you were an apprentice then?

1 A. Yes.
2 Q. And do you know that apprentices are referred
3 differently than journeyman?
4 A. Yes.
5 Q. Do you know what the JATF is?
6 A. Yes.
7 Q. What -- do you know what it stands for, the letters?
8 A. No.
9 Q. Okay. Is A apprentice?
10 JUDGE SANDRON: Well, you can -- I would think it would
11 be --
12 Q. BY MS. BACHELDER: I'm not sure, but is it Journeyman
13 Training Apprentice program, or Joint --
14 MR. EASTLAND: It's Journeyman Apprentice Training --
15 Q. BY MS. BACHELDER: Journeyman Training Apprentice Fund.
16 Do you understand JATF to be that?
17 A. Yeah.
18 Q. And that's how you were referred?
19 A. Yes.
20 MS. BACHELDER: No questions.
21 JUDGE SANDRON: Mr. Eastland, any recross?
22 MR. EASTLAND: No.
23 JUDGE SANDRON: Okay. Thank you. You're done.
24 THE WITNESS: Thank you.
25 (Witness excused.)

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1 MS. CAROL: My next witness will be Mr. Jamey Foster,
2 who'll I'll get right now.
3 (Whereupon,
4 JAMEY G. FOSTER
5 was called as a witness by and on behalf of the General
6 Counsel and, after having been first duly sworn, was examined
7 and testified as follows:)
8 JUDGE SANDRON: Kindly come up to the witness stand and
9 be seated. If you can give us your full and correct legal
10 name and spell it, and provide us with your address, either
11 residence or business --
12 THE WITNESS: Okay.
13 JUDGE SANDRON: -- at your preference.
14 THE WITNESS: Jamey Glen Foster, J-a-m-e-y G-l-e-n
15 F-o-s-t-e-r, 510 West 68th Street, Newaygo, Michigan.
16 JUDGE SANDRON: And the zip code?
17 THE WITNESS: 49337.
18 JUDGE SANDRON: Thank you.
19 DIRECT EXAMINATION
20 Q. BY MS. CAROL: So, Mr. Foster, are you currently
21 employed?
22 A. Yes.
23 Q. And who are you employed by?
24 A. Erickson.
25 Q. How long have you worked for Erickson's?

1 A. Fourteen years.
2 Q. And what's your position?
3 A. Crane operator.
4 Q. And which facility do you work from?
5 A. Grand Rapids.
6 Q. Okay. And who is you supervisor?
7 A. Steve, Brian Sharp.
8 Q. Steve Erickson?
9 A. Uh-huh.
10 Q. And who is the other person, I'm sorry?
11 A. Brian Sharp. He's the dispatcher.
12 Q. Okay. And his last name is Sharp?
13 A. Sharp.
14 Q. S-h-a-r-p?
15 A. Uh-huh.
16 Q. Okay. And are the operators at Erickson's represented
17 by a Local 324?
18 A. Yes.
19 Q. And are you a member?
20 A. Yes.
21 Q. And have you been a member the whole time you've worked
22 there?
23 A. Yes.
24 Q. And you said you've worked there for 14 years. Were you
25 hired directly, or were you hired through the union referral

1 hall?
2 A. Directly.
3 Q. Okay. And are you a full-time employee?
4 A. Uh-huh.
5 Q. Okay.
6 JUDGE SANDRON: You've got to say yes.
7 THE WITNESS: Yes.
8 Q. BY MS. CAROL: Yeah. Sorry they -- and is that a year-
9 round position?
10 A. Yes.
11 Q. Okay. Do you hold any certifications?
12 A. Yes.
13 Q. I was going to ask you which ones. Let me ask it to you
14 this way. Are you certified to operate all the equipment
15 that Erickson's has?
16 A. Other than the tower crane.
17 Q. Okay.
18 JUDGE SANDRON: And which is that one?
19 THE WITNESS: Other than the tower crane.
20 JUDGE SANDRON: Oh, tower crane. Everything else?
21 THE WITNESS: Yeah. Large and small hydraulic, ladders,
22 truck, and crawler.
23 Q. BY MS. CAROL: Now, in your 14 years working there, have
24 you ever been laid off?
25 A. No.

1 Q. Okay. Even temporarily?
2 A. Week off, I guess, when we're slow.
3 Q. How many times do you think that you've had a week off
4 because it's slow?
5 A. Just once. I've only drawn one unemployment check.
6 Q. Okay. What was that -- what did you --
7 A. One unemployment check.
8 Q. Oh, an unemployment check, okay.
9 JUDGE SANDRON: Do you remember approximately when that
10 was in terms of --
11 THE WITNESS: Probably 2008, somewhere around there
12 where it was real slow for everybody.
13 Q. BY MS. CAROL: And when you were on that layoff, were
14 you called back to work directly, or did that recall go
15 through the hall?
16 A. Right from Steve.
17 Q. Okay. And when you were laid off that time, did you
18 have to turn in your company-issued equipment, like a credit
19 card?
20 A. No.
21 Q. Okay. Or keys?
22 JUDGE SANDRON: I think he did -- you have to wait for
23 him to answer.
24 MS. CAROL: I think --
25 MS. BACHELDER: He shook his head.

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1 MS. CAROL: I'm sorry.
2 THE WITNESS: I said no.
3 MS. CAROL: Okay.
4 JUDGE SANDRON: No to both?
5 THE WITNESS: No.
6 JUDGE SANDRON: No to both. All right.
7 Q. BY MS. CAROL: And do you recall during the time of
8 that -- how was it determined who was laid off at that time?
9 JUDGE SANDRON: Do you know how it was determined who --
10 THE WITNESS: I think by whoever was there the
11 longest --
12 JUDGE SANDRON: All right.
13 THE WITNESS: -- and who was least.
14 MR. EASTLAND: Objection as to foundation.
15 JUDGE SANDRON: Or was anything said to you about how
16 employees were selected --
17 THE WITNESS: Uh-huh.
18 JUDGE SANDRON: -- for layoff?
19 THE WITNESS: Not that time, no.
20 Q. BY MS. CAROL: Was that based on your observations?
21 A. As to if I was --
22 Q. Whether other --
23 A. -- sent home.
24 Q. -- how the layoffs were effectuated or how the layoffs
25 went?

1 A. Yeah. I guess speculation, I guess.
2 JUDGE SANDRON: Well, no.
3 MS. CAROL: Okay.
4 JUDGE SANDRON: About how many people were there at the
5 time of your layoff? You said it's -- you were in 2008, as
6 best as you can remember?
7 THE WITNESS: So 13, 14 operators. I'm not even sure
8 how many are there right now, to be honest.
9 JUDGE SANDRON: Well, how many were laid off at the same
10 time you were when you say others were laid off, if you
11 remember?
12 THE WITNESS: I don't recall.
13 JUDGE SANDRON: All right.
14 MS. CAROL: Okay.
15 JUDGE SANDRON: It's just what you remember.
16 MS. CAROL: Okay.
17 Q. BY MS. CAROL: Now --
18 A. It's nothing unnormal either when it gets slow like
19 that.
20 Q. Okay. So when it's slow that's what happened?
21 A. Uh-huh.
22 Q. And conversely, in your experience working there, are
23 there ever the situations where additional employees are
24 required?
25 A. Yeah. When we get busy.

1 Q. And what is done in those situations? How are
2 additional employees employed to the best of your knowledge?
3 A. I think he calls -- call the hall or call guys that have
4 worked there before. Before.
5 JUDGE SANDRON: Do you have personal knowledge of that
6 or is that just what --
7 THE WITNESS: It's --
8 JUDGE SANDRON: -- what you heard?
9 THE WITNESS: We've heard.
10 JUDGE SANDRON: All right. I think --
11 MS. CAROL: So -- I'm sorry.
12 JUDGE SANDRON: No, that's all right.
13 MS. CAROL: Okay. I'm sorry.
14 Q. BY MS. CAROL: So are you aware of the -- generally
15 speaking -- of the collective bargaining agreement between
16 the Union and the Company?
17 A. Uh-huh.
18 Q. Okay. And are you generally aware of the wage rates
19 that are --
20 A. Yes.
21 Q. -- in that? Okay.
22 Have you, in your 14 years, ever have any issues with
23 you getting paid the appropriate rate?
24 A. Yes.
25 Q. One time, or more than one time?

1 A. More than one.
2 Q. Can you estimate how many times?
3 A. Not really because -- I'm not sure to be honest.
4 JUDGE SANDRON: And now you've been there a long period
5 of time --
6 THE WITNESS: Uh-huh.
7 JUDGE SANDRON: -- 14 years -- you got to say yes.
8 THE WITNESS: Oh. Yes.
9 JUDGE SANDRON: Although that really wasn't a question;
10 I was coming into a question.
11 Was this a constant problem, occasional, or rare or how
12 would you say over the -- because you were there a lot of
13 years?
14 THE WITNESS: Happened more than it should have.
15 JUDGE SANDRON: Would you say it was a year?
16 THE WITNESS: Every week.
17 Q. BY MS. CAROL: Every week of all 14 years?
18 A. Not just me.
19 Q. Okay.
20 A. That necessarily --
21 JUDGE SANDRON: All right, you're --
22 THE WITNESS: Oh, you're talking about just me?
23 JUDGE SANDRON: Yeah.
24 MS. CAROL: Yes, just you.
25 JUDGE SANDRON: Just you.

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1 THE WITNESS: Not every week necessarily, but no.
2 JUDGE SANDRON: Well, how many times a year would you
3 say that ballpark figure?
4 THE WITNESS: Out of the 52 weeks, probably 30 I would
5 say. Half the time you didn't say nothing about it because
6 you wouldn't -- it wouldn't go no further.
7 Q. BY MS. CAROL: And that's my next line of questions is
8 before 2015, when these wage issues would come about, what
9 was the normal course that you individually would take to try
10 to --
11 A. Call Nancy.
12 Q. And who's Nancy? What's her last name?
13 A. I don't know.
14 Q. Is it Tejchma?
15 A. Tejchma.
16 Q. Okay. And who is she?
17 A. The payroll lady.
18 Q. And under what circumstances would you contact her, just
19 when you had wage issues or other issues as well?
20 A. If we was missing hours, or if your pay wasn't the right
21 scale.
22 Q. And do you know if she ever adjusted or fixed these
23 issues for you?
24 A. She would never tell you she did. She would say I'll
25 check on it, and then you'd have to keep an eye on your check

1 the following week to make sure she did. And there was few
2 cases where she didn't, and I'd have to call her again.
3 JUDGE SANDRON: And now prior to 2015, were all of your
4 wage issues ultimately resolved or were there --
5 THE WITNESS: One way or another, yeah, whether it was
6 to my liking or not, or the way it's supposed to be.
7 JUDGE SANDRON: And were they adjusted to the way you
8 thought --
9 THE WITNESS: Okay. The scale -- scale-wise.
10 JUDGE SANDRON: Yeah.
11 THE WITNESS: Not always, no.
12 JUDGE SANDRON: And on those occasions when she didn't
13 resolve it to your, you know, your satisfaction, did you take
14 any further action?
15 THE WITNESS: No, just left it.
16 JUDGE SANDRON: About what percentage of the time would
17 you say she had it resolved one way or another? To the way
18 you liked it, let's put it that way? Not just, you know,
19 made an adjustment but how many times?
20 THE WITNESS: Maybe 70 percent to the way it's supposed
21 to be, the correct way.
22 JUDGE SANDRON: And the other 30 percent you just let
23 go?
24 THE WITNESS: Uh-huh.
25 JUDGE SANDRON: Is that --

1 THE WITNESS: Yes.
2 Q. BY MS. CAROL: Okay. So I want to direct your attention
3 more to --
4 JUDGE SANDRON: And one other question: Did you have
5 any conversations with Mr. Erickson prior to 2015 on these
6 issues?
7 THE WITNESS: I have. I've called him when she wouldn't
8 do nothing.
9 JUDGE SANDRON: Well, I don't know if we want to get
10 into too many details, but were any of those resolved between
11 you and him after you talked to her?
12 THE WITNESS: Yes.
13 JUDGE SANDRON: And what percent would you say of those
14 were resolved when you talked to him directly?
15 THE WITNESS: To the correct way it's supposed be --
16 JUDGE SANDRON: Yes.
17 THE WITNESS: -- according to the contract?
18 JUDGE SANDRON: Yes. The way you felt it should be?
19 THE WITNESS: Most of the time it was.
20 JUDGE SANDRON: And did you take any further action when
21 you couldn't resolve it with him?
22 THE WITNESS: No.
23 JUDGE SANDRON: So just to clarify that on the 30
24 percent when you dealt with her and you didn't feel it was
25 resolved satisfactorily, on some of those occasions you went

1 to Mr. Erickson?
2 THE WITNESS: Uh-huh.
3 JUDGE SANDRON: Yes?
4 THE WITNESS: Yes.
5 JUDGE SANDRON: And he resolved, most of those were
6 resolved satisfactorily to you?
7 THE WITNESS: Yes.
8 JUDGE SANDRON: All right.
9 MS. CAROL: Okay, and that's --
10 JUDGE SANDRON: Yeah, I think that, you know, we don't
11 need --
12 MS. CAROL: But that's --
13 JUDGE SANDRON: -- anything to go into too much --
14 MS. CAROL: Yes.
15 JUDGE SANDRON: -- extra details.
16 MS. CAROL: Correct.
17 Q. BY MS. CAROL: So I wanted to talk about 2015
18 specifically. Did you have any wage issues in 2015??
19 A. Yes.
20 Q. And do you remember when specifically -- did you have
21 one or more than one in 2015?
22 A. Don't remember to be honest.
23 Q. Okay. Do you remember having any sort of wage dispute
24 in December of 2015?
25 A. Yes.

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1 Q. And do you generally remember what the nature of that
2 dispute was?
3 A. Yeah. It wasn't a correct scale.
4 Q. Okay, and what, if anything, did you do on that occasion
5 to --
6 A. I called Nancy and let her know, and I was told that's
7 what she was told it was.
8 Q. And so you weren't able to get this one resolved --
9 A. No.
10 Q. -- through directly -- did you do anything else after
11 you spoke to Nancy?
12 A. I called Brandon.
13 Q. Brandon Popps?
14 A. Yes.
15 Q. Okay.
16 JUDGE SANDRON: All right, is this going to -- is he
17 also one of the individuals that was the subject of the
18 charge in the settlement?
19 MS. CAROL: Yes.
20 JUDGE SANDRON: Well, I don't know -- maybe we can --
21 MS. BACHELDER: No. He wasn't the charged --
22 JUDGE SANDRON: He wasn't?
23 MS. CAROL: Not --
24 MS. BACHELDER: -- in the settlement. There wasn't a
25 layoff.

1 MS. CAROL: Oh, yes, I'm sorry. I'm sorry.
2 JUDGE SANDRON: Oh, I see.
3 MS. CAROL: I'm sorry. Yes. It was related to that but
4 not his particular --
5 JUDGE SANDRON: Not --
6 MS. CAROL: -- layoff because he still --
7 JUDGE SANDRON: I see.
8 MS. CAROL: He still works there. So --
9 JUDGE SANDRON: Go ahead.
10 Q. BY MS. CAROL: I'm sorry, you contact Mr. Popps, and
11 after you spoke with Mr. Popps, did you speak with
12 Mr. Erickson after --
13 A. No.
14 Q. -- you spoke to Mr. Popps?
15 Did you get any sort of communication from Mr. Erickson
16 after you spoke to Mr. Popps?
17 A. Just a text.
18 (General Counsel's Exhibit 9 marked for identification.)
19 Q. BY MS. CAROL: Okay. So I'm going to show you General
20 Counsel's 9, which again is one-page document. See if you
21 identify this document for me? And do you recognize --
22 A. Yes.
23 Q. -- that document? And what is that?
24 A. It's a text from Steve.
25 Q. Okay. And so looking at this document at the top,

1 there's some handwriting on that says from Steve Erickson to
2 Jamey Foster. Is that your writing?
3 A. No.
4 Q. Okay. And so Sunday, December 13th is -- there's a
5 message under there that says "8 am gr Monday"?
6 A. Yeah.
7 Q. Who is that? Who's the speaker there?
8 A. From Steve.
9 Q. Okay. And then there's Friday, December 18th where it
10 says, starts with "Jamie," and who is that speaking --
11 A. From Steve.
12 Q. -- or typing?
13 A. Steve.
14 Q. And then on the other side where it starts, "I need to
15 talk," is that --
16 A. Oh, that's from me.
17 Q. Okay. And underneath the "Ok" is also from
18 Mr. Erickson?
19 A. Yes.
20 Q. Okay. And these dates are accurate as far as your
21 recollection --
22 A. Yes. Yeah.
23 Q. -- of your conversations?
24 A. They come right off my phone.
25 Q. Okay. So this was on your phone. How did they -- did

1 you print this out?
2 A. No.
3 Q. Did you provide the text messages to anyone?
4 A. Yes.
5 Q. And who did you give them to?
6 A. Brandon.
7 Q. All right. And do you know if he printed them out?
8 A. I don't know.
9 Q. Okay.
10 JUDGE SANDRON: So you're only interested in the two
11 complete ones, right --
12 MS. CAROL: Yes.
13 JUDGE SANDRON: -- on December 18th because the others
14 are cut off?
15 MS. CAROL: Yes. Yes.
16 All right, so I'm sorry. I'd like to offer General
17 Counsel's Exhibit 9 into evidence.
18 MS. BACHELDER: No objection.
19 JUDGE SANDRON: Any objection? To that portion.
20 MR. EASTLAND: Yeah, I guess voir dire question.
21 VOIR DIRE EXAMINATION
22 Q. BY MR. EASTLAND: Whose -- do you know whose handwriting
23 that is on the top right?
24 A. No.
25 JUDGE SANDRON: Well, that, I don't think -- that part's

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1 not being offered --
2 MS. CAROL: No absolutely not.
3 JUDGE SANDRON: Just that --
4 MR. EASTLAND: Okay.
5 JUDGE SANDRON: -- middle part.
6 MR. EASTLAND: No objection.
7 JUDGE SANDRON: All right. General Counsel's Exhibit 9
8 is received, the text portion on that part of December 18,
9 2015, portions from that date.
10 (General Counsel's Exhibit 9 received in evidence.)
11 DIRECT EXAMINATION (cont.)
12 Q. BY MS. CAROL: Okay. So this, after this text message
13 exchange, did you discuss this matter with Mr. Erickson at
14 all again?
15 A. Not for 3, 4 weeks.
16 Q. Oh, so you did, it was just later?
17 A. Uh-huh.
18 Q. Okay.
19 JUDGE SANDRON: All right, remember you got to say yes.
20 THE WITNESS: Yes.
21 MS. CAROL: Yes.
22 JUDGE SANDRON: And remember make sure he answers --
23 MS. CAROL: I will. I'm sorry.
24 JUDGE SANDRON: -- before you ask him another question.
25 Q. BY MS. CAROL: And -- I'm sorry. You said that 3 or 4

1 weeks after this text message?
2 A. Yes.
3 Q. Okay. So --
4 A. I don't remember the exact date but it was January I
5 think.
6 Q. Okay. And where were you when you spoke to --
7 A. In Muskegon yard.
8 Q. Okay. And where in the Muskegon yard, or --
9 A. In his office.
10 Q. Okay. And was there anyone else in the office with you?
11 A. No.
12 Q. Okay. And what -- why were you in his office?
13 MR. EASTLAND: I'm sorry, did the witness answer it? I
14 didn't hear?
15 MS. CAROL: I thought he said --
16 JUDGE SANDRON: Yeah. Slow down a little bit so --
17 THE WITNESS: I said no, there was no one else in his
18 office.
19 MR. EASTLAND: Okay.
20 JUDGE SANDRON: And what time of day do you think?
21 THE WITNESS: 7:00 at night.
22 Q. BY MS. CAROL: And what was the purpose of you -- why
23 were you in his office?
24 A. First it was to talk about the job the next day, and
25 then to ask me about the grievance process.

1 JUDGE SANDRON: I'll tell you what, it might be best --
2 why don't you just start from the beginning. Did he call you
3 to the office or did you go --
4 THE WITNESS: No he called me to the office.
5 JUDGE SANDRON: All right. And why don't you start from
6 the beginning --
7 MS. CAROL: Yes.
8 JUDGE SANDRON: -- in what he said and what you said?
9 Q. BY MS. CAROL: So you went to the office --
10 A. Uh-huh.
11 Q. -- who started talking? Who said what?
12 A. Steve.
13 Q. Okay. What he say?
14 A. He started talking about the job the next day, what he
15 wanted done with the pallets and stuff down in Plainwell.
16 Q. And I'm sorry, and did you respond?
17 A. Uh-huh. Yes.
18 Q. What did you say?
19 A. I said okay; get it taken care of.
20 Q. And then what, if anything, did he say?
21 A. Then he followed up by wanting to know about the
22 grievance, the pay.
23 JUDGE SANDRON: Well, what he -- you mean what he asked
24 or what he said?
25 THE WITNESS: He said, now, onto this grievance, what's

1 this all about?
2 JUDGE SANDRON: Okay.
3 THE WITNESS: I said pay; the pay wasn't right, and this
4 is the last straw to get it fixed.
5 JUDGE SANDRON: And did he respond to you at that point?
6 THE WITNESS: Uh-huh.
7 JUDGE SANDRON: What did he say?
8 THE WITNESS: I don't really remember what he said. I
9 don't recall.
10 JUDGE SANDRON: Well, do you remember anything else that
11 either you or he said in the whole conversation?
12 THE WITNESS: I do. There was one comment that was made
13 that Brandon was playing games and he was going to play games
14 back with him; that if he lead me down a road, the wrong
15 road, that could make my employment -- jeopardize my
16 employment, and it would make it a hostile work environment
17 if he had start laying guys off that worked there.
18 JUDGE SANDRON: And Mr. Erickson said this?
19 THE WITNESS: Yes.
20 JUDGE SANDRON: And did you say anything else?
21 THE WITNESS: I didn't. I don't remember what
22 everything that was said.
23 Q. BY MS. CAROL: And how long do you think this
24 conversation lasted? How long was the meeting?
25 A. Half hour I think.

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1 JUDGE SANDRON: Do you remember how it ended? Who said
2 what or anything?
3 THE WITNESS: We hand-shook and said we were good.
4 MS. CAROL: Okay. That's all I have for this witness,
5 Your Honor.
6 JUDGE SANDRON: Ms. Bachelder?
7 MS. BACHELDER: No questions.
8 JUDGE SANDRON: And Mr. Eastland, cross-examination?
9 MR. EASTLAND: Sure. Are there affidavits?
10 MS. CAROL: Yes. There is one. It is I believe three
11 pages, and it is dated -- okay, yes. Thank you. I'm sorry.
12 It is dated January 21 of 2016. There you go.
13 JUDGE SANDRON: We'll go off the record for a few
14 minutes so counsel can review it.
15 (Off the record from 2:44 p.m. to 2:47 p.m.)
16 JUDGE SANDRON: And cross-examination.
17 CROSS-EXAMINATION
18 Q. BY MR. EASTLAND: Good afternoon, Mr. Foster. How are
19 you?
20 A. Good, and you?
21 Q. Good. Just a couple of questions for you this
22 afternoon. Did you begin working as an operator --
23 A. Yes.
24 Q. At Erickson's on August 25th, 2003?
25 A. Yes.

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1 Q. Sounds correct?
2 A. Uh-huh.
3 Q. Okay.
4 A. Pretty close.
5 JUDGE SANDRON: Remember, you've got to say yes.
6 THE WITNESS: Yes.
7 Q. BY MR. EASTLAND: All right, and you continued to be an
8 operator working there on June 20th when some other
9 individuals were laid off, correct?
10 A. Yes. Yes.
11 JUDGE SANDRON: Of 2016?
12 Q. BY MR. EASTLAND: Of 2016?
13 A. Yes.
14 Q. Okay. And you continued to work after June 20th of 2016
15 for Erickson's?
16 A. Yes.
17 Q. And you're still employed, correct?
18 A. Yes.
19 Q. And you testified on direct examination that the Company
20 has layoffs when work is slow, correct?
21 A. Yes.
22 Q. Okay, so hours and work fluctuate in this line of work,
23 doesn't it?
24 A. Yes.
25 Q. Okay. And operating engineers, you've seen them come

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1 and go at Erickson's in your 14 years, haven't you?
2 A. Just steadies. There were steady guys that worked there
3 off and on.
4 Q. Right, but employees have come and gone, correct?
5 A. Not different ones, no. Not that I've really seen.
6 Q. So there haven't been any layoffs of people that left
7 and came back?
8 A. Just the same guys that are working there are usually
9 sitting home for a couple weeks and then they come back.
10 Q. Okay, but you're aware that there are layoffs, correct?
11 A. Yeah.
12 Q. Do you know Nick Willer?
13 A. Yes.
14 Q. And that's N-i-c-k W-i-l-l-e-r, correct?
15 A. That's his name, not mine.
16 Q. Sound right?
17 JUDGE SANDRON: That's all right; you can spell it.
18 MR. EASTLAND: Okay.
19 Q. BY MR. EASTLAND: And he's an operator, correct?
20 A. Yes.
21 Q. Member of Local 324?
22 A. Yes.
23 Q. An employee of Erickson's?
24 A. Not now.
25 Q. He was though?

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1 A. He was.
2 Q. Do you know that he was laid off around June 20th of
3 2016?
4 A. You'd have to ask him; I don't know.
5 Q. Okay, you don't know. That's fair. I don't want you to
6 say anything you don't know yourself. Thank you.
7 Okay, were you aware that there were six operating
8 engineers laid off in 2016?
9 A. Yes.
10 Q. But you continued to work?
11 A. Yes.
12 Q. And the other employees who continued to work, the other
13 operating engineers, there were others that continued to
14 work?
15 A. Yes.
16 Q. Okay. They were all union members, weren't they?
17 A. Yes.
18 Q. Dan Wubben, do you know him?
19 A. Yes.
20 JUDGE SANDRON: Do you want to spell that name?
21 MR. EASTLAND: Yep. D-a-n W-u-b-b-e-n.
22 Q. BY MR. EASTLAND: Dan Wubben is a crane operator?
23 A. Yes.
24 Q. At Erickson's?
25 A. Yes.

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1 JUDGE SANDRON: All right, stipulation is received.
2 Q. BY MR. EASTLAND: And, Mr. Foster, you're also aware
3 that three of the individuals who were laid off in 2016 have
4 been recalled by Erickson's, right?
5 A. Yes.
6 Q. And that's Keith Stevenson?
7 A. Yes.
8 MR. EASTLAND: We've got his name in the record already.
9 JUDGE SANDRON: Yes, that's fine.
10 Q. BY MR. EASTLAND: Erin Baerman?
11 A. Yes.
12 Q. And Jason Baerman?
13 A. Yes.
14 Q. Would you agree with me, Mr. Foster, that a lack of work
15 is a fair reason to lay off an operating engineer?
16 MS. CAROL: Objection.
17 MS. BACHELDER: Objection.
18 JUDGE SANDRON: Sustained. I think it's axiomatic. I
19 think it's axiomatic.
20 MR. EASTLAND: Very well. I'll move on. Thank you,
21 Your Honor.
22 JUDGE SANDRON: If the Employer can establish that and
23 that there's no animus, then there's no issue for the
24 Employer.
25 Q. BY MR. EASTLAND: And, Mr. Foster, I understand that you

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1 are currently the union steward?
2 A. Yes.
3 Q. And the prior union steward was Don Deuling, correct?
4 A. I don't know who it was.
5 Q. Okay.
6 A. We never had one.
7 Q. When did you become the union steward?
8 A. I'm not sure of the official date, but it was January or
9 February.
10 Q. Of?
11 A. 2016.
12 JUDGE SANDRON: Were you the steward at the time of the
13 June 2016 layoff?
14 THE WITNESS: No.
15 JUDGE SANDRON: So, or was it this year that you became
16 steward?
17 THE WITNESS: Do you know the date?
18 JUDGE SANDRON: Well, you can't ask.
19 THE WITNESS: Oh, I can't ask? I don't know the date.
20 JUDGE SANDRON: But as far as you can recall, in June
21 2016 you weren't a steward yet, or you're not sure?
22 THE WITNESS: It was in the spring of 2016.
23 JUDGE SANDRON: All right, well, if it's as best as you
24 know.
25 THE WITNESS: Yeah.

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1 JUDGE SANDRON: If you're not sure, don't guess.
2 Q. BY MR. EASTLAND: Do you remember giving a sworn
3 affidavit to the NLRB?
4 A. Yes.
5 Q. Do you remember writing in and initialing on your sworn
6 affidavit that, "I became steward on January 4th"?
7 A. Yes.
8 JUDGE SANDRON: Of?
9 Q. BY MR. EASTLAND: Of 2016, correct?
10 A. Yes.
11 Q. So that reflects --
12 A. So that's the actual date, yeah.
13 Q. Okay.
14 JUDGE SANDRON: So that refreshes your memory?
15 THE WITNESS: Uh-huh.
16 JUDGE SANDRON: You've got to say yes.
17 THE WITNESS: Yes. Yes. Sorry.
18 Q. BY MR. EASTLAND: Mr. Foster, you mentioned there was a
19 pay dispute that resulted in a grievance I think in December
20 of 2015; does that sound right?
21 A. Yes.
22 Q. And I understand that the dispute was about $110?
23 A. Yes.
24 Q. And that was resolved?
25 A. Through the grievance process, yes.

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1 Q. And you received that approximately $110?
2 A. Yes.
3 MR. EASTLAND: That's all I have.
4 JUDGE SANDRON: Are you the most senior operator there
5 now?
6 THE WITNESS: Pardon?
7 JUDGE SANDRON: Are you the most senior operator?
8 THE WITNESS: No, I am not.
9 JUDGE SANDRON: About where do you stand in the
10 seniority, as best as you know?
11 THE WITNESS: Maybe number 6, I think. With the guys
12 that have been there before me?
13 JUDGE SANDRON: Yes. You're about 6?
14 THE WITNESS: I think so.
15 JUDGE SANDRON: Redirect?
16 REDIRECT EXAMINATION
17 Q. BY MS. CAROL: You had testified on cross that you were
18 aware that Keith Stevenson, Erin Baerman, and Jason Baerman
19 had been recalled?
20 A. Yes.
21 Q. Do you know when that was?
22 A. When I found out?
23 Q. No, when they were recalled?
24 A. I don't.
25 Q. Was it recently or was it last --

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1 A. It was just recently as far as I know.
2 Q. Okay.
3 JUDGE SANDRON: Well, would you say it was more than a
4 couple months ago or a month ago?
5 THE WITNESS: I think a month. I don't know when the
6 Palisades job started.
7 Q. BY MS. CAROL: Okay, when you say the Palisades job?
8 A. The nuclear plant.
9 Q. Okay.
10 A. Whenever that started and they got called from there,
11 it's I presume when they got called down there.
12 Q. Okay, and you don't know when that started?
13 A. No.
14 Q. And do you know whether that recall was through the
15 referral hall or they were called directly if you know?
16 A. I believe they were through the hall.
17 MS. CAROL: Okay. That's all I have on redirect.
18 JUDGE SANDRON: Ms. Bachelder?
19 MS. BACHELDER: No questions.
20 JUDGE SANDRON: Any recross?
21 MR. EASTLAND: No, I can do it through other witnesses.
22 Thank you.
23 JUDGE SANDRON: All right, thank you, Mr. Foster.
24 THE WITNESS: Uh-huh.
25 (Witness excused.)

1 MS. CAROL: All right, my next witness is Carlos Ocampo.
2 (Whereupon,
3 CARLOS OCAMPO
4 was called as a witness by and on behalf of General Counsel
5 and, after having been first duly sworn, was examined and
6 testified as follows:)
7 JUDGE SANDRON: If you'll kindly come up to the witness
8 stand to be seated. Please state and spell your full and
9 correct legal name and provide us with an address, either
10 residence or work.
11 THE WITNESS: It's Carlos. Spelling? You want me to
12 spell it?
13 JUDGE SANDRON: Yes.
14 THE WITNESS: C-a-r-l-o-s O-c-a-m-p-o.
15 JUDGE SANDRON: And an address?
16 THE WITNESS: 1428 Springdale Drive, Southeast, Grand
17 Rapids, Michigan 49508.
18 JUDGE SANDRON: All right, thank you. And just try to
19 keep your voice up so everybody can hear you.
20 MS. CAROL: And just so you know, they're recording, so
21 you have to say yes or no. It won't pick up like if you nod
22 your head or something like that. So just try to keep that
23 in mind.
24 THE WITNESS: Okay.
25 DIRECT EXAMINATION

1 Q. BY MS. CAROL: Okay, so Mr. Ocampo, have you ever worked
2 for Erickson's?
3 A. Yes.
4 Q. And during what time period did you work there?
5 A. From 2005 to 2016.
6 Q. And what was your position when you worked there?
7 A. Operator.
8 Q. And who was your supervisor?
9 A. Steve.
10 Q. Steve Erickson?
11 A. Yeah.
12 Q. Okay.
13 JUDGE SANDRON: You have to say yes.
14 THE WITNESS: Yes.
15 MS. CAROL: Okay, thank you.
16 Q. BY MS. CAROL: And which facility did you work from?
17 A. Out of the Grand Rapids one.
18 Q. When you were hired in 2005, were you directly hired, or
19 were you hired through the Union's referral hall?
20 A. I was directly hired.
21 Q. And do you hold any crane certifications?
22 A. Not at that time.
23 Q. Do you now?
24 A. Yes.
25 Q. And did you at any time when you were working for

1 Erickson's?
2 A. Yes.
3 Q. Did you obtain the crane certification?
4 A. Yes.
5 Q. Do you remember when approximately?
6 A. Five years ago.
7 JUDGE SANDRON: Mr. Ocampo, why don't you try to sit
8 back a little bit and be a little more comfortable as you
9 testify.
10 THE WITNESS: Okay.
11 JUDGE SANDRON: You know, just so you can be as relaxed
12 as you can.
13 THE WITNESS: Okay.
14 Q. BY MS. CAROL: And those certifications that you
15 obtained, did they -- was there any equipment at Erickson's
16 that you were not certified to operate once you achieved
17 those certifications?
18 A. Yes, there was.
19 Q. Which ones were you not qualified to operate?
20 A. Lattice crawler.
21 Q. Uh-huh. Anything else?
22 A. I think for what he had, that was the only thing that I
23 did.
24 Q. What was the last one?
25 A. Lattice crawler.

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1 Q. Okay. So did you --
2 A. Oh, and tower crane.
3 Q. Oh, and tower crane. Okay. All right.
4 Did you work on a particular piece of equipment when you
5 worked there or did it vary?
6 A. It varied.
7 Q. And were you a full-time employee?
8 A. Yes.
9 JUDGE SANDRON: During the last couple of years that you
10 were there, did you have any particular equipment that you
11 were on more than others?
12 THE WITNESS: There was a crane that was assigned to me,
13 but they still move me around.
14 JUDGE SANDRON: All right. And what was the crane
15 assigned to you?
16 THE WITNESS: It was a 40-ton crane.
17 JUDGE SANDRON: And as I understand it, the tower crane
18 is the one that requires the higher certification to operate
19 the crane?
20 THE WITNESS: I don't know if it's higher. It's just
21 different certification.
22 JUDGE SANDRON: I see. And that was the one you did not
23 have a certification?
24 THE WITNESS: I did not have it for that, and I did not
25 have it for the lattice crawler.

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1 JUDGE SANDRON: And you had it for everything else?
2 THE WITNESS: I had large hydraulic and small hydraulic.
3 Or fixed cab and swing cab.
4 JUDGE SANDRON: And those are all separate vehicles?
5 THE WITNESS: Yes.
6 MR. EASTLAND: I'm sorry. I didn't catch the witness's
7 -- he said something large hydraulic? There were three
8 things you said there; I just didn't hear them. I'm sorry.
9 THE WITNESS: It's a fixed cab and swing cab.
10 JUDGE SANDRON: So there were four, right?
11 THE WITNESS: It's two -- they change the name through
12 the years, so it's fixed cab and swing cab what I had.
13 JUDGE SANDRON: That was, I see, the same equipment but
14 different names? Is that right?
15 THE WITNESS: Yeah.
16 JUDGE SANDRON: You're the one that knows, and --
17 THE WITNESS: Yeah, a small and large, and they changed
18 the name on the license to fixed and swing cab.
19 Q. BY MS. CAROL: Okay, so, I'm sorry. You said you were
20 full-time when you worked at Erickson's?
21 A. Yes.
22 Q. And it was a year-around position?
23 A. Yes.
24 Q. Had you ever been laid off before?
25 A. Yes.

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1 Q. How many times do you think you'd been laid off while
2 working there?
3 JUDGE SANDRON: Before June --
4 Q. BY MS. CAROL: I'm sorry. Before 2016?
5 A. Maybe five times.
6 Q. And what was the longest of those layoffs, those five
7 layoffs?
8 A. Maybe 2 to 3 weeks.
9 Q. And when you were laid off in the past before 2016, how
10 were you recalled back to work? Was it through the Union
11 hall or was it direct recall?
12 A. Direct recall.
13 Q. And in those prior five layoffs when you were laid off,
14 were you told whether or not it was temporary or permanent?
15 A. Yes, it was basically take a few days off or something
16 like that, take a layoff.
17 JUDGE SANDRON: And who told you that?
18 THE WITNESS: It was Steve.
19 Q. BY MS. CAROL: And do you know or do you have any
20 information on how people were chosen to be laid off, in what
21 order?
22 A. I used to think it was by seniority.
23 JUDGE SANDRON: Was anything ever said, you know, by
24 Mr. Erickson or somebody speaking for him about seniority?
25 Or did they post anything that showed they were using

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1 seniority?
2 THE WITNESS: Dispatch had mentioned the seniority list
3 before.
4 JUDGE SANDRON: Was that for a layoff or just --
5 THE WITNESS: Just for -- just the seniority list, and
6 the way the layoffs happened it seemed like, to me it seemed
7 like it was by seniority the way it happened, or if, just say
8 the guy was running the 165 crane was going to be busy, he
9 wouldn't lay him off, you know, he would lay me off if I had
10 more seniority. That's how it seemed to me; I don't know.
11 JUDGE SANDRON: All right. And who was the dispatcher?
12 THE WITNESS: Brian Sharp. He's the one that mentioned
13 the seniority to me at one time, but I mean it was just --
14 JUDGE SANDRON: Was that in connection with a layoff or
15 just --
16 THE WITNESS: No, just something talking about work.
17 Q. BY MS. CAROL: Okay, so you know the operators are
18 represented by Local 324, correct?
19 A. Yes.
20 Q. And are you a member of Local 324?
21 A. Yes.
22 Q. And are you generally familiar with the wage rates that
23 are in the collective bargaining agreement?
24 A. Not really.
25 Q. Would you know if there was something amiss with your

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1 wages when you got your paycheck?
2 A. Yeah. I mean for the most part, but there was times
3 when I had to make a phone call to find out what it was
4 supposed to be.
5 Q. And that's my next question. When you worked there, did
6 you ever have any issues, any of these issues with receiving
7 the proper wage rate?
8 A. Yes.
9 Q. All right. One time or more than one time?
10 A. It happened a few times where I had to call the payroll
11 lady, you know, and say something was wrong.
12 Q. How many times if you can estimate?
13 A. I really don't know.
14 Q. Would it be more than -- so you worked there, what, for
15 11 years, more than once a year?
16 A. Yeah, yes.
17 Q. Okay. All right. More than five times a year?
18 A. Maybe five times or so.
19 Q. Okay.
20 A. I mean it --
21 Q. So that would be like --
22 A. -- I didn't keep track of it.
23 Q. Well, but that's the ballpark of how many?
24 A. Yes.
25 Q. Okay. All right. So before 2016, before the year that

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1 you were laid off, how would you deal with that if that came
2 up? What would you do in the past?
3 A. I would call the payroll lady, and sometimes she would
4 say call Steve. The last one happened in January 2016. I
5 called her and she told me to call Steve. I left Steve a
6 message that I didn't understand my pay because it was
7 something I had never seen, and then he called me back hours
8 later --
9 JUDGE SANDRON: All right, why don't you stop there.
10 Q. BY MS. CAROL: Yeah, hold on one second. Let me just
11 take that little by little. So first of all you mentioned
12 the payroll lady. Do you know what her name is?
13 A. Nancy.
14 Q. Nancy. Is it Tejchma? Does that sound right?
15 A. I don't know her last name.
16 Q. All right.
17 JUDGE SANDRON: Well, we have that in the record. I
18 don't think it's going to be disputed.
19 Q. BY MS. CAROL: And before 2016 she's who you would call
20 to deal with these issues, right?
21 A. Yes.
22 Q. And were they ever fixed by her? By Nancy? Did she
23 ever fix them for you in the past?
24 A. Yes. I believe so.
25 Q. Okay.

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1 A. I don't know how they did it at the office, but I
2 believe so.
3 Q. Okay. So you would talk to Nancy about a problem and
4 then it would be fixed later?
5 A. Yes.
6 Q. Okay.
7 A. Sometimes she said she would have to check with Steve.
8 JUDGE SANDRON: But your pay was adjusted in those
9 cases?
10 THE WITNESS: Yes.
11 Q. BY MS. CAROL: All right. So then you start talking
12 about January of 2016. So let's talk about that incident.
13 What was the wage issue you were having in January 2016?
14 A. That's just the most recent one I can recall, but that
15 was -- I went out oiling, and my oiler rate at that time I
16 think was supposed to be like 25.56 or something like that,
17 and I got paid, I want to say it was 19-something. And I
18 didn't know what that was.
19 Q. Okay, so when you saw that what did you do if anything?
20 JUDGE SANDRON: Do you remember where that was, the
21 work?
22 THE WITNESS: Yes, it was taking a tower crane down that
23 was on 28th street and 96.
24 JUDGE SANDRON: So it was within the local area here?
25 THE WITNESS: Yes.

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1 Q. BY MS. CAROL: All right, so when you noticed that
2 difference, what, if anything, did you do?
3 A. I called Nancy.
4 Q. Did you get the matter taken care of with Nancy?
5 A. No.
6 Q. Okay, so what, if anything, did you do after you talked
7 to Nancy?
8 A. She told me to call Steve, so I called Steve.
9 Q. And do you remember how soon after you spoke to Nancy
10 that you talked to Steve?
11 A. I called him right after but he didn't answer me.
12 Q. Okay, did you eventually speak with him?
13 A. Yes.
14 Q. And how? Was it over the phone or in person?
15 A. Over the phone.
16 Q. And who called whom?
17 A. He called me back.
18 Q. Got you. And what did he say?
19 JUDGE SANDRON: Well, about how much after you left the
20 message?
21 THE WITNESS: The message was around noontime I think,
22 and he called me back I think it was around 5:00.
23 JUDGE SANDRON: The same day?
24 Q. BY MS. CAROL: And what did he say when he called back?
25 JUDGE SANDRON: Well, who said what?

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1 THE WITNESS: Steve, I mean I can't remember exactly how
2 the phone call went, but it was, I told him that I didn't
3 understand that pay, and he said something like, they're both
4 right, but the one that I paid you is not, something like
5 that. And I said, well, how can that be? And he said,
6 there'll be paperwork -- or he said, he said he owed me four
7 dollars and some cents, and I said, how can that be if it was
8 like five-something difference per hour? It was a 13-hour
9 day, I think. And he said, there'll be paperwork with your
10 check so you can understand it.
11 JUDGE SANDRON: Anything else in that conversation?
12 THE WITNESS: That's all I remember. Then I called
13 Brandon.
14 Q. BY MS. CAROL: And how soon after you spoke with
15 Mr. Erickson did you call Mr. Popps?
16 A. Right after.
17 Q. Same day?
18 A. Yes.
19 Q. Okay.
20 JUDGE SANDRON: Be careful not to lead him.
21 MS. CAROL: Oh, sorry.
22 Q. BY MS. CAROL: And after you spoke with Mr. Popps, did
23 the matter get resolved?
24 A. Yes.
25 Q. All right, so I want to jump ahead a little bit. Do you

1 know someone named Erin Baerman?
2 A. Yes.
3 Q. And who is he?
4 A. Operator that I worked with at Erickson.
5 Q. And what about Jason Baerman?
6 A. An operator that I work with there.
7 Q. And Nick Willer?
8 A. An operator I worked with Erickson.
9 Q. Are you aware of whether or not their employment status
10 changed in the summer of 2016?
11 A. Yes.
12 Q. And how'd you become aware of that?
13 A. Just the guys, some of the guys from Erickson called me
14 and told me because I was working out of town.
15 Q. And what did you learn? How had their employment status
16 changed?
17 JUDGE SANDRON: I don't know that -- these are not going
18 to be disputed, are they?
19 MS. CAROL: No.
20 JUDGE SANDRON: Outside the --
21 MS. CAROL: Well, I mean it is the dispute, but the fact
22 that it happened, no.
23 JUDGE SANDRON: The fact that they were laid off --
24 MS. CAROL: Right.
25 JUDGE SANDRON: -- is not disputed.

1 Q. BY MS. CAROL: So were you aware that the three guys
2 were laid off?
3 A. Yes.
4 Q. And after you heard this, what, if anything, did you do
5 in response to hearing about this layoff?
6 A. I called the guys, you know, because I worked with them
7 for a long time, and then that's all I did then. Then it was
8 a little bit later, like maybe a couple of weeks, a month,
9 couple of weeks to a month I called Steve for something about
10 the crane.
11 JUDGE SANDRON: All right, I want you to stop for one
12 minute and let her set the foundation before that.
13 Q. BY MS. CAROL: So you called the three guys
14 individually, and then you said you called Steve Erickson?
15 A. Yes.
16 Q. And when did you call the guys after -- so they were
17 laid off on June 20th. How --
18 A. I called them --
19 JUDGE SANDRON: I don't think it really matters when he
20 called them.
21 MS. CAROL: Okay.
22 JUDGE SANDRON: As to when he called Mr. Erickson.
23 THE WITNESS: I called them the same week they got laid
24 off.
25 Q. BY MS. CAROL: All right, and then you called

1 Mr. Erickson how much time after that?
2 A. It was 2 weeks to a month.
3 JUDGE SANDRON: Do you remember the time of day you
4 called him?
5 THE WITNESS: It would have been in the afternoon
6 because we were just getting done with work, taking -- doing
7 something with a wind turbine.
8 MS. CAROL: Okay.
9 THE WITNESS: And I -- can I keep talking?
10 Q. BY MS. CAROL: I was going to say, and when you called,
11 who said --
12 JUDGE SANDRON: Well, wait. I know it's -- did you call
13 him --
14 THE WITNESS: I --
15 JUDGE SANDRON: -- at an office or on a cell phone or?
16 THE WITNESS: I called him to his cell phone.
17 Q. BY MS. CAROL: And what was said and by whom during this
18 conversation?
19 A. I just asked him what I had to ask him about the crane,
20 and then I told him, while I have you on the phone, can I ask
21 you a question? And he said, go ahead. And I said, am I
22 next? And I think he chuckled; it's hard to tell what he
23 did, you know. I think he chuckled on the phone, and then he
24 said, not right now.
25 Q. And did you have any response?

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1 A. I told him then that if he -- if it meant anything to
2 him, I just wanted to work, make money and get paid what I
3 was supposed to get paid. And he said, fair enough.
4 JUDGE SANDRON: Anything else in that conversation that
5 you --
6 THE WITNESS: That's all I remember.
7 Q. BY MS. CAROL: All right, so did anything happen to your
8 employment status after that conversation?
9 A. Yes.
10 Q. And how soon after that conversation?
11 A. I think that conversation must have been in -- it was in
12 June. Maybe middle, towards the end of June.
13 Q. And when were you -- were you laid off?
14 A. I got laid off on July 7th, I think it was.
15 Q. So let me talk about that. How did you come to find out
16 that you were laid off?
17 A. I was working in the Grand Rapids yard running a crane,
18 and Steve texted me to stop and see him before I went home.
19 Q. And did you do that?
20 A. Yes.
21 Q. And where did you meet with him?
22 A. In the Grand Rapids office.
23 Q. And was anybody else in the office with you and
24 Mr. Erickson?
25 A. No, it was just him.

1 Q. And so what was said and by whom?
2 JUDGE SANDRON: About what time was that?
3 THE WITNESS: This was right around 4:20, 4:30 probably.
4 In the afternoon.
5 JUDGE SANDRON: And he has an office, and that's where
6 you met him, or did they have an office in --
7 THE WITNESS: I don't think that was his office, but it
8 was in the Grand Rapids offices. We went into one of the
9 offices in there.
10 JUDGE SANDRON: One of the company offices?
11 THE WITNESS: Yes.
12 Q. BY MS. CAROL: All right, so what was said and by whom
13 during this meeting?
14 A. When I walked in, he said, you probably, something like
15 you probably know why you're here. And I said, I have an
16 idea. And we walked in the office, this was in the hallway,
17 then we walked in the office, and then he said -- then I
18 said, I have an idea because of what's been going on with
19 guys been getting laid off.
20 Q. And did he have any response to that?
21 A. Then he said it was nothing I did, that I'd done a great
22 job there. And that he -- something he had to go with it or
23 play -- go or play by the union rules, and that he wasn't
24 running them small cranes anymore. And something like
25 Brandon is relentless and no one seems to care about that.

1 Q. And did you have any response when he said that?
2 A. I just stood up, thank you for the work, shook his hand
3 and gave him the credit card, and I walked out.
4 Q. That was my next question. Did you have to turn in
5 anything --
6 JUDGE SANDRON: Well, before we get to that, did you,
7 anything else in that conversation you remember that either
8 you said or he said?
9 You know, think for a minute and tell us if there's
10 anything else you recall, and if not, then you can say so.
11 Just think for a moment.
12 THE WITNESS: I just think -- all I remember is him
13 saying that he wasn't running the smaller cranes anymore,
14 that I'd done a great job there, and it was nothing I did;
15 Brandon is relentless, and no one seems to either do or care
16 about that. I forget exactly how he said it. That's all I
17 remember. Thank you for the work, and I walked out.
18 Q. BY MS. CAROL: And did you return any --
19 A. He gave me a check, my layoff check, and I gave him the
20 credit card and fuel card, company credit card.
21 JUDGE SANDRON: Did he ask for it, or did you
22 voluntarily hand them over?
23 THE WITNESS: When he gave me the layoff check, he told
24 me I was getting laid off, and I just turned in the stuff.
25 He didn't ask me for the credit card, no.

1 JUDGE SANDRON: Had you ever done that before?
2 THE WITNESS: I was never laid off before permanently.
3 He never told me, pulled me in the office to lay me off.
4 JUDGE SANDRON: So you considered it different than the
5 short-term layoff?
6 THE WITNESS: Yes, because the short-term layoffs were
7 always on the phone, take a few days off.
8 JUDGE SANDRON: And this is the only time you were
9 called into his office?
10 THE WITNESS: Yes.
11 Q. BY MS. CAROL: And you had mentioned in your previous
12 testimony that when a layoff was over, that you'd be called
13 back directly by Mr. Erickson?
14 A. Yes.
15 Q. And have you since your layoff in July been directly
16 called by Mr. Erickson to come back to work at all?
17 A. No.
18 MS. CAROL: That is all I have on direct for this
19 witness, Your Honor.
20 JUDGE SANDRON: Ms. Bachelder?
21 MS. BACHELDER: No questions.
22 JUDGE SANDRON: Mr. Eastland, cross-examination?
23 MR. EASTLAND: Yes. Affidavit?
24 MS. CAROL: Can I get the last one back?
25 MR. EASTLAND: Oh, yes.

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1 JUDGE SANDRON: Oh, yeah, for the record, have you been
2 getting the affidavits back?
3 MS. CAROL: Yes. I just forgot to ask for this one.
4 JUDGE SANDRON: All right, that's noted on the record
5 then. Unless there's something stated to the contrary, we'll
6 assume --
7 MS. CAROL: Correct.
8 JUDGE SANDRON: -- that's the case henceforth.
9 MS. CAROL: Yes, I have one affidavit from Mr. Ocampo,
10 which is three pages, from July 8th of 2016. There you go.
11 JUDGE SANDRON: We'll give counsel a moment to review
12 it.
13 We'll go off the record.
14 (Off the record from 3:20 p.m. to 3:25 p.m.)
15 JUDGE SANDRON: Back on the record.
16 Cross-examination.
17 CROSS-EXAMINATION
18 Q. BY MR. EASTLAND: Mr. Ocampo, you testified that you
19 began work for Erickson's in 2005?
20 A. Yes.
21 Q. Your actual hire date was October 30th, 2006. Does that
22 sound more correct?
23 A. No.
24 Q. You sure about that?
25 A. Yes.

1 Q. Okay.
2 JUDGE SANDRON: Well, if there's something contrary in
3 the affidavit you can --
4 MR. EASTLAND: I -- yeah --
5 JUDGE SANDRON: -- bring that up.
6 MR. EASTLAND: We'll put the records in to show the
7 accurate hire date. We'll handle that.
8 Q. BY MR. EASTLAND: You're aware that work at Erickson's
9 fluctuates for Operating Engineers, correct?
10 A. Yes.
11 Q. And work is assigned on a project basis frequently?
12 A. I'm not sure.
13 JUDGE SANDRON: Do you understand that question?
14 Q. BY MR. EASTLAND: So as an operator, oftentimes you'll
15 get assigned to a piece of equipment on a particular project?
16 A. Yes.
17 Q. And those projects have a duration, and they come and
18 go, don't they?
19 A. Yes.
20 Q. And you said that you had been laid off five times?
21 A. That's what I remember, yes.
22 Q. So it could be more?
23 A. Could be more, could be less.
24 Q. Okay. You testified, Mr. Ocampo, that the longest of
25 those layoffs was a couple of weeks; is that right?

1 A. I remember 2 to 3 weeks.
2 Q. Do you remember being laid off in February of 2011?
3 A. It sounds right; it's the wintertime when I was -- when
4 I would be laid off.
5 Q. Right, and so you didn't work at all -- or I'm sorry.
6 Hold on one second.
7 MR. EASTLAND: I'm sorry. I want to make sure, did I
8 say March of 2011 or February?
9 MS. BACHELDER: February.
10 Q. BY MR. EASTLAND: Yeah, I meant March. I apologize. I
11 was looking at the wrong date. Do you remember being laid
12 off in March of 2011?
13 A. Like I said, I don't remember the exact months. I
14 remember the time of year, yes, the wintertime.
15 Q. Do you remember being laid off for an entire month in
16 the wintertime of 2011?
17 A. I don't remember an entire month.
18 Q. Would you have any reason to dispute if your payroll
19 records show that you didn't have any hours paid for the
20 entire month of March 2011?
21 JUDGE SANDRON: I don't think he -- I don't think you
22 need to -- we'll assume that's --
23 MR. EASTLAND: Well, we can introduce the payroll
24 records to show.
25 JUDGE SANDRON: Yeah, you can get that in later. I

1 don't think you need to ask him if you have documentary
2 evidence. It wouldn't be inconsistent with his testimony.
3 MR. EASTLAND: No, I just want to make sure the record
4 is clear --
5 JUDGE SANDRON: Yes.
6 MR. EASTLAND: -- that it was an entire month not --
7 JUDGE SANDRON: That's fine.
8 MR. EASTLAND: -- just more than 2 weeks.
9 JUDGE SANDRON: I think he had said -- oh, I see. All
10 right.
11 MR. EASTLAND: That's double.
12 JUDGE SANDRON: But you'll have it in the records --
13 MR. EASTLAND: Thank you.
14 JUDGE SANDRON: -- as a document, so that's more
15 reliable than --
16 MR. EASTLAND: All right, we'll put that in.
17 JUDGE SANDRON: That's more reliable than his memory.
18 MR. EASTLAND: Through an appropriate witness. Thank
19 you, Your Honor.
20 Q. BY MR. EASTLAND: And do you recall being laid off in
21 February of 2006 for some weeks? I'm sorry, February of 2016
22 for a few weeks?
23 A. I don't remember being laid off. I remember I took time
24 off to go on vacation and thought it was the beginning of
25 February -- end of January into the beginning of February, 2

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1 A. Yes.
2 Q. Whatever date that was?
3 A. Well, that was the 7th, not the 8th.
4 Q. But you did talk to him?
5 A. Yes.
6 Q. On the 7th of July 2016?
7 A. Yes.
8 Q. And do you remember him telling you that the Company's
9 not running smaller cranes, correct?
10 A. Yes.
11 Q. Didn't he also tell you that you were welcome back there
12 in the future?
13 A. He might have; I don't remember.
14 Q. Do you remember giving an affidavit to the NLRB in this
15 case?
16 A. Yes.
17 Q. A sworn affidavit?
18 A. Yes.
19 Q. Do you remember seeing that Steve made the comment, all
20 you guys are welcome back here?
21 A. I don't recall it.
22 Q. Okay. But you don't deny that he could have said that?
23 A. No, I --
24 JUDGE SANDRON: Why don't -- if you can ask him -- but
25 you can just -- you have pointed out it's in the affidavit.

1 MR. EASTLAND: Yes.
2 JUDGE SANDRON: He doesn't remember, so you can't
3 really --
4 MR. EASTLAND: Right, but he's not saying it wasn't said
5 in the conversation is my question.
6 JUDGE SANDRON: Well, I think if he doesn't recall
7 then --
8 MR. EASTLAND: Okay.
9 JUDGE SANDRON: -- by definition he doesn't remember.
10 So could have, but it couldn't not have -- anyway, you read
11 the statement into the record. And generally speaking we
12 assume an affidavit is going to be more reliable, taken
13 closer in time, than current testimony.
14 Q. BY MR. EASTLAND: Mr. Ocampo, when you were not working
15 for those 2 or 3 weeks in the winter of 2016 --
16 A. Huh?
17 Q. You said you were -- there were some weeks you weren't
18 working. Did you collect unemployment for that period?
19 A. No.
20 Q. You didn't apply for unemployment for that period?
21 A. I don't think so.
22 Q. You don't remember if you did or not?
23 A. I'm pretty sure I didn't.
24 Q. Okay, but you don't know for sure?
25 A. I'm going to say I didn't. I didn't apply for

1 unemployment.
2 Q. And so you're sure of that then?
3 A. Yes.
4 JUDGE SANDRON: Well, I think he's saying he doesn't
5 believe he did. I don't think he's saying he -- you're not
6 completely sure?
7 THE WITNESS: I'm not 100 percent sure.
8 JUDGE SANDRON: You believe that you didn't?
9 THE WITNESS: I believe I did not apply for
10 unemployment.
11 MR. EASTLAND: That's all I have.
12 JUDGE SANDRON: Any redirect from the General Counsel?
13 MS. CAROL: No redirect from General Counsel.
14 JUDGE SANDRON: And Ms. Bachelder?
15 MS. BACHELDER: No.
16 JUDGE SANDRON: Okay, Mr. Ocampo, thank you for your
17 testimony.
18 THE WITNESS: Thank you.
19 (Witness excused.)
20 MS. CAROL: All right, my next witness is Matt Rowe.
21 (Whereupon,
22 MATTHEW C. ROWE
23 was called as a witness by and on behalf of the General
24 Counsel and, after having been first duly sworn, was examined
25 and testified as follows:)

1 JUDGE SANDRON: If you'll kindly be seated. If you can
2 state and spell your full and correct legal name for the
3 record, and provide us with an address, either a residence or
4 work, whichever you prefer.
5 THE WITNESS: Matthew Clay Rowe. M-a-t-t-h-e-w C-l-a-y
6 R-o-w-e. Residence, 6438 Sommerset Road, Lansing, Michigan.
7 S-o-m-m-e-r-s-e-t.
8 JUDGE SANDRON: And the zip code?
9 THE WITNESS: 48911.
10 JUDGE SANDRON: Thank you.
11 DIRECT EXAMINATION
12 Q. BY MS. CAROL: All right, Mr. Rowe, are you currently
13 employed?
14 A. Yes.
15 Q. Where do you work?
16 A. Grand Davo Grain Service.
17 Q. And how long have you worked there?
18 A. About a year now.
19 Q. Did you ever work at Erickson's?
20 A. Yes.
21 Q. And during what time period?
22 A. From 2013, I think it was, to about 2016.
23 Q. And when you worked there, what was your position?
24 A. Operating Engineer.
25 Q. And which facility did you work from?

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1 A. Grand Rapids.
2 JUDGE SANDRON: What was your position there?
3 THE WITNESS: Operating engineer.
4 JUDGE SANDRON: Well, is that your job title?
5 THE WITNESS: Operator/oiler.
6 Q. BY MS. CAROL: And just, so when you started there, what
7 was your position? Were you an operator or an oiler?
8 A. I was both.
9 Q. Okay.
10 A. So I would run fork trucks on occasion, oil on cranes as
11 well.
12 Q. Okay. And was that -- did that stay the same through
13 your whole employment there, or did it change at all?
14 A. It changed up a little bit. I started to where I was
15 running some of the smaller cranes at times.
16 Q. And I'm sorry, did you say which facility you worked
17 from?
18 A. Grand Rapids.
19 Q. Grand Rapids. All right, sorry.
20 JUDGE SANDRON: So toward the end of your employment,
21 you were doing more operative work?
22 THE WITNESS: It was -- no, it was doing more oiling.
23 Still, it was the same.
24 Q. BY MS. CAROL: And how many other operators worked out
25 of the Grand Rapids facility when you worked there?

1 A. I don't know exact number. I would say 15 maybe.
2 JUDGE SANDRON: Maybe you want to say in twenty -- when
3 did you leave employment there?
4 THE WITNESS: 2016. It would have been in May of 2016.
5 JUDGE SANDRON: I believe we have it in the record, but
6 in that, in those first months of 2016, do you recall how
7 many employees there were?
8 THE WITNESS: Operators and -- just operators or?
9 JUDGE SANDRON: Operators, yes.
10 THE WITNESS: There was 15 plus. There had to be.
11 JUDGE SANDRON: And that's including oilers?
12 THE WITNESS: Yeah. Yup, I think so.
13 Q. BY MS. CAROL: And when you worked there, were you full-
14 time working for Erickson's?
15 A. Yes.
16 Q. And did you work year around?
17 A. Yes.
18 Q. And who was your supervisor?
19 A. Steve Erickson.
20 Q. And the employees were represented by Local 324? Or I
21 should say the operators were?
22 JUDGE SANDRON: I think we have that --
23 MS. CAROL: Okay.
24 JUDGE SANDRON: It's in the record, and he's indicating
25 that --

1 Q. BY MS. CAROL: Okay. And you're a member of Local 324?
2 A. Correct.
3 Q. All right. And when you worked there, did you ever have
4 any issues regarding your wages or getting paid the
5 appropriate wage rate?
6 A. Yes.
7 Q. And one time or more than one time?
8 A. More than once.
9 Q. How many times do you think in your 3 years working
10 there?
11 A. I would say 5 to 10.
12 Q. And before 2016, before the year that you were laid off,
13 what was the general procedures for addressing those wage
14 issues?
15 A. You would call Nancy and then --
16 JUDGE SANDRON: I don't know if you can say general
17 procedures. I guess what he did.
18 MS. CAROL: Yes, I'm sorry.
19 THE WITNESS: Yes.
20 Q. BY MS. CAROL: What did you do in the past?
21 A. I would call Nancy, and then either Nancy would fix it
22 or she'd direct me to Steve, or Steve would direct you to
23 Nancy. And then if all else failed, you would finally call a
24 business agent.
25 Q. All right, so just to back up a little bit, is it Nancy

1 Tejchma?
2 A. I don't know her last name. I think so.
3 Q. And what's her position?
4 A. Payroll, billing maybe.
5 Q. And when in the past you made these complaints to Nancy,
6 and I think you may have covered this before but just to be
7 clear, were there instances where she would fix the problem?
8 A. No. It was usually you got redirected to Steve
9 Erickson.
10 Q. Okay. And --
11 JUDGE SANDRON: Did she ever fix it, as far as you know,
12 herself?
13 THE WITNESS: No.
14 Q. BY MS. CAROL: And you said that if that didn't work you
15 would take it to the Union?
16 A. Call -- yes.
17 Q. And had you ever done that before?
18 A. Twice I did.
19 Q. When was that?
20 A. The first time when I was an apprentice, and then the
21 second time was the last time.
22 Q. All right, so let's talk about the second time.
23 A. Yes.
24 Q. Do you remember when that was?
25 A. It was on a Wednesday, if I remember, and it was the end

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1 of April, beginning of May. I don't know the exact date it
2 was.
3 Q. And what year?
4 A. 2016.
5 Q. So just generally speaking, what was the dispute? What
6 happened?
7 A. He paid me a lesser wage. We should have been paid in I
8 think it would have been, I want to say his shop agreement is
9 what I should have been paid under, and he was paying me
10 under AGC if I remember correct.
11 Q. And what was the difference in what you expected versus
12 what you --
13 A. Five or six bucks, I think.
14 Q. Total or an hour?
15 A. An hour.
16 JUDGE SANDRON: For what work was this for?
17 THE WITNESS: We were setting a tower crane up in
18 downtown Grand Rapids.
19 JUDGE SANDRON: And you were being paid, what -- what
20 was that called? The --
21 THE WITNESS: I would have been paid under the oiler's
22 rate in his shop agreement and it should have been I want to
23 say -- or no, I'm sorry. I was paid under the AGC oiler
24 rate, and it should have been under our shop agreement at the
25 time.

1 JUDGE SANDRON: I think we had testimony before about
2 the distinction on the record.
3 Q. BY MS. CAROL: And so when you noticed this, what you
4 perceived to be a problem, what did you do?
5 A. I called Steve Erickson.
6 Q. And did you call him directly?
7 A. Yes, I did.
8 Q. All right, and what time of day did you call him?
9 A. It was probably around noon, 1:00, 2:00, something like
10 that.
11 Q. And what was said and by whom during that conversation?
12 JUDGE SANDRON: Since I didn't ask this before, on what
13 kind of phone did you call him?
14 THE WITNESS: My cell phone.
15 JUDGE SANDRON: And on what phone was he --
16 THE WITNESS: It was his cell phone.
17 Q. BY MS. CAROL: And so what was said and by whom during
18 this conversation?
19 A. I just told Steve I felt I was paid under the wrong
20 contract and it should have been, you know, a different one,
21 and he said you're wrong, and that was it, click.
22 Q. And did you do anything else after that conversation as
23 far as this dispute?
24 A. Yes, I did. I called my business agent at the --
25 Q. And who did you call?

1 A. It would have been Joe Shippa.
2 Q. And, well, do you know whether or not he did anything
3 after he spoke with you?
4 A. Joe did say --
5 MR. EASTLAND: Objection to foundation.
6 THE WITNESS: -- he was going to call Steve.
7 JUDGE SANDRON: Well, I think we allowed hearsay, and
8 obviously a lot of this will have to be tied up to be
9 probative.
10 Q. BY MS. CAROL: Now, you said you talked to -- did the
11 matter get resolved after you spoke to the business agent?
12 A. Yes, it did.
13 Q. All right. So you said that that was in early May or
14 late April of 2016?
15 A. Yeah.
16 JUDGE SANDRON: You've got to say yes.
17 THE WITNESS: Yes.
18 Q. BY MS. CAROL: Did your employment status change at all
19 after that conversation?
20 A. Yes.
21 Q. How soon or not soon after that conversation?
22 A. About 3 days later.
23 Q. Okay.
24 A. It was the following week afterwards.
25 Q. All right, so let's talk about the circumstances

1 surrounding your layoff. How were you informed about it?
2 A. I got my typical Sunday night text to come in on Monday
3 at noon.
4 Q. I'm sorry. Who was the text from?
5 A. From Steve Erickson.
6 Q. And where were you supposed to report?
7 A. To the Grand Rapids yard.
8 JUDGE SANDRON: Was that normal?
9 THE WITNESS: No, it was not. A noon start was the
10 oddball out of the whole deal. You know, to me I thought,
11 eh, a 12:00 start on Monday? This is normally not right.
12 Q. BY MS. CAROL: Okay, and so did you go to the Grand
13 Rapids yard at noon on Monday?
14 A. Yes, I did.
15 Q. And where did you go when you got there?
16 A. I went to the yard. I went upstairs to see if I had
17 paperwork. There was none. By the time I got upstairs I was
18 getting a text from Steve to meet him in his office.
19 Q. All right, and did you meet him there?
20 A. Yes, I did.
21 Q. Anybody else there?
22 A. Nope, just Steve and I were in there.
23 Q. Okay, so take us through what was said and by whom
24 during that conversation.
25 A. We just went in his office, and he just said that

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1 Erickson's was going in a different direction; work was
2 drying up in the Grand Rapids area; he was selling all of the
3 smaller cranes; and he was laying people off according to
4 seniority and ability, and I was one of the low men on the
5 totem pole.
6 Q. Did you respond?
7 A. No. I just said okay. He asked for his stuff back, and
8 in the middle of asking for his stuff, which would have been
9 his credit card, gas card, shop key, I already had it
10 together because I knew what was going on, and I slid it
11 across his desk. Then he kind of just said, oh, I guess you
12 knew this was coming. That was the end of it.
13 Q. Do you recall him saying anything else?
14 A. No, that's --
15 Q. Do you recall him saying anything about the employees,
16 the attitude of the employees there?
17 A. Yes. Yes.
18 Q. What do you recall him saying?
19 A. He said he felt that some of the employees --
20 JUDGE SANDRON: I think counsel is making --
21 MR. EASTLAND: No, I was just going to say I'm going to
22 object --
23 JUDGE SANDRON: But --
24 MR. EASTLAND: -- and to the extent that -- that's fine,
25 but I would ask that the leading be limited here.

1 JUDGE SANDRON: Well, I think once his recollection was
2 exhausted, some leading is allowed.
3 MR. EASTLAND: Right, but I mean that was --
4 JUDGE SANDRON: You thought that was too leading?
5 MR. EASTLAND: I thought it was a leading question. I
6 just want to make sure that we're not going to lead through
7 the whole way. That's all I --
8 JUDGE SANDRON: No, I don't think --
9 MR. EASTLAND: But go ahead. I'm sorry.
10 MS. CAROL: No, I --
11 JUDGE SANDRON: But you don't object to that question?
12 MR. EASTLAND: I didn't object.
13 JUDGE SANDRON: All right.
14 MR. EASTLAND: I almost did; that's probably what you
15 saw me doing, but I withheld.
16 JUDGE SANDRON: Almost is --
17 MR. EASTLAND: Is not an objection.
18 MS. CAROL: I'll take it.
19 Q. BY MS. CAROL: Sorry. Go ahead with --
20 A. Yes, he did just state he felt if some of the employees
21 that weren't happy there anymore, if they're not happy
22 there's no reason to keep them there. Or to continue
23 employment with unhappy people.
24 Q. And when in the course of this conversation was that?
25 A. That was pretty much towards the end of it. It was what

1 he was stating the fact of the cranes being dismissed and
2 sold, the smaller cranes.
3 JUDGE SANDRON: Do you recall anything else that either
4 you or he said? Just think for a moment, and if you can
5 recall anything else, that's fine, and if you can't, that's
6 also fine.
7 THE WITNESS: No, I can't.
8 Q. BY MS. CAROL: All right, so in the 3 years you worked
9 there --
10 A. Yeah.
11 Q. -- had you ever been laid off before?
12 A. No. The times I did leave it was on my own.
13 JUDGE SANDRON: And what caused you to leave on those
14 occasions?
15 THE WITNESS: Some was just to make a little more money
16 at a different job. Another time was through the wintertime
17 it was my apprenticeship program, I did a lot of classes, so
18 I would leave for the classes.
19 Q. BY MS. CAROL: And when you did that, when you
20 voluntarily left, were you able to come back directly or did
21 you have to go through the hall to come back?
22 A. No, I was able to come back directly.
23 JUDGE SANDRON: And with whom did you speak on those
24 occasions?
25 THE WITNESS: With Steve.

1 MS. CAROL: That's all I have on direct for this
2 witness, Your Honor.
3 MS. BACHELDER: No questions.
4 JUDGE SANDRON: Okay, we're ready for cross-examination.
5 MR. EASTLAND: Affidavit?
6 MS. CAROL: Yes. It is -- there's one, four pages dated
7 August 18th of 2016. There you go.
8 JUDGE SANDRON: We'll go off the record for a few
9 minutes.
10 (Off the record from 3:50 p.m. to 3:55 p.m.)
11 JUDGE SANDRON: Back on the record.
12 Cross-examination.
13 CROSS-EXAMINATION
14 Q. BY MR. EASTLAND: Mr. Rowe, you're currently still a
15 member of Local 324?
16 A. Yes.
17 Q. Do you recall your start date at Erickson's as an
18 operator to be April 17th, 2013?
19 A. It --
20 Q. Does that sound right?
21 A. Yeah.
22 Q. Sometime in April 2013?
23 A. Yes.
24 Q. Is that fair?
25 A. Yes.

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1 Q. And you would agree with me that hours and work
2 fluctuate at Erickson's?
3 A. Yes.
4 JUDGE SANDRON: I think we can probably get that
5 stipulated as a general proposition, correct?
6 MS. BACHELDER: I don't know that I want to stipulate to
7 something that generic.
8 JUDGE SANDRON: All right.
9 MS. BACHELDER: But I think the record reflects it.
10 MS. CAROL: Yeah, I mean --
11 JUDGE SANDRON: I don't think there'd be any dispute
12 that it's not always the same.
13 MS. CAROL: Yeah.
14 JUDGE SANDRON: Based on the nature of the industry.
15 Q. BY MR. EASTLAND: Now, do you recall not working at
16 Erickson's for long periods of time; is that right?
17 JUDGE SANDRON: I don't know if he said long periods of
18 time.
19 THE WITNESS: Not really long periods of time.
20 JUDGE SANDRON: All right, wait. Maybe you can --
21 Q. BY MR. EASTLAND: What's the longest you voluntarily
22 took off?
23 A. Three months.
24 Q. Are you sure about that?
25 A. Let me rephrase that. Two years ago it was a little bit

1 longer than 3 months. He called me and wanted me to come
2 back, but I took a job somewhere else. I wanted to be home
3 when my child was born; I didn't want to be in Kansas or, you
4 know, out of town.
5 Q. When was that?
6 A. So 2 years ago would have been 2015. Okay, so 2014 --
7 Q. 2015? 2014 or '15?
8 JUDGE SANDRON: If you remember.
9 THE WITNESS: I can't quite remember the date on it. It
10 would have been '15.
11 Q. BY MR. EASTLAND: Would have been '15?
12 A. Yeah, it would have been '15, I think. Yep.
13 Q. Okay.
14 JUDGE SANDRON: Did you have to travel out of town on
15 the job?
16 THE WITNESS: Yes.
17 JUDGE SANDRON: Because you were saying, you mentioned
18 Kansas.
19 THE WITNESS: Well, I never went out of state. I was
20 in-state, but I was always far enough from my home to where I
21 was not going home.
22 JUDGE SANDRON: Oh, you used Kansas metaphorically.
23 THE WITNESS: Yes, because that was not -- it was not
24 out of the norm to have to go to another state or --
25 JUDGE SANDRON: All right, so you weren't saying

1 literally --
2 THE WITNESS: Yeah.
3 JUDGE SANDRON: -- you'd have to go to Kansas on the
4 job. You may -- you had to go out of the area?
5 THE WITNESS: Yes.
6 Q. BY MR. EASTLAND: Mr. Rowe, you were laid off on May
7 20th, 2016, correct?
8 A. Yes.
9 Q. And you know Phil Witchell, don't you?
10 A. Yes.
11 Q. He's an operating engineer at Erickson's, correct?
12 A. Yes.
13 Q. Union member?
14 A. Yes.
15 Q. And he continued to work after you were laid off on
16 May 20th, 2016, didn't he?
17 A. He's still there today.
18 Q. And you know Erin Baerman?
19 A. Yep. Yes.
20 Q. Mr. Baerman is a operating engineer at, or was an
21 operating engineer at Erickson's, correct?
22 A. Yes.
23 Q. And do you know Terrance Nelson?
24 MS. BACHELDER: Objection. This is the same thing we
25 went through before that --

1 JUDGE SANDRON: I --
2 MR. EASTLAND: It's not, Your Honor. I mean it's
3 relevant for other reasons, and I -- it's one last question
4 really.
5 JUDGE SANDRON: All right.
6 THE WITNESS: Yes.
7 Q. BY MR. EASTLAND: And he was an operating engineer?
8 A. Yes.
9 Q. At Erickson's?
10 A. Yes.
11 Q. And he continued to work past May 20th, 2016?
12 A. I don't know that.
13 Q. Okay, you don't know. That's fair.
14 MR. EASTLAND: And we can probably then stipulate then
15 that that same list of folks continued to be employed after
16 May 20th, 2016?
17 MS. BACHELDER: You can put in documents to that effect.
18 MR. EASTLAND: Well, I'm going to ask the witness
19 questions again, or if we can have the same stipulation.
20 MS. CAROL: I guess my only issue with the stipulation
21 is that he wasn't working there after May 20th, so he's not
22 going to know for certain who is and isn't working --
23 MR. EASTLAND: Well, we can ask him.
24 JUDGE SANDRON: Well, I don't know if you need to ask
25 him.

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1 MR. EASTLAND: Well, he just told what he --
2 JUDGE SANDRON: I assume that the Union would have that
3 information about who is there so --
4 MS. BACHELDER: Not necessarily.
5 JUDGE SANDRON: No?
6 MS. BACHELDER: But the Company certainly does, and we
7 have no way to dispute what their records say.
8 JUDGE SANDRON: Well, it --
9 MS. BACHELDER: It just seems like --
10 JUDGE SANDRON: I don't think this witness would be --
11 you can get in by --
12 MS. BACHELDER: Yeah.
13 JUDGE SANDRON: You can even show a document --
14 MR. EASTLAND: Sure, or we can stipulate and avoid all
15 of that is the point.
16 JUDGE SANDRON: Well, if they want to see a document,
17 you can just show it to them and we'll get a stipulation.
18 But I think if you have the document, that's probably going
19 to be the most reliable evidence. You know, we need to ask
20 the witness --
21 MR. EASTLAND: Okay.
22 JUDGE SANDRON: The other, or the previous witness that
23 we've already, or the one before him already testified about
24 that. So I don't think those facts will be disputed by the
25 General Counsel or Charging Party. Ms. Bachelder may not

1 have stipulated, but she won't be able to rebut it.
2 MS. BACHELDER: Exactly.
3 Q. BY MR. EASTLAND: Mr. Rowe, when you explained in direct
4 testimony that you had a pay concern, you called a business
5 agent named Joe Shippa, correct?
6 A. Yes.
7 Q. Okay, you didn't call Mr. Popps?
8 A. No.
9 Q. Why did you call Mr. Shippa?
10 A. Just because that was who I was talking to originally
11 about everything, and he was that area, you know, our area
12 person. He knew the contract in my opinion, so that's who I
13 called.
14 Q. Your area being -- okay.
15 A. This, you know, or in Grand Rapids here.
16 Q. Okay. And the matter was resolved, correct?
17 A. Yes, it was, the day I was laid off it resolved.
18 Q. And there was no grievance filed?
19 A. I didn't file a grievance, no.
20 Q. You're not aware that the Union filed any?
21 A. No. I mean I'm aware that Jamey had filed a grievance
22 which led to the Union filing a grievance, but --
23 Q. But you're not aware of any grievances related to your
24 pay issue?
25 A. No.

1 Q. Mr. Rowe, it's true, isn't it, that you've been
2 convicted of a felony?
3 MS. BACHELDER: Objection --
4 THE WITNESS: What does that have anything --
5 JUDGE SANDRON: Sustained.
6 MR. EASTLAND: Your Honor?
7 JUDGE SANDRON: If you --
8 MR. EASTLAND: Rule 609 of the Federal Rules of Evidence
9 says that a felony conviction with 10 years must be admitted.
10 Must be is the language from the rule, so it's absolutely
11 relevant for impeachment purposes and credibility purposes,
12 and it's one question.
13 JUDGE SANDRON: Well, the Federal Rules of Evidence are
14 not necessarily strictly applied, and I believe there's also,
15 the Federal Rules talk about undue prejudice to a witness,
16 and as I indicated earlier in my opening remarks that
17 evidence that is too prejudicial to the witness and cause the
18 witness undue embarrassment can be excluded.
19 Now, I'll ask this question: Does the conviction relate
20 to truth and veracity or to another matter?
21 MR. EASTLAND: It relates -- well, there are other
22 issues relating to truthfulness and honesty actions. The
23 particular felony --
24 JUDGE SANDRON: Wait, don't --
25 MR. EASTLAND: -- that I'm asking about --

1 JUDGE SANDRON: Don't put it on the record. I'll take a
2 look at it if you have it. I'll take a look at in camera.
3 MS. BACHELDER: And I would like to see a copy of it
4 while the Judge is looking at it.
5 JUDGE SANDRON: Although I'm not sure if it's viewed in
6 camera that opposing counsel --
7 MS. BACHELDER: Well, Your Honor, if he's showing it to
8 you, I believe he has to show it to us.
9 JUDGE SANDRON: I'm not sure about that.
10 General -- Miss?
11 MS. CAROL: Well, I think if you're going to let him ask
12 the question, obviously we get to see it.
13 JUDGE SANDRON: Yes, then you're -- but I think if it's
14 in camera it's like a privilege -- I believe I can look at it
15 alone, and then if I decide that it is admissible, then you
16 can look at it.
17 MR. EASTLAND: Your Honor, I don't have any objection
18 sharing it. It's a matter of public record.
19 JUDGE SANDRON: But I think -- Ms. Carol --
20 MR. EASTLAND: Okay, I'll wait for instruction.
21 JUDGE SANDRON: -- your understanding is the same as
22 mine, correct?
23 MS. CAROL: It is, but I mean if he's okay with handing
24 it to us, then --
25 JUDGE SANDRON: All right, go ahead then.

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1 MS. CAROL: That's what I --
2 MS. BACHELDER: Yes.
3 MS. CAROL: -- thought we had done in the past.
4 JUDGE SANDRON: Maybe that would be the best way to do
5 it, because maybe submit it in an envelope, sealed, you know,
6 it will be I guess Rejected Exhibit 1, right? Respondent's
7 Rejected Exhibit 1, and it will be put under seal. And that
8 way, should anybody disagree with my ruling at a later point,
9 it could be opened.
10 (Rejected Respondent's Exhibit 1 marked and rejected.)
11 MR. EASTLAND: Very good. Then we will come with
12 this --
13 JUDGE SANDRON: Yes.
14 MR. EASTLAND: -- under seal and --
15 JUDGE SANDRON: Right. And if you want to argue
16 acceptance, if that is the case, then if someone disagrees
17 with me at a higher level, it will be available for them --
18 MR. EASTLAND: We're still off the record?
19 COURT REPORTER: We are on the record.
20 JUDGE SANDRON: Do you want to go off the record?
21 MR. EASTLAND: Oh, we're on the record? I thought we
22 were off the record.
23 JUDGE SANDRON: You can't go off the record.
24 MR. EASTLAND: No.
25 JUDGE SANDRON: But I think that would be the best way

1 to preserve your contention and also not prejudice the
2 witness.
3 MR. EASTLAND: Thank you.
4 No further questions.
5 JUDGE SANDRON: Redirect.
6 MS. CAROL: No redirect, Your Honor.
7 MS. BACHELDER: No questions.
8 JUDGE SANDRON: Okay, thank you for your testimony.
9 (Witness excused.)
10 MS. CAROL: Bring Jason in.
11 (Whereupon,
12 JASON BAERMAN
13 was called as a witness by and on behalf of the General
14 Counsel and, after having been first duly sworn, was examined
15 and testified as follows:)
16 JUDGE SANDRON: If you'll kindly be seated. Please
17 state and spell your full and correct legal name for the
18 record, and provide us with an address, either residence or
19 work, whichever you prefer.
20 THE WITNESS: My name is Jason, J-a-s-o-n, Baerman,
21 B-a-e-r-m-a-n. My address is 1234 West Giles Road, Muskegon,
22 Michigan.
23 JUDGE SANDRON: And the zip code?
24 THE WITNESS: 49445.
25 JUDGE SANDRON: Thank you.

1 DIRECT EXAMINATION
2 Q. BY MS. CAROL: Mr. Baerman, have you ever worked for
3 Erickson's?
4 A. Yes.
5 Q. And during what time period did you work there?
6 A. From April of 2007 to June 20th of July -- I mean June
7 20th of 2016.
8 Q. All right. And what was your position when you worked
9 there?
10 A. Operator.
11 Q. And who is your supervisor?
12 A. Steve Erickson.
13 Q. And which facility did you generally work from?
14 A. I was mainly based out of the Muskegon office.
15 Q. And how many other operators worked out of the Muskegon
16 office in 2016?
17 A. Average was two to three operators out of Muskegon.
18 Could be more at times.
19 Q. All right. And when you were hired in you said 2007,
20 right?
21 A. Yes.
22 Q. Were you hired directly, or did you come to work at
23 Erickson's through the hall?
24 A. No, I applied, and Steve hired me directly.
25 Q. And do you hold any certifications to operate cranes?

1 A. Yes, I have four certifications.
2 Q. And is there any equipment at Erickson's that you are
3 not certified to operate?
4 A. Tower crane would be the only crane he has that I'm not
5 certified for.
6 Q. Okay.
7 JUDGE SANDRON: And that requires the highest level?
8 THE WITNESS: No, that tower crane holds their own
9 certification.
10 JUDGE SANDRON: Oh.
11 THE WITNESS: So a tower crane is a tower crane cert,
12 but hydraulic cranes have their own, lattice boom crawlers
13 have their own, and I have everything that he has other than
14 tower crane.
15 Q. BY MS. CAROL: All right, so in the years that you
16 worked there had you ever been laid off before 2016?
17 A. Yes.
18 Q. And can you estimate how many times?
19 A. Well, quite a bit in '08 and '09. I can't say how much,
20 but I know in one of those 2 years, I drew just as many
21 unemployment checks as I did paychecks.
22 Q. And what was the longest duration of a layoff?
23 A. Never more than 2 weeks in a stretch. You know, he'd
24 call you back for a day or two of work nonstop in those, that
25 whole year I mean, but there was times where I went a full

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1 2-week period.
2 Q. Okay. And --
3 JUDGE SANDRON: What about after 2009?
4 THE WITNESS: 2010 work picked up, and I had probably
5 time off for like weight restriction time in the spring, but
6 other than that stayed busy.
7 JUDGE SANDRON: So --
8 MS. CAROL: And -- sorry, go ahead.
9 JUDGE SANDRON: Were you laid off after 2009 at any time
10 that you recall?
11 THE WITNESS: A few weeks in 2010, I believe, but as I
12 recall, after maybe 2011, I can only think of maybe 1 week of
13 unemployment I drew.
14 JUDGE SANDRON: And you got unemployment in 2010 for
15 those few weeks?
16 THE WITNESS: Yes, I did.
17 JUDGE SANDRON: So as you recall, then after 2010, you
18 only had 1 week of layoff and --
19 THE WITNESS: I only remember collecting probably like 1
20 week, yes.
21 Q. BY MS. CAROL: And you've mentioned in 2010 you had had
22 a couple weeks of layoff. Were those consecutive, or were
23 those separate layoffs?
24 A. Never consecutive. It was the same thing; it'd be slow
25 a couple days a week, and I would sit home.

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1 JUDGE SANDRON: When you said it was a few weeks in
2 2010, you --
3 THE WITNESS: Yes, I believe so. I can't recall.
4 JUDGE SANDRON: Right, as best as you can remember.
5 THE WITNESS: Yes.
6 JUDGE SANDRON: Realizing it's been a number of years.
7 So you're saying that that wasn't like 4 weeks in a stretch?
8 THE WITNESS: No.
9 JUDGE SANDRON: It was spread out?
10 THE WITNESS: Spread out.
11 Q. BY MS. CAROL: And during those time -- sorry.
12 JUDGE SANDRON: Oh, one thing. I don't want to keep
13 interrupting you --
14 MS. CAROL: No, it's --
15 JUDGE SANDRON: -- but any particular period of the year
16 that these layoffs occurred that we talked about?
17 THE WITNESS: When it was slow it was on and off. Like
18 I said, '08 and '09 it could be all year long; work was slow.
19 But in -- after that it was pretty much just in the spring
20 time, weight restrictions when all the cranes and all the
21 heavy truck moving stopped till they lifted weight
22 restrictions off the roads.
23 JUDGE SANDRON: Oh, I see.
24 Q. BY MS. CAROL: And when are the weight restrictions in
25 effect?

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1 A. When it starts to warm up usually they come on anywhere
2 the end of February and can go into April.
3 Q. Okay, and that's every year?
4 A. Every year usually.
5 Q. Every year.
6 A. Yes.
7 Q. Okay. So those times before 2016 when you were laid
8 off, when you came back to work were you called directly by
9 Mr. Erickson or did you go again through the -- or again --
10 did you go through the Union hall?
11 A. No. Erickson or his dispatcher would call you up.
12 Q. Okay. And during those layoffs, were you ever required
13 to turn in your keys or your credit card?
14 A. No, never.
15 Q. So you had mentioned that you stopped working for
16 Erickson's --
17 JUDGE SANDRON: One other thing. Were you ever told in
18 these layoffs about whether you'd be returned to work?
19 Anything said about that?
20 THE WITNESS: Yes. The usual would be a call on Sunday
21 night saying, work is a little slow; go ahead, file for
22 employment, and I'll let you know when I have some work.
23 Q. BY MS. CAROL: All right, so in the time that you worked
24 there, do you know someone named Nancy Tejchma?
25 A. Yes.

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1 Q. And who is she?
2 A. She works in the office and does the payroll.
3 Q. And have you ever had any occasion to speak with her
4 about any work issues?
5 A. Yes.
6 Q. And what have you spoken to her about in the past?
7 A. Usually it'd be about your paycheck, missing time, not
8 being paid the correct scale.
9 Q. And had you ever made such a complaint before in the
10 past?
11 A. Yes.
12 Q. And can you estimate how many times?
13 A. You know, every couple of weeks it seemed like there'd
14 be something wrong.
15 Q. And had you ever had any of those incidents fixed by
16 Ms. Tejchma?
17 A. Oh, yes. Most of the time she would just say, I'll look
18 into it and I'll get back -- she would never really get back
19 with you. You -- just your check would be fixed or the next
20 possible week, or if it wasn't you'd have to call her again.
21 Q. Okay. And so talking again about your employment
22 status, you were laid off in 2016, right?
23 A. Yes.
24 Q. And I think you remember the date?
25 A. Yes, June 20th.

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1 Q. So I want to talk about that for a little bit. How were
2 you notified -- well, first of all, let's talk about June
3 20th. Did you report to work that day?
4 A. Yes, on Sunday night I believe I had a text saying be
5 into Muskegon at 8:00 a.m.
6 Q. And who was the text from?
7 A. Steve.
8 Q. Is that the normal procedure for letting you guys know?
9 A. Yeah, the last year or two, that it used to be phone
10 calls and it turned to texting.
11 Q. All right, so did you arrive at Muskegon at 8:00 a.m.?
12 A. Yes, I did.
13 Q. And what did you do when you got there?
14 A. I went into the break room where we pick up our
15 paperwork for the day, start our day from.
16 Q. And when you say pick up your paperwork, what's the
17 paperwork? What are you looking for in that?
18 A. There would be job sheets hanging on the board for our
19 daily jobs; who you're working with, what equipment, where
20 you're going; that type of thing would be.
21 Q. And were those up every day or?
22 A. Yes.
23 Q. And did you have one for that day?
24 A. There was a paper on the board with my name, Erin's
25 name, and Nick Willer's name on there that said 8:00 a.m.

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1 (General Counsel's Exhibit 10 marked for identification.)
2 Q. BY MS. CAROL: I'll show it to you, see if you can
3 identify this document. General Counsel's Exhibit 10. Take
4 a look at that and see if you can identify that document.
5 JUDGE SANDRON: You can put one of one if we admit it.
6 MS. CAROL: I definitely will --
7 JUDGE SANDRON: On the court reporter's copy.
8 MS. CAROL: Yeah.
9 Q. BY MS. CAROL: I'm sorry. So you recognize that
10 document?
11 A. Yes, I do.
12 Q. All right, what is that?
13 A. That is a job sheet, one of his versions of job sheets.
14 He has multiple different ones, but that's one of them.
15 Q. Okay. And this is what you saw when you went in that
16 morning?
17 A. Yes.
18 Q. Okay. So where it says job number, what does that
19 reference?
20 A. 324 is our local operators number.
21 Q. What would a normal job number look like?
22 A. It would be numbers.
23 Q. Three digits?
24 A. Or maybe a -- maybe even a name of a company let's say.
25 Q. Okay.

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1 A. But most of the time it was a number.
2 Q. Okay. And would that be a three digit number or?
3 A. No, usually it'd be a lot of digits.
4 Q. So when you saw this, did you follow the instructions on
5 this sheet?
6 A. Yes. He was already in the room, as was Nick and my
7 brother Erin.
8 Q. All right. Sorry. So is this an accurate copy of the
9 one that you saw that day? I think I may have already asked
10 you.
11 A. Yes.
12 MS. CAROL: Okay. So I'd like to offer General
13 Counsel's 10 into evidence at this time.
14 MS. BACHELDER: No objection.
15 JUDGE SANDRON: And is that --
16 MR. EASTLAND: No objection.
17 JUDGE SANDRON: General Counsel Exhibit 10 is received.
18 (General Counsel's Exhibit 10 received in evidence.)
19 Q. BY MS. CAROL: So and you said that you -- where did you
20 meet with Mr. Erickson?
21 A. In the break room.
22 Q. And who else was in the room when you got there?
23 A. As I said, Nick Willer and Erin Baerman, and I believe
24 there was an iron worker in there, Bryan Rust, who was
25 getting his paperwork for the day.

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1 Q. All right, and did he stay in the break room?
2 A. No, he left.
3 JUDGE SANDRON: Do we have that spelling in the record?
4 MS. CAROL: Rust, right?
5 THE WITNESS: R-u-s-t.
6 MS. CAROL: R-u-s-t. And then Bryan?
7 THE WITNESS: B-r-y, I believe.
8 MS. CAROL: Oh, wow. B-r-y-a-n.
9 THE WITNESS: y-a-n.
10 Q. BY MS. CAROL: Okay, so the four of you were in the
11 break room. So what was said and by whom? Who started
12 speaking?
13 A. Oh, after Bryan left, I believe Steve had us sitting
14 there. We weren't really knowing what to expect, and he just
15 basically started out as, as you know --
16 JUDGE SANDRON: Yeah, just try to think for a moment.
17 THE WITNESS: Yeah.
18 JUDGE SANDRON: To remember.
19 THE WITNESS: As you know, you know, I think he said the
20 Union and our business agent and Doug Stockwell were making
21 things difficult for him to operate, and that he was going to
22 sell the small cranes and that being that we operated the
23 small cranes he was letting us go.
24 Q. BY MS. CAROL: Do you recall him saying anything else?
25 A. Oh, yes. I mean he went on -- oh -- to say that -- I

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1 think I asked him why he was letting us go after I'd been
2 there for 9 years, and that he was keeping guys that were
3 there less than a year or, you know, a year or less. And I
4 just said I didn't agree with it, and he says, told me not to
5 be mad at him, to be mad at the Union; that things didn't
6 have to be this way and that this is how -- this is what he
7 was going to do.
8 Q. Do you recall him saying anything else?
9 A. Yeah, he, you know, he said that -- said things didn't
10 have to be this way if the Union would stop, you know, doing
11 what they were doing, that Brandon and Doug Stockwell were
12 tyrants, and that the new union contract they were trying to
13 shove down his throat was going to get more people let go;
14 the contractors on this side of the state were not going to
15 pay that, and that he was going to make sure he got his
16 contract.
17 Q. Did anyone else say anything during this meeting?
18 A. Yes. At one point my brother said, you know, when he
19 said, don't be mad at me, be mad at the Union, my brother
20 said, you hired us, Steve; we didn't come from the Union.
21 And that, you know, and that --
22 Q. Did he respond? I'm sorry, did --
23 JUDGE SANDRON: Hold on. Just -- yeah, let's see if he
24 can recall.
25 THE WITNESS: Yeah, I -- you know, I think -- I can't

1 exactly remember what Steve said, but, you know, he just
2 said, I think he said it again, this is just the way it's
3 going to be, and I'm not going to deal with it anymore.
4 Q. BY MS. CAROL: All right, and so how long do you think
5 the meeting lasted? How long did this conversation take
6 place?
7 A. I bet you it wasn't more than 10 minutes.
8 Q. And you had mentioned that you your brother had said
9 something and that you had said something. Did Mr. Willer
10 say anything?
11 A. Nick, when I said, you know, I've been here 9 years;
12 what about seniority, and he, you know, Nick did mention
13 that, I've been here 18; how do you think I feel? You know,
14 and then, you know, but Steve did say, I'm not keeping people
15 based on seniority; I'm keeping people based on ability. And
16 at the time I didn't say this, but I kept thinking why am
17 I --
18 JUDGE SANDRON: All right, you don't have to say what
19 you think.
20 THE WITNESS: Okay.
21 JUDGE SANDRON: That's okay.
22 THE WITNESS: Yeah. It's just --
23 Q. BY MS. CAROL: And then after about 10 minutes of this
24 conversation, what happened at the end of the meeting?
25 A. He told us to turn our keys in, turn our credit cards

1 in, he was paying us for 2 hours show up, and Nancy was
2 making our checks out as we speak.
3 Q. Anybody else say anything at that point?
4 A. No. Not that I can recall.
5 Q. Now, after you had been laid off, were you ever directly
6 recalled to come back to work?
7 A. No.
8 JUDGE SANDRON: Did you have any other conversation with
9 Mr. Erickson after that?
10 THE WITNESS: Yes.
11 JUDGE SANDRON: All right, well, I think it probably
12 should be in the record. I don't know if the General Counsel
13 wants to get it in or --
14 Q. BY MS. CAROL: After you were laid off, you had
15 conversations with Mr. Erickson?
16 A. Yes, after he said he was making out our checks and he
17 was getting up to walk away from, out of the room, I said, I
18 had my paycheck in my pocket from the previous week, and I
19 says, well, you need fix this last week's paycheck. And so I
20 followed him into the office into Nancy's office and showed
21 him he had the wrong pay scale for a day's work up at
22 Ludington Pump Storage Power Plant, and he said, no, that's
23 the pay scale, that's the new contract. And I said, no, it's
24 not. I've never seen a pay scale that low for the equipment
25 I've run. And I asked him to make out a copy of it so I

1 could look into it. So he made me a copy of the pay scale of
2 that day, and I presented it to Brandon later, and I was -- I
3 got a check a few days later fixing that day's pay.
4 MS. CAROL: Okay.
5 JUDGE SANDRON: Did you ever have any conversations with
6 him after that day?
7 THE WITNESS: Oh, no, never.
8 MS. CAROL: Okay, that's all I have on direct, Your
9 Honor.
10 MS. BACHELDER: No questions.
11 JUDGE SANDRON: Do you have -- you said you were never
12 directly offered employment. Were you ever contacted by
13 Mr. Erickson to come back?
14 THE WITNESS: Oh, yes, just recently. Not Erickson
15 himself; his salesman called me up to see if I would come
16 back to work for a job; that a customer requested me.
17 JUDGE SANDRON: And who was the salesperson then?
18 THE WITNESS: Jeff Afton.
19 JUDGE SANDRON: Can you spell that?
20 THE WITNESS: J-e-f-f A-f-t-o-n.
21 JUDGE SANDRON: And that was just recently?
22 THE WITNESS: Yeah, that was probably about a month ago.
23 JUDGE SANDRON: Was that for a particular job for a
24 particular customer?
25 THE WITNESS: Yes, a particular job for Marley Cooling

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1 MS. BACHELDER: North Muskegon is 45 --
2 THE WITNESS: Forty-some miles away.
3 MR. EASTLAND: I think I can get done, Your Honor.
4 JUDGE SANDRON: All right, we'll try.
5 MR. EASTLAND: I think we all have an interest in moving
6 the case along.
7 JUDGE SANDRON: Right.
8 MR. EASTLAND: I don't --
9 JUDGE SANDRON: That's fine. So he doesn't have to make
10 the trip back.
11 Are we on the record?
12 COURT REPORTER: Yes.
13 JUDGE SANDRON: All right, we'll go off the record,
14 please.
15 (Off the record from 4:44 p.m. to 4:47 p.m.)
16 JUDGE SANDRON: Back on the record for cross-
17 examination.
18 CROSS-EXAMINATION
19 Q. BY MR. EASTLAND: Mr. Baerman, a few questions for you
20 this afternoon. You mentioned some layoffs that you
21 experienced personally in '08 and '09, correct?
22 A. Yes.
23 Q. And then additional layoffs in 2010 you remember?
24 A. Yes.
25 Q. Do you recall that you were laid off for about a month

1 in March of 2011?
2 A. Well, like I said, I probably did draw a few weeks. I
3 don't know exactly how many, but every year during weight
4 restrictions, you know, being a low seniority operator I
5 would be one of the first guys to be laid off.
6 Q. So, but you do recall having some downtime in March of
7 2011 as a layoff?
8 A. I can't say in March, only March, but in the winter
9 months, yes.
10 Q. Of 2011?
11 A. Yes.
12 Q. And same thing for 2012?
13 A. 2012 I don't recall because work picked up and there
14 was, at that time guys, you know, I started getting guys
15 underneath me seniority-wise, and once there was more and
16 more guys there I would -- I wasn't getting laid off anymore.
17 Q. What about in February of 2015, do you recall having
18 layoffs for a couple of weeks during that month?
19 A. February of 2015. No, I wasn't laid off at all in 2015.
20 No, because I was on a 2-year job and no layoffs. Nothing in
21 2014 or 2015.
22 Q. What about March and April of 2015? Do you remember --
23 A. March and April of 2015. Yeah, I know what job I was on
24 and there was no layoffs.
25 Q. Okay, you worked fully both of those months?

1 A. Oh, yes.
2 Q. Are you sure of that?
3 A. I'm sure of that.
4 Q. Now, when you were laid off on June 20th, you had a
5 concern with the layoff as it related to seniority; is that
6 right?
7 A. Oh, yes. Yes.
8 Q. But you didn't file a grievance, correct?
9 A. What do you mean?
10 Q. You didn't file a contract grievance about the layoff,
11 did you?
12 A. No.
13 Q. And you said that, was it Nick Willer?
14 A. Yes.
15 Q. Nick Willer also had some concerns about seniority with
16 respect to his layoff?
17 A. Oh, yes.
18 Q. Okay, I think you said he thought -- I think you said 18
19 years or something --
20 A. Yes, 18 years he believes --
21 Q. -- he may have been with the Company?
22 A. Yeah, he worked there.
23 Q. We can vet that, but it -- but to your knowledge did he
24 file a grievance with the Company?
25 A. As far as I don't know what you mean by a grievance. I

1 don't -- grievance to Erickson himself --
2 Q. A grievance under the collective bargaining agreement.
3 A. -- or to the Union? I don't understand I guess who
4 would --
5 Q. Are you familiar that the collective bargaining
6 agreement applies to your employment?
7 A. I'm not sure, no.
8 Q. Okay.
9 A. I don't understand. I call the --
10 Q. So your testimony is --
11 JUDGE SANDRON: Well, why don't you just let him finish.
12 You called?
13 THE WITNESS: You know, I called Brandon, told him that
14 we had been let go, and as far as I'm concerned it wasn't a
15 layoff. When we were told to turn our keys in, we were
16 fired. I didn't believe I -- I -- there was no reason I
17 should have been fired.
18 Q. BY MR. EASTLAND: Do you know what a contract grievance
19 is?
20 MS. BACHELDER: Objection.
21 JUDGE SANDRON: All right, I think that --
22 MR. EASTLAND: Well, this goes to credibility, Your
23 Honor.
24 JUDGE SANDRON: I don't think that -- all right --
25 MR. EASTLAND: I mean the witness is testifying that he

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7

In the Matter of:

ERICKSON TRUCKING SERVICE, INC.,
d/b/a ERICKSON'S, INC.,

Respondent, | Case No. 07-CA-178824

and

LOCAL 324, INTERNATIONAL UNION
OF OPERATING ENGINEERS (OPEIU),
AFL-CIO,

Charging Party.

The continuation of the above-entitled matter came on for hearing pursuant to notice, before IRA SANDRON, Administrative Law Judge, at the National Labor Relations Board, Gerald R. Ford Federal Building, 110 Michigan Street, S.W., Suite 299, Grand Rapids, Michigan, on Thursday, April 27, 2017, at 9:30 a.m.

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1 EXHIBITS

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1 PROCEEDINGS
2 (Time Noted: 9:28 a.m.)
3 JUDGE SANDRON: On the record.
4 Sir, if you'll please raise your right hand, and I'll
5 swear you in.
6 (Whereupon,
7 NICHOLAS WILLER,
8 was called as a witness by and on behalf of the General
9 Counsel and, after having been duly sworn, was examined and
10 testified as follows:)
11 JUDGE SANDRON: If you'll kindly be seated. Please
12 state and spell your full and correct legal name, and
13 provide us with an address, either home or work, whichever
14 you prefer.
15 THE WITNESS: My name is Nicholas Willer,
16 N-i-c-h-o-l-a-s W-i-l-l-e-r. I live at 755 Oakmere Place,
17 Muskegon, Michigan 49445.
18 JUDGE SANDRON: Can you spell the street name?
19 THE WITNESS: O-a-k-m-e-r-e P-l-a-c-e.
20 JUDGE SANDRON: And the zip code?
21 THE WITNESS: 49445.
22 JUDGE SANDRON: Thank you.
23 DIRECT EXAMINATION
24 Q. BY MS. CAROL: Mr. Willer, just as a reminder, the court
25 reporter is recording, so if you're going to say yes or no,

1 make sure you say yes or no and not nod your head because
2 the recording won't pick it up, so just a little reminder.
3 Mr. Willer, have you ever worked Erickson's?
4 A. Yes, ma'am.
5 Q. During what time period did you work for the Company?
6 A. June of '98 through July 20 of '16.
7 Q. When you worked there, what was your position?
8 A. Crane operator.
9 Q. Do you hold any certification to operate cranes?
10 A. Yes, large hydraulic certification.
11 JUDGE SANDRON: And Mr. Willer, you can sit back if you
12 would be more comfortable, either way, whatever makes you
13 more comfortable.
14 Q. BY MS. CAROL: Which facility did you work from?
15 A. The Muskegon facility.
16 Q. About how many operators were there working over there
17 when you were let go?
18 A. Oh, three to five at any given time.
19 Q. Are you familiar working there with someone named Nancy
20 Tejchma?
21 A. Yes, ma'am.
22 Q. Who is she?
23 A. She was the payroll lady.
24 Q. Where does she work?
25 A. In Muskegon.

1 Q. Did you ever have any reason to interact with
2 Ms. Tejchma?
3 A. Not very often. She usually kept my, my pay pretty
4 good. I've never had much problems with her.
5 Q. When you were hired you said in 1998 --
6 JUDGE SANDRON: Let me just ask you one backup question.
7 You say she handled payroll, but what was her general role
8 in payroll?
9 THE WITNESS: Writing checks, keeping time together.
10 JUDGE SANDRON: You submitted your paychecks -- I mean
11 to whom did you submit your hours?
12 THE WITNESS: We wrote a timesheet and sent it in every
13 day.
14 JUDGE SANDRON: Where did it go? I mean did you deliver
15 it to anybody?
16 THE WITNESS: No. You just put it in a basket, in the
17 break room after your job was complete.
18 JUDGE SANDRON: Were you ever asked any questions about
19 your timesheet by anybody after you submitted it?
20 THE WITNESS: No, not usually.
21 JUDGE SANDRON: Did it ever happen at all if you recall
22 specifically?
23 THE WITNESS: No.
24 Q. BY MS. CAROL: You said you were hired in 1998. Were
25 you directly hired or were you hired through the union

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1 referral hall?
2 A. Mr. Erickson hired me.
3 Q. So it was not through the union hall?
4 A. No.
5 Q. Through your years there were you a full-time employee?
6 A. Yes.
7 Q. Did you work year round?
8 A. Yes.
9 Q. During that time were you ever laid off before?
10 A. Not very many times, like maybe a handful, three, four.
11 I can't recall being laid off for more than two, three, four
12 days because I'd usually get called back because something
13 would happen or they'd need more people.
14 Q. Do you know what your longest layoff was?
15 JUDGE SANDRON: As best as you can remember.
16 Q. BY MS. CAROL: Sure.
17 A. Four days.
18 Q. When was your -- before you were let go in 2016, when
19 was your most recent layoff that you can recall, if you can
20 recall?
21 A. Couple of years before that maybe.
22 JUDGE SANDRON: Going back to what you were saying, you
23 said about three to five operators at the location you
24 worked prior to your layoff in July 2016. Now, were they
25 also operators?

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1 THE WITNESS: It all depends how many people he needed
2 in a certain location that day. If he needed more operators
3 or whatever, he'd send someone to go down there.
4 JUDGE SANDRON: What types of equipment would you
5 operate?
6 THE WITNESS: Hi-los, cranes.
7 JUDGE SANDRON: Were there any other equipment there
8 besides that one? In other words, was there any equipment
9 there otherwise that you couldn't operate?
10 THE WITNESS: Crawler cranes, but I never sit in the
11 crawler cranes, track cranes.
12 JUDGE SANDRON: You were always busy with the cranes
13 that you -- which cranes again could you operate?
14 THE WITNESS: All of them, but I ran the 60-ton crane
15 most of the time.
16 JUDGE SANDRON: Oh, 60-ton.
17 THE WITNESS: Out of Muskegon, yes.
18 JUDGE SANDRON: About how long did you have that one as
19 your primary equipment?
20 THE WITNESS: Five, six years possibly.
21 JUDGE SANDRON: Yes? The Respondent is giving me a
22 quizzical look.
23 MR. EASTLAND: No, I'm just wondering -- I didn't think
24 Ms. Carol had gotten into this area so I'm just wondering
25 where we're headed.

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1 JUDGE SANDRON: I think sometimes I like to have
2 information --
3 MR. EASTLAND: Okay.
4 JUDGE SANDRON: -- that I find helpful, that may be
5 helpful. Go ahead.
6 Q. BY MS. CAROL: Before the layoff in 2016, for these
7 other layoffs that we were talking about before, how were
8 you recalled from those layoffs?
9 A. He'd just call you that night and say he needed you to
10 come in.
11 Q. Do you recall for any of those layoffs, if you were
12 required to go through a union hall referral?
13 JUDGE SANDRON: Did you say he would call you?
14 THE WITNESS: Mr. Erickson would call. Sorry.
15 JUDGE SANDRON: Mr. Erickson.
16 Q. BY MS. CAROL: And the last time I think you just shook
17 your head. Did you ever have to go -- sorry, did you ever
18 have to go through the union hall to get recalled on those
19 prior ones?
20 A. No, ma'am.
21 Q. I want to ask you about the time you were laid off in
22 2016. I think if you'll look in front of you there is, it's
23 marked GC-10. Let me make sure it's up here.
24 JUDGE SANDRON: And that is?
25 MS. CAROL: It's already in evidence.

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1 JUDGE SANDRON: Which document is that?
2 MS. CAROL: General Counsel's 10.
3 JUDGE SANDRON: But what is it?
4 MS. CAROL: Oh, I'm sorry, I'm sorry.
5 JUDGE SANDRON: You'll have to help and say --
6 MS. CAROL: It's the work order from June 20th.
7 Q. BY MS. CAROL: You recognize that document?
8 A. Yes, ma'am.
9 Q. I want to talk about the circumstances surrounding this
10 document. Where did you see that, or did you see this on
11 June 20th?
12 A. In the break room where we get our job slips for the
13 day.
14 Q. Where was it? Like is it posted on a board or on a
15 table?
16 A. It's posted on a board.
17 Q. When you saw that, what if anything did you do?
18 A. Looked and it wasn't a normal job, the usual, and there
19 was no equipment behind our name. We just had to meet with
20 Steve, it said.
21 Q. Did you meet with Mr. Erickson?
22 A. Yes, ma'am.
23 Q. Where did you meet with him?
24 A. In the break room.
25 Q. Who was present?

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1 A. Me, Jason Baerman, and Erin Baerman.
2 Q. Anybody else or just the four of you?
3 A. Just us three and Mr. Erickson.
4 Q. When you got there -- well, I'm sorry, what time of day
5 was this?
6 A. Right at the beginning of the day at 8:00 a.m.
7 Q. Did anyone start speaking -- who started the meeting and
8 what was said?
9 A. Mr. Erickson started the meeting.
10 Q. What did he say?
11 A. He said that he was getting rid of the smaller cranes
12 and that he was getting pressured by the Union, and we
13 got -- he was going to get rid of the smaller cranes so he
14 had to get rid of some of us. And he said if we can get the
15 Union to back off him, things could go back the way it was.
16 Q. Do you recall anything else that he said?
17 A. That Brandon and Mr. Stockwell were dictators and
18 tyrants.
19 Q. Do you recall anything else?
20 JUDGE SANDRON: Think for a minute if there is anything
21 else. If not, you can just say so.
22 THE WITNESS: Not that I can remember because I was kind
23 of angry or disappointed, I guess.
24 Q. BY MS. CAROL: Do you recall anyone else speaking or
25 responding to Mr. Erickson's comments?

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1 A. Jason did about seniority and what have you. There was
2 other people there with less seniority than us.
3 Q. Is that what -- you said Jason. Mr. -- I guess I should
4 call him Jason --
5 A. Mr. Baerman. I'm sorry.
6 Q. -- because there's two Mr. Baermans. Is that what Jason
7 said?
8 A. Yes.
9 Q. Did Jason say anything else?
10 A. Not so much. I don't remember, I'm sorry.
11 Q. That's okay. What about the other Mr. Baerman, Erin,
12 did he have any response?
13 MR. EASTLAND: I'm going to just object, or maybe it's
14 clarification to the extent it's hearsay, but I'm not sure
15 you're seeking to --
16 MS. CAROL: No, I'm trying to --
17 MR. EASTLAND: You're not offering it for the truth of
18 the matter asserted?
19 MS. CAROL: No. They already testified.
20 MR. EASTLAND: Okay, then I withdraw the objection.
21 MS. CAROL: Just for corroboration purposes.
22 MR. EASTLAND: Thank you.
23 THE WITNESS: I don't remember what Erin said, if he
24 said anything.
25 Q. BY MS. CAROL: Did you say anything during the meeting?

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1 A. No, not too much. I just said I was there for 18 years
2 and you fire me in 5 minutes. You know, it's kind of --
3 Q. Do you recall anything else being said during that
4 meeting?
5 JUDGE SANDRON: Do you remember if Mr. Erickson
6 responded at all to your comments or Jason's comments?
7 THE WITNESS: No, not that I -- I can't recall.
8 Q. BY MS. CAROL: How long did this conversation take place
9 or last?
10 A. Half hour roughly.
11 Q. How did it end? What happened at the end of the
12 meeting?
13 A. We went into the office and gave back our credit cards
14 and keys, and got our 2-hour checks, that 2-hour show up
15 type checks, got our checks for the week before that we made
16 out.
17 Q. In the prior layoffs before 2016, had you ever turned in
18 your equipment before?
19 A. No, ma'am.
20 Q. After that date, were you ever directly recalled by
21 Mr. Erickson?
22 A. What was that? Sorry.
23 Q. That's okay. After that date, after June 20th, did
24 Mr. Erickson ever directly call you to return?
25 A. No.

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1 MS. CAROL: That's all I have on direct, Your Honor.
2 JUDGE SANDRON: Ms. Bachelder, anything?
3 MS. BACHELDER: No questions.
4 JUDGE SANDRON: Mr. Eastland?
5 MR. EASTLAND: Yes. Affidavit?
6 MS. CAROL: There is one. It is a three-page affidavit
7 dated June 20th of 2016.
8 JUDGE SANDRON: We'll go off the record.
9 (Off the record at 9:40 a.m.)
10 JUDGE SANDRON: Back on the record.
11 Cross-examination?
12 CROSS-EXAMINATION
13 Q. BY MR. EASTLAND: Mr. Willer; is that correct?
14 A. Yes, sir.
15 Q. I just have a couple of questions for you this morning.
16 You testified on direct that I think you began your
17 employment in 1998 with Erickson's. Is that accurate?
18 A. Yes.
19 Q. But you didn't start as an operating engineer, correct?
20 A. No. I worked my way up, apprenticeship, you know.
21 Q. Yes. I think your hire date into the Operators Union
22 was September 20, 2001. Does that sound correct?
23 JUDGE SANDRON: If you recall.
24 THE WITNESS: I'm sure you looked at it and so yeah,
25 but --

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1 JUDGE SANDRON: Well, just if you recall.
2 THE WITNESS: I recall, yeah, because I worked there for
3 a little while before I got in the Union, yes.
4 Q. BY MR. EASTLAND: So that would have been about three
5 years or so and then you were an operator?
6 A. Less than that.
7 Q. Two years? Okay.
8 MS. CAROL: Sorry, you have to say yes or no. You just
9 nodded your head.
10 THE WITNESS: Oh, I'm sorry.
11 MS. CAROL: That's okay.
12 THE WITNESS: I was trying to think. I'm sorry. Yes.
13 Q. BY MR. EASTLAND: Two years?
14 A. Two.
15 Q. You testified about a meeting here on June 20, 2016,
16 correct?
17 A. Yes, sir.
18 Q. During that meeting, Steve Ericksons -- sorry, Steve
19 Erickson told you that he's not making money off the small
20 cranes and that he was going to get rid of them?
21 A. Yes, sir.
22 Q. He told you also that you were being -- all three of
23 you, that you were being laid off based on abilities not
24 seniority, correct?
25 A. Yeah, I guess, yeah. Yes.

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1 Q. That's accurate he said that?
2 A. Yes.
3 Q. Now, you testified that the meeting lasted maybe 30
4 minutes?
5 A. Yes.
6 Q. You also mentioned that Jason Baerman had brought up
7 some concerns with seniority?
8 A. Yes, sir.
9 Q. You also brought up concerns?
10 A. No, I didn't.
11 JUDGE SANDRON: I think he just said he made a comment.
12 Q. BY MR. EASTLAND: Did you bring up any concerns?
13 A. Yeah, I was there -- I mean I'd been there for 18 years.
14 He fired me in 5 minutes.
15 Q. You said that to Mr. Erickson --
16 A. Yes, I did.
17 Q. -- during that meeting.
18 A. He didn't reply, no.
19 Q. During that meeting, you said that --
20 A. Yes, I did.
21 Q. -- to him? You have to let me finish because --
22 JUDGE SANDRON: Yes.
23 Q. BY MR. EASTLAND: -- they're recording everything we say
24 and the court reporter will have a tough time if we talk
25 over each other.

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1 A. Yes, sir.
2 Q. So you did raise concerns with seniority to
3 Mr. Erickson?
4 JUDGE SANDRON: Well, I think he's --
5 MS. BACHELDER: Objection.
6 JUDGE SANDRON: -- asked and answered. He said that --
7 MR. EASTLAND: I'm just trying to make sure the record
8 is clear because I think we were talking over each other,
9 Your Honor.
10 JUDGE SANDRON: Well, he said what he said, however you
11 characterize it.
12 MR. EASTLAND: So I'm not permitted to clean up the
13 record?
14 JUDGE SANDRON: For what, clean up for what?
15 MR. EASTLAND: Because we were talking over each other,
16 Your Honor.
17 MS. BACHELDER: I agree, Your Honor, it was asked and
18 answered.
19 JUDGE SANDRON: I believe he stated -- you're asking him
20 to basically characterize what he said. He put it on the
21 record what he said so why does he need to characterize it.
22 MR. EASTLAND: I guess we could have the court reporter
23 read it back and that would confirm my --
24 JUDGE SANDRON: Are you objecting, Ms. Bachelder?
25 MS. BACHELDER: Yes, asked and answered.

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1 JUDGE SANDRON: Sustained.
2 Q. BY MR. EASTLAND: Now, you also testified there were
3 parts of that meeting that you don't recall, correct?
4 A. Yes.
5 Q. I'm sorry?
6 A. Yes.
7 JUDGE SANDRON: I guess there is a little bit of maybe a
8 distinction can be drawn with not recalling anything else
9 was said and recalling that more was said but you don't
10 remember what it was.
11 MR. EASTLAND: I'm going to move on, Your Honor. The
12 witness has answered the question.
13 JUDGE SANDRON: Well, I'm going to ask him. Do you
14 recall that other things were said but you cannot recall
15 them? Is that what you're saying?
16 THE WITNESS: There was more that was said, but I just
17 can't remember what quite was said.
18 JUDGE SANDRON: All right, that's fine. I just wanted
19 to clarify that.
20 Q. BY MR. EASTLAND: Would you say the majority of that
21 meeting focused on concerns related to seniority?
22 A. Yes, sir.
23 MR. EASTLAND: I have no further questions.
24 JUDGE SANDRON: Any redirect?
25 MS. CAROL: No redirect.

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1 JUDGE SANDRON: Ms. Bachelder?
2 MS. BACHELDER: No questions.
3 JUDGE SANDRON: I'm going to ask the witness, the three
4 of you were all equipment operators at Muskegon?
5 THE WITNESS: Yes, sir.
6 JUDGE SANDRON: When the three of you were laid off, who
7 else was working there at the time doing equipment
8 operating, because you said there was between three and
9 five? Was anybody else still working there besides the
10 three of you?
11 THE WITNESS: There was one or two other operators there
12 that day, sure.
13 JUDGE SANDRON: Do you recall who they were? We don't
14 need the names, but do you recall who they were?
15 THE WITNESS: I know one for sure, yes.
16 JUDGE SANDRON: Since seniority has been brought up as
17 an issue, we haven't made any determinations on how it
18 should bear on the layoffs, but was that individual -- did
19 that individual have more or less seniority than you?
20 THE WITNESS: He had more than me.
21 JUDGE SANDRON: He had more than you. And you said
22 there was one other person. Do you recall --
23 THE WITNESS: I don't recall that other person, but I
24 know that one person that was there had more seniority than
25 I did.

1 JUDGE SANDRON: Any follow-up questions of any kind?
2 MS. CAROL: No, Your Honor.
3 Q. BY MR. EASTLAND: Mr. Willer, during that meeting on
4 June 20, 2016, did you complain to Mr. Erickson that there
5 were junior folks in your view that should have been laid
6 off?
7 A. I didn't. Mr. Baerman did, Jason did.
8 MS. CAROL: I have a couple of questions just on that.
9 REDIRECT EXAMINATION
10 Q. BY MS. CAROL: When you testified that the three of you
11 worked at Muskegon and a couple of others, is that did the
12 five of you or approximately five of you always work there?
13 A. Not always. Erin would go to Grand Rapids sometimes, so
14 would Jason sometimes.
15 Q. Would any individual operators from Grand Rapids ever
16 work at Muskegon?
17 A. It would all depend how busy, if he had equipment coming
18 out of that particular part on that day.
19 Q. So the two facilities worked in conjunction with each
20 other?
21 A. I would say. But there was always those people that
22 would stay usually in one spot or the other.
23 MS. CAROL: That's all I have, Your Honor.
24 MS. BACHELDER: I have one question.
25 REDIRECT EXAMINATION

1 Q. BY MS. BACHELDER: Mr. Willer, when you say you worked
2 at Grand Rapids or Muskegon, that's where the equipment was,
3 right?
4 A. Yes, ma'am.
5 Q. Wouldn't most of your work be done out in the field, at
6 a customer's location?
7 A. Yes, yes.
8 Q. So --
9 A. We would pick up -- sorry.
10 Q. So you would get the equipment from one location and
11 then go to a job?
12 A. Yes.
13 MS. BACHELDER: Nothing further.
14 JUDGE SANDRON: And just to clarify, each location had
15 equipment?
16 THE WITNESS: Yes, sir.
17 JUDGE SANDRON: Is there any other questions?
18 MS. CAROL: Nothing further for me.
19 JUDGE SANDRON: All right, Mr. Willer, thank you.
20 THE WITNESS: You're welcome.
21 JUDGE SANDRON: You're done with testimony.
22 (Witness excused.)
23 JUDGE SANDRON: Next witness?
24 (Off the record from 9:50 a.m. to 9:53 a.m.)
25 JUDGE SANDRON: If you will please raise your right

1 hand?
2 (Whereupon,
3 ERIN BAERMAN
4 was called as a witness by and on behalf of the General
5 Counsel and, after having been duly sworn, was examined and
6 testified as follows:)
7 JUDGE SANDRON: If you will kindly be seated. If you
8 can state and spell your full and correct legal name, and
9 provide us with an address, either home or work, whichever
10 you prefer.
11 THE WITNESS: My name is Erin Baerman, E-r-i-n
12 B-a-e-r-m-a-n. I live at 3195 Memorial Drive in Muskegon,
13 Michigan.
14 JUDGE SANDRON: And your zip code?
15 THE WITNESS: 49445.
16 JUDGE SANDRON: Thank you.
17 DIRECT EXAMINATION
18 Q. BY MS. CAROL: Mr. Baerman, have you ever worked for
19 Erickson's?
20 A. Yes, I have.
21 Q. During what time period?
22 A. 2013 till June of last year, and I am currently on his
23 payroll also right now.
24 Q. How long have you been on the current payroll?
25 A. Three weeks, I believe.

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1 Q. Is that through the union hall or directly?
2 A. Through the union hall.
3 Q. When you worked there between 2013 and 2016, that's the
4 period I'm mostly going to be focusing on, what was your
5 position?
6 A. I was an operator.
7 Q. Which facility did you work from generally?
8 A. Muskegon.
9 Q. When you were hired in 2013, was that also through the
10 union hall or was that a direct hire?
11 A. Directly by Steven. He placed me into the Union.
12 Q. That's Steve Erickson, right?
13 A. Yes.
14 Q. When you were hired in 2013, were you a full-time
15 employee?
16 A. Yes, I was.
17 Q. Did you work year round?
18 A. I did work year round.
19 Q. Did you hold any certifications?
20 A. I did not hold any certifications at first. I acquired
21 them after I started working there. About a year to a year
22 and a half in, I took all my crane certs with the exception
23 of tower crane.
24 Q. Just to make it easier on me to understand, was there
25 any equipment that Erickson's had that you were not

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1 certified to run in 2016?
2 A. Tower crane.
3 Q. When you worked there, were you ever laid off before
4 2016?
5 A. The year after I got hired, I believe it was 2014 I sat
6 home the whole month of February. Other than that it would
7 be during the slow periods you might sit home maybe a day, 2
8 days a week. In the wintertime, it gets a little slow and
9 then that would be about the extent of it.
10 Q. During those layoffs before 2016, how were you recalled
11 to work? Was it through the hall --
12 A. He would --
13 Q. Sorry, go ahead.
14 A. He would just send you a text and say be at the shop at
15 7:00 a.m., 8:00 a.m., whenever he needed you.
16 Q. During those prior layoffs, did you have to turn in any
17 company issued equipment?
18 A. No. I never had to turn in any equipment.
19 Q. Did you know at that time how employees were chosen for
20 layoff?
21 MR. EASTLAND: I'm going to object as to foundation.
22 JUDGE SANDRON: Well, you asked if he --
23 MR. EASTLAND: Okay, she asked -- you're right, I
24 withdraw. You asked if he knew. I withdraw the objection.
25 Q. BY MS. CAROL: Do you know how these previous layoffs

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1 were done?
2 A. What I noticed was, is that generally he would start
3 with iron workers that did not have CDLs. Some of the Iron
4 Workers Union had a driver's license, so he would take the
5 ones that could not drive the semis. Those would be the
6 first to go. And then he would go towards seniority in the
7 Operators and then start working his way up.
8 MR. EASTLAND: I'm going to renew my objection as to
9 foundation.
10 JUDGE SANDRON: Well, it's not real strong evidence.
11 MS. CAROL: It's his understanding of how it was done
12 based on his observations.
13 JUDGE SANDRON: Right, right.
14 MR. EASTLAND: We don't know what those observations are
15 or if there is any foundation for those observations.
16 MS. BACHELDER: You can cross-examine that.
17 JUDGE SANDRON: It's on the record.
18 MR. EASTLAND: Foundation is an element to admission.
19 It's not a matter for cross-examination.
20 JUDGE SANDRON: Did Mr. Erickson or anybody else at the
21 Company ever say anything about how seniority was treated?
22 The dispatch, I mean did they ever say anything?
23 THE WITNESS: No, nothing was ever said. It was just
24 that I noticed that guys that were hired in after me would
25 go before me and then I would go, and then like working his

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1 way up to like my brother and other employees that worked
2 there that had more seniority than me. They would always be
3 laid off after me.
4 JUDGE SANDRON: Does the Respondent have records, I
5 don't know if they were subpoenaed, that would show layoffs
6 by seniority? Were those subpoenaed, because those would be
7 the best evidence?
8 MS. CAROL: I believe they were subpoenaed. I haven't
9 gotten through all my subpoenaed documents yet.
10 JUDGE SANDRON: All right, well, those would probably be
11 more reliable as far as figuring out how seniority was used
12 than his recollection.
13 MS. CAROL: Yeah. And as I had mentioned at the
14 beginning, if I find such records and I don't have them now,
15 I'd like to call witnesses as necessary to authenticate and
16 put foundation to those documents. I just haven't finished
17 reviewing them all yet.
18 JUDGE SANDRON: These are from the Employer.
19 MS. CAROL: Yes, yes.
20 MR. EASTLAND: Right. But, Your Honor, now we've
21 produced those records and it's been an entire day so I mean
22 there's been times since we recessed at 5:00 to review those
23 records.
24 MS. CAROL: I'll be done before I -- I mean if we take a
25 lunch break, I'm going to finish at lunch break. I just

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1 haven't finished yet.
2 MR. EASTLAND: Oh, sorry.
3 JUDGE SANDRON: I think those would be the best way
4 to --
5 MS. CAROL: Absolutely.
6 JUDGE SANDRON: -- determine definitively how seniority
7 was used.
8 MS. CAROL: Yes, that is correct. I was going to say
9 and not to get too deep into subpoena issues but I was
10 informed there is no seniority list to compare the records
11 that was kept by the Employer.
12 JUDGE SANDRON: So there's no list of --
13 MS. CAROL: Right.
14 JUDGE SANDRON: -- when people were hired?
15 MR. EASTLAND: Right. But if I may, Carol?
16 MS. CAROL: Yes, sure.
17 JUDGE SANDRON: Yes.
18 MR. EASTLAND: We worked that out as a subpoena issue
19 and I explained that there was no seniority list, but what
20 we have provided pursuant to our agreement with Counsel for
21 the General Counsel that it is not a seniority list and
22 won't be treated as such but we have provided them the hire
23 dates, a list of operating engineers and hire dates.
24 MS. CAROL: I just haven't seen it yet.
25 JUDGE SANDRON: I see, all right.

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1 MR. EASTLAND: And we have that.
2 MS. CAROL: Okay. I haven't gotten to it yet then.
3 JUDGE SANDRON: I think that would probably be good
4 evidence.
5 MR. EASTLAND: We can probably stipulate to put that in,
6 too.
7 MS. CAROL: Oh, good.
8 JUDGE SANDRON: That would be helpful.
9 MS. CAROL: The boxes aren't in order so I'm looking as
10 I'm going through things. All right, I'm sorry.
11 JUDGE SANDRON: Why don't you get your thoughts
12 together?
13 MS. CAROL: Yeah, I'm sorry about that.
14 Q. BY MS. CAROL: Oh, do you know someone named Nancy
15 Tejchma?
16 A. I do.
17 Q. Who is Nancy Tejchma?
18 A. She is the lady that takes care of payroll.
19 Q. When you say takes care of payroll, what do you mean by
20 that?
21 A. She would handle like the hours accounted for. And if
22 there was ever an issue with your check, she would be the
23 person you would contact.
24 Q. During your employment did you ever have occasion to
25 discuss those issues with her directly?

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1 A. Yes.
2 Q. How many times do you think that you would?
3 A. I don't know an exact number, but the check would
4 frequently be wrong.
5 Q. So when you say -- I know you don't have an exact
6 number. Do you have like how many times this might happen
7 in a given year?
8 A. I would say at least once a month or more sometimes
9 depending. When I was hired in and I started noticing like
10 some of my paychecks would be wrong, some of the old timers
11 would be like if it's $20 or less, don't even worry about
12 it, kid. Just that's the way it was explained to me.
13 Q. If it was more than $20, did you ever take it up
14 directly with Ms. Tejchma?
15 A. Yes, I did.
16 Q. Did you ever have that matter resolved by her?
17 A. Yes. Usually, it would be taken care of the next check
18 or she would say I'll check into it. But there has been
19 occasion where I had to call her six payrolls in a row to
20 get one issue resolved until it resulted in a screaming
21 match over the phone.
22 Q. When was that?
23 A. That had to be 2014, 2015, somewhere in there. I don't
24 have an exact date.
25 Q. Do you know someone named Keith Stephenson?

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1 A. I do.
2 Q. Who is he?
3 A. He was a fellow co-worker and a high school friend also.
4 Q. Did he work at Erickson's -- I'm sorry, do you know how
5 long he worked at Erickson's?
6 A. Well over a decade. I do know that.
7 Q. Were you aware of his layoff in May of 2016?
8 A. Yes, I was.
9 Q. How did you find out about that?
10 A. Through my brother, actually. My brother is friends
11 with him also. And he called me and said that Keith was
12 terminated.
13 Q. Did you discuss Mr. Stephenson's termination with
14 Mr. Erickson?
15 A. Actually, I did.
16 JUDGE SANDRON: Why don't you lay a foundation?
17 MS. CAROL: Yes.
18 Q. BY MS. CAROL: Do you remember when that conversation
19 took place?
20 A. It was approximately 2 weeks after Keith was let go. I
21 was getting ready to start construction on my house. Steve
22 is kind of unapproachable, so I went into his office and to
23 break the ice I said to Steve --
24 JUDGE SANDRON: What time was that?
25 THE WITNESS: It was 2 weeks after Keith was let go. I

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1 don't have an exact date.
2 JUDGE SANDRON: Do you remember the time of day of the
3 meeting?
4 THE WITNESS: It was morning.
5 Q. BY MS. CAROL: When you say went into his office, it's
6 my understanding there's two facilities so what office?
7 A. It was the Muskegon office.
8 Q. Was anybody else in there during this conversation?
9 A. Not in the office, no. But I believe Kim was out in the
10 lobby.
11 Q. Who is Kim?
12 A. Kim is the secretary.
13 Q. Do you know her last name?
14 A. I do not.
15 Q. All right, so I'm sorry, what was said and by whom when
16 you went into the office?
17 A. To break the ice because I felt a little uncomfortable,
18 I said to Steve, I said I'm not next to get the axe, am I,
19 as a joke.
20 Q. Did he respond?
21 A. He did. Actually, he said you might be, you and Carlos
22 both, you're both right there. And said that you're both my
23 40-ton guys and you'll be the next to go, but unless this
24 stuff stops with the Union then you'll be safe. You're good
25 for the rest of this week, but I'm going to keep letting

1 guys go until I get to the guy I want unless this stuff
2 stops with the Union.
3 Q. Did you respond?
4 A. I was shocked. That was not the --
5 JUDGE SANDRON: All right, it's best if you just say
6 what -- if you said anything.
7 THE WITNESS: Okay. I did. I asked if I could use the
8 boom truck, which is the original reason I had went in there
9 for. I asked if he ever let guys take equipment home and if
10 I could use the boom truck to remove some trusses from my
11 house. He said I could as long as I replaced the fuel.
12 Q. BY MS. CAROL: Was anything else said that you recall
13 during that conversation?
14 A. No, there was nothing else.
15 Q. How long did this take, this whole conversation?
16 A. Five minutes.
17 Q. I want to talk about your layoff from the Company. That
18 was on June 20th, correct?
19 A. Yes.
20 Q. I think it might be in front of you, if you would take a
21 look at General Counsel's 10, which says job continuation
22 work order on the top.
23 A. Yes.
24 Q. Do you recognize that document?
25 A. I do.

1 JUDGE SANDRON: I think we have already two witnesses
2 that testified about it. I think it shouldn't be disputed.
3 I think it would be cumulative to go any further with the
4 same foundation on this. Do you agree?
5 MR. EASTLAND: I think the exhibit is into evidence.
6 MS. CAROL: Sure.
7 JUDGE SANDRON: Yes.
8 MS. CAROL: Can I ask him what he did when he saw it or
9 where he saw it?
10 JUDGE SANDRON: I guess it's only a couple of questions.
11 Go ahead. But ordinarily if it's already in the record --
12 MS. CAROL: It's already in evidence, sure.
13 Q. BY MS. CAROL: On the 20th, did you see this document?
14 A. I did. It was hanging up in the break room.
15 Q. What did you do when you saw the document, if anything?
16 A. I sat there and waited to meet with Steve.
17 Q. Where was that? Where did you sit and wait?
18 A. In the break room. Steve was roaming around outside the
19 entrance to his office in the warehouse at that time.
20 Q. Was anyone else in the room with you at that time?
21 A. Nick.
22 Q. At some point, were you joined by anyone else in the
23 room?
24 A. My brother.
25 Q. And Mr. Erickson?

1 A. Yes, and Mr. Erickson.
2 Q. Anyone else other than the four of you in this break
3 room?
4 A. I believe Bryan Rust came in. He is an iron worker
5 foreman. Then Steve told him to go to the back and see
6 Denny, who is another iron worker foreman, and that was it.
7 Q. So Mr. Rust left?
8 A. He left, yes.
9 Q. How did the meeting start? Who spoke first?
10 A. Steve did.
11 Q. What, if anything, did he say?
12 A. He said, gentlemen -- we were all sitting down at the
13 other end of the break room from him. He said I'm letting
14 you guys go. It's nothing personal, but it is what the
15 Union is forcing me to do. I'm done dealing with the Union.
16 I'm done dealing with Brandon Popps. I'm not going to let
17 the Union tell me how to run my business, so I'm going to
18 sell these 40s and 60s and let go of the guys that run them.
19 They don't make me any money. I have to subsidize them. I
20 actually have to subsidize the 90s. They don't really start
21 making any money until the 120-ton crane. I don't know why
22 he -- I don't know why the Union doesn't want me to pay
23 these work hours in, but if they are going to force me out
24 of business then I'm going to help them.
25 Then he went on to say but you guys can make this stop.

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1 You can go tell Stockwell that you do not want Brandon
2 talking for you. I am done dealing with Brandon. I'm not
3 going to answer his calls or texts. I am done dealing with
4 Stockwell, also. He is about the most arrogant son-of-a-
5 bitch I've ever met who wants to run your union like Hitler.
6 Brandon and Stockwell are costing you, your guys' jobs.
7 I've tried talking to them. They won't listen. But maybe
8 if I get rid of you guys, you guys could go talk to them and
9 this could be reversed, and we can go back to doing business
10 like we've done around here for the last 40 years.
11 Q. Now, those statements, did anyone interject while he was
12 saying that or did he say all those statements --
13 A. He pretty much kept talking and nobody said a word.
14 Then at the end and he was sitting there looking at us, I
15 said but the Union did not hire us, Steve, you did. You
16 gave us all our jobs here.
17 Q. Did he respond?
18 A. I said I take pride in being an Erickson's employee. At
19 that time, my brother, I could see he -- my brother was very
20 upset.
21 Q. Your brother is --
22 JUDGE SANDRON: All right, just tell us what he said.
23 THE WITNESS: Okay. He said, Steve, I've been a good
24 employee. I've sat back for years waiting my turn because
25 that's what I was told I had to do to get a seat here, so

1 I've kept my mouth shut and waited for my turn. And I've
2 seen other guys come in off the street, lie about their
3 ability, and get moved up in front of me. And then he
4 said -- he named two employees, Brad Oetman and Quentin
5 Wheeler. He said they come in and they run these cranes by
6 phone; are getting trained while they're in the seat. And
7 then he mentioned an example where Quentin actually broke
8 equipment because of lack of experience.
9 Q. BY MS. CAROL: That's everything that Jason said.
10 A. Yeah, that's pretty much it.
11 Q. Did Mr. Erickson respond to what he said?
12 A. He said I had no idea. I did not know that. Then my
13 brother said there's a lot of shit that goes on around here
14 that you don't know.
15 MR. EASTLAND: Ms. Carol, I don't mean to interrupt, but
16 I'm presuming you're not offering that for the truth of the
17 matter asserted. If you are, I'd have an objection.
18 MS. CAROL: You mean as far as whether or not --
19 MR. EASTLAND: All the things that were said by --
20 MS. CAROL: Oh, no. I'm just trying --
21 MR. EASTLAND: -- by Jason Baerman as conveyed by this
22 witness.
23 MS. CAROL: No. Those are not alleged. It's just part
24 of the conversation at issue.
25 MR. EASTLAND: I just wanted to make sure.

1 JUDGE SANDRON: Do you just want to spell the names of
2 those two individuals?
3 MS. CAROL: I don't know how to spell the names of those
4 individuals.
5 Q. BY MS. CAROL: Do you?
6 A. Jason, J-a-s-o-n, Baerman, B-a-e-r-m-a-n.
7 Q. Mr. Wheeler and Mr., is it Oetman?
8 MS. BACHELDER: Oetman.
9 THE WITNESS: Oh, Wheeler? Quentin, I have -- I think
10 it's Q-u-i-n-t-o-n [sic], and Wheeler, W-h-e-e-l-e-r. Then
11 Brad, B-r-a-d, and Oetman is O-a-t-m-a-n [sic], I do
12 believe.
13 Q. BY MS. CAROL: So Jason had something to say.
14 Mr. Erickson responded. Did anybody else say anything
15 during that meeting?
16 A. Then Nick, he just said I guess 18 years means nothing.
17 Q. Anything else that you recall being said?
18 A. That was pretty much it. That was the end of the
19 conversation for all parties.
20 Q. What happened at the end of the meeting? How did it
21 end?
22 A. We got up and we walked out in the parking lot. We all
23 talked about it. And then --
24 JUDGE SANDRON: All right, I think she meant --
25 MS. CAROL: I just meant at the end of the meeting.

1 JUDGE SANDRON: -- the end of that meeting, itself.
2 Q. BY MS. CAROL: Sorry. Like how did it end?
3 A. Oh, we just got up and we walked out of the room.
4 Q. Did you have to turn in any equipment at the end of the
5 meeting?
6 A. Oh, yeah. Steve had asked for our gas cards and our
7 credit cards.
8 Q. Since then have you ever been directly called by
9 Mr. Erickson to come back to work?
10 A. I have not.
11 MS. CAROL: That is all I have on direct, Your Honor.
12 JUDGE SANDRON: Ms. Bachelder?
13 MS. BACHELDER: No questions.
14 JUDGE SANDRON: Mr. Eastland?
15 MR. EASTLAND: Yes. Affidavit, please?
16 MS. CAROL: I have two documents. I have a four-page
17 affidavit dated June 30th, as well as a one-page,
18 typewritten signed statement that is undated.
19 JUDGE SANDRON: We'll go off the record for a few
20 minutes.
21 (Off the record from 10:13 a.m. to 10:20 a.m.)
22 JUDGE SANDRON: Back on the record.
23 Cross-examination.
24 CROSS-EXAMINATION
25 Q. BY MR. EASTLAND: Mr. Baerman, on direct testimony, I

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1 what you have.
2 MR. EASTLAND: I'm sorry. Can we have --
3 MS. BACHELDER: Do we have the document?
4 MR. EASTLAND: -- the witness be excused for a moment?
5 JUDGE SANDRON: Well, the witness is not going to see
6 it.
7 MR. EASTLAND: No. But I'd like to make some comments
8 that I don't believe are appropriate for the witness to
9 hear.
10 JUDGE SANDRON: All right.
11 MS. CAROL: I have no objection.
12 MS. BACHELDER: It's up to you, Your Honor.
13 JUDGE SANDRON: The witness will go outside for a
14 minute.
15 (Witness exits hearing room.)
16 MR. EASTLAND: Briefly.
17 JUDGE SANDRON: I mean my inclination is in the absence
18 of a criminal conviction or an adjudication by some body
19 that actually found that he was guilty of action that would
20 bear on truth and veracity that it's too far afield.
21 MR. EASTLAND: Your Honor, if in fact the witness
22 testifies truthfully we believe and acknowledges that there
23 was a discharge and it was for false reasons, then my fellow
24 counsel are suggesting that the witness will deny it.
25 They're suggesting his testimony to him. We don't know that

1 because I haven't been able to get an answer to my question.
2 JUDGE SANDRON: Right. But the big point is whether
3 that prior discharge has any bearing on this case. Now, as
4 you say, you're saying it would bear on credibility but that
5 would depend in any event on whether there was an actual
6 adjudication that he's guilty of something that involved
7 dishonesty or otherwise a lack of credibility.
8 MR. EASTLAND: Well, look --
9 JUDGE SANDRON: I'll be glad to look at the document
10 in-camera and see what you have, but we're not going to go
11 into --
12 MR. EASTLAND: The Federal Rules of Evidence which I
13 understand do not strictly apply --
14 JUDGE SANDRON: Right, that's correct.
15 MR. EASTLAND: -- clearly allow me to ask that question.
16 JUDGE SANDRON: At my discretion.
17 MR. EASTLAND: Correct. And so if your ruling is I'm
18 not allowed to ask the question, we can move on.
19 JUDGE SANDRON: I want to see the document that you
20 have.
21 MR. EASTLAND: I'm sorry. I thought I said earlier I'm
22 not aware of a conviction, a document of conviction.
23 JUDGE SANDRON: Do you have anything showing that his
24 termination --
25 MR. EASTLAND: I don't have any documentation of that

1 per se, no.
2 JUDGE SANDRON: All right, well, then I'm not going to
3 allow further questions. If you had something even from
4 like a state administrative agency that found merit to his
5 being discharged, I might consider -- whether if it was for
6 something that would show a lack of truthfulness then I
7 might consider it. But without documentation, I think we're
8 going on a fishing expedition, and I don't see the
9 relevance, so I'm not going to allow further questions on
10 that.
11 MR. EASTLAND: Very good. I will move on, Your Honor.
12 MS. BACHELDER: I'll get him.
13 (Witness re-enters hearing room.)
14 JUDGE SANDRON: Mr. Eastland, you can continue.
15 Q. BY MR. EASTLAND: Mr. Baerman, I just want to ask you a
16 couple more questions.
17 A. Sure.
18 Q. During the June 20, 2016, meeting that you testified
19 about, would you say that you, your brother Mr. Baerman --
20 Jason Baerman, or Mr. Willer were upset about the fact that
21 what you believed were more junior employees continued to be
22 employed?
23 A. I think that was more of my brother being upset by that.
24 We were all taken aback. It wasn't till later that I
25 realized that there were still junior employees being

1 employed.
2 Q. You didn't say anything?
3 A. No, I did not.
4 Q. About seniority?
5 A. No. All I stated was is that you hired us and you
6 placed us into the hall.
7 Q. Do you recall whether Nick Willer was upset about the
8 seniority issue?
9 JUDGE SANDRON: He said he was upset.
10 MR. EASTLAND: Well, I'm asking about the witness's
11 observations of the conduct in the meeting.
12 JUDGE SANDRON: Then you have to go into what he
13 observed that made him -- led him to conclude that he was
14 upset. If you want to do that, you can go ahead.
15 MR. EASTLAND: Okay. What made you believe that he was
16 upset?
17 JUDGE SANDRON: Let's answer your question, you can ask
18 the first one. Did he act like he was upset?
19 THE WITNESS: Yeah, he did.
20 Q. BY MR. EASTLAND: And why do you say that?
21 A. A few deep sighs, head buried, head shaking, skin color
22 was flushed. I mean he was visibly upset and he just kept
23 saying, I mean repeatedly, 18 years means nothing. So I
24 would deem that to be upset.
25 Q. Did he use profanity?

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1 A. No, I don't believe he ever used profanity.
2 Q. And that was your brother, Jason Baerman?
3 A. That was Nick Willer.
4 Q. That was Nick Willer, okay.
5 A. Yes. My brother was the one that stated the profanity,
6 there's a lot of shit that goes on around here that you
7 don't know about. And then he was also the one that brought
8 up junior employees, guys that came in -- guys that came in
9 after him that were moved ahead of him because they lied
10 about their ability.
11 Q. Did you observe conduct from your brother, Jason
12 Baerman, that would suggest he was upset?
13 A. Well, yeah. I've known my brother my whole life. His
14 voice was trembling. His hands were shaking. He was upset,
15 you know. And my brother is a pretty soft-spoken guy. He
16 don't get upset easily. He pretty much -- he gets walked on
17 a lot because he keeps his mouth shut.
18 Q. I'm asking about the conduct observed at the -- it's
19 fine. I'm just going to stop you.
20 JUDGE SANDRON: That's fine, you can.
21 MR. EASTLAND: You're going beyond the call of the
22 question, as we say.
23 JUDGE SANDRON: That you can do. Or I can stop you.
24 Just limit it to the --
25 THE WITNESS: I understand.

1 JUDGE SANDRON: To the question.
2 MR. EASTLAND: No further questions.
3 JUDGE SANDRON: Redirect from General Counsel?
4 MS. CAROL: No redirect.
5 MS. BACHELDER: No questions from me.
6 JUDGE SANDRON: Thank you, Mr. Baerman. You're done.
7 (Witness excused.)
8 MR. EASTLAND: Are we on the record?
9 JUDGE SANDRON: No, we're off, right.
10 (Off the record from 10:39 a.m. to 10:40 a.m.)
11 JUDGE SANDRON: I will swear you in, so please raise
12 your right hand.
13 (Whereupon,
14 KEITH A. STEPHENSON
15 was called as a witness by and on behalf of the General
16 Counsel and, after having been duly sworn, was examined and
17 testified as follows:)
18 JUDGE SANDRON: Please be seated. If you will kindly
19 state and spell your full and correct legal name, and
20 provide us with an address, either home or work, whichever
21 you prefer? Please keep your voice up to make sure that
22 what you say is recorded.
23 THE WITNESS: It's Keith, K-e-i-t-h, Alan, A-l-a-n,
24 Stephenson, S-t-e-p-h-e-n-s-o-n. Address 1458 Horton Road,
25 Muskegon, Michigan.

1 JUDGE SANDRON: And the zip code?
2 THE WITNESS: 49445.
3 JUDGE SANDRON: Thank you.
4 DIRECT EXAMINATION
5 Q. BY MS. CAROL: Mr. Stephenson, have you ever worked for
6 Erickson's?
7 A. Yes.
8 Q. During what time period?
9 A. From October of '05 to May of '16.
10 Q. When you worked there in 2016, what was your position?
11 A. I worked as an operator.
12 Q. How long had you worked as an operator at that time?
13 A. Almost a year.
14 Q. But you had testified that you started working for
15 Erickson's in '05. What were you doing in '05?
16 A. I was a Teamster Local 406 for 10 years.
17 Q. Do you remember the date you became an operator?
18 A. I can't remember the --
19 Q. Approximate date?
20 A. -- exact date. It was -- I think it was August.
21 JUDGE SANDRON: When you were a teamster for that long
22 period, what did you do for the Employer?
23 THE WITNESS: I basically ran trucks and sometimes
24 equipment.
25 Q. BY MS. CAROL: I'm sorry, you said in August you became

1 an operator, but I don't think you said a year.
2 A. It would be 2015.
3 Q. Got you, okay. When you became --
4 JUDGE SANDRON: Just so we get it on the record, so the
5 Teamsters Union represented employees who did what?
6 THE WITNESS: Drive trucks.
7 JUDGE SANDRON: That was your primary role?
8 THE WITNESS: Yes, in Teamsters, drive trucks. And they
9 do have I think have the Goldhofers.
10 JUDGE SANDRON: What?
11 THE WITNESS: They do have the jobs of being Goldhofer
12 operators, too.
13 Q. BY MS. CAROL: I didn't hear what you said.
14 A. A teamster is a truck driver, and they run Goldhofer
15 equipment.
16 Q. A Goldhofer?
17 A. Yes.
18 Q. Is that a brand name of some sort?
19 A. Yes.
20 Q. What does that mean for the rest of us?
21 A. It's a type of trailer. It's a trailer ran by
22 hydraulics.
23 JUDGE SANDRON: I see.
24 THE WITNESS: With a bunch of wheels.
25 JUDGE SANDRON: Do you know how to spell that by any

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1 chance?
2 THE WITNESS: No.
3 JUDGE SANDRON: All right. I just wanted --
4 THE WITNESS: I know it has a different spelling.
5 JUDGE SANDRON: So as a teamster you performed different
6 work than the operators?
7 THE WITNESS: Correct.
8 JUDGE SANDRON: And a different union represents the
9 group.
10 THE WITNESS: Correct.
11 JUDGE SANDRON: Okay, that's clear on the record now.
12 Q. BY MS. CAROL: When you became an operator, did you do
13 that while maintaining your employment with Erickson's or
14 did you have to go through a referral through the Local 324
15 union hall?
16 A. I went through the hall.
17 Q. Were you let go and then hired back from the hall or how
18 did that work?
19 A. No. I went right from being a teamster to an operator
20 through contacting Brandon and I got the approval from
21 Steve.
22 Q. So you maintained working for Erickson's during the
23 transition?
24 A. Correct.
25 JUDGE SANDRON: Which facility were you working at?

1 THE WITNESS: Primarily out of the Muskegon area,
2 Muskegon office.
3 Q. BY MS. CAROL: After you became an operator, did you
4 have any issues related to receiving the appropriate wage
5 rates?
6 A. Yes.
7 Q. One time or more than one time?
8 A. More than once.
9 Q. How many times, if you can estimate?
10 A. Could I go by percentage? I would say it was 60
11 percent.
12 Q. 60 percent of the time you received a paycheck?
13 A. Oh, no, no, no, sorry.
14 Q. It's okay.
15 A. Can you repeat the question?
16 Q. Yeah, sure.
17 JUDGE SANDRON: Yeah, make sure you understand.
18 Q. BY MS. CAROL: How many times do you think that you had
19 issues with your wages as an operator?
20 A. I would say on an average twice a month.
21 Q. What did you do when those issues came up?
22 A. I would call Nancy.
23 Q. Is that Nancy Tejchma?
24 A. Yes.
25 Q. Do you know what her position is?

1 A. She's payroll.
2 Q. Did you ever have any of those issues resolved by Nancy?
3 A. Yes.
4 Q. Did you ever have any of those issues not resolved by
5 Nancy?
6 A. Yes.
7 Q. How many times do you think they were not resolved by
8 Nancy?
9 A. I couldn't say for sure.
10 JUDGE SANDRON: Just could you say maybe it was more
11 than five or less than five?
12 THE WITNESS: More than five.
13 MS. CAROL: On those occasions when Nancy wasn't --
14 JUDGE SANDRON: Well, just to go a little further, do
15 you think it was more than 10 or less than 10?
16 THE WITNESS: Throughout my career, it was more than 10.
17 JUDGE SANDRON: This is as an operator?
18 THE WITNESS: As an operator, probably I would say more
19 than five.
20 Q. BY MS. CAROL: More than 10?
21 A. No. To be honest, I couldn't say more than 10.
22 Q. Okay.
23 JUDGE SANDRON: Between about 5 and 10 then.
24 MS. CAROL: Single digits.
25 Q. BY MS. CAROL: On those occasions when you weren't able

1 to get it remedied by Nancy, what did you do on those
2 occasions?
3 A. You would have to -- she would tell you Steve's handle
4 it, to contact Steve, or Steve would call me.
5 Q. I want to direct your attention to December of 2015.
6 Did you have an issue with your wages during that month that
7 you can recall?
8 A. I had issues with -- I worked out of the state.
9 Q. What affect did that have on you, you worked out of
10 state? What happened?
11 A. I didn't get paid the wage that I was supposed to get
12 paid for the state I was working in.
13 JUDGE SANDRON: Which state was that?
14 THE WITNESS: Pennsylvania.
15 Q. BY MS. CAROL: So what did you do when you discovered
16 that this didn't look right to you?
17 A. I called Nancy and told her my pay was wrong.
18 Q. Did she remedy the pay for you?
19 A. No. She said that Steve Erickson would handle it and I
20 needed to quit talking to Brandon.
21 JUDGE SANDRON: If you want to have that conversation
22 considered, you've got to lay a foundation for it.
23 MS. CAROL: Yes.
24 Q. BY MS. CAROL: When this first came up, did you talk to
25 Nancy -- well, let me ask you about this particular wage

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1 issue in Pennsylvania. Did you talk to Nancy one time or
2 more than one time?
3 A. Once.
4 Q. Was that before or after you spoke to Mr. Erickson?
5 A. It was before.
6 Q. On this particular conversation that you had just talked
7 about, do you remember when that occurred in relation to
8 December of 2015?
9 A. Can you repeat again?
10 Q. Yeah, sure. When did this -- when did that conversation
11 with Nancy take place?
12 A. It took place after I got paid for the job.
13 Q. Do you know when that was?
14 A. The following week.
15 Q. Is that still in December or is that into 2016?
16 A. With talking to Nancy, it would still be in December.
17 Q. Did you call her at the office or how did you contact
18 her?
19 A. I called her on my cell phone to the office.
20 Q. Do you remember what time of day it was that you talked
21 to her?
22 A. It was before noon I remember because I was riding in
23 the tool truck with other guys.
24 Q. Do you recall what was said and by whom during that
25 conversation?

1 A. What was that again?
2 Q. What was said and by whom during that conversation?
3 A. I said my pay was wrong for my job in Pennsylvania. And
4 I had to clear in to a different local, because you have to
5 clear in when you go into a different local. She told me
6 that I didn't need to do that; that Steve would take care of
7 that. I said, no, Brandon said I have to call. She said
8 you need to quit talking to Brandon.
9 Q. Do you recall anything else being said?
10 A. No. I ended the conversation.
11 Q. What if anything did you do after talking to Nancy about
12 this wage issue?
13 A. I did nothing. Steve presented me with an envelope
14 saying, listing what I would get paid for and what I
15 wouldn't get paid for if he went by their contract.
16 Q. Let me back you up a little bit. After you have this
17 phone call, you said you had a conversation with
18 Mr. Erickson about this same issue. When was that in
19 relation to when you had the conversation with Ms. Tejchma?
20 A. It was a week later.
21 Q. Are we still in December?
22 A. Yes, we're still in December.
23 Q. Let's take the end of the year. Is it during that week,
24 during 2 weeks around that? Can you ballpark it?
25 A. The conversation, it was a week after. But the

1 presentation with the list of what he was paying and what he
2 wasn't paying was three weeks later into January.
3 Q. So January of 2016?
4 A. Correct.
5 Q. Okay. This was a face to face conversation with
6 Mr. Erickson?
7 A. Yes. When he handed me the envelope, it was face to
8 face in the warehouse.
9 Q. When you say warehouse, which facility are we talking
10 about?
11 A. It would be the Muskegon warehouse. I had come back
12 from the job.
13 Q. What time of day did that conversation take place?
14 A. It was in the evening.
15 Q. Was anybody else around?
16 A. No. It was late in the evening. I was putting
17 equipment away.
18 Q. Who approached who?
19 A. Mr. Erickson came to me with an envelope, handed it to
20 me.
21 Q. So now that you're there, what was said and by whom?
22 A. He handed it to me and said that Nancy saved me money by
23 paying his contract, and if I had any other questions about
24 it to ask him. He wrote a note on the bottom if I had any
25 questions to contact him.

1 Q. Do you recall him saying anything else during that
2 conversation?
3 A. He said -- I don't remember exact words of what happened
4 before. He says that you need to quit talking to Brandon
5 because he's going to get you in trouble. And I ended the
6 whole conversation because I didn't want the confrontation
7 anymore.
8 Q. How did you end it? When you say you ended it, what do
9 you mean?
10 A. I just said I don't want nothing to do with it.
11 Q. How long did that conversation last?
12 A. I would say maybe 5 minutes.
13 Q. I want to jump ahead a little bit. You said that you
14 were laid off in May or terminated in May of 2016.
15 A. May 15th.
16 Q. How were you informed that you were being laid off?
17 A. I was texted on the Sunday to come in on Monday morning
18 and I had no job slips or any --
19 JUDGE SANDRON: Who texted you on Sunday?
20 THE WITNESS: Mr. Erickson.
21 JUDGE SANDRON: Did he tell you what time to come in?
22 THE WITNESS: Yes, to be in at 8 o'clock.
23 Q. BY MS. CAROL: Which facility were you supposed to
24 report to?
25 A. Muskegon.

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1 Q. Muskegon. Did you do that? Did you report?
2 A. I reported at 8 o'clock.
3 Q. What did you do when you got there?
4 A. I waited in the lunch room. Steve came to the lunch
5 room and told me he needed to talk to me, escorted me to his
6 office.
7 Q. Was anybody else in his office with him?
8 A. No.
9 Q. What was said and by whom in that office?
10 A. Steve said I'm going to have to lay you off for lack of
11 work -- or let you go for lack of work, sorry. And I --
12 Q. Did you respond or did he say anything?
13 JUDGE SANDRON: All right, let him think for a minute.
14 MS. CAROL: Oh, okay.
15 JUDGE SANDRON: Try to remember as best as you can who
16 said what.
17 THE WITNESS: He said he was going to let me go for lack
18 of work and he had to do it the legal way and let me go
19 first, which he was going by experience, qualifications, and
20 certifications.
21 Q. BY MS. CAROL: Did you respond at all?
22 A. I said what is the real reason.
23 Q. And did he say anything?
24 A. He didn't really say what the real reason. And I said
25 does this have anything to do with the Union. And he said

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1 no.
2 Q. Do you recall him saying anything else?
3 A. He said -- I said is the real reason the Union. He said
4 no. Then I said -- well, I can't remember exactly what it
5 was after that, sorry.
6 Q. That's okay. Would something -- would looking at your
7 affidavit refresh your recollection?
8 A. Yeah.
9 MS. CAROL: I'm going to mark it.
10 JUDGE SANDRON: I'm not sure that a document just to
11 refresh needs to be marked as an exhibit.
12 MS. CAROL: I don't think so, either. But if it's --
13 JUDGE SANDRON: Unless it's offered?
14 MS. CAROL: No, I don't intend to offer it.
15 JUDGE SANDRON: So then I don't think you need to mark
16 it. You can show it to opposing counsel.
17 MS. CAROL: All right, so let me just show your
18 affidavit --
19 JUDGE SANDRON: No, I mean show it to --
20 MS. CAROL: Yeah, I'm sorry, I don't have another copy.
21 JUDGE SANDRON: You can see it later, but --
22 MS. CAROL: I'm just going to have him take a look at
23 the bottom paragraph there.
24 MS. BACHELDER: I have another copy.
25 MR. EASTLAND: Oh, thank you.

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1 JUDGE SANDRON: Ms. Bachelder, you've seen it?
2 MS. CAROL: Thank you.
3 Q. BY MS. CAROL: So let me have you look at -- here's the
4 last paragraph. Just read this paragraph right here. Let
5 me know when you're finished and I'll take it back from you.
6 JUDGE SANDRON: Read it to yourself.
7 MS. CAROL: Yes, sorry.
8 JUDGE SANDRON: And then return it to the General
9 Counsel. We're going to get this in later probably on
10 cross, but what's the date of the affidavit?
11 THE WITNESS: June 30, 2013.
12 MS. CAROL: Thank you.
13 Q. BY MS. CAROL: Does that refresh your recollection?
14 A. Yes.
15 JUDGE SANDRON: It's being returned to the General
16 Counsel.
17 Q. BY MS. CAROL: Do you recall anything else that was said
18 during that conversation?
19 A. Mr. Erickson said that this has been in the works for a
20 while. I asked what has been in the works. He said all
21 this union stuff.
22 Q. That was in May --
23 JUDGE SANDRON: I think probably, Mr. Eastland, you
24 should give the affidavit back.
25 MR. EASTLAND: Oh, sure.

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1 JUDGE SANDRON: And then you could ask for it later.
2 Q. BY MS. CAROL: After you were let go or at that meeting,
3 do you recall anything else being said or did you have any
4 further response?
5 A. He just said there was a lot of unhappy people around
6 here and I seemed unhappy. That was pretty much it.
7 Q. At the end of the meeting, did you have to turn in any
8 of your things?
9 A. Yes. I had to turn in my keys and my credit card.
10 Q. After you were let go, were you ever directly called by
11 Mr. Erickson to work, to come back to work?
12 A. Not by Mr. Erickson.
13 Q. Were you directly called by anyone at the Respondent
14 directly to come back to work?
15 A. I was called by the Union.
16 Q. Through the hall?
17 A. Correct.
18 JUDGE SANDRON: Did you return there?
19 THE WITNESS: I worked there -- the same week I was laid
20 off, I worked through the hall.
21 Q. BY MS. CAROL: What days did you work that week when you
22 were let go?
23 A. I believe it was a Wednesday, a Thursday, and a Friday.
24 JUDGE SANDRON: Was that just for that short period?
25 THE WITNESS: Correct.

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1 Q. BY MS. CAROL: How were you let go that time at the end
2 of that 3-day period?
3 A. The job was over.
4 JUDGE SANDRON: So that was just for one job?
5 THE WITNESS: Correct.
6 MS. CAROL: That is all I have on direct, Your Honor.
7 MS. BACHELDER: No questions.
8 JUDGE SANDRON: Mr. Eastland, I assume you want the
9 affidavit?
10 MR. EASTLAND: That is correct, Your Honor.
11 MS. CAROL: Four pages, June 30th.
12 JUDGE SANDRON: The affidavit is being given back to
13 counsel.
14 We'll go off the record for a minute.
15 (Off the record, 10:56 a.m.)
16 JUDGE SANDRON: Back on the record.
17 Cross-examination.
18 MR. EASTLAND: Yes, please. Thank you.
19 CROSS-EXAMINATION
20 Q. BY MR. EASTLAND: Mr. Stephenson, a few questions for
21 you. You testified that you had some payroll concerns maybe
22 two times per month.
23 A. Correct.
24 Q. What types of payroll concerns were they? Did it relate
25 to which contract applied?

1 A. It would be hours or wages.
2 Q. Hours that were reported on a time card, is that how
3 that works?
4 A. Correct.
5 Q. You would report hours on a time card and -- I'm sorry,
6 you have to answer yes.
7 A. Yes.
8 Q. You were shaking your head.
9 A. Yes, sorry.
10 Q. That's okay. So you report your hours and then that
11 gets processed by payroll is your understanding?
12 A. Yes.
13 Q. Nancy Tejchma handles all the payroll?
14 A. Yes.
15 Q. All the time cards go to her or at least your time card
16 does?
17 A. I don't know if they just go to her. They get put in a
18 basket.
19 Q. But your time card does?
20 A. They get put in a basket.
21 Q. So if there is a discrepancy -- if there's a discrepancy
22 on hours that can be adjusted?
23 A. Correct.
24 Q. Would things come up about the different contract rates
25 that might apply depending on where you are working?

1 A. Correct, yes.
2 Q. Because there's as I understand it multiple collective
3 bargaining agreements that apply.
4 A. There's multiple wages, different wages for different
5 places you work.
6 Q. And those are based on collective bargaining agreements,
7 to your knowledge?
8 A. To my knowledge.
9 JUDGE SANDRON: Just to clarify, you were working out of
10 the state in Pennsylvania for Erickson's?
11 THE WITNESS: That was just a one-time deal.
12 JUDGE SANDRON: Did you ever go out of state on other
13 occasions for Erickson's?
14 THE WITNESS: Yes.
15 JUDGE SANDRON: And those were like for particular jobs?
16 THE WITNESS: Yes.
17 JUDGE SANDRON: Your understanding was that when you
18 went out to those jobsites, you were paid in accordance with
19 what was paid in that locality?
20 THE WITNESS: Correct.
21 Q. BY MR. EASTLAND: You said there was only 5 to 10 times
22 where the issue wasn't resolved with Nancy?
23 A. I would say, yes.
24 Q. Now, you started as a Teamsters you explained, correct?
25 A. Correct.

1 Q. You started work at Erickson's as a teamster.
2 A. Yes.
3 Q. Then you transitioned I think your hire date into the
4 operating engineers unit would have been August 7, 2015.
5 Does that sound about right?
6 A. Sounds familiar, yes.
7 Q. Sometime in August of '15?
8 A. Correct.
9 Q. So you had been there for a number of years before you
10 made the switch, correct?
11 A. I was there 10 years, yes.
12 Q. I take it you spoke with Mr. Erickson about making that
13 switch?
14 A. Yes.
15 Q. And by Mr. Erickson, I mean Steve Erickson.
16 A. Yes.
17 Q. You spoke with him before the switch?
18 A. I spoke with him before I got the switch, yes.
19 Q. Did you have any concerns when you made the switch about
20 your health insurance continuing?
21 A. No. I don't recall.
22 Q. Okay, you don't recall that. I'll move on to something
23 else. So I understand it then you were laid off on May 16th
24 of 2016?
25 A. Around that time, yes.

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1 Q. You were immediately rehired by Erickson's for a job
2 that week?
3 A. No. I was called by the hall.
4 Q. But you were re-employed through the hall by Erickson's
5 and you worked for them, right?
6 A. I worked for him, yes.
7 Q. And that was that same week?
8 A. Correct.
9 Q. You worked about 3 days; is that right?
10 A. Correct.
11 JUDGE SANDRON: That was at Muskegon?
12 THE WITNESS: Muskegon.
13 JUDGE SANDRON: Muskegon. You can see I'm out of state.
14 Muskegon.
15 MR. EASTLAND: That's all I have.
16 JUDGE SANDRON: Any redirect?
17 MS. CAROL: No redirect.
18 MS. BACHELDER: No questions.
19 JUDGE SANDRON: Thank you. You're excused today.
20 (Witness excused.)
21 JUDGE SANDRON: We'll go off the record.
22 (Off the record from 11:07 a.m. to 11:17 a.m.)
23 JUDGE SANDRON: We've had some discussion off the record
24 of the General Counsel's need to review some additional
25 documents that were provided by the Respondent pursuant to

1 subpoena. We also discussed the possibility of getting
2 stipulations in terms of some of the documents. And
3 further, the General Counsel has asked for unredacted
4 versions of certain documents pertaining to the Respondent's
5 sale of equipment.
6 In light of that, we will take a longer lunch period
7 than normal, so we will recess now until 12:45 p.m. If the
8 parties need a few extra minutes at that point to wrap up
9 things that they're doing as far as what we discussed, I'll
10 allow that time.
11 So we stand adjourned.
12 (Whereupon, at 11:19 a.m., a lunch recess was taken.)
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1 AFTERNOON SESSION
2 (Time Noted: 12:55 p.m.)
3 JUDGE SANDRON: On the record.
4 Counsel for the General Counsel and counsel for the
5 Respondent signed a basically request for protective order
6 regarding certain documents described therein. We will mark
7 that as Joint Exhibit 1.
8 (Joint Exhibit 1 marked for identification.)
9 JUDGE SANDRON: I will approve this order. I
10 understand, Ms. Bachelder, you have no objection to the
11 document?
12 MS. BACHELDER: Correct.
13 JUDGE SANDRON: It is therefore received.
14 (Joint Exhibit 1 received in evidence.)
15 JUDGE SANDRON: I understand you have a few more
16 questions, Ms. Carol?
17 MS. CAROL: I do, Your Honor. I have a couple of
18 documents that I believe can be entered by stipulation. The
19 first is General Counsel's 11, which is a list of layoffs
20 from Erickson's. It is a six-page document and it includes
21 all the trades. I only intend to have accepted into
22 evidence the pages that relate to the operating engineers,
23 which would be pages 3 through 6.
24 (General Counsel's Exhibit 11 marked for identification.)
25 JUDGE SANDRON: That would start on page 3 where?

1 MS. CAROL: It says operators.
2 JUDGE SANDRON: That would be the classification there?
3 MS. CAROL: Yes, correct.
4 JUDGE SANDRON: And then 4 and 5 and 6 up to where it
5 says Teamsters drivers, Jeffrey Moore would be the last
6 person.
7 MS. CAROL: Correct.
8 JUDGE SANDRON: Any objections to the document?
9 MR. EASTLAND: I just want to make sure that we're clear
10 about the scope of what this document represents.
11 JUDGE SANDRON: Go ahead.
12 MR. EASTLAND: The document represents what our client
13 was able to identify as formally documented layoffs. Every
14 payroll record was not reviewed, and there are or may be
15 other layoffs that aren't necessarily reflected on this
16 because they're just in the payroll documents. This was
17 what was available to our client in response to the
18 subpoena. We put together what we clearly knew and we had,
19 so without going through every single payroll record of
20 every single employee to see if there are others, I guess is
21 the point.
22 JUDGE SANDRON: This was based on --
23 MR. EASTLAND: So I don't want it to represent that this
24 is exclusive.
25 JUDGE SANDRON: This is based on available records that

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1 employees laid off and those that were retained. There's no
2 prima facie case, no disparate treatment between those two
3 groups. There was a decrease in work at Erickson's and the
4 layoffs were made by experience and qualifications.
5 In addition, Your Honor, and importantly, the compelling
6 business case for the Company's actions demonstrates that
7 they would have sold these small cranes, and continue to
8 sell these small cranes and buy larger cranes regardless of
9 any of the Union activity or the allegations in this case.
10 Finally, we'll establish that there have been no Section
11 8(a)(1) violations. Thank you.
12 JUDGE SANDRON: Thank you. Are you ready to call your
13 first witness?
14 MR. EASTLAND: Yes.
15 JUDGE SANDRON: I'll swear you in, sir, if you will
16 raise your right hand.
17 MR. ERICKSON: Yes, sir.
18 (Whereupon,
19 BRENT ERICKSON
20 was called as a witness by and on behalf of the Respondent
21 and, after having been duly sworn, was examined and
22 testified as follows:)
23 JUDGE SANDRON: If you'll come up to the witness stand
24 and be seated? Please state and spell your full and correct
25 legal name, and provide us with an address, either home or

1 work, whichever you prefer.
2 THE WITNESS: My name is Brent Erickson, B-r-e-n-t
3 E-r-i-c-k-s-o-n.
4 JUDGE SANDRON: And you can give either --
5 THE WITNESS: My home address is 245 Calais Court,
6 spelled C-a-l-a-i-s Court, Grand Rapids, Michigan 49546.
7 JUDGE SANDRON: Thank you.
8 DIRECT EXAMINATION
9 Q. BY MR. EASTLAND: Good afternoon, Mr. Erickson.
10 A. Hello, sir.
11 Q. Would you please tell the Judge what your current
12 position is?
13 A. I'm the controller for Erickson's Incorporated.
14 Q. How long have you been working at Erickson's?
15 A. I started in March of 2016.
16 Q. That entire time has been as controller?
17 A. Yes.
18 Q. Would you please generally describe your
19 responsibilities as the controller for the Judge?
20 A. I've got control and responsibilities over all the
21 financial day-to-day activities, payroll, AP, AR collection,
22 and the billings, as well as the capital side of business,
23 the financing and investments and capital.
24 JUDGE SANDRON: What does AR stand for?
25 THE WITNESS: Accounts receivable.

1 Q. BY MR. EASTLAND: Anything else?
2 A. Just general accounting work.
3 Q. So what is your educational background?
4 A. I've got a bachelor's degree from the University of
5 Michigan in 2002, in Ann Arbor, Michigan. And then I've got
6 a master's degree in Accounting from Grand Valley State
7 University. That's in Grand Rapids, Michigan, just down the
8 road a little bit. And that was in 2008 I got the master's
9 degree. In 2010 I became a licensed certified public
10 accountant.
11 Q. I notice there is a gap between your undergraduate work
12 at University of Michigan and your master's degree at Grand
13 Valley State.
14 A. Yes. In 2002 I joined the Army, and I was a captain in
15 the Army from 2002 to 2007. I obtained the rank of captain
16 and left honorably in 2007. I was in the armor branch,
17 where I was a tank platoon leader and a scout platoon
18 leader. I spent 2 years in Iraq in support of Operation
19 Iraqi Freedom and I was stationed in Germany.
20 Q. After your military service, what did you do?
21 A. I actually worked at Erickson's as the yard boy, truck
22 washer for about a year, 2007 to 2008 early.
23 Q. What were your duties as yard boy, did you say?
24 A. Yeah, yard boy. It's an endearing term. I would wash
25 trucks and bring fuel to people, just things people needed.

1 I'd run errands; make sure everybody had what they needed.
2 Q. After that what did you do?
3 A. In 2009, I began at Deloitte, the public accounting
4 firm. I was a staff auditor there.
5 JUDGE SANDRON: Can you just spell the name?
6 THE WITNESS: Deloitte, D-e-l-o-i-t-t-e. And then after
7 that I went to Wolverine Worldwide. It's a publicly held
8 company based in Rockford, Michigan. It's a shoe
9 manufacturer and shoe distributor, Merrell, Sebago, some
10 other licensed brands. I think they have 12 brands in their
11 portfolio. Then after that I was an accountant --
12 JUDGE SANDRON: Could you spell those as well?
13 THE WITNESS: Oh, man, I shouldn't have said them.
14 MR. EASTLAND: Go ahead, to the best of your knowledge.
15 JUDGE SANDRON: Yeah, as far as you know.
16 THE WITNESS: The brands?
17 JUDGE SANDRON: Yeah.
18 THE WITNESS: Merrell, M-e-r-r-i-l [sic], and Sebago,
19 S-e-b-a-g-o.
20 JUDGE SANDRON: That's fine, as best as you know.
21 THE WITNESS: That's as best as I know.
22 JUDGE SANDRON: And keep going then I think.
23 THE WITNESS: And then after that I went to Gordon Food
24 Service as accounting manager there where I was a controller
25 for about five different entities. They were involved in

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1 the strategic alliance portion of their business where they
2 would secure food for the distribution of the parent
3 company, so it was an intercompany type position. But I
4 managed the day to day financial operations of those
5 companies and then consolidated it with the parent company.
6 Q. BY MR. EASTLAND: What were your duties at Wolverine
7 Worldwide?
8 A. I was a financial analyst, again involved in the ledger
9 activity, the financials, cost analysis, profit analysis,
10 trends in the market conditions, and just the different
11 product offerings.
12 Q. When you say financials, what do you mean?
13 A. The financial statements, the ledger activity, again
14 like the bases, the accounts payable, accruals, the
15 receivables.
16 Q. Why did you join Erickson's in March of 2016?
17 A. As I got older, it was a family business since 1923, so
18 while I don't have much background in the crane business, I
19 thought that it would be a good time to come in. Erickson's
20 keeps growing, so I could provide some accounting services
21 and possibly learn enough to help keep it going into the
22 future. I've got two young boys so maybe it could go after
23 that even.
24 Q. What types of work does Erickson's, Incorporated
25 perform?

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1 A. We've got crane service and crane rental. That's the
2 biggest portion of the business. There's a lot of some
3 heavy machinery moving with the Teamster Union, the heavy
4 trucks and trailers. And then there is the rigging activity
5 where that's mostly moving machines, injection mold
6 machines, and presses and things inside factories like
7 General Motors or Chrysler, those kinds of places.
8 Q. Does the work fluctuate at Erickson's?
9 A. Yeah, the work tends to be very -- it fluctuates a lot
10 depending on the season, depending on the project, just
11 depending on what's available. Generally, the fall, it's
12 more of a factory type time. The summer tends to be more
13 construction projects, larger projects. But, again, that's
14 all seasonal, cyclical, and just very dependent on what else
15 is going around.
16 Q. Are there any fluctuations among business segments?
17 A. Yes, very much so. One year seems like one segment
18 supports the other between the crane, or the trucking, or
19 the rigging segments. And then the next year it flips
20 around. So we're really just dependent on whatever is out
21 there in the economy to, to produce our revenue.
22 Q. Does it fluctuate based on the type of equipment?
23 A. Yes. Yes, very much so. The larger projects would need
24 larger cranes. If there is a big factory moving, that would
25 be more rigging work, perhaps more trucking work. It just

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1 depends on what's available.
2 Q. Obviously, the Company is unionized.
3 A. Yes. There's three main unions, the Teamster Union, the
4 Iron Workers, and then the Operating Engineers. They
5 provide all of our labor.
6 Q. Let's focus obviously on the operating engineers here
7 these last 2 days. Can you explain generally what kind of
8 work the operating engineers do?
9 A. Yeah, they run all of our cranes. They run hi-los and
10 telescopic forklifts we call zoom booms. I can spell that,
11 z-o-o-m b-o-o-m. We've got small cranes, large cranes.
12 Q. Oiling, is that a task that's performed by operating
13 engineers?
14 A. Yes. Yes, the large cranes, anything over 20 tons, I
15 believe, something like that requires an oiler. They drive
16 the counterweight trailers and they help get it set up so
17 it's appropriately outfitted to lift whatever the capacity
18 of the lift.
19 Q. What general types of cranes does the Company own?
20 A. From my financial analysis when I started, I broke it
21 down into four segments. So there is a specialized segment
22 of what we call carry deck cranes, which are just small
23 cranes. They would work in a factory and help lift over
24 another machine like that. It really is ancillary equipment
25 for the rigging operations. So you've got the carry deck

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1 cranes and tower cranes, and that's more for large projects,
2 apartment buildings. You see them in any downtown skyline.
3 Q. You said four categories?
4 A. Four categories. Those two are the smallest.
5 Q. I'm sorry, if I may, the first was carry deck?
6 A. Carry decks.
7 Q. And then you mentioned tower?
8 A. Tower cranes, yeah.
9 Q. Is that a different category?
10 A. That's a different category.
11 JUDGE SANDRON: The first one, how do you spell that?
12 THE WITNESS: Carry deck, c-a-r-r-y d-e-c-k. It's just
13 a very small crane.
14 JUDGE SANDRON: That's the brand name of the crane or
15 the type?
16 THE WITNESS: Just the category of crane.
17 JUDGE SANDRON: So that's one category. Then the tower
18 crane?
19 THE WITNESS: That's another category, yeah.
20 JUDGE SANDRON: And then there are two more?
21 THE WITNESS: Yeah, then there's just small cranes and
22 large cranes. I categorize anything small as under 120 tons
23 capacity lifting-wise. And then anything over that I would
24 consider a large crane. That's how I broke down the
25 financial analysis.

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1 Q. BY MR. EASTLAND: What's a tower crane?
2 A. So a tower crane is used to construct large buildings
3 generally in a downtown environment, apartment buildings,
4 high rises, things like that.
5 Q. These are the ones we'd see in large cities for
6 constructing buildings?
7 A. Yes.
8 Q. Are certain types of cranes more lucrative from a
9 revenue standpoint?
10 A. Yes. The larger the tonnage generates very much more
11 revenue.
12 Q. Why do you say that?
13 A. I mean there's -- it costs more to acquire so the
14 capital investment in a large crane would, you know,
15 requires it to generate more revenue just to cover the cost
16 and make it a worthwhile investment. There's less available
17 in the marketplace, so not everybody can have the crane of
18 some of the sizes that we have and that becomes lucrative as
19 well on the revenue side of things.
20 Q. Are there, well, other business opportunities generated
21 by larger cranes?
22 A. Yeah, that's the great thing about these larger cranes
23 and the projects. It's once you're in and it takes a little
24 while to get in a project, but they tend to go on for a long
25 time and they don't require a lot of maintenance and

1 overhead to keep going. They also spin off other business.
2 Once you're in with a contractor, they can just say, hey,
3 I'm going to need two more cranes for a couple of months and
4 since you're already in, you've met the qualifications and
5 they're happy with the service you provided, they'll just
6 call you up an ask you for two more cranes. So that one
7 project, that one crane spawns into more business and it
8 really builds on itself organically.
9 Q. Approximately, how many cranes does Erickson's
10 currently own?
11 A. There's 36 cranes right now.
12 (Respondent's Exhibit 6 marked for identification.)
13 Q. BY MR. EASTLAND: I hand you what's been marked
14 Respondent's 6. Mr. Erickson, are you familiar with this
15 document?
16 A. I am.
17 Q. Would you please describe what it is?
18 A. This is a description. It tells us the internal unit
19 number and a description of the type of crane, and then the
20 grouping that I talked about, one of the four groups.
21 You'll see the 36 different cranes and then it's broken down
22 in those groupings.
23 Q. Did you prepare this list?
24 A. I did.
25 Q. Where did you get the data?

1 A. Just from our internal records.
2 Q. You verified that these are all the current cranes
3 owned?
4 A. I did.
5 Q. And unit number, that's an internal numbering system?
6 A. It's an internal numbering system. We put them on the
7 sides of the cranes so that everybody knows they're going to
8 Number 269. They don't just have to look for a 15 ton carry
9 deck.
10 Q. The description tells us a little bit about the size and
11 type of crane?
12 A. Yep. Those correspond to my financial groups for the
13 analysis that we do.
14 Q. The group, does that correspond with the four categories
15 you've explained?
16 A. Yes.
17 MR. EASTLAND: Move for admission of Respondent's 6.
18 JUDGE SANDRON: Any voir dire?
19 MS. CAROL: No objection.
20 MS. BACHELDER: No objection.
21 JUDGE SANDRON: Respondent's Exhibit 6 is received.
22 (Respondent's Exhibit 6 received in evidence.)
23 Q. BY MR. EASTLAND: You said zoom boom before?
24 A. Yeah.
25 Q. Is that a form of hi-lo or forklift?

1 A. Yeah, it is kind of a hi-lo.
2 Q. So in addition to the cranes are there other, some other
3 equipment that some of the operators operate?
4 A. Yeah, the hi-los and the zoom booms. They're kind of
5 separate from the crane discussion and analysis. They're
6 more ancillary to the rigging segment and they really
7 support that, that segment.
8 JUDGE SANDRON: Are they considered cranes or more
9 like --
10 THE WITNESS: Well, like they're considered fork trucks,
11 forklifts, things like that so not a crane, more for
12 machines.
13 Q. BY MR. EASTLAND: Is that treated as a separate business
14 segment?
15 A. Yes. Like I said, it really rolls into the rigging
16 segment.
17 Q. Are there employees, operating engineers who work
18 forklifts --
19 A. Yes.
20 Q. -- versus cranes?
21 A. Yeah. Yeah, there are.
22 Q. Is buying and selling cranes part of Erickson's
23 business?
24 A. Yes, very important. Make sure you get and you buy a
25 crane, you get what you can out of it, and then you maximize

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1 your return on it when you sell it. And then use that
2 capital to invest in whatever is next, you know, the market
3 conditions dictate. So we've been buying bigger cranes.
4 You can use that capital you freed up and invest in larger
5 cranes that will hopefully generate more revenue and keep
6 the business healthy.
7 Q. How frequently would you say cranes are bought or sold?
8 A. I've only been here for a year. I've seen two sold.
9 And I know from just review of the records we sold several.
10 We average a crane or two a year being sold.
11 Q. Have there been any cranes purchased since you've come
12 on board?
13 A. Since I've been here, there's been three purchased and
14 there's been five since 2014.
15 (Respondent's Exhibit 7 marked for identification.)
16 Q. BY MR. EASTLAND: I'm going to hand you what's been
17 marked Respondent's 7. Mr. Erickson, you mentioned that you
18 looked at records about the cranes sold.
19 A. Yes, sir.
20 Q. Are you familiar with this document?
21 A. Yes, I am.
22 Q. Did you prepare this document?
23 A. Yes, I did.
24 Q. Can you explain to the Judge what it is?
25 A. This is a list of all the cranes sold since 2003. They

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1 are listed by our internal unit number, then a description
2 very similar to the other page. It's grouped by our
3 financial groupings, the carry deck, the tower, the under
4 120, or the above 120, and then the year that we sold.
5 Q. How did you compile this list?
6 A. From financial records available internally.
7 Q. Did you verify that it's an accurate and complete list
8 of the cranes sold?
9 A. I did, yes.
10 Q. For the period identified at the top?
11 A. Yes.
12 MR. EASTLAND: Move for admission of Respondent's 7.
13 JUDGE SANDRON: Any objection?
14 MS. CAROL: No objection.
15 MS. BACHELDER: No objection.
16 JUDGE SANDRON: Respondent's Exhibit 7 is received.
17 (Respondent's Exhibit 7 received in evidence.)
18 Q. BY MR. EASTLAND: What considerations are made before
19 you -- before the Company buys or sells a crane?
20 MS. BACHELDER: Objection, foundation.
21 Q. BY MR. EASTLAND: Okay. Have you been involved in
22 decisions to buy or sell cranes?
23 A. Yes.
24 Q. What considerations are made?
25 A. Well, obviously, you have to know what market you're

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1 targeting. So if we're targeting -- the most recent
2 purchase was targeting wind work on the east side of the
3 state, so it's a heavy crane, large capacity, over 600 ton
4 with a large reach so you can target maintenance work on
5 windmills. In Bad Axe, Michigan, there's a lot of wind
6 farms over there and they require a lot of maintenance. And
7 it's for GE and Duke Energy, we've got some customers over
8 there. That's really what he started was Mr. Erickson,
9 Steve Erickson, my father, he started targeting that in 2014
10 with another crane that that he bought most specifically for
11 that windmill industry.
12 Q. What size of crane or type of crane is necessary for
13 that type of application?
14 A. They're all -- they're very tall so you have to be able
15 to lift a couple of hundred feet in the air. Generally,
16 it's a 600-ton capacity or greater type crane that can do
17 that.
18 Q. So those would be large cranes?
19 A. Large cranes, yes.
20 Q. Are there considerations before buying or selling
21 cranes?
22 A. The selling side of it, I've done a lot of analysis on
23 the equipment that we have and what you really need to
24 consider is how much did you pay for the equipment. You
25 look at that. How much have you billed against it. So

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1 you've got to know what have I bought it for and then what
2 have I really generated revenue-wise on that. Then you take
3 a look at the maintenance on it, because you can track how
4 much have we invested into it maintenance-wise, repairs,
5 things like that. You try to calculate the interest. How
6 much have I paid to own this crane through a financing
7 respect? And then what -- use the last appraisal, what is
8 the fair market value of that piece of equipment. And then
9 you can come up with a return on investment from that
10 purchase price. You can really zero in. If you haven't put
11 a lot of maintenance in, but you're at about a 10 years or
12 10,000 hour mark on the crane, well, then you're at a
13 perfect time because you probably haven't done a lot of
14 maintenance on it. So, you can maximize your billing,
15 maximize your resale, minimize your equipment cost, and it's
16 a perfect time to do it. If you can identify them, that's
17 when you need to get out.
18 Q. I see. So that's when you would sell the crane?
19 A. That's when you should sell a crane.
20 Q. It's kind of like a car that is seven years old and you
21 think the transmission is going to go so you maybe sell it
22 and the new purchaser has to --
23 A. Right, because we're talking about millions of dollars
24 in cranes. So a transmission, it's unfortunate on a car but
25 it's really unfortunate on a crane or something that size

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1 from a dollar value.
2 Q. Is there a trend or business objective related to cranes
3 that Erickson's, Incorporated is buying or selling?
4 A. Yeah. We have -- this began before me, but the movement
5 to these larger cranes, the project type cranes, the large
6 capacity that would go to a job and it will stay there for
7 months or perhaps even years, it requires minimal
8 maintenance, relationships, and things like that. You're
9 not out there beating on doors for work. It goes there and
10 then like I said it organically creates work in and of
11 itself. As they need additional services, they just call us
12 because we're already there and we're established, and they
13 think we're doing a good job.
14 Q. Is there more revenue and profit in larger cranes?
15 A. Yes.
16 MS. BACHELDER: Objection.
17 JUDGE SANDRON: Well, that's leading.
18 MR. EASTLAND: I think he's already testified about it.
19 I was just trying to move it along.
20 Q. BY MR. EASTLAND: What are the advantages of a larger
21 crane?
22 A. Like we talked about, the larger cranes generate more
23 revenue and then they help to -- they can create more
24 business for the Company just of its own self.
25 Q. Are they more profitable?

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1 A. They are very much more profitable.
2 Q. Have you mentioned that there's been some purchases of
3 cranes in the last few years?
4 A. Yes.
5 Q. Have you had occasion to examine what cranes have been
6 purchased recently?
7 A. I have.
8 Q. I had you what we're going to mark Respondent's 8.
9 (Respondent's Exhibit 8(a) marked for identification.)
10 Q. BY MR. EASTLAND: Do you know how many cranes have been
11 purchased in the last few years, Mr. Erickson?
12 A. Yeah, I believe it's been five since 2014.
13 Q. Are you familiar with the documents as a packet marked
14 Respondent's 8?
15 A. Yes, I am. They are the purchase agreements or sales
16 acknowledgements for the last five cranes we purchased.
17 Q. Do you remember or can you tell us from these documents
18 what cranes those reflect?
19 A. Yes, I can.
20 Q. I think we have the crane list as an exhibit.
21 JUDGE SANDRON: Yes.
22 MR. EASTLAND: So maybe that's easiest to do it by unit
23 number.
24 JUDGE SANDRON: Probably.
25 THE WITNESS: The first one is 814, so that's an 800-ton

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1 crane. That's the one I was referencing for the windmill
2 work. It's right for that market.
3 Q. BY MR. EASTLAND: When was that purchased?
4 A. 2014, 2013.
5 Q. It looks like the buyer agrees to purchase and seller
6 agrees to sell, it's dated November 22, 2013.
7 A. Yeah, purchased in '13, delivered in '14. That's what
8 it is.
9 Q. The next crane that was purchased?
10 A. That is 815 and that's a 90-ton RT, which is a rough
11 terrain crane. It's not the type of crane that you drive on
12 the road and you can't drive it from job to job. It
13 requires a trailer and a truck to get there, but it's
14 perfect for a jobsite, a construction site. It kind of goes
15 hand in hand with the larger project cranes that I was
16 talking about. That's the kind of cranes that they would
17 order in addition.
18 Q. Is that a unique category, RT or rough terrain?
19 A. Yeah, it's unique. It's a type of small crane but it
20 falls into that small crane segment just because of the
21 tonnage capacity. 90 is a large ton capacity for an RT
22 crane. But for our analysis, it still falls under that
23 segment.
24 Q. And the next crane that was purchased I think -- I'm
25 sorry, before we do that let me make sure the record is

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1 clear on this. The second one was Unit Number 815; is that
2 right?
3 A. Yes, I believe so. Yes.
4 Q. I think the third one here showing that was sold, the
5 documents --
6 A. Yeah, that 2250, Manitowoc Model 2250, that's a 300-ton
7 crane.
8 Q. What crane does that correspond to on the crane list?
9 A. That's 816 on the crane list.
10 Q. What type of crane is this?
11 A. It's a crawler crane. It's a large capacity crane.
12 Again, it can't drive from job to job. It's a crane you
13 take to a jobsite, a big project. You set it up. You get
14 it ready and then it stays there. It tends to stay there
15 for a long time.
16 Q. When was that purchased?
17 A. The purchase agreement is 2014 and I believe it
18 delivered in 2015.
19 Q. It looks like there is another next crane, if you could
20 explain that?
21 A. Yes. 817 is the next crane purchased. That was a
22 Manitowoc MLC 650. That's a 900-ton crane, so that's our
23 largest crane. That job -- that was purchased. It's been
24 on a couple of jobs. It worked at Miami Dolphins Stadium
25 down in Florida. That was its first job. And then it went

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1 to a Bechtel Energy project in Corpus Christi, Texas. That
2 one has never been to Michigan. It's a large crane, large
3 project type crane for us.
4 Q. That was purchased?
5 A. 2014, the purchase, and then I believe it delivered at
6 the end of 2015, December 2015.
7 Q. It looks like maybe two more cranes purchased based on
8 the documents here.
9 A. Yes. Our tower crane is Number 818. That's the next
10 one in the packet.
11 Q. What is a tower crane?
12 A. So again it works you set it up downtown. It's very
13 tall, used for large buildings, apartment buildings,
14 construction in downtown areas.
15 Q. When was that purchased?
16 A. 2016.
17 Q. And the final crane purchased here it looks like in
18 these documents?
19 A. 819 is the last one and that's a 600-ton Liebherr. That
20 was purchased in 2016 and it delivered in March 2017.
21 MR. EASTLAND: Move for admission of Respondent's 8.
22 JUDGE SANDRON: Any voir dire or objection?
23 MS. CAROL: No objection.
24 MS. BACHELDER: Your Honor, I would note that it appears
25 to have prices redacted and I don't know how we can evaluate

1 an economy defense if that is the case. So I would object
2 to the redactions.
3 JUDGE SANDRON: Does General Counsel have a position?
4 MS. CAROL: I'm looking at them, sorry. Well, it looks
5 like here, I don't --
6 JUDGE SANDRON: Right, the purchase prices I think --
7 MS. CAROL: Well, I mean this is not part of the
8 subpoenaed documents because this is not related to the
9 sales during the time period in question, I don't believe.
10 And if it was -- oh, because these are about purchases, not
11 about sales.
12 MR. EASTLAND: Correct.
13 MS. CAROL: They wouldn't have been included in the
14 subpoenaed documents. To the extent that they are
15 purchasing instead of selling, I don't really have an
16 objection to that, although Ms. Bachelder's point is well
17 taken.
18 JUDGE SANDRON: It probably would be helpful to have
19 that information.
20 MR. EASTLAND: Your Honor, I believe that the documents
21 would be relevant, well, without that information because
22 we're going to present additional evidence to show that
23 these types of cranes, as already has been testified by the
24 witness, are more lucrative from a revenue standpoint. So
25 the cost of the crane, itself, is not directly relevant to

1 that.
2 That being said, if there is an objection that they
3 can't evaluate it in this case, for purposes of this case
4 with the information we can admit it and provide unredacted
5 versions of that subject to a protective order to make sure
6 that there's no misuse of that information beyond this case.
7 JUDGE SANDRON: That probably would be a good idea.
8 MS. BACHELDER: Yeah, I think that's fine given that
9 it's difficult to cross-examine on an incomplete document.
10 MR. EASTLAND: Right. I'm not sure we will have that
11 this afternoon, but we can certainly put it in the record
12 tomorrow.
13 JUDGE SANDRON: I think that would be helpful to be able
14 to fully evaluate some of the financial defenses.
15 MR. EASTLAND: Sure, that's fine. And we'll make the
16 witness available tomorrow as well if need be.
17 JUDGE SANDRON: Do you want to keep this as Respondent's
18 Exhibit 8?
19 MR. EASTLAND: Yes. And then we can submit that
20 additional one that's an unredacted version that would be
21 subject to a protective -- agreement on a protective order.
22 JUDGE SANDRON: That's fine. Maybe we could make this
23 Respondent's Exhibit 8(a), and then the unredacted would be
24 8(b) and then that would be sealed because it's basically
25 the same document.

1 MR. EASTLAND: That would be fine, Your Honor.
2 JUDGE SANDRON: So with that understanding, Respondent's
3 Exhibit 8(a) is received.
4 (Respondent's Exhibit 8(a) received in evidence.)
5 MR. EASTLAND: Thank you.
6 Q. BY MR. EASTLAND: How long has the -- have you noticed
7 in your review of the records, how long have you noted that
8 the trend toward larger cranes, how long has that been going
9 on?
10 A. It's been going on for several years.
11 Q. When did you first begin discussing the trends or did
12 you have discussions about these trends with Mr. Steve
13 Erickson?
14 A. Yeah, right when I started. One thing that's striking
15 about our company when you come there, there's so much idle
16 equipment. It's like Noah's Ark. There's two of everything
17 that you could imagine around the yard. He's got all this
18 equipment and we're not using it. When you're not using
19 equipment, you're just paying interest on it so we had a lot
20 of discussions right away about idle capacity, unused
21 capacity, the cost of interest, the cost of this capital
22 that's just sitting around.
23 Q. Those discussions were when you started in March of --
24 A. Right, March of 2016.
25 Q. You eventually take a closer look at some of the

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1 underlying data?
2 A. Yes. So the fiscal year end is April 30th. We took a
3 hard look through that process in April and May. And then
4 we continued to dive deeper down into individual units and
5 just try to figure out if we had the right mix, and what
6 we're doing right, and what we're doing wrong.
7 Q. You said it's like Noah's Ark; there's two of lots of
8 things.
9 A. Yes.
10 Q. Did your review include review of data related cranes?
11 A. Yes, it did.
12 Q. What did you review?
13 A. I reviewed all the hours that we've billed on our
14 cranes, all the revenue that we generated on those cranes,
15 and really did an analysis on what was worthwhile and what
16 was not making any business sense at all that we were still
17 doing.
18 (Respondent's Exhibit 9 marked for identification.)
19 Q. BY MR. EASTLAND: I'm going to hand you -- we're on 9,
20 Respondent's 9? Did you compile the data that you looked
21 at?
22 A. I did.
23 Q. Are you familiar with Respondent's 9?
24 A. Yes, I am.
25 Q. Can you explain to the Judge what this is?

1 A. These are our hours and billings by crane category since
2 2005. You can see the carry deck type, the tower category,
3 and then the under 120 ton and above 120 category. It shows
4 the hours on top and billings on the bottom.
5 Q. Did you prepare this document?
6 A. I did. I pulled all the information from our accounting
7 system, the Sage 100, and then compiled the data from that.
8 Q. Can you explain to the Judge what Sage 100 is?
9 A. Sage 100 is just a standard accounting system. It's for
10 your payroll, our accounts payable, our accounts receivable.
11 It tracks our equipment and it compiles our sales. It's how
12 we enter our invoices and things like that. It's our full
13 service accounting suite.
14 Q. Did you pull reports from that computer software system?
15 A. Yes, I did.
16 Q. Are the records in that software system maintained by at
17 or near the time they occur?
18 A. Yes, they are.
19 Q. Is it the regular practice for Erickson's to keep those
20 records?
21 A. Yes, it is.
22 Q. Are those records kept in the ordinary course of
23 business?
24 A. Yes, they are.
25 Q. Just to make sure I understand is this a summary of the

1 underlying reports that you reviewed?
2 A. Yes. It's a summary of the underlying data.
3 JUDGE SANDRON: The hours reflects what? The hours are
4 for what?
5 THE WITNESS: Those are how many hours we billed on that
6 specific type of category.
7 JUDGE SANDRON: That you bill customers?
8 THE WITNESS: Yes.
9 Q. BY MR. EASTLAND: Crane hours, correct?
10 A. Crane hours.
11 JUDGE SANDRON: Crane hours.
12 THE WITNESS: It's crane equipment hours.
13 JUDGE SANDRON: And then billings is the amount?
14 THE WITNESS: Those are the amounts, yeah.
15 Q. BY MR. EASTLAND: Would billings and revenue, would
16 that --
17 A. Yes, billings are the revenue. And then the percents
18 are the -- those would be hours as a percent of the total.
19 So if you look at 2016, you can see that 39 percent of our
20 time was spent with the under 120-ton class, and 50 percent
21 of our time was on the over 120-ton, our equipment billing.
22 JUDGE SANDRON: And at the bottom where it says
23 percentage?
24 THE WITNESS: Right. You'll see in that same category,
25 the bottom right-hand corner, 79.7 percent, that's the

1 revenue generated on the larger cranes. And then above
2 that, 14.4 percent, that's the revenue generated from the
3 smaller cranes. So we used 40 percent of our equipment time
4 to generate 14 percent of our billings on those small
5 cranes, but then we used 50 percent of our time to generate
6 80 percent of the entire billings on the larger cranes. So
7 6 of the $7 million in equipment billings were from those
8 larger cranes.
9 JUDGE SANDRON: When it says percent of hours that shows
10 us what?
11 THE WITNESS: The hours we billed.
12 JUDGE SANDRON: The percent of hours?
13 THE WITNESS: Yeah, the total. That 17,000 hours --
14 JUDGE SANDRON: Oh, I see.
15 THE WITNESS: -- 8,000 of those hours, that's about
16 50.5 percent.
17 JUDGE SANDRON: I see.
18 MR. EASTLAND: We move for admission of Respondent's 9.
19 JUDGE SANDRON: Any objection?
20 MS. BACHELDER: Voir dire?
21 JUDGE SANDRON: Yes, go ahead.
22 VOIR DIRE EXAMINATION
23 Q. BY MS. BACHELDER: When was this document prepared?
24 A. This specific document was prepared in March of 2017.
25 Q. Was it prepared for this hearing?

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1 A. This one was, yes.
2 MS. BACHELDER: No objection.
3 MS. CAROL: No objection.
4 JUDGE SANDRON: Respondent's Exhibit 9 is received.
5 (Respondent's Exhibit 9 received in evidence.)
6 MR. EASTLAND: Your Honor, we're prepared to present the
7 underlying reports and information, but given your
8 instruction about not encumbering the record with
9 unnecessary documents --
10 JUDGE SANDRON: Well, if the General Counsel and the
11 Union want to look at them for whatever reason, they haven't
12 objected. If they want to see them, you can present them.
13 If not, they don't need to be put in the record until --
14 MR. EASTLAND: Very good. Thank you.
15 JUDGE SANDRON: -- a request to see them. Does General
16 Counsel want to see the underlying documents?
17 MS. CAROL: Perhaps, but not at this time. I don't have
18 any objection. Let's see what happens for the rest of his
19 testimony, if I need to look at them. But at this juncture,
20 this is sufficient. I don't have an objection to that.
21 JUDGE SANDRON: Ms. Bachelder?
22 MS. BACHELDER: Same answer.
23 MR. EASTLAND: Thank you very much. Sorry, I lost my
24 train of thought.
25 JUDGE SANDRON: I had one question about General Counsel

1 Exhibit 11, I think. The layoffs there, is that from the
2 period from January 1, 2015 on? I was just looking at the
3 dates just to make sure we know what period it covers. You
4 take a look at it. It's the one where --
5 MR. EASTLAND: Yeah, we'll take a look at it. That was
6 produced in response to a subpoena request so I think
7 whatever the subpoena --
8 JUDGE SANDRON: Was it January 1, 2015 to present?
9 MS. CAROL: Yes, that is correct.
10 JUDGE SANDRON: That's fine.
11 DIRECT EXAMINATION (cont.)
12 Q. BY MR. EASTLAND: In examining the underlying data,
13 Mr. Erickson, have you been able -- have you prepared
14 graphic depictions of the data?
15 A. Yes, I have.
16 MR. EASTLAND: I've got four here, Your Honor. Would it
17 be easier to package them as one exhibit or we can do
18 separate ones.
19 JUDGE SANDRON: Probably one, if they're all similar.
20 It's up to you, whichever you think would be more easier.
21 MR. EASTLAND: We'll do them separately because that way
22 it's marked consistent with your guidelines. They are
23 pre-marked, so we'll do that.
24 JUDGE SANDRON: That's fine.
25 MR. EASTLAND: Respondent 10, 11, 12, 13.

1 I'll just mark them and hand them to everyone as we go.
2 I'll wait till they're all marked before I question him.
3 JUDGE SANDRON: Yes, that's probably best.
4 MR. EASTLAND: Thank you.
5 (Respondent's Exhibits 10 through 13 marked for
6 identification.)
7 Q. BY MR. EASTLAND: Mr. Erickson, in examining the
8 underlying data, you obviously prepared Respondent's 9.
9 Have you also prepared Respondent's -- what's been marked as
10 Respondent's 10, 11, 12, and 13?
11 A. Yes, I have.
12 Q. Can you explain to the Judge what each of these graphic
13 depictions represents?
14 A. Respondent 10, on the left you'll see our revenue on the
15 crane equipment, $7 million in total. The purple line at
16 the top shows that almost $6 million of those $7 million was
17 generated by that large crane class, above 120 ton. The
18 green line next down shows that about $1 million of that $7
19 million was generated by the small cranes, under 120 ton.
20 The red and blue lines at the bottom, that shows the tower
21 and the carry deck segments, that those are kind of
22 ancillary equipment that we use to provide a full service
23 crane company but they are not that lucrative. It's just
24 something you have to provide to be a good business.
25 JUDGE SANDRON: And then why don't you go ahead.

1 THE WITNESS: Sure.
2 JUDGE SANDRON: Respondent's Exhibit 11, maybe you can
3 explain?
4 THE WITNESS: Respondent's 11, if you go all the way to
5 the right, the purple, 50.5 percent, those are the machine
6 hours we billed on the above 120-ton class, so 50.5 percent
7 of our hours. Those 50.5 percent of the hours, if you go
8 back to Respondent 10, generated that 80 percent,
9 approximately 80 percent of the revenue. But what we're --
10 you can see here 39 percent of our time was spent on that
11 under 120-ton class and it only generated, if you look at
12 Respondent 10, close to $1 million in revenue so it's 14
13 percent of the revenue in 2016.
14 Again, we're using a comparable amount of time.
15 JUDGE SANDRON: Right, I don't think you need to repeat
16 what you said about the methodology. Just tell us what
17 these represent.
18 THE WITNESS: Sure. Then 12, if you look at it, it's
19 another graphic depiction of the total billing. Purple is
20 the above 120 segment at about 80 percent. And then 13, it
21 shows the total hours billed by year, by segment.
22 JUDGE SANDRON: So if I understand it, these graphs
23 basically are a visual representation of the information
24 that's in Respondent's Exhibit 9?
25 THE WITNESS: Yes. Yes.

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1 MR. EASTLAND: Yes. Move for admission of Respondent's
2 10, 11, 12, and 13.
3 JUDGE SANDRON: Any objection?
4 MS. CAROL: No objection.
5 MS. BACHELDER: Voir dire?
6 JUDGE SANDRON: Go ahead.
7 VOIR DIRE EXAMINATION
8 Q. BY MS. BACHELDER: Mr. Erickson, when was each of these
9 documents prepared?
10 A. They were prepared in March, along with this report.
11 Q. March of 2017?
12 A. Yes, ma'am.
13 Q. Was each one of them prepared for this hearing today?
14 A. Yes.
15 Q. I notice Respondent's -- strike that. Respondent's 11,
16 does it include figures for the entire 2016?
17 A. Yes.
18 Q. And the same of Respondent's 12?
19 A. Yes.
20 Q. What about 10 and 13, is that all of 2016?
21 A. Yes.
22 MS. BACHELDER: Okay. No objection.
23 JUDGE SANDRON: Respondent's Exhibits 10 through 13 are
24 received.
25 (Respondent's Exhibits 10 through 13 received in evidence.)

1 DIRECT EXAMINATION (cont.)
2 Q. BY MR. EASTLAND: Now, you prepared the summary of the
3 data in 2017 you said?
4 A. This summer, yes.
5 Q. Were you having these discussions about the trends prior
6 to that?
7 A. Yes. I developed early on, last July, and it continues
8 to develop, a return on investment spreadsheet where I can
9 track all the equipment, how much we purchase it for like we
10 talked about, what we've billed against it, the maintenance,
11 etc.
12 Q. When you look back historically at the data, did you
13 reach any conclusions about the trends?
14 A. Yes. It's an obvious conclusion that we're spending a
15 comparable amount of time on large cranes and small cranes
16 but we're generating almost all of our revenue from the
17 larger cranes. We have a wrong business mix right now so
18 that's something I just -- I try to convey. That goes along
19 with the idle equipment and the unused capacity that we
20 talked about.
21 Q. Sure. I want to shift focus a little bit. Has
22 Erickson's decided to sell some smaller cranes since you
23 have come on board?
24 A. Yes.
25 Q. How many?

1 A. There's four that went up for sale. We've also talked
2 about selling four or five, six other cranes all in that
3 under 120-ton segment.
4 Q. Has Erickson's sold any cranes?
5 A. Yes. We sold two smaller cranes in the last few months.
6 Q. Do you know which cranes those were by chance?
7 A. We sold Number 263, which was a carry deck crane, and
8 Number 284, which is a 25 ton truck crane.
9 Q. Those were sold when?
10 A. They were both sold in 2017, so in the last couple of
11 months. 2016 maybe, December 2016 to March 2017, in that
12 time frame.
13 Q. Then you said that there were others that were -- there
14 was a decision that was made to put them up for sale?
15 A. Right. We put the 40s and the 60-ton truck cranes up
16 for sale. We talked about the 90-ton cranes and some other
17 smaller cranes.
18 Q. 40-ton, 60 --
19 A. 40-ton cranes, 60-ton cranes.
20 Q. What about 75 ton RT cranes, have those been --
21 A. Yeah, I know we need to thin down our RT fleet, too, so
22 I know we're going to try to reduce that by at least half
23 but again those tend to go with the project cranes, but some
24 of them, yeah.
25 Q. Did you prepare a list of the cranes that have been put

1 up for sale?
2 A. Yes.
3 Q. In that period we discussed.
4 A. Yes.
5 JUDGE SANDRON: It's probably self-explanatory, but his
6 copy -- the reporter's copy should say 1 of 1.
7 MR. EASTLAND: Yes.
8 (Respondent's Exhibit 14 marked for identification.)
9 Q. BY MR. EASTLAND: Are you familiar with this document?
10 A. Yes, I am.
11 Q. What is it?
12 A. These are cranes that are currently for sale.
13 Q. Does this list reflect the testimony you just provided?
14 A. Yes.
15 MR. EASTLAND: Move for admission of Respondent's 14.
16 MS. BACHELDER: Voir dire?
17 JUDGE SANDRON: Go ahead.
18 VOIR DIRE EXAMINATION
19 Q. BY MS. BACHELDER: Did you prepare this list for this
20 hearing?
21 A. Yes, I did.
22 MS. BACHELDER: No objection.
23 MS. CAROL: No objection.
24 JUDGE SANDRON: And these were put up in the time frame
25 that you mentioned?

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1 THE WITNESS: Yes.
2 JUDGE SANDRON: Respondent's Exhibit 14 is received.
3 (Respondent's Exhibit 14 received in evidence.)
4 DIRECT EXAMINATION (cont.)
5 Q. BY MR. EASTLAND: Do you know when the small cranes were
6 first listed for sale?
7 A. I know he had conversations with the broker back in May
8 of 2016 and I --
9 MS. CAROL: Objection.
10 MS. BACHELDER: Objection to foundation, hearsay.
11 JUDGE SANDRON: Well, I think we need to get his basis.
12 MR. EASTLAND: That's fine. I'm happy to do that.
13 Q. BY MR. EASTLAND: Were you aware that the cranes were
14 put up for sale?
15 A. I think the list date was July 2016.
16 Q. How did you discover that?
17 A. I was told.
18 MS. BACHELDER: Objection.
19 JUDGE SANDRON: Well, we have allowed hearsay
20 conditional on meeting certain requirements.
21 MR. EASTLAND: May I? I don't think there is going to
22 be any dispute about when they're -- I mean there's emails
23 and other witnesses will testify.
24 JUDGE SANDRON: I'll allow it. As I say, we can listen
25 to hearsay testimony and then determine subsequently whether

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1 it's reliable enough to be considered as probative evidence.
2 Q. BY MR. EASTLAND: So you learned that the small cranes
3 were up for sale.
4 A. Yes.
5 Q. You know that some of them are still up for sale,
6 correct?
7 A. Yes. We haven't sold any of these.
8 JUDGE SANDRON: Maybe we should just ask how did you
9 find out they were for sale.
10 THE WITNESS: Steve told me he made the decision to sell
11 them and he listed them.
12 Q. BY MR. EASTLAND: As part of your responsibilities as
13 controller are you made aware of decisions to sell equipment
14 that you're responsible for accounting for?
15 A. Yes.
16 Q. Do you support the Company's decision to list and sell
17 these small cranes?
18 MS. BACHELDER: Objection.
19 JUDGE SANDRON: I think you're leading in answers.
20 MS. BACHELDER: Irrelevant.
21 JUDGE SANDRON: But we would most likely assume it,
22 but --
23 MR. EASTLAND: Sure.
24 JUDGE SANDRON: -- based on his prior testimony.
25 Q. BY MR. EASTLAND: The cranes continue to be for sale,

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1 correct?
2 A. They continue to be for sale and I recommend that they
3 be for sale. And we use that cash that we could generate to
4 invest in other capital that's better suited for the
5 business.
6 Q. So you recommended that these --
7 JUDGE SANDRON: All right, you really can't lead him.
8 MR. EASTLAND: He said it, Your Honor. It's just
9 that --
10 JUDGE SANDRON: Right. But you can't lead him even if
11 his answer may suggest that. I mean in other words --
12 MR. EASTLAND: There was a lot of leading in the case in
13 chief for General Counsel. In fact, one time I said, well,
14 that's fine but as long as it's not too much. And I feel
15 like I've not led at all. And the first time maybe it's
16 leading, we're being cautioned. I guess I just want the
17 same latitude to apply equally to both cases.
18 JUDGE SANDRON: I think the standard is the same.
19 MR. EASTLAND: Thank you.
20 JUDGE SANDRON: But whatever his testimony is on the
21 record, it's already in there.
22 Q. BY MR. EASTLAND: Did you look at any financial data
23 specific to the 40-ton and 60-ton cranes that are up for
24 sale?
25 JUDGE SANDRON: I would point out going back to what you

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1 said that I have allowed you to get hearsay testimony in, as
2 well as I did with General Counsel as far as letting it come
3 on the record. But go ahead.
4 Q. BY MR. EASTLAND: Okay. What's the answer, please?
5 A. Yes, I prepared some information on the specific cranes
6 that are listed for sale.
7 JUDGE SANDRON: R-15 for identification?
8 MR. EASTLAND: Yes. I'm handing to the witness what's
9 been marked as Respondent's 15.
10 (Respondent's Exhibit 15 marked for identification.)
11 Q. BY MR. EASTLAND: Mr. Erickson, do you recognize this
12 document?
13 A. Yes.
14 Q. What is it, please?
15 A. These are the 40- and 60-ton cranes that we have listed
16 for sale and it shows the hours per year by unit number and
17 by year from 2007 to 2015. It has the total and the average
18 amount of hours used. The second page is just a graphic
19 representation of that data.
20 JUDGE SANDRON: So as I understand it, the four in
21 Respondent's Exhibit 15, those are still for sale?
22 THE WITNESS: They are.
23 Q. BY MR. EASTLAND: Did you prepare this document?
24 A. Yes, I did.
25 Q. This is based off of the underlying business data and

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1 records from that accounting system?
2 A. Yes.
3 MR. EASTLAND: Move for admission of Respondent's 15.
4 JUDGE SANDRON: Any voir dire?
5 MS. BACHELDER: Yes.
6 VOIR DIRE EXAMINATION
7 Q. BY MS. BACHELDER: Mr. Erickson, when did you prepare
8 this document?
9 A. March 2016 -- or 2017, I'm sorry.
10 Q. When you prepared all the other documents?
11 A. Yes, ma'am.
12 Q. And it was prepared for this hearing?
13 A. Yes.
14 Q. Is there a reason you left off 2016?
15 A. No, not specifically.
16 Q. Do you know what those numbers would be?
17 A. No, not -- I would have to look.
18 MS. BACHELDER: I have no objection.
19 JUDGE SANDRON: Just to make sure, I think you've
20 already testified about this but where it says hours per
21 year, that's the number of hours that --
22 THE WITNESS: We've billed.
23 JUDGE SANDRON: To customers?
24 THE WITNESS: Yeah, for that use of equipment.
25 JUDGE SANDRON: For each equipment. And then the total,

1 the hours that are there?
2 THE WITNESS: That's the total of the above.
3 JUDGE SANDRON: I see, combining all four and the
4 average hours of the four.
5 THE WITNESS: Yes, Your Honor.
6 JUDGE SANDRON: Respondent's Exhibit 15 is -- I believe
7 you indicated no objection, Ms. Carol?
8 MS. CAROL: No objection.
9 JUDGE SANDRON: Respondent's Exhibit 15 is received.
10 (Respondent's Exhibit 15 received in evidence.)
11 DIRECT EXAMINATION (cont.)
12 Q. BY MR. EASTLAND: Mr. Erickson, do you have any reason
13 to believe that the decision to sell these cranes has
14 anything to do with the Union?
15 MS. CAROL: Objection.
16 MS. BACHELDER: Objection.
17 MS. CAROL: Foundation, particularly.
18 MR. EASTLAND: I asked him if he had any reason to
19 believe.
20 MS. CAROL: It's also the ultimate decision to be
21 decided by the Judge.
22 MR. EASTLAND: He can answer the question if he knows.
23 MS. BACHELDER: He could have an opinion. I don't know
24 there is any indication on the record that he has the facts
25 necessary to have an answer to that question.

1 MR. EASTLAND: These are great arguments but there's no
2 basis for objection to the question.
3 MS. BACHELDER: Relevance.
4 JUDGE SANDRON: I suppose the question is are you
5 contending he's an agent? If he's an agent then he would be
6 entitled to maybe give a specific denial.
7 MS. CAROL: He's not alleged in the complaint as an
8 agent.
9 MR. EASTLAND: That's great, Your Honor, that he's not
10 alleged in the complaint, but he is part of the leadership
11 team at the Company who made a decision and the cranes
12 continue to be on sale. And he's the controller that has
13 influence and say in those decisions, so why shouldn't he be
14 able to testify that he supports --
15 JUDGE SANDRON: Well, I think --
16 MR. EASTLAND: -- what he's already testified to, as
17 well as whether or not he has any reason to believe it is
18 based on the Union.
19 MS. BACHELDER: Could I just briefly?
20 JUDGE SANDRON: Go ahead.
21 MS. BACHELDER: He's been called as a financial person
22 for the Company.
23 JUDGE SANDRON: Right.
24 MS. BACHELDER: Which is fine. There is no indication
25 that he has any interaction, knowledge, or decision-making

1 authority in regard to collective bargaining, or the Union,
2 or unionized employees, or payroll decisions.
3 MR. EASTLAND: Your Honor, he testified that he had
4 discussions with Steve Erickson in March of 2016 when he
5 came on board.
6 JUDGE SANDRON: I'm going to ask the question did your
7 father ever say anything to you regarding whether the Union
8 played any role in the layoffs in 2016.
9 THE WITNESS: No.
10 MS. BACHELDER: Did he answer?
11 JUDGE SANDRON: Yes. He said no.
12 MS. BACHELDER: I didn't hear.
13 MR. EASTLAND: We all heard fine.
14 MS. CAROL: I didn't either.
15 THE WITNESS: I'm sorry. No.
16 MS. CAROL: It's okay. I wasn't looking.
17 MR. EASTLAND: Just letting you know.
18 MS. BACHELDER: I thought you were shaking your head
19 that's why I --
20 JUDGE SANDRON: No, he said no.
21 MR. EASTLAND: I'm just letting you know we heard fine
22 so maybe direct your voice that way a little bit.
23 JUDGE SANDRON: I think that covers it.
24 Q. BY MR. EASTLAND: In your capacity as controller, have
25 you had an opportunity to examine the total number of hours

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1 worked by operating engineers for Erickson's in 2015 and
2 2016?
3 A. Yes, I have.
4 MR. EASTLAND: We're on Respondent's 16?
5 JUDGE SANDRON: 16, yes.
6 (Respondent's Exhibit 16 marked for identification.)
7 Q. BY MR. EASTLAND: What records did you examine in that
8 context?
9 A. We can run all the payroll records and that will tell
10 you the hours worked by employee so I broke it down just for
11 operators, and then I used that data from 2015 and 2016 and
12 2017 to compile the information.
13 MR. EASTLAND: R-16. Here you go, Your Honor. Please
14 let the record reflect I'm handing the witness what's been
15 marked as Respondent's 16.
16 Q. BY MR. EASTLAND: You're familiar with this document,
17 Mr. Erickson?
18 A. Yes, I am.
19 Q. What is it, please?
20 A. This shows the operating engineers we employed from
21 January 1, 2015 through March 25, 2017, the date they were
22 hired, and then the amount of hours they worked by year from
23 2015, 2016, and 2017. On the third page there is a total.
24 Q. That shows the, okay, total.
25 MR. EASTLAND: We'd move for admission of

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1 Respondent's 16.
2 MS. CAROL: Your Honor, could I voir dire on this one?
3 JUDGE SANDRON: Yes.
4 VOIR DIRE EXAMINATION
5 Q. BY MS. CAROL: Do you have any involvement in payroll or
6 HR functions?
7 A. Yes. I do payroll once a month just so somebody else
8 has knowledge of it.
9 Q. Would you know on this document whether these employees
10 would include employees that were from the union hall versus
11 permanent employees?
12 A. All our employees are from the union hall.
13 Q. Well, do you ever -- would these include even things
14 referral through the union hall, as well as employees who
15 work year round?
16 MR. EASTLAND: Objection; asked and answered.
17 MS. CAROL: I don't know if I asked the question
18 appropriately. I think he may have misunderstood the
19 question.
20 JUDGE SANDRON: Go ahead.
21 Q. BY MS. CAROL: Because you said that all of your
22 employees are through -- you said all your employees are
23 with the Union, right?
24 A. They're all from the Union, the union hall, yes.
25 Q. Right. And I guess my question --

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1 A. It would show anybody that's an operating engineer.
2 Q. For any period of time, right?
3 A. Yes.
4 Q. So this wouldn't include the end date like if someone
5 came on just for a project?
6 A. Not this document, no.
7 Q. This document, okay. Again was this prepared in
8 anticipation for this hearing as well?
9 A. Yes, ma'am.
10 MS. CAROL: No objection.
11 MS. BACHELDER: Voir dire?
12 JUDGE SANDRON: Yes.
13 VOIR DIRE EXAMINATION
14 Q. BY MS. BACHELDER: Was this document prepared at the
15 same time as the others?
16 A. Yes, ma'am.
17 Q. The 2017, well, what was the cutoff for the 2017 hours?
18 A. March 25th is --
19 MR. EASTLAND: It's at the top.
20 Q. BY MS. BACHELDER: Does this include straight time and
21 overtime?
22 A. No, this would be just total hours worked. So if they
23 worked 45 hours, it would include the 45 hours, yes.
24 Q. So it includes overtime but just as a straight hour?
25 A. Yes.

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1 Q. The same with double time, if there is double time it's
2 just --
3 A. Yeah, if they worked it, it's in here.
4 MS. BACHELDER: No objection.
5 JUDGE SANDRON: I believe you said no objection?
6 MS. CAROL: No objection, right.
7 JUDGE SANDRON: Respondent's Exhibit 16 is received.
8 (Respondent's Exhibit 16 received in evidence.)
9 MR. EASTLAND: I have one follow-up question.
10 DIRECT EXAMINATION (cont.)
11 Q. BY MR. EASTLAND: Ms. Carol asked you and I want to make
12 sure I understand, she asked you about the hire dates for
13 the operators, and it doesn't show their end date, correct?
14 A. Correct.
15 Q. But if they worked on a project for a month, they would
16 still be listed and their hours would be reflected, correct?
17 A. Right. You would see a small number of hours.
18 Q. I just wanted to make sure that the record was clear on
19 that. I think that's the exchange, but I'm sorry if that
20 was duplicative.
21 JUDGE SANDRON: Respondent's Exhibit 16 is received.
22 Q. BY MR. EASTLAND: Mr. Erickson, you explained that you
23 do have a role in payroll?
24 A. Yes, I do.
25 Q. Can you explain what your responsibilities are when

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1 you're involved in payroll?
2 A. Yes. Generally and overall I'm responsible, but
3 specifically our payroll clerk, Nancy Tejchma -- have we
4 spelled that one yet?
5 JUDGE SANDRON: Yes.
6 THE WITNESS: Okay, good.
7 JUDGE SANDRON: She's in the record.
8 THE WITNESS: She has done it by herself for a long
9 period of time, probably -- I don't even know, a long time,
10 a long time before me. And so nobody else knew how to do
11 it. Then she had to be away last year for a period of time
12 so we thought it prudent that I would start doing payroll
13 once a month so that somebody else could learn the codes,
14 and try to understand all the different contracts, and just
15 be familiar with the process. So once a month I do the
16 payroll, and issue all the checks and the payments.
17 Q. BY MR. EASTLAND: What is the process for time cards and
18 how they get processed through to a paycheck?
19 A. Every employee fills out their own time card for every
20 job they do. If a person had eight jobs in one day, they
21 would have eight time cards for that day. We compile all
22 those time cards and for any given week it will be 7- to 800
23 time cards generally, time card records. We key them in,
24 key in the regular hours and then the overtime hours to get
25 the calculations. You make sure the contract is right, the

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1 code is right, because for every piece of equipment they run
2 there is also -- for a lot of them, the union employees,
3 it's a different rate so they might be on the same job but a
4 different rate for two or three times on that job so you
5 have to type it in again. You do all that. We do
6 everything is in by Monday and then we issue checks or the
7 direct deposit on Tuesday every week.
8 Q. You mentioned contracts, how many different contracts
9 might apply?
10 A. There's like six or seven different Operator contracts.
11 I think there's at least five or six Iron Worker contracts.
12 And then there is only one Teamster contract that we really
13 function under.
14 Q. Then pay codes, you mentioned that. How many would you
15 estimate, how many different pay codes might there be?
16 A. Each contract could have like 6, 8, 9, 10 different pay
17 codes so a forklift operator had a pay code. Under our
18 local contract, the size of the crane, the tonnage dictates
19 the rate. On other contracts it's the length of the boom.
20 So because you have a heavy crane on a different part of the
21 state, if you're not using very much of it then you wouldn't
22 get paid as much as you would here. It's very much shifting
23 for every record.
24 Q. Have you experienced or been involved with any pay
25 concerns or issues that have come up in processing of time

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1 cards to paychecks?
2 A. Yes, there's some issues. We made mistakes from here
3 and there. Sometimes there's questions on what's contract.
4 And just due to the time we usually get it in and then try
5 to correct it after the fact because we figure something is
6 better than nothing. We can always fix it later, that's the
7 hope. There's a lot of questions back and forth besides the
8 contract, whether people were running that equipment, were
9 they not, was someone an oiler even if they don't think
10 they're an oiler, were they scheduled to start at 8:00 but
11 they started themselves at 7:00, should we start their time
12 at 7:00 and pay them overtime when we told them to start at
13 8:00. A lot of times it takes a while to get back to the
14 employee, and to talk to the dispatcher, talk to the
15 salesman, and then figure out, hey, can we bill for that
16 hour or not. There's a few each week. If we have 5 or 10
17 each week, we're still about 98 percent accurate. We do the
18 best we can.
19 Q. I'll call them mistakes. Maybe that's not the right
20 word, but --
21 A. Disagreements for sure.
22 Q. Well, what are the causes? Is it Employer caused or
23 employee caused, or how does it -- how do they arise?
24 A. There can be both. I mean sometimes I might not
25 recognize it's a different contract. It's not always

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1 obvious from the customer or the jobsite so it could be my
2 fault. I paid them short because I don't understand it. Or
3 it could be their fault because maybe they don't write the
4 correct information so maybe they had 300 foot of boom, but
5 they don't write that. Or a lot of times if they're not
6 sure on the contract, they'll just put it on there, the
7 information for the hire contract. And then I sometimes
8 assume that they would know but they assume I know, and
9 we've got to go back and research it. It can be -- it's a
10 source of frustration on both sides for sure. It's the
11 hardest payroll I've ever seen in all the places I've
12 worked.
13 Q. Let's talk about if there is an issue. What's the
14 resolution generally how these things get resolved in your
15 experience?
16 A. Since I started and I moved to the Grand Rapids office
17 in September of 2016, and that's where most everyone is
18 based out of so I see everybody. So I see everybody. I've
19 worked with them before. A lot of them I consider friends.
20 They'll just come to me and say, hey, this happened on this
21 date. I say okay, let me look into it. I can talk to
22 Nancy. I can talk to Steve. I can work with the crane
23 salesmen, the main crane salesman, and just figure out what
24 it should have been and try to make it right.
25 JUDGE SANDRON: So the larger office is in Grand Rapids?

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1 THE WITNESS: Yes.
2 JUDGE SANDRON: And more operating engineers work out of
3 Grand Rapids?
4 THE WITNESS: Yes.
5 JUDGE SANDRON: Where is -- her last name is difficult
6 to pronounce. Where is Nancy's office?
7 THE WITNESS: She's in Muskegon, Your Honor.
8 JUDGE SANDRON: Oh, she has an office there.
9 THE WITNESS: Yes.
10 JUDGE SANDRON: And your father has an office in both or
11 one?
12 THE WITNESS: His office is in Muskegon. There is a
13 conference room he can use in Grand Rapids.
14 JUDGE SANDRON: But more employees work in Grand Rapids?
15 THE WITNESS: Yes, Your Honor.
16 Q. BY MR. EASTLAND: I take it, Mr. Erickson, you are
17 familiar with payroll check history reports?
18 A. Yes, I am.
19 MR. EASTLAND: Could we go off the record just for a
20 minute?
21 JUDGE SANDRON: Yes.
22 (Off the record from 2:25 p.m. to 2:30 p.m.)
23 JUDGE SANDRON: The Respondent has proffered
24 Respondent's Exhibit 17 through 20 for identification.
25 (Respondent's Exhibits 17 through 20 marked for

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1 identification.)
2 JUDGE SANDRON: Mr. Eastland, do you want to represent
3 on the record what they are?
4 MR. EASTLAND: Yes, Your Honor. Respondent's Exhibits
5 17 through 20 are payroll check history which are payroll
6 reports generated from the Company's electronic payroll
7 software, which are business records. They are for four
8 different employees, Erin Baerman, Matthew Rowe, Carlos
9 Ocampo, and Jason Baerman, and they are for the particular
10 years included which relate to prior testimony.
11 JUDGE SANDRON: And I understand the General Counsel and
12 the Charging Party have no objections to those documents?
13 MS. BACHELDER: I have no objection, Your Honor. I
14 would note that some of the dates appear to be cut out by a
15 punch hole and I assume they go on consecutively, the
16 payroll dates.
17 MR. EASTLAND: Correct, weekly. I do see what
18 Ms. Bachelder is referring to. For instance, on
19 Respondent's 17, there was a three-hole punch from the
20 report and so October 4, 2014, it would -- each line would
21 be an additional week, correct.
22 MS. BACHELDER: And one more question. On Respondent's
23 20, there is a capital N in a column about two-thirds of the
24 way down, 10/22/11. Do you know what that is?
25 MR. EASTLAND: I do not. We can find out though for

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1 sure.
2 THE WITNESS: I didn't look at it.
3 MR. EASTLAND: I can probably show the witness.
4 JUDGE SANDRON: Do you want to show it to the witness?
5 Can I get copies of this?
6 MR. EASTLAND: Yes.
7 MS. BACHELDER: It looks like it's canceling something
8 out.
9 MR. EASTLAND: Yeah, there are negative signs, I see
10 that. Universal symbol for a mistake. I'll just show him
11 20, if that's okay?
12 JUDGE SANDRON: And the one to which you're referring,
13 Ms. Bachelder, is?
14 MS. BACHELDER: Respondent's 20.
15 JUDGE SANDRON: Oh, I see there is a capital N. Maybe
16 you can ask the witness if he knows what it represents.
17 THE WITNESS: Yeah, I think just canceling out that
18 check. It's the same Check Number 074142 and the next line
19 is 074142. It's canceling that out.
20 JUDGE SANDRON: Same amount.
21 THE WITNESS: Yeah.
22 MS. BACHELDER: Yes.
23 JUDGE SANDRON: Does that answer your question,
24 Ms. Bachelder?
25 MS. BACHELDER: Yes. And can I ask one more question?

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1 If there is a week in which an employee had zero hours does
2 the date appear with zero?
3 THE WITNESS: No, it will not.
4 MS. BACHELDER: Okay, so these are only dates where they
5 were paid something.
6 THE WITNESS: Yes.
7 MS. BACHELDER: I have no objection.
8 MS. CAROL: Your Honor, provided like I said before we
9 issue to the court reporter we redact the social security
10 numbers, I have no objection.
11 JUDGE SANDRON: And yellow represents what on these?
12 MR. EASTLAND: That was just an inerrant mark, yeah.
13 JUDGE SANDRON: Oh, so just ignore those.
14 MR. EASTLAND: Ignore those, yes.
15 JUDGE SANDRON: All right. So there being no
16 objections, Respondent's Exhibits 17 through 20 are
17 received.
18 (Respondent's Exhibits 17 through 20 received in evidence.)
19 MR. EASTLAND: Ready?
20 JUDGE SANDRON: Yes, ready when you are.
21 MR. EASTLAND: Okay, I'm sorry.
22 Q. BY MR. EASTLAND: Mr. Erickson, I think I'm just about
23 finished here. When you took a closer look at information
24 the end of the fiscal year of 2016, what information did you
25 look at?

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1 A. Not in reference to what I'm talking about. There could
2 be in the sense that a crane could work for like 5,000 hours
3 let's just say but we might only bill for 2,000. All I'm
4 talking about is the billing. This is what we billed for.
5 We might not bill for all the hours or like if the crane is
6 rented, we might bill it as 1 hour and it works 12 hours,
7 something like that.
8 Q. That was my next question. Do those hours include the
9 rental of machines that don't have an operator that go with
10 the machine?
11 A. Yes.
12 Q. Those hours would include that?
13 A. They would be in here.
14 Q. But there would be -- I think what you're saying, they
15 might not be entirely accurate because you don't know how
16 many hours a person who rents the crane is going to use it?
17 A. Yeah. So we -- a rented crane we put in as just one, so
18 it would have one hour and that would represent one month
19 billed. But it doesn't reflect the recordkeeping of how
20 long it was used. That's more of a maintenance perspective.
21 Q. So that's going to be different than your numbers.
22 A. For my perspective for the financials, I just use what
23 we billed it as.
24 Q. What percentage of the crane business is rental versus
25 sending it out with an operator?

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1 A. There's some. Right now we've got one crane on bare
2 rental. It's the one I talked about in Texas, so that's a
3 very large crane and that would be billed at one hour and X
4 dollars per month.
5 Q. Can you estimate like on a regular basis how much
6 business is rental versus direct crane operation?
7 A. I would be guessing.
8 Q. So is it just that one machine right now or --
9 A. Right now.
10 Q. -- are there other -- any rentals of the smaller cranes
11 or anything like that?
12 A. Not a bare rental at this moment.
13 Q. What's a bare rental? You said that before. I should
14 probably make sure I know what that means.
15 A. That's we send a crane without an operator and whoever
16 is renting that crane they just have the crane. They use it
17 for -- they have a certain amount of hours per month. I
18 believe it's 170. Then that would just be billed at a
19 normal monthly rate.
20 Q. Got you.
21 JUDGE SANDRON: What is that, it's called a?
22 THE WITNESS: A bare rental, b-a-r-e.
23 MS. CAROL: B-a-r-e.
24 JUDGE SANDRON: B-a-r-e, okay.
25 MS. CAROL: That makes sense.

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1 JUDGE SANDRON: Not like the animal.
2 THE WITNESS: No.
3 MS. CAROL: I just wanted to make sure.
4 JUDGE SANDRON: When you send out of state for a rental,
5 would Teamster employees take it out there?
6 THE WITNESS: It depends. That wouldn't be my decision.
7 That would be operations so Steve would decide that. But
8 sometimes we would sub it out to a different contractor.
9 Sometimes we use our own people for the more expensive
10 pieces of the equipment.
11 JUDGE SANDRON: I see.
12 THE WITNESS: But it just depends on what we have
13 available and what's out there.
14 JUDGE SANDRON: So it varies.
15 THE WITNESS: It does vary.
16 Q. BY MS. CAROL: You had mentioned before that there is
17 three, I guess three relationships with unions. There is
18 the Iron Workers, the Teamsters, and the Operating
19 Engineers, right?
20 A. Yes.
21 Q. You're generally familiar with, since you do payroll,
22 with the wage rates that each of those trades is paid
23 generally?
24 A. Yes.
25 Q. The Operating Engineers are the highest paid of the

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1 three trades at Erickson's; is that correct?
2 A. It depends. They get the most on the check generally,
3 but the fringe benefit packages vary so I don't always see
4 that. I don't always have it committed to memory. But I
5 think they're all in a proximate range on the local
6 contract.
7 Q. But their wage rates are higher than say a teamster's
8 wage rate?
9 A. Yes, generally.
10 Q. You also said something about anything bigger than a 20
11 requires an oiler to also work on it as well; is that
12 correct?
13 A. I believe that's what the contract states.
14 Q. So the bigger cranes that the Company is acquiring these
15 days, those would require more than one employee to operate
16 each crane, right?
17 A. Yes. I think at a minimum we would require an oiler and
18 an operator. Then during the set up and the tear down
19 process it is probably more.
20 Q. It can be sometimes four employees per crane for those
21 big ones. Does that sound right?
22 A. I don't know about all the time, but during the set up
23 and the tear down there's assist cranes and things like
24 that.
25 JUDGE SANDRON: Then it could be up to four?

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1 THE WITNESS: Yeah, that could be up to four because the
2 assist crane would have an operator and an oiler. It
3 depends if there's a lot of truckloads down there, perhaps
4 the operator would take that down there so it could be
5 whatever we wanted to use.
6 Q. BY MS. CAROL: Okay. Looking at -- let me get a number
7 here, Respondent's 14, the current cranes for sale.
8 A. Yes, ma'am.
9 Q. Those are, you said, are all current today? Those are
10 all for sale?
11 A. Yes.
12 Q. You had mentioned in your testimony that the first one
13 went on sale in July of 2016. Is that correct?
14 A. That's I believe the date, July, the 240s and the 260s.
15 Q. Do you know if it was all -- the 240s and the 260s all
16 went on sale at the same time?
17 A. I believe so, but Steve made that decision. He
18 contacted the broker.
19 Q. He made that decision. Did he -- did you have any
20 involvement with setting whatever the price was at that
21 time?
22 A. No, I did not set the price.
23 Q. What about the 75 tons, when did those go on sale?
24 A. I don't know if we did it at the same time or not. So
25 he -- that would be a question for Steve.

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1 Q. Who made the decision to sell all of these?
2 A. Steve makes the final decision.
3 Q. You had also testified that there were two smaller
4 cranes that were sold in 2017, right?
5 A. Yes, ma'am.
6 Q. I think you said that a carry deck and a 25 ton truck
7 crane?
8 A. Right.
9 Q. Do you know if any employees were laid off when those
10 were sold?
11 A. I don't know that.
12 Q. Would you know that as someone who does payroll once a
13 month generally?
14 A. If I knew what week we sold the crane and if I commit it
15 to memory, I would.
16 Q. You don't have any like direct involvement in personnel
17 decisions as they relate to who gets hired, who gets laid
18 off?
19 A. No.
20 Q. When did you start doing the payroll stuff? You said
21 you do it once a month. Was that right away when you got
22 hired?
23 A. No. It was I had to do it in July when Nancy was out
24 for a couple of weeks and then once a month after that
25 starting in August.

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1 Q. So you weren't involved in any of the payroll
2 compilation or paychecks before July of 2016?
3 A. No.
4 Q. No, you weren't? I'm sorry.
5 A. I was not involved in the payroll process before --
6 Q. In anything before --
7 A. -- July 2017.
8 Q. Got you, thank you. So these cranes that were for sale
9 in General Counsel's exhibit -- the one I just looked at,
10 14, I think it is.
11 MR. EASTLAND: Respondent's.
12 Q. BY MS. CAROL: I'm sorry, Respondent's 14, continued to
13 be used even after they were put up for sale, right?
14 A. I think there was a hiatus for a little while and then
15 once we couldn't sell them quickly he put them back to use
16 in some limited capacity.
17 Q. They are still being used currently?
18 A. I believe they are being used from time to time.
19 Q. You also -- I was looking through these documents and
20 you said you came up with these four classifications --
21 A. Yes.
22 Q. -- of crane. Those include different types of
23 equipment, right?
24 A. Yes.
25 Q. In the under 120, we've got these small cranes, the 40,

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1 the 60, the 75. It also includes rough terrain cranes?
2 A. Yes.
3 Q. How many of those are there?
4 A. I would have to count it up, but approximately six.
5 JUDGE SANDRON: That would be in which document just so
6 we can refer to it? You don't need to do it.
7 THE WITNESS: If we look at Respondent's 6, anything
8 with an RT after it in the description would be an RT crane,
9 so one, two, three, four, five, six.
10 Q. BY MS. CAROL: These rough terrain cranes are pretty
11 specialized pieces of equipment, is that correct, fair?
12 A. They're all specialized pieces of equipment, but --
13 Q. Okay. But say a 40-ton crane probably has more uses
14 than a rough terrain crane would have?
15 JUDGE SANDRON: If you know?
16 Q. BY MS. CAROL: If you know.
17 A. Yeah, I guess I don't know exactly. They all have sort
18 of specific uses.
19 Q. Do you know whether or not those rough terrain cranes,
20 you separated out their use versus the use of the small
21 truck cranes when coming up with these numbers?
22 A. I did some analysis on them and that's why we have some
23 for sale, but at the same time they sort of go as ancillary
24 equipment with those bigger project cranes so it makes sense
25 to see if we can develop that market a little bit.

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1 Q. Well, I guess did you when coming up with these numbers
2 in any of Respondent's exhibits, we just have under 120, you
3 didn't break out the small cranes versus the rough terrain
4 cranes, right?
5 A. No, they are all included.
6 Q. They're all included.
7 A. Anything under 120-ton is included in that number.
8 Q. There are more of those rough terrain cranes than there
9 are -- oh, I guess there is equal if you said there is about
10 six. Three's about equal number of both the small truck
11 cranes and the rough terrain cranes, right?
12 A. No, I think there would be more smaller cranes.
13 Q. Okay. I was just -- so we've got the 275s --
14 A. More non-RT, smaller cranes.
15 JUDGE SANDRON: Just make sure you let him finish his
16 answer.
17 MS. CAROL: Yeah, sorry about that.
18 JUDGE SANDRON: Before you ask another question so you
19 don't overlap.
20 THE WITNESS: It would be about right, so seven of the
21 non-RT and six of the RT.
22 Q. BY MS. CAROL: All right. Are any of those for sale
23 right now? I think you had mentioned something, but I
24 wasn't -- I don't remember what you said. Are any of the
25 rough terrain cranes for sale?

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1 A. Yeah, I believe 288 and 289 are rough terrain cranes.
2 Q. The 75 ton?
3 A. Yes, ma'am.
4 Q. Got you, okay.
5 MS. CAROL: That's all I have on cross, Your Honor.
6 JUDGE SANDRON: Ms. Bachelder?
7 MS. BACHELDER: I have a few questions.
8 CROSS-EXAMINATION
9 Q. BY MS. BACHELDER: Sticking with the rough terrain
10 issue, the rough terrain cranes get used fewer hours than
11 the 40s and 60s; is that correct?
12 A. I would have to look. I don't have that information in
13 front of me.
14 Q. Isn't it true that by -- that if you broke out the RTs
15 versus the 40s and 60s the RTs would bring down the average?
16 A. I don't know that. I'd have to look.
17 Q. You said that Steve made the decision to sell the 40s
18 and 60s?
19 A. Yes, he did.
20 Q. Did he also make the decision to sell the RTs?
21 A. Yes. He makes all the decisions.
22 Q. Do you know when he made the decision to sell the 40s
23 and 60s?
24 A. I believe July is the time it was put to sale. I
25 speculated that it was in May. I believe that's when he

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1 started talking to the broker. So that's when the decision
2 was made, as far as I know.
3 Q. But your analysis wasn't complete till about July of
4 2016, didn't you say that?
5 A. Yeah, that's when I really started the unit by unit.
6 Q. Besides the 40- and 60-ton cranes and the rough terrain
7 ones you talked about, is there any other equipment for
8 sale?
9 A. We've been selling a lot of trailers recently. Are we
10 talking about crane equipment or just --
11 Q. Crane equipment.
12 A. So these six are currently for sale and then we haven't
13 found much luck selling them so I don't think we put
14 anything additional on sale. But again I haven't made that
15 decision.
16 Q. None of the cranes have been sold; is that correct?
17 A. Not these six; just the two that I referred to earlier.
18 Q. The 263 carry deck, did you say that was sold?
19 A. Yes, it was sold.
20 Q. Do you know what it was sold for?
21 A. I do know.
22 Q. How much?
23 MR. EASTLAND: I'm going to object to the extent that it
24 calls for information that would be subject to a
25 confidential agreement/protective order I think that we

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1 discussed in connection with Respondent's Exhibit 8(a) and
2 (b) providing that information.
3 MS. BACHELDER: I don't think I signed that and I
4 continue to take the position that if we have a financial
5 defense that claims they are being sold for a certain amount
6 of money, we need to look at what their practice is.
7 MR. EASTLAND: Right. If Ms. Bachelder can assure me
8 that that won't be used beyond this proceeding for some
9 other purpose then we wouldn't have an objection. But if
10 she's not willing to do that then I would have some major
11 concerns that that lack of willingness to do that would
12 suggest it might be used outside of this hearing for
13 purposes unrelated to this case which would not be
14 appropriate.
15 MS. BACHELDER: Well, I'm willing to agree to that but I
16 don't know mechanically how you would do that because --
17 JUDGE SANDRON: I think if you just --
18 MR. EASTLAND: Well, we agree and then the Judge orders
19 it. That's how that happens.
20 MS. BACHELDER: Well, the transcript is a public
21 document, so if the witness answers the question it is going
22 to be in the transcript unless the Judge --
23 JUDGE SANDRON: Although it's not likely that anybody
24 outside of this proceeding is going to go through the
25 transcript to look for any information. It is public, as

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1 you say, but --
2 MR. EASTLAND: Right. But, Your Honor, what happens is
3 somebody else does it and Ms. Bachelder doesn't do it, but
4 somebody else does it and FOIA's it, and then it's out
5 there. So I guess to the extent we can -- I mean this
6 happens all the time in court and so we have to take the
7 testimony under seal.
8 JUDGE SANDRON: How do we evaluate, though, the
9 information without the cost?
10 MR. EASTLAND: All right, we'll withdraw the objection.
11 THE WITNESS: $45,000.
12 Q. BY MS. BACHELDER: That was the carry deck 263?
13 A. Yes, ma'am.
14 Q. Do you know what the original asking price was for it?
15 A. No.
16 Q. But it was sold for $45,000?
17 A. Yes.
18 Q. What about --
19 A. Oh, wait, I'm sorry. The original asking price? We
20 asked $45,000 I think was the purchase price. I don't know
21 what it was purchased for.
22 Q. You originally asked $45,000 and that's what you got?
23 A. I believe so, but again I didn't make the deal so I
24 shouldn't say. The $45,000 is the only number that I ever
25 heard.

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1 JUDGE SANDRON: That was you recall for what? $45,000
2 is the selling price?
3 THE WITNESS: Yeah, that was the selling price.
4 JUDGE SANDRON: So you're not sure if --
5 THE WITNESS: I wasn't in the conversation, so I
6 shouldn't -- I don't know.
7 JUDGE SANDRON: You don't know what the original asking
8 price is.
9 THE WITNESS: No.
10 JUDGE SANDRON: All right.
11 Q. BY MS. BACHELDER: So again the person that makes the
12 decision what price at which to sell, would that be your
13 father?
14 A. Yes, that's Steve.
15 Q. The 284 -- I can't quite even read my writing, but --
16 A. It's a small truck crane.
17 Q. Truck crane. Do you know what the selling price was for
18 that?
19 A. It sold for $21,000.
20 Q. And again that was your father's decision?
21 A. Yes.
22 MR. EASTLAND: Well, I'll object to the extent if you're
23 asking about the decision to sell, the decision to buy
24 wasn't.
25 MS. BACHELDER: That's what I was asking, the decision

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1 to sell.
2 MR. EASTLAND: Okay, I just wanted to clarify that.
3 Q. BY MS. BACHELDER: How long has your father been running
4 the Company?
5 A. I believe it was the early 1980s he started running it.
6 And then he was an operating engineer in the '70s working,
7 working there.
8 Q. Did the Company exist before your father took over the
9 operation?
10 A. Yes, 1922.
11 Q. Was it still a family company?
12 A. Yes, ma'am.
13 Q. Was it your father's father who started it?
14 A. His grandfather.
15 MS. BACHELDER: No more questions.
16 JUDGE SANDRON: Redirect?
17 MR. EASTLAND: Yes.
18 REDIRECT EXAMINATION
19 Q. BY MR. EASTLAND: Mr. Erickson, you were asked some
20 questions about your financial data and hours billed versus
21 hours used. Do you remember that?
22 A. Yes.
23 Q. Is it the Company's practice or policy to bill as many
24 hours as you can for the crane?
25 A. Yes.

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1 Q. You were involved in payroll matters beginning in July
2 2016?
3 A. Yes.
4 Q. To your knowledge, has that process changed at all?
5 A. No, not to my knowledge.
6 Q. Was the process that you followed in existence at that
7 time?
8 A. Yes, it was.
9 Q. You were asked some questions about smaller cranes that
10 were still being used I think you said from time to time and
11 in a limited capacity?
12 A. Yes.
13 Q. Do you know how frequently those cranes are being --
14 A. I don't know how frequently. I know that I've looked at
15 some information that we have used them, but I don't know.
16 Q. But you don't know the frequency?
17 A. No.
18 Q. One more basic question to clarify. You were asked some
19 questions about the family nature of the business. What is
20 the corporate structure? I mean what kind of business is
21 it, is it a C corp., S corp.?
22 A. It's a C corporation. Steve Erickson is the sole
23 shareholder and the only officer.
24 Q. Thank you.
25 MR. EASTLAND: That's all I have.

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1 ruling of yesterday. The offer of proof is on the record,
2 and we will take the document and mark it as Respondent's
3 Rejected 2 or Rejected Respondent's 2.
4 (Rejected Respondent's Exhibit 2 marked and rejected.)
5 MR. EASTLAND: And as part of the offer of proof, Your
6 Honor, we also would submit a four-page document which
7 comprises invoices establishing that Erickson's was
8 servicing the work that we have referenced.
9 JUDGE SANDRON: So that would be Rejected Exhibit 3 for
10 Respondent.
11 MR. EASTLAND: Correct, Your Honor, and it is marked.
12 JUDGE SANDRON: That's fine.
13 MS. CAROL: Same objection.
14 MS. BACHELDER: Also, same objection.
15 JUDGE SANDRON: Same ruling.
16 MR. EASTLAND: Are we good?
17 JUDGE SANDRON: Yes.
18 MS. BACHELDER: Do you have copies, Keith?
19 JUDGE SANDRON: Well, for a rejected exhibit --
20 MS. BACHELDER: It's going to be in the record. We need
21 copies because he's going to be making arguments in his
22 brief.
23 JUDGE SANDRON: Well, that's true.
24 MR. EASTLAND: I agree with that.
25 MS. BACHELDER: You agree?

1 JUDGE SANDRON: All right, so why don't you give us all
2 a copy.
3 MR. EASTLAND: Yeah, let's do that.
4 JUDGE SANDRON: That was a good point.
5 MS. BACHELDER: Thank you.
6 (Pause.)
7 JUDGE SANDRON: I would just comment, I've already made
8 my ruling, but I would just make the comment that this post-
9 dates any of the alleged unfair labor practices.
10 MS. CAROL: Thank you.
11 MR. EASTLAND: Your Honor, if I may? The offer of proof
12 will show that the email was sent afterwards, but the
13 arrangement was reached prior to.
14 JUDGE SANDRON: This is Rejected 2. If that's the case,
15 I won't rely on that --
16 MR. EASTLAND: Right.
17 JUDGE SANDRON: -- as the grounds for finding relevance.
18 But on other grounds --
19 MR. EASTLAND: Right, just so the record is clear, the
20 offer of proof would include the testimony from Mr. Derby
21 explain that that relationship and arrangement occurred
22 during the relevant times and that that was a communication
23 memorializing the terms of the arrangement reached with
24 Mr. Popps.
25 JUDGE SANDRON: Okay. This is Respondent's Rejected 2.

1 And we have 3 coming.
2 MR. EASTLAND: Correct.
3 (Rejected Respondent's Exhibit 3 marked and rejected.)
4 JUDGE SANDRON: This document, Rejected 3, goes back to
5 2011, doesn't it?
6 MR. EASTLAND: Correct. But Rejected 3 shows that the
7 work has been consistently performed --
8 JUDGE SANDRON: Oh, I see.
9 MR. EASTLAND: -- by Erickson's, Inc.
10 JUDGE SANDRON: Do you want to call your next witness?
11 MR. EASTLAND: Yes, Steve Erickson.
12 JUDGE SANDRON: Mr. Erickson, if you will come up?
13 You've seen me do this before.
14 (Whereupon,
15 STEVEN ERICKSON
16 was called as a witness by and on behalf of the Respondent
17 and, after having been duly sworn, was examined and
18 testified as follows:)
19 JUDGE SANDRON: Come up to the witness stand and be
20 seated. And state and spell your full and correct legal
21 name for the record, and provide us with an address, either
22 residence or business at your preference.
23 THE WITNESS: My name is Steven Erickson, S-t-e-v-e-n,
24 E-r-i-c-k-s-o-n. Residence is at 1725 Meadow Lane, North
25 Muskegon, Michigan 49445.

1 JUDGE SANDRON: Thank you.
2 DIRECT EXAMINATION
3 Q. BY MR. EASTLAND: Mr. Erickson, how long have you worked
4 in the construction industry?
5 A. 45 years.
6 Q. In what roles?
7 A. Everything from sweeping floors when I first started to
8 an operating engineer from 1974 to 1983. 1983, I purchased
9 the Company and became manager.
10 Q. You said you started sweeping floors. Where was that?
11 Was that Erickson's?
12 A. Erickson's.
13 Q. Erickson's, Inc.?
14 A. Yeah.
15 JUDGE SANDRON: Have you always worked at Erickson's?
16 THE WITNESS: I had six other jobs in my lifetime. All
17 of them were gas stations in my 14- and 15-year-old, there
18 was a car wash and five gas stations. The rest of the time
19 I worked for the family.
20 Q. BY MR. EASTLAND: And so I guess you sort of worked your
21 way up then?
22 A. Yes.
23 Q. You mentioned that you were an operating engineer for a
24 period of time?
25 A. I joined the Operating Engineers in 1974. I took a

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1 withdrawal in 1983.
2 JUDGE SANDRON: When you became the owner?
3 THE WITNESS: Yes.
4 Q. BY MR. EASTLAND: So as an operating engineer between
5 1974 and 1983, were you a member of the Union?
6 A. Yes, I was.
7 Q. Local 324?
8 A. Local 324.
9 Q. Where did you work?
10 A. Out of Muskegon. Well, we only had one facility. I was
11 out of Muskegon.
12 Q. So out of the Muskegon office?
13 A. Yeah.
14 Q. Then you said you moved to management in 1983?
15 A. Correct.
16 Q. What positions have you held?
17 A. I purchased the place in 1983, so pretty much wear all
18 the hats now.
19 Q. When you purchased the -- you became the sole
20 shareholder; is that right?
21 A. Yes.
22 Q. When you became the sole shareholder, what title did
23 you --
24 A. President.
25 Q. Is that the current role you serve?

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1 A. Yes.
2 Q. Any other roles that you serve at Erickson's?
3 A. No official titles. President and secretary/treasurer,
4 I think, there is a second title.
5 Q. What are your responsibilities as the president of
6 Erickson's, Inc.?
7 A. Primarily, I'm a salesman. I still generate
8 approximately 70 percent of the sales for the business. But
9 I also oversee the management of the Company. I purchase
10 and sell equipment, hire and fire employees, oversee the
11 invoicing and general accounting departments.
12 Q. Who is responsible for day to day operations?
13 A. Brian Sharp is the operation manager/dispatcher out of
14 Grand Rapids.
15 Q. Do you have a role in day to day operations?
16 A. They try to keep me out of it as much as possible, but I
17 stick my nose in there when I can.
18 Q. Or when you're called upon?
19 A. When I'm called upon, yeah.
20 Q. Do you have I take it office support staff and sort of a
21 work force?
22 A. Yes.
23 Q. Can you describe the office support staff?
24 A. There are four people in the accounting department,
25 three people in the engineering department, three in sales,

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1 and one in operations -- two in operations.
2 Q. In the accounting department, who is that?
3 A. Brent is the controller. Nancy is --
4 Q. I'm sorry.
5 A. Brent Erickson is the controller. Nancy Tejchma is the
6 payroll clerk. And Kim Olsen is the billing clerk.
7 JUDGE SANDRON: Can you spell Olsen?
8 THE WITNESS: O-l-s-e-n.
9 Q. BY MR. EASTLAND: Is there another?
10 A. There is another part-time gal, Mary. And I'm sorry I
11 don't know her last name.
12 Q. So she works --
13 A. She comes in 3 days a week to help with billing.
14 Q. And engineers?
15 A. Chad Fox, Greg Esper, and Amanda Ruffing.
16 Q. Can you spell those?
17 A. Greg Fox, F-o-x -- excuse me, that was Chad Fox. Greg
18 Esper, E-s-p-e-r. And Amanda, A-m-a-n-d-a, Ruffing,
19 R-u-f-f-i-n-g.
20 Q. Then in engineers?
21 A. That was the engineering.
22 JUDGE SANDRON: Sales.
23 Q. BY MR. EASTLAND: Sales, that's what I meant.
24 A. Sales is Jeff Afton, A-f-t-o-n; Joe Lake, L-a-k-e; David
25 Crace, C-r-a-c-e.

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1 Q. And the operations?
2 A. Brian Sharp, Kimberlee McCabe, K-i-m-b-e-r-l-e-e, McCabe
3 is M-c, capital C-a-b-e.
4 Q. Does that office support staff, those different areas,
5 does that support one or both of the locations?
6 A. Both facilities.
7 JUDGE SANDRON: Just one thing, I guess it's Ms. McCabe,
8 Kimberlee?
9 THE WITNESS: Kimberlee, yes.
10 JUDGE SANDRON: Does she have the same role as
11 Mr. Sharp?
12 THE WITNESS: She's more his assistant. She prepares
13 schedules and orders, and Brian expedites them.
14 Q. BY MR. EASTLAND: Can you explain to the Judge just kind
15 of generally the scope of the business that Erickson's, Inc.
16 is involved with?
17 A. We're involved in crane service, crane rental, general
18 transportation, trucking, heavy transportation which would
19 include supersized loads, make building modules, things like
20 that. Iron workers provide rigging service. Those guys,
21 they move machinery in and out of plants. They also do the
22 assembly of the cranes in most cases.
23 JUDGE SANDRON: Can you give us an estimate of how many
24 total employees you have in Grand Rapids and how many you
25 have in --

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1 THE WITNESS: Total staff right now is probably 70.
2 There's maybe 8 in Muskegon and 62 in Grand Rapids.
3 JUDGE SANDRON: Thank you.
4 Q. BY MR. EASTLAND: So we've heard testimony for three
5 primary unions, right?
6 A. Yes.
7 Q. Teamsters, how many Teamsters unionized employees do you
8 have?
9 A. Currently, 16 Teamsters.
10 Q. Can you give us just an example so we understand the
11 type of transportation work they are involved in?
12 A. Teamsters are actually split into two categories for us.
13 There's eight of them that are truck drivers basically.
14 They operate, drive trucks, and they do the Goldhofer heavy
15 transport work, supersized loads, things like that. The
16 other eight are involved with the maintenance department.
17 They perform all the maintenance on all the equipment for
18 the fleet.
19 Q. The eight truck drivers, is that commercial CDL
20 required?
21 A. Yes.
22 Q. The maintenance folks, do they just service the trucks
23 or do they service all of your equipment?
24 A. All of the equipment, trucks, cranes, facilities,
25 whatever there is to fix.

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1 Q. Then you've got -- how long have you had the
2 relationships with the Teamsters?
3 A. Predates me, 1950s.
4 Q. You mentioned the Iron Workers perform rigging services.
5 Help lawyers understand with an example, what --
6 A. Machinery moving is their primary job. They'll pick up
7 a machine off a truck, move it into a plant, set it down,
8 anchor it to the floor, and get it in a position where it
9 can be run to make parts, or move them from one plant to
10 another.
11 Q. What type of machine is it? Can you give us an example?
12 A. Milling machines for auto plants, stamping presses that
13 make car parts, injection mold machines that make your
14 steering wheels and whatnot. There's all sorts of machinery
15 out there. We move anything that's big and heavy, that
16 generally falls into our, you know, from MRI machines, X-ray
17 machines to a little bit of everything.
18 JUDGE SANDRON: They load and unload or do they also
19 transport?
20 THE WITNESS: The riggers will load and unload. The
21 drivers will transport.
22 Q. BY MR. EASTLAND: How many of the Iron Worker member
23 employees do you have?
24 A. Currently, probably 30, maybe 25 to 30.
25 JUDGE SANDRON: That's fine, ballpark figures.

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1 Q. BY MR. EASTLAND: We've heard a lot of testimony about
2 different types of cranes, but can you give us an
3 understanding of the kinds of work that the operating
4 engineers do?
5 A. Operators run our cranes. They operate the cranes.
6 They also have the oiler position, which is more or less an
7 assistant to the operator. They run forklifts, mostly
8 construction forklifts on jobsites, but they do get involved
9 with our rigging crews also to move the machinery in the
10 shops. That pretty much covers the scope of their work.
11 Q. How many operating engineers do you currently employ?
12 A. Probably 18, 20.
13 Q. Has the work for the Teamsters, Iron Workers, and
14 Operating Engineers, has -- what's the nature of that work,
15 is it steady, not steady?
16 A. Oh, it fluctuates all the time. We're at pretty much a
17 high right now. 70 is about our high usually. It doesn't
18 get much more than that. That will run us through the
19 summer. Then in the winter it'll drop back down into the
20 30s.
21 JUDGE SANDRON: Of the operating engineers, how many are
22 in Grand Rapids?
23 THE WITNESS: We only have one based in Muskegon now.
24 Well, maybe two, two are based out of Muskegon.
25 JUDGE SANDRON: I see. And the rest are --

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1 THE WITNESS: The rest are Grand Rapids, yeah.
2 Q. BY MR. EASTLAND: We know you have a collective
3 bargaining agreement, so we'll skip that. Can you explain
4 the types of cranes that you have for the Judge?
5 A. We have crawler cranes, typical general construction
6 cranes that you see crawling around on the jobsite. They
7 have tracks and a fixed boom. We have a lattice boom --
8 excuse me, telescopic wooden crawler cranes, which is
9 another track type crane but it's got a telescopic boom. We
10 can get into very much detail. I don't know if you want to
11 get into that?
12 Q. Well, give us a range of the cranes.
13 A. There's a couple of types of crawler cranes. And you
14 have all-terrain cranes, which are generally the 120 ton and
15 up. They're multi-wheeled, telescopic boom cranes. Rough
16 terrain cranes is the four-wheel drive, RT cranes for
17 construction sites. Carry deck cranes, little industrial
18 cranes for inside plant work. Tower cranes for general
19 high-rise construction.
20 Q. Are there weight classifications?
21 A. These cranes range from right now 18 ton to 125 ton,
22 900 ton, it depends on whether you're metric or American.
23 Q. What does that rating mean?
24 A. It's just the capacity the manufacturer gives for the
25 crane on how much its theoretical lift can be. A 50-ton

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1 crane really can't lift 50 tons anymore. Back in the 70s,
2 they probably could, but nowadays they chart them much
3 differently, engineered calculation.
4 JUDGE SANDRON: I guess just to make sure we know, on
5 Respondent's Exhibit 6 and all the documents, those are
6 American tons on all these documents?
7 THE WITNESS: Yes.
8 Q. BY MR. EASTLAND: Of the cranes you've described, I
9 think the Judge just showed you Respondent's 6, there is a
10 group listed on that. Are there general categories?
11 A. Yes.
12 JUDGE SANDRON: Do you have 6 before you?
13 Q. BY MR. EASTLAND: Can you explain those, please?
14 A. The accounting department classifies them under 120 ton,
15 over 120 ton, carry deck, and tower.
16 Q. Are there certain cranes or pieces of equipment in your
17 stable so to speak, in your company stable that are more
18 lucrative?
19 A. Obviously, the larger cranes are more lucrative than the
20 smaller cranes.
21 Q. Why?
22 A. They produce more revenue. The rental rate is higher.
23 Our largest crawler crane rents for $125,000 a month. There
24 is a lot of accessory equipment. To move that particular
25 crane from Manitowoc, Wisconsin, to Miami, Florida was

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1 $350,000, 82 truckloads, so it throws off work into our
2 trucking department and actually way more than we can handle
3 so we subcontract a lot of it. Large cranes produce larger
4 revenue. The mid-sized cranes, it just follows them down.
5 They're rated. The pricing is based on what they cost and
6 the cost is based on their tonnage a lot of ways.
7 JUDGE SANDRON: What would be a large size, a large
8 crane? What would be the range?
9 THE WITNESS: Well, for accounting purposes, they use
10 120-ton plus. They call that large class.
11 JUDGE SANDRON: And then under 120 is small?
12 THE WITNESS: Under 120 is considered small cranes.
13 JUDGE SANDRON: And the range you said is 18 to --
14 THE WITNESS: Yeah, the smallest crane we have currently
15 is 18 ton.
16 JUDGE SANDRON: And the largest again?
17 THE WITNESS: The largest is 900.
18 JUDGE SANDRON: The ones on the high end like the 900,
19 it would be the ones that would go out of state maybe?
20 THE WITNESS: Not necessarily. My 900 is currently in
21 Corpus Christi, Texas. But my 750 is in Ludington,
22 Michigan. I've got a 600 in Elkton, up by the thumb. It's
23 a windmill generator job. There's a 550 down south at a
24 nuclear plant in Lower Michigan. Most of our fleet stays in
25 Michigan. The extremely big crawlers probably will never

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1 come to Michigan, but that's a range I'm trying to get into.
2 That's my first one in that class.
3 Q. BY MR. EASTLAND: You mentioned I think forklift or
4 hi-lo operators.
5 A. Yeah.
6 Q. Who does that work?
7 A. Operating engineers.
8 Q. Is that different than the crane work?
9 A. It is. Hi-lo operators are not required to have a crane
10 certification so typically they don't. The pay scale is a
11 little lower in the hi-lo classifications. It's just a
12 different classification. It's the same group of employees.
13 They belong to the same union, but it's kind of a sub-group.
14 Q. You mentioned crane classification -- I'm sorry,
15 qualification?
16 A. Crane qualifications, yeah, certifications.
17 Q. Certification. Is there an industry standard for a
18 certification or how does that work?
19 A. The current industry standard is NCCO, National Crane
20 Certification, I think. I heard him do this the other day.
21 I should have looked it up, I'm sorry, but something about
22 crane certification. We just call it NCCO, your CCO card.
23 That's pretty much the standard. It's not fully countrywide
24 yet, but it's most of the northern part of the country for
25 sure.

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1 Q. And so what does that mean to you when an operator has,
2 you said, a CCO card?
3 A. CCO card indicates to me that they have been through
4 basic training. They know how to read a load chart. They
5 can operate a small crane. There's several classifications
6 within the CCO card, I think, as has already been discussed.
7 But they -- to me that gives you, you know, the guy knows
8 how to start. That's a starting point to learn how to run a
9 crane.
10 Q. Is buying and selling equipment part of Erickson's
11 business?
12 A. Always.
13 Q. How frequently does the Company buy or sell cranes?
14 A. Generally, every couple of years -- or I mean a couple
15 of cranes every year. The current fleet is about, what do
16 we have, 36 I think. And we typically try to turn them
17 every 10 years, so we could sometimes process up to 3 or 4 a
18 year. But typically a couple every year for sure, age out
19 or either age out or hour out. I sell my cranes based on,
20 you know, I'm looking for 10 years, 10,000 hours is about
21 the time when I want to sell them.
22 Purchases go the other direction. That's more market
23 driven. We are currently trying to get into the wind market
24 on the other side of the state and some of the Southern
25 Michigan border states, so we're buying different cranes for

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1 that particular operation. We're trying to push into the
2 large, ultra-large cranes, the 900-ton crawlers and things,
3 so those are much bigger machines. They're much more
4 expensive. I doubt that I'll foot them every 10 years. But
5 the everyday taxi cranes, we try to flip every 10 years.
6 Q. Is there a trend for your business or business objective
7 with regard to buying or selling cranes?
8 A. Well, the trend for the last 10 years or better, and I
9 think it maybe goes back into the late 2000s, but the small
10 cranes no longer find much work in our area. There was a
11 time when the 35 ton RT was a big crane. And now I have
12 trouble selling anything less than a 90-ton RT. The
13 customers just want bigger cranes, longer booms. It's just
14 market driven. So we're selling small cranes, buying larger
15 cranes all the time.
16 Long boom is another big thing. Our current fleet of
17 cranes has been rotated around so that the longest boom
18 configurations are in the more modern cranes. Where I had a
19 300-ton crane, 1996, it had 198 foot of boom, the newest
20 machine that was bought four or five years ago has 262 feet
21 of boom. Technology changes in about that 10-year time
22 span, too, so we try to rotate with the technology a little
23 bit.
24 JUDGE SANDRON: Can you just describe for a layperson
25 what boom means?

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1 THE WITNESS: The boom is the part of the crane that
2 extends out up over the top of the building. If I'm setting
3 an air conditioner, my boom goes out over the building.
4 I'll pick it up off the truck, swing it out over the
5 building, and land it on the roof someplace. So the boom is
6 the lifting part of the crane.
7 JUDGE SANDRON: So the trends are the larger ones being
8 more desirable?
9 THE WITNESS: Certainly, yes, more demanding. It takes
10 more years of experience. We generally start them in little
11 cranes. And then as they progress and get more skilled,
12 then we move them up into larger cranes over periods of
13 time. That's typically the way that's been done for our
14 company.
15 JUDGE SANDRON: As I understand your earlier testimony,
16 customers want larger or do they call it longer booms?
17 THE WITNESS: Longer booms, more reach. The newer
18 technology is more to do with engineering. Booms in the old
19 days were heavy and thick iron, and designed by slide rule
20 maybe. Nowadays, it's all computer-driven. They're thin as
21 beer cans, you know. They're just amazing that they hold
22 the weight they do. But they're very thin and light, and
23 they can make them longer. We actually consider them a wear
24 item now because they are so thin that we figure they have a
25 life span, too. That's another factor we look at when we're

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1 selling a crane is what is the life span before major
2 components need to be replaced. A boom is considered a life
3 span item now.
4 JUDGE SANDRON: That means that --
5 THE WITNESS: You could either run it longer and change
6 that component and get a new one, or you can sell it before
7 you need to change it. It's like selling a car before the
8 engine blows up. I try to sell them before I have to
9 replace any big parts. We do routine maintenance. I don't
10 do engines in my shop. I don't do -- I try not to do any
11 major transmission work. We sub most of that stuff out, so
12 I try to keep my fleet moving before I have to do those
13 things.
14 JUDGE SANDRON: I see, thank you.
15 Q. BY MR. EASTLAND: How long have you been selling smaller
16 cranes?
17 A. It's gone on since 2003. I think that was our first
18 35 ton crane sales. Back in the '70s, the '80s, that was a
19 very popular size crane, but nowadays you can't market
20 anything that small.
21 Q. You were here, there was some testimony earlier, I think
22 you heard it about the purchases of some cranes recently.
23 A. Yes.
24 MR. EASTLAND: Can we have the number, Respondent's
25 exhibit -- is it 8?

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1 UNIDENTIFIED SPEAKER: Yes, 8(a).
2 Q. BY MR. EASTLAND: 8(a). Take a look at that,
3 Mr. Erickson.
4 A. The big one here. Okay, yeah, it says Liebherr on it?
5 Q. Right. These are sales or purchase order documents
6 relating to the --
7 A. Yes.
8 Q. -- purchase of cranes?
9 A. Yeah, these are the last five cranes purchased.
10 Q. I think the first was Number 814?
11 A. Yes. It's a 750-ton telescopic mobile crane.
12 Q. Why did Erickson's, Inc. purchase that crane?
13 A. This was purchased in anticipation of working in the
14 windmill sector. We can lift rotor blades off and in the
15 upper parts of the turbine generators now with this crane,
16 so it has long reach and high capacity.
17 Q. How about the next one, if you look at the next?
18 A. The next one is a 90-ton rough terrain, four-wheel
19 drive, construction site type crane.
20 Q. Why did the Company purchase that?
21 A. In response to customer requests. Again, we had 60-,
22 75-, and 80-ton cranes. They wanted bigger so we went into
23 the 90 ton. Rough terrains only go to 130 ton right now,
24 maybe 150 on some Japanese models. But 90 is a pretty good
25 size RT. It's in the big end of the RT fleet.

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1 Q. Within the RT subset, that would be considered --
2 A. Within the RT, that's a big RT. That's my biggest RT.
3 Q. In the scope of RT cranes, where does that fall in size?
4 A. Well, it's either 90, 100, 130, I think is how it goes,
5 so it's in the top 3 or 4 levels of that size type of crane.
6 JUDGE SANDRON: Are there smaller RTs also?
7 THE WITNESS: Yes. They go all the way down to I think
8 15 ton. You can still buy a 15 ton, and then 30, a lot of
9 40, 60, a lot of 50 tons out there in the little RT range.
10 But, yes, they go way down to 15 ton.
11 JUDGE SANDRON: And they go up to about 130?
12 THE WITNESS: 130 is the biggest. I think there is a
13 150 out there nowadays. I have not had a chance to see one.
14 Q. BY MR. EASTLAND: Let's move to the next crane in this
15 packet, Number 816. I think that's a 300 ton.
16 A. Number 816 is the Manitowoc. That's currently in Corpus
17 Christi, Texas. It's called the MLC-6050, the big crawler
18 crane for large construction jobs. It's on an LMG facility,
19 scheduled to be there through 2020.
20 JUDGE SANDRON: For the record, it's M-a-n-i-t-o-w-o-c.
21 THE WITNESS: M-a-n, yeah.
22 Q. BY MR. EASTLAND: Why did the Company purchase that
23 crane?
24 A. It's cutting edge technology. I actually ordered it in
25 2014 at a trade show when the first models came out. It

1 took over 2 years to get that crane delivered. It's got a
2 very innovative counterweight system on it. It's very new.
3 We think it's going to be state of the art. We're
4 experiencing some early model problems with that particular
5 machine, but we're hoping to work through those with the
6 manufacturer and make it into a very, very productive
7 machine for us.
8 Q. That was purchased in December of '14, right?
9 JUDGE SANDRON: Well, I think it states it on the
10 document.
11 MR. EASTLAND: Okay, I'll move on. I think we've
12 already established that.
13 Q. BY MR. EASTLAND: So the next, let's talk about the next
14 one then, please, the next crane that was purchased.
15 A. Oh, there is a tower crane. The next one is a tower
16 crane.
17 Q. Wasn't there one before that? I thought a 900 ton --
18 A. Am I missing something here? It went from the Manitowoc
19 to another Manitowoc, but it's a tower crane, MB-485B. It's
20 a 20 metric ton tower crane, which 20 ton seems small but
21 it's one of the larger tower cranes you'll see in Grand
22 Rapids. You'll typically see -- we have two of that size
23 now in the Grand Rapids market mostly to service the local
24 general contractors here. Almost all of our work has been
25 done within the Grand Rapids downtown corridor with the

1 tower cranes.
2 Q. Is that why the Company purchased it?
3 A. To keep our customers happy, yeah. Tower cranes are not
4 a real lucrative contract for us. It's not my specialty.
5 We don't buy the real tall ones that will go up 60 stories.
6 We buy them just big enough that our big regular cranes can
7 erect them so that I can service -- Grand Rapids is not a
8 real tall town yet, so I can reach everything that's in this
9 town. I can't work in New York. I can't work in Chicago.
10 It's a small tower crane.
11 Q. I think there is one more, a 500-ton crane?
12 A. Yes. Most recent crane is another Liebherr 500 metric
13 ton crane. Again, it's a long boom machine designed to work
14 in the wind market on the east side of the state, somewhat
15 down in the Ludington area. Around the Ludington area,
16 there's some wind market up there, too.
17 Q. So it was purchased for that particular market?
18 A. Primarily for the wind market, yes.
19 Q. Now, obviously, well, let me ask you about the small
20 crane market. Can you describe what you have observed in
21 the past several years with respect to the small crane
22 market?
23 A. The small crane market is being taken over by the non-
24 union sector in West Michigan. Non-union has been a very
25 big factor over in this area for a long time. We manage to

1 stay, you know, to keep a market here for a long time, but
2 it's we've been struggling with it. The hours have been
3 down and dropping the last 10 years on our smaller cranes.
4 As they age out, I'm rolling them out of the fleet. They
5 either age or hour out, either 10 years or 10,000 hours, I
6 generally look at moving them. Sometimes, economy will
7 factor into that. If it's a little slow, I may hold off for
8 a year or two and not move one or two. Or if the market is
9 kind of hot, I might sell them at 8 years. It depends on
10 what the market is. Right now, the market is terrible for
11 used cranes so we're not having much luck selling anything.
12 Q. Are there any operational targets or standards that you
13 look at for smaller cranes, say 40-, 60-ton cranes?
14 A. It ties into the 10 years, 10,000 hour thing. We're
15 trying to find at least 1,000 hours a year out of a machine
16 to maintain its -- maintain a reason for keeping it in the
17 fleet. We'd love to have 1,500 hours out of every one, but
18 we don't generally get that. If we can keep 1,000 hours out
19 of a machine, we'll keep it running.
20 Q. When you say 1,000 out of machine --
21 A. A year.
22 Q. What does that mean?
23 A. Well, 1,000 working hours, billable hours or working
24 hours, engine meter hours. That's how we -- we actually
25 read the numbers off the engine meter.

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1 JUDGE SANDRON: Oh, I see. And that holds true for the
2 10,000 hours you mentioned also?
3 THE WITNESS: Yeah. Now, there are people out there
4 that keep them to 20,000 hours. If you want to get into
5 doing full rebuilds and things like that, yes, the machines
6 will last longer. I don't want to do that. I don't want to
7 get into the heavy rebuild market.
8 Q. BY MR. EASTLAND: Those hours, is that something tracked
9 by the Company on a year to year basis?
10 A. Tracked weekly, actually daily. It's logged into the
11 operator's log every day. And it's a maintenance number,
12 too. We service them between 250 and 300 hours. It gets
13 logged into the maintenance department. The billing
14 department gets to work with it. Everybody uses the same
15 number.
16 Q. Have you examined what part of your business is small
17 crane business?
18 A. Yes. It's a very small percentage of our overall sales.
19 Q. What do you mean by overall sales?
20 A. Well, gross revenue and I think Brent explained earlier
21 we're doing maybe $1 million a year in small crane sales and
22 $7 million a year in large crane sales.
23 JUDGE SANDRON: I think we have the documents --
24 MR. EASTLAND: Yep.
25 JUDGE SANDRON: -- that show that.

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1 THE WITNESS: I didn't want to go fishing while I was
2 talking.
3 JUDGE SANDRON: That's all right, you don't need to. We
4 have them in the record.
5 THE WITNESS: He's the numbers guy.
6 Q. BY MR. EASTLAND: Now, let's talk about your decision to
7 put small cranes up for sale in 2016. When did you first
8 consider putting cranes up for sale in 2016?
9 A. Year-end, 4/30, for us we always -- that's kind of a
10 point when we sit down and analyze or at least I sit down
11 and analyze where are we going, what are we doing this year,
12 what are we going to order for the next year. You've got to
13 order about a year ahead so you try to kind of plan and we
14 picked the year-end. That generally tells if we had a good
15 year or bad year; that's kind of when we know. So about
16 4/30, we started looking at it. I think I talked --
17 Q. I'm sorry, you said 4/30?
18 A. April 30th of 2016.
19 Q. Okay, sorry. Go ahead.
20 A. I think I called the broker -- I actually called three
21 brokers in between April and May sometime, and we were
22 discussing what the market looked like. I ordered an
23 appraisal of all of the equipment. That was done. About
24 May 15th, I think, of 2016, the appraisal came in. That's
25 something we do annually, too. That is another factor that

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1 I look at when I sell equipment is I want to see where it is
2 currently appraised at in the market. So the appraisal came
3 in probably mid-May. We order it at the end of the year,
4 4/30. The guy comes over, the first week of May. It might
5 even slide towards the end of May before we get the written
6 report back. He inspects every piece of equipment we own,
7 puts a value on it.
8 Q. You mentioned that you called three brokers?
9 A. Three equipment sales brokers that I've used over the
10 years. I actually called a couple of my dealers.
11 Sometimes, the dealers will be able to sell equipment for
12 you, so I called our Manitowoc dealer in Chicago.
13 Q. That's one of the three?
14 A. One of the guys that I called, Mike Kearney from -- I
15 forget, I can't say names, K-e-a-r-n-e-y, Mike Kearney with
16 Walter Payton Power Equipment Company.
17 Q. Okay. And when did you call him?
18 A. The initial conversations would have been mid-May.
19 Q. Who else? What other brokers or dealers did you call?
20 A. Gene from Quality Cranes. He is actually East Coast
21 based crane sales. Sometimes, I find some luck in the
22 selling of that market. He covers a lot of the United
23 States, but he's primarily East Coast, and he does a little
24 bit of export work off that area.
25 Q. Anyone else? I'm sorry, before we ask -- before you go

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1 to the next one, when was that?
2 A. I called them all the same day, I think. They were all
3 contacted at the same time. We started talking about what
4 are you guys looking for, what's the market, where are we
5 going, what do I have for sale that might meet your needs.
6 I talked to them all on the same day. And the third one was
7 down in Houston. He services the South American market.
8 I've sold several cranes through that broker, too.
9 JUDGE SANDRON: And what name --
10 THE WITNESS: The name just eluded me for some reason.
11 JUDGE SANDRON: All right, if you recall it.
12 THE WITNESS: I'm sorry, I can't remember the name right
13 now. There is a third broker, somebody I talked to down in
14 Houston.
15 JUDGE SANDRON: So the one in Houston is a broker and
16 Kearney is also a broker?
17 THE WITNESS: He's a new equipment sales person, but
18 they sell used equipment also. The other two are strictly
19 used equipment.
20 JUDGE SANDRON: So would you call the dealer as those
21 two?
22 THE WITNESS: Yes.
23 JUDGE SANDRON: And then the third one was the actual
24 broker?
25 THE WITNESS: Yeah, well, used equipment sales broker.

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1 I call them brokers.
2 JUDGE SANDRON: So they're all brokers basically?
3 THE WITNESS: Basically, yeah. They're crane peddlers,
4 iron peddlers, depending on what you call them. There's a
5 lot of names for them.
6 JUDGE SANDRON: But they all do the same thing?
7 THE WITNESS: Yeah. I just try to reach out to
8 different markets. Most of our equipment doesn't sell well
9 in the far West Coast. California has different emissions
10 rules than we do so most of our machines won't sell in that
11 market out there, so I don't even try to market them out
12 that way.
13 Q. BY MR. EASTLAND: Mr. Erickson, did you communicate via
14 email with any of these dealers or brokers?
15 A. Yes.
16 Q. Do you remember which broker you --
17 A. I'm sure there is an email string in there from Gene,
18 from Quality Crane. There might be one from Mike Kearney,
19 too.
20 Q. What was the purpose -- do you remember when you
21 emailed? His name was Gene Landres.
22 A. Mid-May probably.
23 JUDGE SANDRON: All right, if you have the emails, I
24 think you can just show them to opposing counsel. If there
25 is no dispute over their authenticity then you can just

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1 offer them.
2 MR. EASTLAND: Very good.
3 JUDGE SANDRON: Because he's already testified. And
4 again I think we have the issues of prices, but as far as
5 the -- so this is Respondent's Exhibit 21 for
6 identification.
7 (Respondent's Exhibit 21 marked for identification.)
8 Q. BY MR. EASTLAND: Is this the email exchange you
9 testified about, Mr. Erickson?
10 A. Yes.
11 MR. EASTLAND: I would move for admission of
12 Respondent's 21.
13 MS. BACHELDER: I have a problem with the redactions.
14 JUDGE SANDRON: General Counsel?
15 MS. CAROL: Yeah. I think if we're going to put -- if
16 the Respondent is going to put it into evidence, we've got
17 to have the full document in order for us to cross-examine
18 it.
19 THE WITNESS: And, Keith, while I'm usually price
20 sensitive, the prices are on the market. So if they want
21 them with the prices on --
22 MR. EASTLAND: Well, I believe the General Counsel
23 already has this in the production.
24 MS. CAROL: I do. And I think --
25 MR. EASTLAND: I'm surprised by the objection, I guess.

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1 MS. CAROL: Well, no. Just if we're going to put one
2 into evidence --
3 MR. EASTLAND: Yeah, let's put the right one in, yes.
4 MS. CAROL: -- I want to put the right one in.
5 MR. EASTLAND: That's fine, yes, agreed.
6 JUDGE SANDRON: So do you want to --
7 MR. EASTLAND: We can renumber this, it's fine.
8 MS. BACHELDER: If we can get the unredacted one, we'll
9 have to get copies.
10 JUDGE SANDRON: And then we can substitute it.
11 MR. EASTLAND: Okay. We'll do 21(a) again like we did
12 for Respondent 8?
13 JUDGE SANDRON: Although, if you have the unredacted
14 one, you might just make it 21. There wouldn't be any
15 reason to have the redacted one in also, would there?
16 MR. EASTLAND: We can do that.
17 JUDGE SANDRON: It would just be an extra document.
18 MR. EASTLAND: Yeah, we can make -- do you have a copy
19 of that, Colleen? We'll make a copy.
20 MS. CAROL: Probably. I've got this whole stack so I'd
21 have to pull it out.
22 JUDGE SANDRON: Well, assuming that we have the
23 unredacted version, are there any objections to Respondent's
24 Exhibit 21?
25 MS. CAROL: No, as long as we get the right one in

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1 there, I have no objection.
2 JUDGE SANDRON: Ms. Bachelder?
3 MS. BACHELDER: No objection.
4 JUDGE SANDRON: Respondent Exhibit 21 will be received
5 subject to the unredacted version, the complete version
6 being substituted for the current version.
7 (Respondent's Exhibit 21 received in evidence.)
8 Q. BY MR. EASTLAND: Mr. Erickson, ultimately, did you make
9 a decision to place some cranes up for sale?
10 A. I did.
11 Q. What was placed or put up for sale?
12 A. Pardon me?
13 Q. What?
14 A. Which cranes?
15 Q. Yeah.
16 A. Initially, we listed the 240 ton and 260 ton. And I
17 also listed the 300-ton Manitowoc crawler, which is
18 discussed here, our Unit Number 293 was discussed in these
19 email chains. He thought he had a buyer for it so I put
20 that one up for sale, too. That machine is a -- we've gone
21 over the 10,000 hours with that machine because it was on a
22 job. It's up around 12 now, so we're kind of in between
23 sales points. At this point, I need to hold it for another
24 2,000 hours to really sell it, but I let him put it up for
25 sale. But I told him I was going to have 6 to 10 machines

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1 for sale this year, details in a couple of weeks, back on
2 May 14th.
3 Q. Do you have Respondent's 6? It would be easier to do it
4 that way. It's the Erickson's current crane list.
5 A. 6, yeah -- or, no, that's GC-6. Yes, I've got it right
6 here.
7 Q. Maybe you can identify on here the unit numbers of the
8 cranes that were put up for sale?
9 A. 293, 285, 287, 290, 291 were initially put up. And then
10 I added 288 and 289 some point in time after that. I marked
11 on these exhibits. I probably shouldn't be doing that,
12 should I? I'm sorry.
13 Q. And then the current list of what's for sale, is that in
14 Respondent's 14? I just want to make sure that's accurate.
15 A. Yes. It doesn't have the Unit 293 on there, but it's
16 accurate to the other six machines.
17 Q. So Unit 293 should be added to that?
18 A. It's still for sale. It didn't sell to the particular
19 party that he thought, but we haven't taken it off the
20 market yet.
21 JUDGE SANDRON: So you thought it was sold, but then it
22 didn't sell?
23 THE WITNESS: Correct. He had a particular buyer that
24 was supposed to take that machine and then I think financing
25 fell through. So it's he still has it listed for sale.

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1 It's not on this list.
2 JUDGE SANDRON: So that should be considered added to
3 that list?
4 THE WITNESS: It could be added to this list. I
5 probably never told Brent so it probably never got put on
6 the list.
7 MR. EASTLAND: Okay. We just want to make sure we have
8 the accurate list.
9 JUDGE SANDRON: That's a good idea.
10 Q. BY MR. EASTLAND: Why did you choose to put these cranes
11 up for sale?
12 A. Well, again, the group of six that's on there coincide
13 with the small cranes that are not working very well. They
14 don't generate enough hours to warrant keeping them. They
15 are all in the 10 year plus classification. And they all --
16 they're not all in the 10,000 hour. They're approaching,
17 though. They're in the 7,500 to 8,500, maybe 9,000 hour
18 range, but they are close to the 10,000 hour mark. They're
19 over the 10 year mark and they're not working much.
20 Q. Did you look at the hours per machine, per hour before
21 you made the decision to sell?
22 A. Yes. I don't look at the same data. I don't generate
23 the fancy sheets, but I have a way of looking at things. I
24 know what's working and what's not working.
25 Q. If you can take a look at exhibit Respondent's 15?

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1 A. I'm sorry?
2 Q. Respondent's 15.
3 A. Yeah, that was after the fact; but, yes, I've seen this.
4 Q. Is that data in terms of the hours consistent with what
5 you had observed on those cranes?
6 A. Yes, it is.
7 JUDGE SANDRON: Well, I think this is the most reliable
8 evidence. Observation cannot be as complete as the actual
9 records that were compiled.
10 Q. BY MR. EASTLAND: But you had observed the declining
11 hours on the --
12 MS. BACHELDER: Objection.
13 THE WITNESS: I know which cranes are working and which
14 cranes aren't.
15 JUDGE SANDRON: All right, he is your witness.
16 MR. EASTLAND: Okay. I'm just trying to move it along,
17 but it's fine.
18 JUDGE SANDRON: Respondent's Exhibit 15 was admitted
19 without objection, so it's in the record.
20 Q. BY MR. EASTLAND: Have you discussed your decision --
21 well, let me ask this, when did you actually -- you
22 communicated in May of 2016 to Gene at Quality Cranes?
23 A. Yes.
24 Q. When did you make the decision to list the cranes or
25 when were they listed?

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1 A. It took him a little time to come over. He comes over
2 and takes pictures. We've got to clean them up. They're
3 not exactly pretty things when they come off construction
4 sites, so we cleaned them up. And he came over --
5 JUDGE SANDRON: All right, he shouldn't be really
6 reading from the document.
7 MR. EASTLAND: No, no.
8 JUDGE SANDRON: So if you remember?
9 THE WITNESS: Okay. I'm sorry.
10 JUDGE SANDRON: That's okay. It's just because we have
11 the document and whatever you recall in addition to the
12 document.
13 THE WITNESS: I believe it would have been in July
14 before we finally got the photographs done because they send
15 over a professional photographer to take pictures. And I
16 believe they actually went on the web in July.
17 JUDGE SANDRON: So that's why it took some time to
18 complete the transaction?
19 THE WITNESS: Yeah. We clean them up, and we try to
20 knock some of the rust off them, and shine them up a little
21 bit. And then they send them over to take pictures of them
22 and get all the information. Then they put them up for
23 sale.
24 Q. BY MR. EASTLAND: So that's when they were listed?
25 A. I think that's the official date.

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1 Q. Right. But when did you make the decision?
2 A. Oh, back in May. When I talked to Gene and the guys in
3 mid-May, that decision was made. They were available for
4 them to sell at that point in time, but I don't think they
5 made any kind of a listing until quite a while after that.
6 JUDGE SANDRON: About July, as you recall.
7 THE WITNESS: I think July, yeah. That's the time the
8 photographer came by.
9 Q. BY MR. EASTLAND: All right. Have you discussed the
10 decision to sell these smaller cranes with anyone else in
11 the business?
12 A. Brent and I have -- Brent Erickson and I have had
13 several discussions about selling cranes, quite frankly. If
14 the accounting department had their position, we would sell
15 a lot more. He's less tolerant than I am of slow times.
16 Q. When did you have those discussions with Mr. Brent
17 Erickson?
18 A. Ever since he came on board. That was a lot of the
19 reason why I asked him to come on board. We tried to work
20 together before. It didn't always work out. We've made a
21 couple, three attempts at it and this time seems to be
22 sticking. When he came on board in March or April of 2016
23 that was one of the immediate goals was let's assess the
24 situation where are we at on equipment. Quite frankly, the
25 stuff I'm buying now is much more expensive, puts us in a

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1 very much different financial position, and more than my
2 bankers wanted to wing with me. They wanted data so he came
3 in and provided data for the bankers to show that we could
4 generate enough money to pay for these things.
5 Q. But you discussed selling these cranes, these smaller
6 cranes with Brent, when was the first time?
7 A. In March or April. Before year -- we were at year-end,
8 definitely a bit topic of discussion, 4/30 of 2016.
9 Q. Did Mr. Brent Erickson provide any input on your
10 decision to sell the cranes?
11 A. He provided input and some -- and backup data. The
12 decision to sell had already been made. I was already
13 talking to brokers. But, yeah, he makes pretty charts and I
14 don't.
15 Q. Did the decision to sell these small cranes have
16 anything to do with the Operating Engineers Union?
17 A. No, none whatsoever.
18 Q. Why do you say that?
19 A. We sell cranes all the time. The decision to sell
20 cranes is independent of any other activity. It's based on
21 revenue and based on income. If I can't make any money at
22 it, there's no sense in owning it.
23 Q. Mr. Erickson, I want to shift gears a little bit to talk
24 to you about layoffs at Erickson's.
25 A. Yes.

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1 Q. I take it you've had to lay off employees.
2 A. Several hundred over the years. It's the nature of the
3 business. We hire and we lay off when the jobs are done.
4 Q. How frequently would you say you have to lay --
5 A. Summertime it can be almost weekly or sometimes more
6 than once a week we have a layoff payroll. Depending on
7 when jobs wrap up, there is almost always a layoff payroll
8 midweek in the summertime when many projects are going on.
9 Wintertime, it slows down. Once we get down to our -- a
10 basic number of people then it kind of slows down. It's not
11 going to be weekly. It just depends on the activity going
12 on.
13 JUDGE SANDRON: The winter season is about from when to
14 when?
15 THE WITNESS: Winter for us, you can pretty much count
16 on things slowing down around November 15th. Deer season is
17 about when things slow down in Michigan. And it probably
18 doesn't pick up till mid-April. Right now it starts picking
19 up pretty well.
20 JUDGE SANDRON: Thank you.
21 Q. BY MR. EASTLAND: The layoffs that you've described, do
22 they apply across the different unionized portions of your
23 business?
24 A. Yes.
25 Q. Can you explain how the layoff process works?

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1 A. It's a little different with each trade, but generally
2 when a project finishes up, the crew that's working on that
3 project gets laid off. If it's a crew of iron workers, a
4 lot of times the foreman will be a regular guy and then the
5 crew itself will get laid off at the end of the job. The
6 foreman will come back into the shop pool and get assigned
7 another project.
8 Teamsters, we don't see many layoffs. I rarely get to a
9 layoff in the Teamsters. We just don't have that many of
10 them and it's just the maintenance side of it gets real busy
11 in the winter when the rest of it is not working so the
12 mechanics are working more.
13 Operators, it's various. Again, when the job is
14 finished, you're going to lay them off. There is a lot more
15 of that nowadays than there used to be. The hiring hall is
16 a better option for me now sometimes than having my own men
17 around. Our core area has expanded from West Michigan to I
18 do a lot of work in the Detroit area and in the Bad Axe
19 thumb area so my core area has expanded. It's easier for me
20 to call the Local 324 hall and get men from the particular
21 area that we're working in and then lay them off when we're
22 done with the project.
23 A lot of times the crane operator will be, you know,
24 stay with the pool, but the rest of the guys, his oiler will
25 come from the local.

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1 far right that says average pay?
2 A. That appears to be the hourly rate the person was paid
3 that day; 3 times 23 would be 69, yeah. If you multiply the
4 hours worked times the average pay, you get the amount paid.
5 JUDGE SANDRON: These are for selected dates on the two
6 documents.
7 MR. EASTLAND: Correct.
8 JUDGE SANDRON: These are all crane operators?
9 THE WITNESS: It looks like all operators, yes.
10 JUDGE SANDRON: Operators.
11 THE WITNESS: Yeah.
12 MR. EASTLAND: I'd move for admission.
13 JUDGE SANDRON: Any voir dire?
14 MS. CAROL: No objection.
15 MS. BACHELDER: No objection. I understand you are not
16 offering it for the writing that is contained at the top of
17 each exhibit?
18 MR. EASTLAND: Correct. The handwritten notes at the
19 top of each exhibit, we are not offering it for that.
20 MS. BACHELDER: No objection.
21 JUDGE SANDRON: Respondent's 22 and 23 are received.
22 (Respondent's Exhibits 22 and 23 received in evidence.)
23 MR. EASTLAND: I have a short area next, Your Honor, or
24 would you like to -- I was going to shift to a different
25 area of testimony.

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1 JUDGE SANDRON: If you can finish it in 15 minutes. If
2 you think it's going to go over, then we probably --
3 MR. EASTLAND: I think I can. I'd like to start it just
4 so we can move this.
5 JUDGE SANDRON: All right. Well, if not, then we'll
6 just have to cut it off, and you'll have to finish in the
7 morning.
8 Q. BY MR. EASTLAND: Mr. Erickson, there's been some
9 testimony during the hearing about payroll concerns that
10 arise from employees from time to time. Are you familiar
11 with the types of payroll concerns that have been mentioned?
12 A. Yes.
13 Q. Can you explain the types of payroll concerns that
14 employees have had at Erickson's, Inc.?
15 A. We operate with multiple collective bargaining
16 agreements. Within each agreement are multiple rate
17 sections, different pay scales. On any given week we have
18 errors in time cards, number of hours reported, either how
19 they turn them in or how they get interpreted by the
20 accounting department as to what agreement they belong to,
21 what area they were working in. Some of the guys do a much
22 better job than others. Some of the guys write right on
23 their card I was working here, I was using this particular
24 crane in this area with this much boom. Other guys just
25 write down I worked eight hours and did this. So there

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1 tends to be a number of errors that need to be corrected
2 every week on payroll.
3 Q. How many different contracts might apply to the wage
4 rate?
5 A. In the Operating Engineer group?
6 Q. Sure, the Operating Engineers.
7 A. I believe there are nine collective bargaining
8 agreements that we work under.
9 Q. What about the other units?
10 A. Teamsters only has one agreement. Iron Workers has
11 five, I believe.
12 Q. Can you explain the process for -- historically the
13 process for resolving these types of payroll concerns?
14 A. Historically, it has been if you have a question on your
15 check, you go to Nancy. She'll try to determine if it's a
16 clerical error internally or if it's a time card issue that
17 we've had guys write the wrong number down. They'll write
18 an 8 if they worked 7 or write an 8 if they worked 10.
19 They're just some handwritten time cards so there's errors
20 there. If she can figure that out and come to a conclusion
21 with the guy then she'll fix those. If it requires
22 determination of does it belong to AGC contract, or does it
23 belong to the local contract, or does it belong to another
24 contract that comes over to me for -- either me or the
25 particular salesman that sold the job can also be utilized

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1 to identify what market that's going into. So she has
2 resources. If she can't figure it out, she'll come to me or
3 one of the sales guys and say, look, how did you bid this
4 job and which way, which way did it go, or what contract did
5 you use because there's different rates for each particular
6 contract.
7 Q. So if there is no continuing dispute after the employee
8 speaks with Nancy Tejchma --
9 A. Right.
10 Q. -- what happens?
11 A. If there's no continuing questions, it's fixed right
12 then. She's fix it on their next paycheck. If she can't
13 figure it out then it most generally comes to me. Ninety-
14 nine percent of them come to me after that. More recently,
15 Mr. Popps has implemented a system where if they don't get
16 it done with Nancy they go to him and then he comes back to
17 either Nancy or me to get some clarification. It's a new
18 method but that's the way he prefers to do it.
19 Q. Now, the time cards when they -- who do they get
20 submitted to, do you know?
21 A. Pardon me?
22 Q. Who do the time cards get submitted to, the employee
23 time cards?
24 A. Employees turn them in just in a basket and the payroll
25 clerk picks them up out of the basket in the lunch room in

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1 Muskegon. The Grand Rapids ones get shipped to Muskegon on
2 a daily basis in an envelope.
3 Q. The payroll clerk, who is that?
4 A. Nancy Tejchma. I'm sorry. Nancy Tejchma collects the
5 time cards.
6 Q. Who is responsible for inputting the time cards into the
7 system to generate the payroll checks?
8 A. Mostly Nancy; sometimes Brent, but mostly Nancy.
9 Q. Are you involved in that process at all?
10 A. I am too cumbersome for that process.
11 Q. Now, I take it you're aware employees have had pay
12 concerns or issues in the past.
13 A. Yes. In all of our years, there's always been pay
14 questions and disputes. We try to resolve them as quickly
15 as we can.
16 Q. Specifically with regard to the operating engineers,
17 which employees are you aware of that have had or have
18 brought to the Company's attention concerns with their pay?
19 A. I would think they all have over a period of time.
20 Everybody has had something that needed attention, some of
21 them more so than others. Some of the guys stay local.
22 They do the same. Like a 40-ton crane guy pretty much
23 doesn't go anywhere else. He stays local Grand Rapids. He
24 stays under the same contract most of the time. You're not
25 going to find many -- too many problems with those. The

1 bigger crane guys that run across the state, or into
2 Detroit, or into another market, they'll cross lines and
3 cross contracts, collective bargaining agreement sections,
4 and so there's more room for error on those, more rooms for
5 questions.
6 Q. I want to ask you about some specific names because I
7 want to make sure the record is clear.
8 JUDGE SANDRON: I think you're not going to be able to
9 get this done by the time that we -- if we start to get into
10 individual employees. How many do you have?
11 MR. EASTLAND: I mean I don't think it will take very
12 long. I just wanted to ask him -- I mean he said all, but I
13 want to make sure I understand and identify on the record
14 who all is from the witness.
15 MS. CAROL: Well, I think all is all.
16 JUDGE SANDRON: I think he said all of them at one point
17 or another.
18 MR. EASTLAND: If we can stipulate that all of the
19 operating engineers have brought those payroll concerns,
20 that's fine.
21 JUDGE SANDRON: I don't know if it would be a
22 stipulation. I assume his testimony cannot be rebutted.
23 MR. EASTLAND: Okay. And if with that understanding
24 that's fine, then now I guess would be a good time to break.
25 JUDGE SANDRON: All right. I think then we'll recess

1 until 9:30 a.m. tomorrow. Is there anything before we
2 adjourn for the evening from any counsel?
3 MS. CAROL: No, I don't think so. Not from me anyway.
4 JUDGE SANDRON: Well, have a good evening everyone.
5 (Whereupon, at 4:53 p.m., hearing in the above-entitled
6 matter was continued, to resume the next day, Friday,
7 April 28, 2017, at 9:30 a.m.)
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1 CERTIFICATION
2 This is to certify that the attached proceedings before
3 the National Labor Relations Board (NLRB), Region 7, in the
4 matter of ERICKSON TRUCKING SERVICE, INC., d/b/a ERICKSON'S,
5 INC., Case No. 07-CA-178824, at Grand Rapids, Michigan, on
6 April 27, 2017, was held according to the record, and that
7 this is the original, complete, and true and accurate
8 transcript that has been compared to the recording, at the
9 hearing, that the exhibits are complete and no exhibits
10 received in evidence or in the rejected exhibit files are
11 missing.
12
13
14
15
16
17
18
19 Jeremy Tieking
20 Official Reporter
21
22
23
24
25

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7

In the Matter of:

ERICKSON TRUCKING SERVICE, INC.,
d/b/a ERICKSON'S, INC.,

Respondent, | Case No. 07-CA-178824

and

LOCAL 324, INTERNATIONAL UNION
OF OPERATING ENGINEERS (OPEIU),
AFL-CIO,

Charging Party.

The continuation of the above-entitled matter came on for hearing pursuant to notice, before IRA SANDRON, Administrative Law Judge, at the National Labor Relations Board, Gerald R. Ford Federal Building, 110 Michigan Street, S.W., Suite 299, Grand Rapids, Michigan, on Friday, April 28, 2017, at 9:30 a.m.

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1 EXHIBITS

EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
GENERAL COUNSEL'S		
GC-14	596	598
GC-15	603	611 - Withdrawn
GC-16 and GC-17	611	614
GC-18	618	619
GC-19	620	621
GC-20	621	622
GC-21	622	622
GC-22	642	642
RESPONDENT'S		
R-8(b)	591	591
R-24	512	513
R-25	545	553
R-26	563	566
CHARGING PARTY'S		
CP-1	646	647
REJECTED		
Rejected CP-1	653	653

1 PROCEEDINGS
2 (Time Noted: 9:30 a.m.)
3 JUDGE SANDRON: On the record.
4 Continuation of cross-examination. Mr. Erickson, you're
5 still under oath.
6 MR. ERICKSON: Yes.
7 (Whereupon,
8 STEVEN ERICKSON
9 was recalled as a witness by and on behalf of the Respondent
10 and, having been previously duly sworn, was examined and
11 testified as follows:)
12 MR. EASTLAND: Direct, correct? Direct examination?
13 JUDGE SANDRON: Oh, I stand corrected.
14 DIRECT EXAMINATION (cont.)
15 Q. BY MR. EASTLAND: Good morning, Mr. Erickson. Who is
16 Nancy Tejchma?
17 A. Nancy works in the accounting office. She handles
18 payroll, accounts payable for us.
19 Q. Does she have a title?
20 A. Payroll clerk.
21 Q. Would you please describe what her general duties are
22 for the Judge?
23 A. Payroll side, she assembles the time cards as they come
24 in, codes them, enters them into the computer. She will
25 issue paychecks, send them out to the guys. Accounts

1 payable, she assembles the bills as they come in, puts them
2 together, enters them in the computer and pays them when
3 they are due, and sends the checks out.
4 Q. Does she have any role in establishing policy?
5 A. No.
6 Q. Does she have any role in issuing discipline?
7 A. No.
8 Q. Does she have any authority to alter benefits?
9 A. No.
10 Q. Can you explain -- there has been some testimony in the
11 hearing about her role and maybe some pay issues or
12 concerns. Can you explain what her authority is in that
13 regard?
14 A. If there is clerical errors, if the time cards are wrong
15 and they've figured it out, if there is an overlap of time
16 or underpay, she can fix those types of things. If there is
17 an issue regarding a collective bargaining agreement, which
18 one applies, that comes back to me for determination.
19 Q. Does Ms. Tejchma have any role in relationships, in
20 labor relations?
21 A. No.
22 Q. Mr. Erickson, you will likely recall that --
23 JUDGE SANDRON: Actually, before you get to that --
24 MR. EASTLAND: Sure.
25 JUDGE SANDRON: -- you said you have like four people

1 that do accounting.
2 THE WITNESS: Um-hum.
3 JUDGE SANDRON: Does she report to anybody in accounting
4 or are they all --
5 THE WITNESS: She technically works for Brent Erickson.
6 JUDGE SANDRON: I see.
7 THE WITNESS: He is controller. Her position is under
8 the controller position.
9 JUDGE SANDRON: I see, thank you. Please.
10 MR. EASTLAND: Okay.
11 Q. BY MR. EASTLAND: Mr. Erickson, I believe it was
12 yesterday or the day before, I'm not sure which day, but
13 Mr. Cody Velat testified. Do you know Mr. Velat?
14 A. Yes.
15 Q. There was some mention of maybe some pay concerns or
16 issues from Mr. Velat. Do you know about those?
17 A. Yes.
18 Q. Do you remember when those payroll issues or pay
19 concerns that Mr. Velat had, what time did those occur?
20 A. Those were for I believe late December 2015, I think.
21 Q. Can you describe the nature of those concerns?
22 A. I believe it was a pay issue as far as what rate was he
23 getting paid for a job.
24 Q. Were you involved in resolving or were those pay issues
25 resolved?

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1 A. Yes, they were.
2 Q. Were you involved in that process?
3 A. Yes, I was.
4 Q. Can you explain to the Judge your role there and what
5 happened?
6 A. Had to determine which contract applied and which pay
7 scale applied. I think I worked with Brandon to figure that
8 out, to figure out how we were applying either correctly or
9 incorrectly the contracts and we resolved the issue. His
10 check was adjusted and it was taken care of.
11 Q. You said something about Brandon?
12 A. Mr. Brandon Popps.
13 Q. I just wanted to make sure the record is clear. Did you
14 have communications with Mr. Cody Velat about this?
15 A. Yes.
16 Q. What communications did you have?
17 A. The initial conversation with Cody I believe had --
18 Brandon originally approached me to discuss Cody's pay
19 issues. I told Brandon that I didn't think it was
20 appropriate for me to discuss pay issues without approval
21 from the employee. I didn't have written approval, so
22 that's what I told him.
23 JUDGE SANDRON: It might be better if you get a
24 foundation for conversations that I think are important. If
25 not, you don't have --

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1 Q. BY MR. EASTLAND: Sure. When was that conversation?
2 A. It would have been late December. As soon as Cody
3 brought it up to Brandon then he would have notified me.
4 Q. Was that a telephone discussion or in person?
5 A. Telephone discussion.
6 Q. Do you remember the specific date?
7 A. No.
8 Q. Did you call Mr. Popps or did he call you?
9 A. He called me.
10 JUDGE SANDRON: Do you remember the time that was?
11 THE WITNESS: I would think it was morning. Typically
12 calls from Brandon would come in the morning.
13 Q. BY MR. EASTLAND: How long was the conversation, do you
14 know?
15 A. It was short, a minute or so.
16 Q. Was anything else discussed in that conversation other
17 than what you've explained?
18 A. No.
19 Q. Did you send a text message to Mr. Velat?
20 A. I did.
21 MR. EASTLAND: Do we have the exhibits for the witness?
22 Q. BY MR. EASTLAND: Please look at what's been marked or
23 what is General Counsel's Exhibit 8.
24 A. Yes.
25 Q. Is this a text message exchange between you and

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1 Mr. Velat?
2 A. Yes.
3 Q. Halfway through, it says Friday, 12/18/2005. Then there
4 is a message below that. Do you see that?
5 A. Yes.
6 Q. It says, "Cody, if you have a problem with wages that
7 Nancy has not resolved, you need to contact me. I refuse to
8 discuss wages with a business agent."
9 A. Correct.
10 Q. Why did you write the last sentence there or the last
11 text, part of the text?
12 MS. CAROL: Objection, Your Honor.
13 JUDGE SANDRON: On what basis?
14 MS. CAROL: The document speaks for itself.
15 JUDGE SANDRON: Is your objection to the question of
16 why?
17 MS. CAROL: Yes.
18 JUDGE SANDRON: Ms. Bachelder, do you have a position?
19 MS. BACHELDER: No.
20 JUDGE SANDRON: I'll allow it.
21 Q. BY MR. EASTLAND: Thank you. Why did you write the --
22 A. At that time, I was under the impression that we were
23 not allowed to discuss anything to do with an employee's
24 information, payroll, social security numbers, any of that.
25 I thought all that was covered under privacy rules. We had

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1 in-depth conversations about that. There was actually a
2 grievance filed. And I have since learned that I was wrong.
3 And we accepted that and we settled that issue. I had to do
4 some postings to let the guys know that I was wrong and that
5 the procedure hadn't changed.
6 JUDGE SANDRON: You're talking about the settlement, the
7 Board settlement earlier?
8 THE WITNESS: Yes.
9 Q. BY MR. EASTLAND: If you look at General Counsel Exhibit
10 9, a similar text message I believe exchange between you and
11 Mr. Jamey Foster.
12 A. Same day, same issues, same pay problem, same jobsite.
13 JUDGE SANDRON: And the same reason?
14 THE WITNESS: Same reasons.
15 Q. BY MR. EASTLAND: Okay, very good. Did you ultimately
16 communicate with anyone to resolve the issues that Mr. Velat
17 and Mr. Foster had brought to your attention?
18 A. Yes. We made the payroll adjustments, and I notified
19 Brandon that they had been made, and that we were -- the
20 matter was settled.
21 Q. Do you remember how you communicated with Mr. Popps?
22 A. I think it was a text or email, maybe an email exchange.
23 JUDGE SANDRON: Was that after the charges were filed or
24 the settlement, or was that after the settlement?
25 THE WITNESS: I think it would be before the settlement,

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1 just before the settlement. I had a chance to talk to
2 counsel and figured out that I was -- payroll things could
3 be dealt with that way. So then I'd go ahead and fix them,
4 and let them know that I agreed with their assessment of how
5 I was supposed to do things.
6 JUDGE SANDRON: Thank you.
7 Q. BY MR. EASTLAND: Were you notified that you had fully
8 complied with all your obligations with regard to that
9 resolution?
10 A. Yes.
11 MR. EASTLAND: I mark Respondent's 24.
12 JUDGE SANDRON: Put 1 of 1 just on the official copy so
13 we know that there was only one page. It's better not to
14 assume. We'll make sure all the pagination requirements are
15 met before we close the record.
16 (Respondent's Exhibit 24 marked for identification.)
17 MR. EASTLAND: I think to speed things along I don't
18 think there is going to be any dispute. This is the
19 compliance closure letter. If we can move to admit it and
20 then I'll ask the witness questions about it.
21 JUDGE SANDRON: Any objection?
22 MS. CAROL: No objection.
23 MS. BACHELDER: No objection.
24 MR. EASTLAND: Thank you.
25 JUDGE SANDRON: Respondent's Exhibit 24 is received.

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1 (Respondent's Exhibit 24 received in evidence.)
2 Q. BY MR. EASTLAND: Mr. Erickson, I'd like to move on to
3 now talk about some of the layoffs in question in these
4 proceedings. First, talk about Keith Stephenson. You know
5 Mr. Stephenson?
6 A. Yes.
7 Q. Who is Mr. Stephenson?
8 A. I'm sorry, I couldn't hear.
9 Q. Who is he?
10 A. Keith Stephenson was an employee, had been a teamster
11 for us for roughly eight years and an operator for about one
12 year.
13 Q. When was he most recently laid off by Erickson's, Inc.?
14 A. It would have been in May of 2016.
15 Q. Do you remember which date?
16 A. 5/14 maybe, 5 somewhere. It was the middle of May.
17 Q. Does May 16 sound correct?
18 A. Yeah, middle of May.
19 Q. That was a Monday, May 16, 2016. As I understand it
20 though, were there two layoffs during that week?
21 A. Two that day.
22 Q. For Mr. Stephenson.
23 A. Oh, yes. Keith was laid off originally and told to
24 report to the union hall. Actually, two days later we had
25 another job come in. We called the union hall for a man and

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1 Keith was sent back, so then he got laid off when that two-
2 day job finished. He got laid off again.
3 Q. Why was Mr. Stephenson laid off?
4 A. Keith was the least qualified operator we had in the
5 stable. He had no certifications. He had not run any
6 equipment of any kind or size. His role had been as a truck
7 driver and as an oiler, so he had very limited
8 qualifications. So he was the least qualified operator in
9 the stable, so I felt that it was appropriate to lay Keith
10 off first.
11 Q. Now, you mentioned two words in that testimony. I think
12 you said qualifications and certifications.
13 A. Correct.
14 Q. Is there a difference?
15 A. There is.
16 Q. Can you explain that, please?
17 A. Certifications are what they, these guys get from the
18 NCCO. That's basic training for crane operators. They go
19 to the classroom and do some study, and then they do some
20 hands-on training with the crane. There's several levels or
21 several different classifications of training, but they get
22 certification that says that they are certified to operate a
23 crane through the NCCO.
24 In our case, that just means that's a starting point.
25 We feel the law is interpreted much deeper than that, that

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1 we have to give them specific training on every piece of
2 equipment. So when we do that, we bring them into our
3 stable and start training them.
4 Q. The most recent piece, that's what you mean by
5 qualifications?
6 A. Yes.
7 Q. How do you determine qualifications as you've described
8 it?
9 A. We look at it a lot of it is based on how many hours
10 they've worked in a particular unit. If a guy's got -- he
11 starts out working as an assistant on something then he'll
12 get some seat time and then he'll actually get to run it
13 with another guy around him. He'll get some training in
14 that manner. We like to see several hundred hours of
15 training before they actually get left on their own. But
16 it's just a -- it's a process we go through. They've got to
17 get started and then they learn, and they get experience,
18 and so therefore we call them qualified on a particular
19 machine. Then if they want to move up, the same thing goes
20 up to the next machine.
21 Q. You said qualifications was a consideration for the
22 layoff. Was there an underlying rationale or reason for the
23 layoff?
24 A. As the least qualified operator, there was not a lot I
25 could do with Keith. I couldn't use him to run bigger

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1 cranes. There was just not a lot of places for me to use
2 him.
3 Q. Why were you looking at his qualifications for layoff in
4 the first place?
5 A. That's how we base layoffs, on qualifications.
6 Q. I guess what I'm asking is you decided to -- did you
7 decide to lay Mr. Stephenson off?
8 A. Yes.
9 Q. What prompted the decision?
10 A. Well, we didn't have enough work for the small crane, so
11 we were trying to determine what size the crew needed to be.
12 And at that point I had made a decision to start thinning
13 down the crew a little bit and Keith was the lowest or least
14 qualified.
15 Q. Why did you look at or rely on qualifications as you've
16 described it here today?
17 A. That's pretty much the only thing I go by. That's how I
18 determine what they can do.
19 Q. Why?
20 A. Why? That's the correct way to look at it. You're
21 going to lay somebody off you don't lay off a guy with many
22 more qualifications. You lay off the guy with the least
23 amount of qualifications.
24 Q. Are there business reasons for consideration those
25 factors?

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1 A. Well, certainly. We have to provide a safe product for
2 our customers. The more qualified the guy is, the more
3 safety conscious he is, and it's just puts out a better
4 product for us.
5 Q. Are there any specific safety rules or standards that
6 you have to be concerned with?
7 A. There are references to crane safety in the MIOSHA rules
8 that we have to follow, too, that indicate that we must give
9 specific training on each piece of equipment.
10 Q. When you said off Mr. Stephenson, which operators were
11 retained?
12 A. I believe he was Number 17 at that time, so there were
13 16 guys that were retained above him.
14 Q. Can you give us the names of those 16 folks or --
15 A. I can give you a bunch of them.
16 MR. EASTLAND: Perhaps we could stipulate to this list
17 so I don't have to --
18 JUDGE SANDRON: Would the record show? Would the
19 records that have been submitted be able to?
20 MS. CAROL: Maybe. We've got a list but I don't think
21 that it designates who is what. Maybe go through GC-13 and
22 see who we're talking about?
23 MR. EASTLAND: Right.
24 JUDGE SANDRON: Do you want to maybe go off the record
25 and do that? Maybe you can get a stipulation based on the

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1 document.
2 MS. CAROL: Oh, that's fine.
3 MR. EASTLAND: That's what I'm -- because I mean there's
4 going to be a lot of them.
5 JUDGE SANDRON: I think that would be easier than trying
6 to have him recall.
7 MS. CAROL: That's fine. I just don't know who they are
8 so I can't stipulate quite yet.
9 MR. EASTLAND: Yes, Your Honor. I would like to do
10 that.
11 JUDGE SANDRON: All right, let's go off the record.
12 (Off the record from 9:49 a.m. to 9:50 a.m.)
13 JUDGE SANDRON: Back on the record.
14 Mr. Eastland, I understand after consultation with
15 opposing counsels you wish to propose a stipulation?
16 MR. EASTLAND: Yes, I do, Your Honor. With respect to
17 the layoffs of employees at issue, there are a number of
18 Operating Engineers Union members who were retained by the
19 employer. And rather than have the witness testify each
20 time we speak about a layoff decision, I would propose that
21 we stipulate to the list of Operating Engineers Union
22 members who were retained, at the time of each of these
23 layoffs the list of who would be retained.
24 JUDGE SANDRON: Yes.
25 MR. EASTLAND: I would suggest that at the time that --

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1 I would offer to stipulate that when Mr. Matt Rowe and
2 Mr. Keith Stephenson were laid off in May of 2016 that the
3 following Operation Engineer Union members were retained:
4 Erin Baerman; Nick Willer; Carlos Ocampo; Jason Baerman;
5 Bruce Springer, B-r-u-c-e S-p-r-i-n-g-e-r; Phil Witchell;
6 Jeff Anderson, J-e-f-f A-n-d-e-r-s-o-n; Dave Klein, D-a-v-e
7 K-l-e-i-n; Brian Oetman, B-r-i-a-n O-e-t-m-a-n; Rob Chaney,
8 R-o-b C-h-a-n-e-y; Brad Oetman, B-r-a-d O-e-t-m-a-n; Jamey
9 Foster; Don Dueling, D-o-n D-e-u-l-i-n-g; Quentin Wheeler,
10 Q-u-e-n-t-i-n W-h-e-e-l-e-r; Dan Wubben, W-u-b-b-e-n, I'm
11 sorry, Dan is D-a-n; Scott McPherson, S-c-o-t-t M-c-P-h-e-
12 r-s-o-n; Jay Fox, J-a-y F-o-x; Tom Scheuneman, T-o-m
13 S-c-h-e-u-n-e-m-a-n; Marty Norman, M-a-r-t-y N-o-r-m-a-n.
14 I would further propose to stipulate that after the
15 layoffs of Erin Baerman, Nick Willer, and Jason Baerman, it
16 would be that same list without the additional layoff
17 individuals laid off and then the same thing for Mr. Ocampo.
18 MS. BACHELDER: So stipulated.
19 MS. CAROL: I agree.
20 JUDGE SANDRON: The stipulation is received.
21 MR. EASTLAND: Thank you.
22 Q. BY MR. EASTLAND: Mr. Erickson, we have stipulated to
23 the list of employees that were retained after
24 Mr. Stephenson was laid off. Why were the employees in
25 those groups retained?

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1 A. They had more qualifications and ran bigger cranes than
2 the -- or I guess were just more qualified than the one that
3 I let go.
4 Q. When you say qualified?
5 A. Again, qualified based on our internal training
6 procedures. Certifications, qualifications, and experience
7 are what we go by.
8 Q. How about are there a group of those names that are
9 forklift drivers?
10 A. There is. There's four guys that are pure fork truck
11 operators. They have no certifications whatsoever. They
12 stick to the rigging group and run fork trucks.
13 Q. For the record, can we have the four names of the folks?
14 A. Scott McPherson, Jay Fox, Tom Scheuneman, Marty Norman.
15 Q. Do you treat that group of forklift drivers differently
16 in regard to lay off decisions?
17 A. Yes. They're a separate group.
18 Q. How are they treated different?
19 A. With our organization, they're a separate group. They
20 are 324 members. They're still Operating Engineers, but
21 they are not crane operators. They don't work in that group
22 not as a general rule.
23 Q. Are all of the operating -- well, we've stipulated to it
24 so I don't have to ask you that question. Are you aware of
25 whether Mr. Stephenson engaged in any conduct or union

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1 related activity different from the group of operators who
2 were retained?
3 A. Not that I'm aware of.
4 Q. Was Mr. Stephenson's layoff related to the Union in any
5 way?
6 A. No.
7 Q. How did you communicate the layoff to Mr. Stephenson?
8 A. Called him into my office to a meeting. We explained to
9 him that --
10 Q. Okay, I think the Judge would like us to lay some
11 foundation for the conversation.
12 JUDGE SANDRON: Unless Mr. Stephenson's testimony is not
13 contested as far as --
14 MR. EASTLAND: No. We do contest it.
15 JUDGE SANDRON: Oh, all right, then you need to cover it
16 totally.
17 Q. BY MR. EASTLAND: So why don't you tell us.
18 A. Called Keith into my office --
19 JUDGE SANDRON: I think you need to set the date.
20 MR. EASTLAND: When.
21 JUDGE SANDRON: Your counsel will go one by one.
22 THE WITNESS: Okay. Approximately, what was the date?
23 Keith was May 14th/16th, I believe, 2016. I had made the
24 decision to --
25 Q. BY MR. EASTLAND: And where did this occur?

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1 A. This happened at our Muskegon office.
2 Q. What part of the Muskegon office, because I
3 understand --
4 A. My office.
5 Q. Do you remember what time of day?
6 A. Keith would have been 8 o'clock in the morning.
7 Q. Tell us about the conversation, how did it begin?
8 A. I just started the conversation with Keith, explained to
9 him that the business had slowed down in the small crane
10 segment, that we were no longer going to participate in the
11 small crane segment very much, and asked or told him that he
12 was going to be laid off because he was the least qualified
13 operator in the crane operator stable.
14 Q. Did Mr. Stephenson say anything in response?
15 A. He didn't have much to say, I don't think. We had a
16 little discussion about, you know, I had explained to Keith
17 earlier when he transferred over to the Operators that
18 several months, almost a year before that that things were
19 different in that group. That there was layoffs in the
20 Operators and he hadn't experienced that, so I kind of
21 warned him about that.
22 Q. I'm going to come -- I'll ask you about that
23 conversation separately. I think just for now if you can
24 tell us what -- so you stated to Mr. Stephenson what you
25 just explained.

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1 A. Yeah.
2 Q. And what did he say in response?
3 A. I don't remember what his -- there wasn't a lot of
4 conversation. It was short. He was a little bit surprised
5 and the conversation was pretty much over.
6 Q. Did he ask you what the real reason for the layoff was,
7 anything like that?
8 A. He may have. Yeah, I think he did ask me that question,
9 is this the real reason for the layoff. And I explained it
10 was. The work was getting slower and I didn't need that
11 many crane operators anymore.
12 Q. Did Mr. Stephenson ask you if it had anything to do with
13 the Union?
14 A. He may have asked if it had anything to do with him
15 transferring to the Operators and then that's how we got
16 into the conversation about I had mentioned to him that
17 operators experienced layoffs much more than the Teamsters
18 do a year ago.
19 JUDGE SANDRON: Did you say that in this meeting where
20 you laid him off?
21 THE WITNESS: Yes, that was in that -- that was in the
22 meeting when we discussed it.
23 Q. BY MR. EASTLAND: Did you mention or say anything to
24 Mr. Stephenson about "all this union stuff"?
25 A. No.

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1 Q. Now, you referenced another discussion that you had with
2 Mr. Stephenson.
3 A. In part of that conversation. I took him back to when
4 he signed up for the Operators. We had a previous
5 discussion about that. And while he was in the Teamsters
6 for eight years, there was very few layoffs in the Teamsters
7 because we don't keep a lot of those guys. I had warned him
8 that going into the Operators was a different game.
9 Q. Okay. Just so we get a little foundation here,
10 Mr. Stephenson began work as a --
11 A. That would have been about August, probably late July
12 2015, because I think he switched over.
13 Q. Let's slow down here. I want to make --
14 JUDGE SANDRON: I think we had those -- do we have that
15 in the record?
16 MR. EASTLAND: Yeah, we have the dates. I just want to
17 make sure that the record is clear about what he's
18 referencing.
19 Q. BY MR. EASTLAND: Mr. Stephenson was originally a
20 teamster employee; is that correct?
21 A. Correct.
22 Q. And there came a point in time where he transferred into
23 the Operating Engineers?
24 A. Yes, about August 1st of 2015, he transferred from the
25 Teamsters Union to the Operators Union.

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1 Q. Did you have a discussion with Mr. Stephenson prior to
2 him transferring into the Operating Engineers Union?
3 A. Yes.
4 JUDGE SANDRON: I think he's already testified about it
5 in terms of what he told him at the layoff, at the time of
6 the layoff.
7 MR. EASTLAND: Right. I want to ask him what they said
8 at the earlier conversation.
9 JUDGE SANDRON: You can go ahead and do it. I think
10 he's already basically covered it, but if you want to ask
11 him if there is anything more.
12 MR. EASTLAND: Yeah, I would like to cover that, Your
13 Honor.
14 JUDGE SANDRON: All right.
15 Q. BY MR. EASTLAND: When did that conversation with
16 Mr. Stephenson occur before the transfer?
17 A. It would have been late July. July -- fourth week of
18 July 2015, we were having discussions about his transfer.
19 Q. Where did that occur?
20 A. In my office.
21 Q. In the Muskegon facility?
22 A. In Muskegon, yeah, in Muskegon, in my office.
23 Q. Let me finish so we don't talk over each other. What
24 time of day was that?
25 A. Probably the end of the day again, 4 or 5 o'clock.

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1 That's typical when guys come in to talk to me.
2 Q. Did you start the meeting or the discussion?
3 A. No. Keith came in and asked, asked some questions.
4 Q. What did he ask?
5 A. He just asked if I would have any objection to him
6 transferring from the Teamsters to the Operators.
7 Q. How did you respond?
8 A. I told him I would have no objection, that that was
9 reasonably common, it had happened before, and if he wanted
10 to do that that was fine. That's when I warned him that
11 it's a different, it's a different type of work environment.
12 There are layoffs that happen in that group and he should be
13 aware of that.
14 Q. Why did you caution him about layoffs back in August of
15 or July of 2015?
16 A. I had already been looking at the crane segment trying
17 to figure out what we were going to do to accommodate the
18 lack of sales in the small crane segment. I hadn't made a
19 decision probably at that time, but I knew that it was
20 coming down the road that the small crane segment was going
21 to go away and that would impact him.
22 Q. Anything else you can remember about that conversation?
23 A. No. At the end of the meeting we just discussed if you
24 want to go ahead with it just let Brandon know and get you
25 signed up.

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1 Q. Were there any issues related to Mr. Stephenson's
2 health care during the transition?
3 A. The Teamsters have a very limited health care program.
4 After a week or two of non-payment, your health care stops.
5 So I believe we carried his Teamster health care for quite a
6 while until his Operators kicks in, which takes I think 500
7 hours in the Operators. So for several months we carried
8 both health cares for him.
9 Q. Were you obligated to do that?
10 MS. BACHELDER: Objection, relevance.
11 JUDGE SANDRON: Right. I don't think it's really
12 important. I mean it may have been --
13 MR. EASTLAND: Your Honor, I'm sorry.
14 JUDGE SANDRON: If you're trying to show he treated
15 Mr. Stephenson well at a certain point or beyond what he had
16 to that's fine, but it really doesn't bear on what happened
17 later as far as the claims of --
18 MR. EASTLAND: Your Honor, we believe the issue here
19 is -- one of the issues here is motivation for how
20 Mr. Stephenson was treated. If it's not relevant to the
21 intent and state of mind of Mr. Erickson as the decision
22 maker, if they want to stipulate that that issue, that his
23 state of mind is not a relevant issue that's fine and I
24 won't ask the question. Otherwise, I think I'm entitled to
25 ask it.

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1 JUDGE SANDRON: I think I need to know, maybe the
2 parties can refresh me, when did Mr. Stephenson have contact
3 with Mr. Popps about the issues, because I think that would
4 be --
5 MS. CAROL: I don't recall specifically what his
6 testimony was. I think he said it was often, happen often
7 when he became an operator so that would be within that year
8 after he transferred to be an operator.
9 MS. BACHELDER: Your Honor, I believe the testimony is
10 only offered to show that Mr. Erickson is a good guy in the
11 past and that's really not relevant. And then we might have
12 to litigate whether in fact what he says is true and what
13 the health care was with the Teamsters and what the
14 healthcare was for the Operators.
15 MR. EASTLAND: Your Honor, it goes to the state of mind
16 of the witness for how he treated this individual. The idea
17 that you can't ask that question, I understand -- it's a
18 simple question. It's a simple answer. I mean I think I'd
19 ask that you allow it because it's directly relevant.
20 MS. BACHELDER: I don't think it's relevant, but I also
21 don't object. I don't think it's relevant at all, but I
22 don't think it is material, either. That's why I'm
23 objecting to the question.
24 JUDGE SANDRON: All right, I'll allow it and we can
25 decide what weight if any to be given. Go ahead.

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1 MR. EASTLAND: Thank you, Your Honor.
2 Q. BY MR. EASTLAND: Were you required to continue that
3 health?
4 A. No.
5 JUDGE SANDRON: That would have been from about what
6 period of time that you carried him on both, if you recall?
7 THE WITNESS: It would have been end of -- or first of
8 August and I'm not sure when his insurance kicked in. I
9 want to say Brandon -- I think they worked out something
10 that it was less than 500 hours, but it was a period of
11 time. I'm not sure how long it was. It could have been
12 several weeks, could have been -- how long does it take to
13 get 500 hours? It could have been up to 10 to 12 weeks if
14 they made him do the full thing. It could have been less
15 than that. I don't know how long before they gave him
16 insurance.
17 JUDGE SANDRON: Did you ever get involved in any issues
18 he had about pay, Mr. Stephenson?
19 THE WITNESS: Yes.
20 JUDGE SANDRON: I'm not going to cover any details but
21 do you recall approximately when that started?
22 THE WITNESS: A pay issue?
23 JUDGE SANDRON: That it was brought to your attention
24 that he had a pay issue, approximately.
25 THE WITNESS: It would have been I'm guessing probably

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1 April or May of 2016. Keith had went to Pennsylvania --
2 JUDGE SANDRON: You don't need to. I just wanted the
3 date, at this point. That would be your best estimate?
4 THE WITNESS: Yeah, April or May of 2016, I'm thinking.
5 JUDGE SANDRON: Go ahead, counsel.
6 Q. BY MR. EASTLAND: You mentioned a wage concern issue
7 with Mr. Stephenson in Pennsylvania?
8 A. Yes.
9 Q. In May of 2016?
10 A. Yes.
11 Q. Can you tell us what your involvement in that was?
12 A. Keith had went to Pennsylvania to do an overhead crane
13 lift with a forklift and wasn't happy with his pay scale
14 that Nancy paid him so it came to me for determination to
15 see what it was supposed to be. It was a one-day job so we
16 hadn't bothered to go to Pennsylvania to get the rate scales
17 out there. But I did go ahead and get the rate sheets from
18 Pennsylvania and got them back, and we corrected his pay and
19 gave him the Pennsylvania pay scale. And that issue was
20 resolved.
21 JUDGE SANDRON: Just one thing. When you're dealing
22 with conversations that are more background or are not
23 particular significant, you don't have to cover all the
24 foundation. But if they are important then I think they
25 need to be covered.

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1 MR. EASTLAND: Okay.
2 Q. BY MR. EASTLAND: And that payroll issue was resolved
3 to --
4 A. It was resolved, yes.
5 Q. In the way that Mr. Stephenson had asked?
6 A. I believe so.
7 Q. Did that Pennsylvania payroll or pay concern have
8 anything to do with the layoff?
9 A. No.
10 Q. Mr. Erickson, there was another employee I believe laid
11 off in May 2016, another operating engineer?
12 A. Yes.
13 Q. Who was that?
14 A. Matt Rowe.
15 Q. Why was Matt Rowe laid off?
16 A. Again for lack of work. Matt had finished up a project
17 in Detroit. His job was done. We didn't have any more work
18 for him at that point in time. Matt had been an employee
19 off and on for some time, but he generally got laid off at
20 the end of his projects.
21 Q. Do you know where that project was?
22 A. North side of Detroit. He was setting walls on a
23 substation.
24 Q. How did you determine that Matt Rowe should be selected
25 versus somebody else?

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1 A. Matt had limited experience with us. He had not run any
2 cranes with us, mostly forklift and oiling positions so he
3 wasn't qualified to run any equipment to speak of, any
4 bigger cranes.
5 Q. Is that because he didn't run the larger cranes for
6 Erickson's?
7 A. Right. He had not had any experience with Erickson's
8 doing that. He had operated some cranes in the yard. He
9 had some training and some minor experience, but he had
10 never -- he did not have a lot of experience.
11 Q. How did he compare to the others in the group that were
12 retained in that regard?
13 A. He had less experience. He had less crane time. Seat
14 time we call that. He wasn't as qualified or as experienced
15 as the ones that I kept.
16 Q. When you make these assessments of qualifications based
17 on experience and other factors that you've testified about,
18 is there a general methodology that you use or a process
19 that you go through?
20 A. It's mostly observation from our standpoint, what have
21 we had them do in the past, was it successful, did we have
22 any problems with it, did we move them on. We have some
23 reports back from our field superintendents and our foremen,
24 and maybe the crane operators that they are working for that
25 give us an indication of what they can or can't do. If a

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1 guy is requested, that shows some initiative. If he is not
2 requested, that shows another line of thought.
3 (Pause.)
4 MR. EASTLAND: I'm sorry, Your Honor.
5 Q. BY MR. EASTLAND: Did Mr. Rowe, to your knowledge,
6 engage in any union conduct or activity that was different
7 from the Operators that you kept?
8 A. Not that I'm aware of.
9 Q. How did you communicate the layoff decision to Mr. Rowe?
10 A. The same day as Stephenson. I called him in, in the
11 afternoon, in Grand Rapids. I laid off Keith in the morning
12 in Muskegon. And then I went to Grand Rapids and I met with
13 Matt after lunchtime, 12:30 I think, in the Grand Rapids
14 office.
15 Q. So this was an in-person meeting?
16 A. Yes.
17 Q. Where at in the Grand Rapids facility?
18 A. I don't have an office there so I pick an empty one.
19 Whatever room is empty, I grab and walk into.
20 Q. What time of the day was this discussion?
21 A. 12:30, right after lunch.
22 Q. Would you please describe how the conversation began?
23 A. I called Matt in. We went into an office, closed the
24 door, mentioned to him that work was slowing down for us and
25 that he was getting laid off. I asked him to turn in his

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1 fuel card, I think, and I don't know if he had a credit card
2 or not, I'm not sure. But I asked him to turn in any
3 company equipment that he had and then I handed him his
4 layoff check.
5 Q. Did you tell him why he was being laid off?
6 A. Just told him there was a lack of work right now. We
7 had finished up on the project and I didn't have anything
8 for him.
9 Q. Did Matt say anything in response?
10 A. Not that I recall. It wasn't a long conversation. It
11 was pretty short.
12 Q. How long was it?
13 A. A few minutes, 2 or 3 minutes, I think. I like to lay
14 people off in person and I think he was upset that I called
15 him in to lay him off. In hindsight, it might not have been
16 appropriate.
17 Q. Obviously, you think how he was upset. Was there some
18 reason, something you observed that made you think that?
19 A. Just his reaction. You called me in here for that? I
20 believe that might have been said, you called me in here for
21 that, or something like that.
22 Q. Did you tell Mr. Rowe --
23 JUDGE SANDRON: Well, I think it's better if you exhaust
24 his recall, because he is your witness --
25 MR. EASTLAND: Sure.

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1 JUDGE SANDRON: -- before you go into more specifics.
2 MR. EASTLAND: Okay, fair point.
3 Q. BY MR. EASTLAND: Anything else you recall about that
4 conversation?
5 A. No. We parted ways. He turned in his stuff, took his
6 check, and left.
7 Q. Was there any -- did you tell Mr. Rowe that he was the
8 low man on the list or the low man on the totem pole?
9 A. I probably did tell him he was one of the least
10 experienced or least qualified operators there, so again,
11 yeah, that probably was said.
12 Q. Do you remember any statements or discussion about
13 Mr. Brandon Popps?
14 A. No.
15 Q. Was there any?
16 A. No. There wouldn't have been any reason to.
17 Q. Was there any discussion about other employees and how
18 they might have felt about the Company?
19 A. No.
20 Q. Now, I understand there is another group of employees
21 who were laid off on June 20th of 2016; is that correct?
22 A. Yes.
23 Q. Which employees were those?
24 A. Jason Baerman, Erin Baerman, and Nick Willer.
25 Q. Take them one at a time, Mr. Erickson. Erin Baerman,

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1 why was Mr. Baerman laid off on June 20th of 2016?
2 A. By then I had made the decision to exit the small crane
3 market and Erin was a 40-ton crane operator. That was his
4 only qualification for us. He was -- he had not been in the
5 Union very long or he had not worked for us for more than
6 three years, I don't believe. He hadn't -- he had just
7 recently got his qualification to be a 40-ton crane
8 operator. He was the next least qualified operator in the
9 stable.
10 Q. Again, how did that compare to the Operators who were
11 retained?
12 A. He had much less qualifications than the guys that we
13 kept.
14 Q. What makes you say that?
15 A. Again, the guys that we kept were running bigger cranes.
16 They've had more training, more experience. They've done it
17 longer. It's just they have more qualifications and they're
18 more experienced than Erin was.
19 Q. Did Erin Baerman engage in any union conduct or activity
20 that was different than the operating engineers who were --
21 A. Not that I'm aware of.
22 Q. -- were retained?
23 A. Not that I'm aware.
24 Q. How about Jason Baerman, why was he laid off?
25 A. Again lack of work and the factor that I decided to exit

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1 the 60 and 40-ton crane market. Jason was assigned to a 60-
2 ton crane, although Jason had some experience above that.
3 He had recently come off a project on a 110-ton crane that
4 he had been on for a couple of years so he had a little more
5 experience than Erin. He was more qualified than Erin.
6 But, again, he was assigned to a 60-ton crane and he was
7 less qualified than the people that I kept.
8 Q. Then Nick Willer, why was he laid off?
9 A. Nick Willer had been there quite a bit longer. Nick was
10 an 18-year employee. He was assigned to a 60-ton crane,
11 never really wanted to do much else. He had no formal
12 training on any of the larger cranes. So with me
13 terminating the use of his crane, there was no reason to
14 keep Nick either. He wasn't qualified to run anything
15 bigger than that and he didn't want to.
16 Q. I'm sorry. Did you say he was assigned a particular
17 crane?
18 A. He was assigned to a 60-ton crane.
19 Q. Did you -- well, let me ask you this, did Mr. Willer
20 engage in any union conduct or activity that was different
21 from the union members who were retained?
22 A. No, not that I'm aware of.
23 Q. How about Jason Baerman, did he engage in any conduct or
24 union activity that was different from --
25 A. No, not that I'm aware of.

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1 Q. Let me finish. Different from the union members you
2 retained.
3 A. No.
4 Q. Mr. Erickson, you mentioned that some of the -- you
5 mentioned that the operating engineers who were retained had
6 more qualifications, was your word. Just looking at some of
7 these names that we've stipulated to, why do you say Dan
8 Wubben has more qualifications?
9 A. Dan's qualified to run our 550-ton crane. That is his
10 assigned crane. He is also qualified on every crane under
11 550 ton in our fleet. Dan is one of the few guys we have in
12 the fleet that can run the tower cranes, so he has a great
13 deal of qualifications and got a lot of experience. He's
14 been around a long time.
15 JUDGE SANDRON: He can run all of the cranes?
16 THE WITNESS: Everything below the 550. There's a
17 couple of cranes above that that he has not been trained on.
18 JUDGE SANDRON: What's the highest one again?
19 THE WITNESS: 900 is the largest.
20 JUDGE SANDRON: But the 550 is still considered in the
21 large category?
22 THE WITNESS: Yeah. It goes 900, 750, well, now 600,
23 and then 550, so that's the fourth largest crane we have.
24 Q. BY MR. EASTLAND: How about Quentin Wheeler, why did you
25 reach the conclusion that he was more qualified as you've

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1 described it?
2 A. Quentin is actually qualified on every machine we own.
3 He is our utility operator. He is the backup man for every
4 crane in the fleet. He has the most qualifications of
5 anybody in the system and he is the most experienced crane
6 operator we currently have.
7 Q. And Don Deuling, why did you reach the conclusion that
8 he shouldn't be laid off?
9 A. Don is assigned to a 350-ton crane and he can run
10 everything under 350. Don can also run the 550, but there
11 is no seat open. If Dan was to leave, Don would move up to
12 the 550. But right now he's assigned to the 350, but he's
13 qualified on 550 and down, all the way down to the bottom of
14 the fleet.
15 Q. Mr. Foster, Jamey Foster?
16 A. Jamey is assigned to our 750 ton. He is the primary
17 operator on that machine. He can run probably not all but
18 most of the cranes below that. I don't think he's had
19 training on the 550. The 750 is a -- it's got 30 steps to
20 get up to the cab, so it's a little younger man's crane.
21 Jamey was the appropriate guy to move up to that machine
22 because he was a little younger. He might have missed a
23 couple of steps. There's a couple of cranes in there that
24 he hasn't run, but he is pretty much qualified to run almost
25 all the cranes below the 750.

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1 Q. And Brad Oetman, why did you reach the conclusion that
2 he was more qualified?
3 A. Brad is currently assigned to our 600-ton crane and is
4 qualified on everything under the 600 ton.
5 Q. Very good. And Rob Chaney?
6 A. Rob is assigned to a 275 ton crane. He is actually
7 qualified from 350 down. He is qualified one above his
8 current position and then all the ones below his current
9 position.
10 Q. Brian Oetman, same question?
11 A. Brian, Brian is currently off on medical leave so he has
12 no current crane assigned, but he was at that point in time
13 running the 900 ton down in Miami. Again I think he had
14 qualifications on 350 and below. He was not at that point
15 qualified on the 750. He had not been trained on that
16 machine or the 550. There was two machines he had not been
17 qualified. He is another one that's a little younger and he
18 got stepped up.
19 Q. Just so the Judge has this, can you tell us each of the
20 types of crane tonnage that you have? I think we do have
21 that, don't we? I'm sorry. We do have that in the list.
22 JUDGE SANDRON: Before you go further, you mentioned
23 these seven individuals that you described. Are they all
24 still employed by you?
25 THE WITNESS: Yes. The one guy is off on medical leave,

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1 but everybody else is working.
2 JUDGE SANDRON: Thank you.
3 Q. BY MR. EASTLAND: Who is on medical?
4 A. Brian Oetman, with a heart condition down in Miami.
5 Q. Thank you. I'm sure Mr. Oetman would appreciate us not
6 discussing that.
7 A. Okay, understood.
8 Q. How about Dave Klein?
9 A. Dave is currently assigned to our 165 ton crane. He is
10 qualified on the 275. He may -- he's done some training on
11 the 350, but I don't believe he's qualified to take the 350
12 out yet. But he's at least qualified one rank above his
13 current position and then all the positions below the 165.
14 Q. Jeff Anderson?
15 A. Jeff Anderson was assigned to our 120-ton crane, at that
16 time. I don't believe he had any higher qualifications. He
17 could run all of them under the 120. Jeff is no longer
18 employed. He quit several months ago.
19 JUDGE SANDRON: Dave Klein is still employed?
20 THE WITNESS: Dave Klein is.
21 Q. BY MR. EASTLAND: Was that a voluntary --
22 A. Yes.
23 Q. -- departure for Mr. Anderson?
24 A. Yes.
25 Q. How about Phil Witchell, he was also retained.

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1 A. Phil is currently assigned to our 120 ton machine. He
2 took Jeff's position on the 120. He is qualified up to 275,
3 I believe, in our barn. He came to us from another vendor
4 that had a 240, so he had -- he came with some pretty
5 qualifications. But in our barn, he's qualified up to 275
6 and everything below that.
7 JUDGE SANDRON: Maybe I can ask the employer this, are
8 there any records that show the certifications of the
9 various people that are kept, that the employer has on file
10 that shows who has what certification?
11 MR. EASTLAND: There are just the basic NCCO cards, I
12 believe, that you get as the entry level. But there is
13 nothing as the witness explained for qualifications. As the
14 witness has testified, there are no documents. It's just
15 the basic certification document. Unless there are
16 something I'm unaware of.
17 THE WITNESS: We could probably go to the payroll
18 system. In our barn everything is classified 0 to 20, 20 to
19 50, and it's a different pay rate. We may be able to pick
20 that up off the payroll. How many hours they've been paid
21 at a certain rate may show up in the payroll area.
22 MR. EASTLAND: We have that, Your Honor, to introduce
23 eventually here, but I was going to wait --
24 JUDGE SANDRON: That's fine.
25 MR. EASTLAND: -- till we get through to the end.

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1 JUDGE SANDRON: That's fine.
2 Q. BY MR. EASTLAND: I'm sorry. We were talking about
3 Mr. Witchell, Phil Witchell.
4 A. Yes.
5 Q. Go ahead and explain why you reached the conclusion that
6 he was --
7 A. Phil was assigned --
8 Q. I'm sorry, let me finish. Why you reached the
9 conclusion that Mr. Witchell was more qualified as you've
10 described it compared to the others who were laid off.
11 A. While Phil hasn't been at our facility very long, he
12 came with qualifications from another facility that I look
13 at when they come in.
14 JUDGE SANDRON: As your counsel indicated, it's best if
15 you wait until he is completely done with his question.
16 THE WITNESS: Keep my mouth shut.
17 JUDGE SANDRON: So you don't overlap.
18 THE WITNESS: Okay.
19 JUDGE SANDRON: You'll have a chance to answer.
20 THE WITNESS: Understood.
21 Q. BY MR. EASTLAND: Just one more name here, Bruce
22 Springer.
23 A. Bruce Springer is currently assigned to a 90-ton crane.
24 He is qualified on everything below 90. I believe he's been
25 training some on the 120, but I don't believe he is

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1 currently qualified for the 120, so 90 ton and below.
2 Q. In comparing these, the group of union members who were
3 kept and those that were laid off, were some much more or is
4 there a degree difference in the qualifications?
5 A. Some of the guys were much more qualified. Bruce and
6 Jason were very similar qualifications, ran very similar
7 cranes. In that particular case I did use the hire date as
8 a tie-breaker as far as who I decided to let go and who I
9 decided not to let go at that particular date.
10 Q. You mentioned Jason. Do you mean Jason Baerman?
11 A. Jason Baerman. Jason and Bruce had similar
12 qualifications. I think I didn't see a significant
13 difference between their training so I did access the hire
14 date for that particular decision.
15 JUDGE SANDRON: So you used seniority on that one
16 particular time?
17 THE WITNESS: Yes. The hire date or seniority I guess
18 is a good word for it. But, yeah, when two guys were tied,
19 I had to make a decision over which one.
20 MR. EASTLAND: You mentioned payroll records. I'll hand
21 you --
22 JUDGE SANDRON: Let me clarify one thing. So it's your
23 testimony that of all the layoffs we've discussed that was
24 the only one where the hire date came into play?
25 THE WITNESS: Yes, that was the only one that came into

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1 play.
2 (Respondent's Exhibit 25 marked for identification.)
3 MR. EASTLAND: Your Honor, I've handed the witness what
4 we've marked Respondent's 24.
5 MS. CAROL: I've got 25.
6 MR. EASTLAND: 25. Did I say 24? I apologize. I have
7 marked it correctly.
8 JUDGE SANDRON: Yes, you have it marked correctly.
9 MR. EASTLAND: Going backwards in time.
10 JUDGE SANDRON: We have R Exhibit 25 for identification.
11 Q. BY MR. EASTLAND: Mr. Erickson, you mentioned there were
12 payroll records that would have codes that would explain
13 some of what you're discussing in terms of the types of
14 cranes and equipment that the employees have operated?
15 A. Yes.
16 Q. Are you familiar with this document?
17 A. Yes.
18 Q. Can you describe what it is, please?
19 A. It's a summary of the payroll for the six people in
20 question, in this hearing.
21 Q. It's a packet of 44 pages. The summary is the first
22 page. What is the rest of the document?
23 A. I'm assuming it's the backup for the summary page by
24 person and how they pulled this information.
25 Q. Are these the backup data, are these records kept in the

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1 ordinary course of business at Erickson's?
2 A. Yes. This is spit out of our payroll program.
3 Q. It's the regular practice of Erickson's to maintain
4 these records?
5 A. Yes.
6 Q. Are the records made at or near the time of the events
7 at issue? So, in other words --
8 A. It's made when they turn their time card in.
9 Q. Perfect, yes. Thank you.
10 A. It's how they get paid.
11 MR. EASTLAND: We'd move for the admission of
12 Respondent's 25 as a business record.
13 JUDGE SANDRON: Maybe we can just ask a couple of
14 questions about what some of these notations mean.
15 MR. EASTLAND: Yeah, I was going to do that. Go ahead.
16 Would you like me to, Your Honor, or did you want to?
17 JUDGE SANDRON: You can go ahead.
18 MR. EASTLAND: Sure.
19 JUDGE SANDRON: Like where it says rates and then there
20 is a 325C.
21 MR. EASTLAND: Correct.
22 JUDGE SANDRON: Maybe you can cover this.
23 Q. BY MR. EASTLAND: Can you explain the rates,
24 Mr. Erickson? You have employee -- let's just go across.
25 I'm on page 2 of the --

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1 A. Yeah, Erin Baerman here.
2 Q. There is an employee number. What is that?
3 A. It's their employee number at Erickson's.
4 Q. Then the name and then the date worked, hours worked I
5 think is self-explanatory.
6 JUDGE SANDRON: Right, the amount paid and --
7 MR. EASTLAND: Yes.
8 Q. BY MR. EASTLAND: So rate, what is OE?
9 A. That's a payroll classification. OE is standard
10 operating engineer. It's not 150 ton, or not a bigger crane
11 or smaller crane. It's just their base classification, OE.
12 Q. What does that tell you if anything about what --
13 A. That would indicate to me that it's a small crane or a
14 forklift position. I believe those two fall under the OE.
15 It looks like they're separating oiler, so it would probably
16 be a small crane or a forklift position.
17 Q. And then it says Union 324.
18 A. It's their local union. That's where their fringe
19 benefits go. It's a code in our system where their fringe
20 benefits are assigned.
21 Q. Then we see the next line down for Mr. Baerman on the
22 date January 5, 2015, it says oiler under the rate column.
23 A. Yes.
24 Q. What does that mean?
25 A. It's a crane position. He's an assistant to the

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1 boom length dictates the rate of pay.
2 Q. So going -- I'm sorry.
3 JUDGE SANDRON: Go ahead. Do you have more?
4 Q. BY MR. EASTLAND: Yeah, I was going to say with respect
5 to the regular operator and the regular operator with oiler,
6 what does that tell you about the type of size of equipment?
7 A. Again, it's in the collective bargaining agreement. If
8 you have a crane that -- there's requirements for an oiler
9 in some conditions; in some conditions, there are not
10 requirements for an oiler. The operator gets paid a
11 different rate if he has an oiler with him or if he doesn't
12 have an oiler with him. It's just a different -- again,
13 this goes to the issue that we have with payroll. There are
14 many, many different ways. Every contract has different
15 classifications. And we get this wrong occasionally.
16 Q. But with respect to regular operator, what type of crane
17 or what size of crane, maybe that's a better question?
18 A. That may not indicate size. That contract, a regular
19 operator may be everything from a 15 ton to a 500 ton. In
20 that particular contract they don't go by size and they
21 don't necessarily go by boom length I don't think.
22 JUDGE SANDRON: Do either of the opposing counsels have
23 any further voir dire or any voir dire?
24 MS. CAROL: No. That was my concern so no objection.
25 MS. BACHELDER: No objection.

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1 MR. EASTLAND: Great.
2 JUDGE SANDRON: Respondent's Exhibit 25 is received.
3 (Respondent's Exhibit 25 received in evidence.)
4 Q. BY MR. EASTLAND: Mr. Erickson, how were the layoffs of
5 Erin Baerman, Jason Baerman, and Nick Willer communicated to
6 those individuals?
7 A. I called them into a meeting in our Muskegon office at 8
8 o'clock in the morning.
9 JUDGE SANDRON: I think we already have the date.
10 MR. EASTLAND: Yeah, we have the date, so 8:00 a.m.
11 Q. BY MR. EASTLAND: Where in the Muskegon office did the
12 meeting occur?
13 A. We met in the lunch room.
14 Q. Who was there?
15 A. Myself and Erin and Jason and Keith.
16 Q. Were you there first or were they there first?
17 A. They were probably in the lunch room first.
18 Q. When you entered the lunch room, was anybody else in the
19 lunch room?
20 A. No.
21 Q. How did the meeting begin? What did you say?
22 A. I explained to those guys that I had decided not to
23 operate the 40 and 60 ton truck cranes anymore, I had put
24 them up for sale and, therefore, they were going to get a
25 layoff.

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1 Q. Did you say anything else before they responded?
2 A. No. That would -- that was just as far as I went
3 initially.
4 Q. Did any of the -- obviously, what did the employees say
5 or if you -- and if you remember which particular employee
6 responded?
7 A. The conversation got started Jason had started asking
8 questions about seniority. He wanted to know why he was
9 getting laid off and why there were people with less
10 seniority than him staying.
11 Q. What did he say?
12 A. He just asked. He said why is it me and why are you
13 keeping these people that are less seniority than I am.
14 Q. Did you respond to that or did anyone else say anything?
15 A. Yes, I responded to him. I explained to Keith -- or
16 Jason that there is no seniority in that collective
17 bargaining agreement and that seniority did not apply and
18 never applies to layoffs in our facility. We went through,
19 we had in-depth discussion on how I do it, you know, by
20 qualifications and --
21 JUDGE SANDRON: Why don't you just tell us what he said?
22 Q. BY MR. EASTLAND: So you said?
23 A. I said -- I explained to them that the collective
24 bargaining agreement doesn't have seniority in it.
25 Therefore, we use qualifications and experience to base our

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1 decisions on. And based on my experience that they were the
2 least qualified and therefore the next three guys to go.
3 They were also assigned to the particular cranes that were
4 going.
5 Q. Did they say something in response or did another
6 employee say something? What happened next?
7 A. Nick Willer made a comment about 18 years, but he never
8 really entered into the discussion. The discussion was
9 between me and Jason.
10 Q. What did Mr. Willer say?
11 A. He just made a statement. I've been here 18 years. He
12 was visibly upset about being laid off after a lengthy term
13 with us.
14 Q. Why do you say he was visibly upset?
15 A. You could see. You could tell Nick was upset.
16 Q. Why? Did you observe anything?
17 A. Observation, just my observation. He didn't, he didn't
18 yell or scream or nothing. He was just upset.
19 Q. And so Nick made that comment. Did any of the other
20 employees say anything at that point?
21 A. The conversation went back to Jason. He wouldn't come
22 off the seniority thing. He wanted to debate that issue
23 with me. And we went through it and I explained my position
24 again. He wanted to argue that seniority has to take place
25 and I kept telling him, no, it doesn't, that the proper way

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1 to do this was the way that I was doing it. You lay them
2 off by their qualifications. The exchange got, you know, it
3 ran long and it got heated. It was long, hot deal. Layoff
4 meetings are typically very short. This one went a long
5 time because he wouldn't come off the subject.
6 Q. How long would you estimate it occurred?
7 A. Probably 15 minutes, 12, 15 minutes I would guess. He
8 was getting visibly angrier as the time went on.
9 Q. Yeah, okay. Why do you say he was getting visibly
10 angry?
11 A. He was just, you know, his voice was getting louder and
12 we were not communicating well. He wasn't listening to me
13 and so I at that point then terminated the meeting. I said,
14 look guys, turn in your stuff, pick up your checks, let's
15 go.
16 JUDGE SANDRON: Is that how the meeting ended?
17 THE WITNESS: That's pretty much how the meeting ended,
18 yeah. I wasn't going to get into an altercation.
19 JUDGE SANDRON: That's fine.
20 Q. BY MR. EASTLAND: Did Erin Baerman say anything during
21 the meeting?
22 A. I don't remember Erin saying anything during the
23 meeting. Erin was quite low on the list. He had almost
24 no -- he had one qualification for his 40-ton crane. He
25 hadn't been there very long. It wasn't really Erin that was

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1 talking, it was Jason.
2 Q. Did you say anything about --
3 JUDGE SANDRON: Well, I think you need to exhaust his
4 recollection.
5 Q. BY MR. EASTLAND: What else do you remember about what
6 was said? You said it was 15 minutes. Obviously, there
7 is --
8 A. Well, at some point in the conversation, I was called a
9 tyrant and, I don't know, you're a Hitler in the way you
10 make your own decisions and you do things on your own, and
11 don't do things right. I came back to him with, look, there
12 is no seniority in the collective bargaining agreement. If
13 there is a tyrant here, it's in your negotiation process.
14 It was never put in the agreement. Talk to your union.
15 Find out why it's not in there if that bothers you so badly.
16 That's again I left it there and terminated the meeting, and
17 we were done.
18 JUDGE SANDRON: Do you remember who called you a tyrant?
19 THE WITNESS: I believe it was Jason.
20 Q. BY MR. EASTLAND: When you say Jason, we're talking
21 about Jason Baerman?
22 A. Jason Baerman, yeah. It was getting louder and it was
23 not going well. It wasn't a good meeting, not that any of
24 them are, but it was getting out of hand so I needed to get
25 it done.

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1 Q. What else do you remember that you said or one of the
2 employees said?
3 JUDGE SANDRON: If you can recall anything else?
4 THE WITNESS: No. Again, Nick repeated a couple of
5 times 18 years and it took 5 minutes to lay me off. There
6 was a couple of those comments as they got up and went out
7 the door, but nothing that I remember that's anything
8 specific.
9 Q. BY MR. EASTLAND: Did you say that in that discussion,
10 did you say that you were done dealing with the Union?
11 A. No. I still deal with the Union. I deal with the Union
12 every day. That's part of my business. The Union is a
13 requirement.
14 Q. Did you say that the Union is forcing me to do this?
15 A. No.
16 Q. Did you say that if the Union is going to force me out
17 of business, I'm going to help them?
18 A. No.
19 Q. Did you say you were done with Brandon Popps and Doug
20 Stockwell?
21 A. No. There were no further discussions after I
22 terminated the meeting like that.
23 Q. No, but during the meeting?
24 A. No, no. No, not said.
25 Q. Did you say that Doug Stockwell was the most arrogant

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1 son of a bitch who wants to run the Union like Hitler?
2 A. No, definitely not. I've only met Doug once. I don't
3 have a big issue with Doug.
4 Q. Did you tell the employees that they should go over
5 Brandon Poppwell's [sic] head?
6 A. No.
7 Q. Did you say that if the guys could get the Union to back
8 off things could go back to the way they were?
9 A. No, definitely not. The decision had been made to
10 sell --
11 JUDGE SANDRON: That's fine.
12 THE WITNESS: Okay.
13 Q. BY MR. EASTLAND: I want to move on, Mr. Erickson.
14 There was some testimony from Erin Baerman relating to an
15 alleged conversation that occurred approximately 2 weeks --
16 a conversation between you and Mr. Erin Baerman
17 approximately 2 weeks after Keith Stephenson was laid off.
18 Do you remember having a conversation with Mr. Baerman
19 around that time?
20 A. Yes.
21 Q. When do you remember that occurring?
22 A. It would have been probably early June, first week of
23 June or so.
24 Q. And where did that --
25 JUDGE SANDRON: Of 20 --

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1 boom and in that particular case no oiler.
2 Q. You mean the crane operated has that?
3 A. Right, the crane has that much boom in it.
4 Q. And when you say he, you mean the crane operator who is
5 operating the equipment?
6 A. Yes. Sorry.
7 Q. And if it says operator 500 plus?
8 A. That would be our contract, a 500 ton capacity crane or
9 larger.
10 Q. So it says operator 500 plus, that's 500 tons?
11 A. 500 tons, yes.
12 Q. Would the same be true for operator 201 plus?
13 A. Yes.
14 Q. So that's over 200 tons?
15 A. Yes.
16 Q. That 201, okay. Then what about the next different one,
17 rate code is 220 feet with oiler.
18 A. Again a crane with 220 feet of boom and he has an oiler
19 with him.
20 Q. What about if the rate is operator/220 plus?
21 JUDGE SANDRON: Can you just maybe point out the page to
22 which you're referring? 120 pages, it might be helpful.
23 MR. EASTLAND: I was looking at the summary, but I will
24 look at the --
25 JUDGE SANDRON: Oh, at the summary. Where is that?

1 THE WITNESS: What was the question?
2 MR. EASTLAND: Your Honor, just for the record, so I was
3 going through the summary which is page 1, 2, 3, and 4 of --
4 JUDGE SANDRON: Which page are you questioning? We have
5 the 300 foot boom.
6 MR. EASTLAND: I'm sorry. What page are you on, Your
7 Honor, so I can follow with you?
8 JUDGE SANDRON: Well, I'll tell you, why don't you just
9 go page by page.
10 MR. EASTLAND: Unless there are objections, I would just
11 use the summary.
12 JUDGE SANDRON: Yes.
13 MR. EASTLAND: I've started on page 1 going through and
14 asking the witness about where there is a difference or an
15 additional rate code. And so we were I believe on page 1,
16 completed, unless there is one I missed. So page 2 --
17 JUDGE SANDRON: I think you got everything on the first
18 page.
19 MR. EASTLAND: Yes. So page 2 is I asked the question
20 for the rate code operator/220 plus.
21 JUDGE SANDRON: Yes, down here toward the bottom.
22 Q. BY MR. EASTLAND: Do you see that, Mr. Erickson?
23 A. Yes.
24 JUDGE SANDRON: I see, operator/220 plus.
25 MR. EASTLAND: Yes.

1 THE WITNESS: I'm assuming that's a 220 -- I don't know.
2 That could be 220 foot of boom. That could be -- it's not a
3 ton capacity because ours goes in even numbers so that's got
4 to be boom length, operator at 220 feet of boom.
5 Q. BY MR. EASTLAND: And the same would hold true for the
6 next one, operator/140 plus?
7 A. Yes. I believe those are going to be boom lengths.
8 Probably somebody else keying something in here so just a
9 different way to put it.
10 MR. EASTLAND: I think the others are all similar.
11 There may be variations in terms of numbers, but unless
12 there is a -- counsel would like any further clarification
13 on any of this, I don't think I have any questions.
14 MS. CAROL: No, I think I'm fine with it. The only
15 clarification I want to ask and I think I know the answer is
16 this doesn't include the forklift operators, right? This is
17 just the crane operators?
18 MR. EASTLAND: Correct.
19 MS. CAROL: Okay. I have no objection.
20 MS. BACHELDER: No objection.
21 JUDGE SANDRON: This covers as I understand it,
22 January 1, 2015, through the end of December 2016?
23 MR. EASTLAND: Yes.
24 JUDGE SANDRON: Respondent's Exhibit 26 is received.
25 (Respondent's Exhibit 26 received in evidence.)

1 MR. EASTLAND: Thank you.
2 Q. BY MR. EASTLAND: Mr. Erickson, I want to ask you about
3 one more layoff at issue in this case and that involves
4 Mr. Carlos Ocampo.
5 A. Yes.
6 Q. I think it's undisputed his layoff was on July 7, 2016.
7 Sorry. Why was Mr. Ocampo laid off?
8 A. Again, we had a definite lack of work in the small crane
9 classifications. Carlos was assigned to a 40 ton truck
10 crane. Carlos had limited qualifications. He was not
11 qualified for anything above the 40-ton crane. He,
12 therefore, became the next person on my layoff list. He
13 would have gone in the 6/20 layoff, but he was working. So
14 I waited until he finished his job.
15 Q. What do you mean he was working?
16 A. He was on a project that continued through that date to
17 July and so he was laid off when his current project
18 finished.
19 Q. We've stipulated to his retained -- with respect to the
20 operating engineers who were retained after Mr. Ocampo's
21 layoff -- well, let me ask this, did Mr. Ocampo engage in
22 any union conduct or union activity different than any of
23 the folks, the members who were retained?
24 A. No.
25 Q. Mr. Ocampo had mentioned in his testimony and you were

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1 here for it that there was a payroll issue or concern in
2 January of 2016. Do you remember that?
3 A. Yes. Carlos was working on a project in downtown Grand
4 Rapids assembling a tower crane. We had questions on which
5 contract applied in that particular project. The iron
6 workers that were working on the job used the AGC contract
7 classification. I had thereby assumed that the Operators
8 were using the same classification so they were paid under
9 the AGC agreement. I believe Brandon and I talked --
10 Q. I'm going to ask you about the conversation first.
11 A. Okay.
12 Q. Do you remember talking with Mr. Ocampo about this
13 payroll issue?
14 A. Yeah, he called me and said that he had a pay issue.
15 Q. When did he call?
16 A. The week after the job, after he got his check. It was
17 probably a Tuesday.
18 Q. Was that in January of 2016?
19 A. Yes.
20 Q. Do you remember any specific date or generally when in
21 January?
22 A. Early, it was early January, early to mid-January. It
23 was we were erecting a tower crane at downtown.
24 Q. And he called you, did you say?
25 A. He called, yeah.

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1 Q. On which phone?
2 A. My cell.
3 Q. What did Mr. Ocampo say?
4 A. He just indicated that he felt he had received the wrong
5 rate of pay for that job.
6 Q. How did you respond?
7 A. I told him I thought I had paid him correctly, but I
8 would check into it.
9 Q. Anything else about that conversation that you can
10 remember?
11 A. No. I think that's where we left it. I was going to
12 verify that I had used the correct contract and get back to
13 him.
14 Q. What did you do after you spoke with Mr. Ocampo?
15 A. I had a conversation with -- I believe it was Brandon.
16 It was either Brandon or Joe Shippa regarding that job as to
17 which contract would apply and was informed that under --
18 JUDGE SANDRON: All right, why don't you wait for
19 counsel to ask --
20 MR. EASTLAND: Okay. When was that discussion?
21 JUDGE SANDRON: -- the questions in order?
22 THE WITNESS: Okay. That would have been the next --
23 that same day or the next day.
24 Q. BY MR. EASTLAND: Did you call -- Mr. Popps and
25 Mr. Shippa are both business agents?

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1 A. They're both business agents, yeah.
2 Q. Did you call one of them?
3 A. I don't remember. I think I called them for
4 clarification.
5 Q. What did you say?
6 A. I just asked if I was applying the right contract.
7 Q. What was the response from the --
8 A. The response was no, that I was supposed to use my local
9 agreement in that application. We had just a minor
10 discussion. I said, well, the iron workers used the AGC
11 agreement. And they said they can do what they want to do.
12 It's the Operators' agreement under this condition falls
13 under the local agreement. So that's what I went with.
14 Q. So you agreed with the Union --
15 A. I agreed with them and we corrected Carlos' check the
16 following week, and it was taken care of.
17 JUDGE SANDRON: Just so we have a complete foundation,
18 do you remember the time that you had that conversation, if
19 you can remember?
20 THE WITNESS:
No. I think morning. I think
21 mid-morning, but I can't be 100 percent accurate on that.
22 JUDGE SANDRON: All right, that's fine.
23 Q. BY MR. EASTLAND: That payroll concern with Mr. Ocampo
24 involved what project?
25 A. It was the erection of a tower crane in downtown Grand

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1 Rapids. Carlos was an oiler on the, I believe, 550-ton
2 crane.
3 Q. Do you recall there being another payroll concern with a
4 different employee on that same project?
5 A. That actually happened again when they tore the crane
6 down, I believe, was that Matt Rowe had the same issue on
7 the same job when we took the crane down. And the same
8 thing happened. We fixed that also. We paid the iron
9 workers under the AGC agreement. He was paid under the AGC
10 agreement. We fixed it. We knew it was wrong and we just
11 fixed it.
12 Q. Do you remember having a discussion with Mr. Rowe about
13 that?
14 A. I remember there was a discussion. He called about a
15 payroll issue. I think it was actually transferred to me
16 from Nancy, tell you the truth. I believe he had called
17 Nancy and then Nancy transferred the call to me.
18 Q. Do you remember roughly when that occurred?
19 A. I don't know offhand. March, April, something like that
20 I think.
21 Q. Mr. Rowe had testified about a discussion that you guys
22 had, a telephone discussion that you guys had some time in
23 May of 2016.
24 A. It could have been.
25 JUDGE SANDRON: Does that ring a bell?

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1 THE WITNESS: I remember the conversation. I just don't
2 remember if it was May or April. I know Matt didn't call me
3 a lot so I remembered the conversation.
4 Q. BY MR. EASTLAND: But you do remember him calling you.
5 A. Yeah, I do remember the conversation with him.
6 JUDGE SANDRON: Mr. Rowe could be mistaken on the date,
7 also.
8 Q. BY MR. EASTLAND: What did Mr. Rowe say to you?
9 A. It was the same question, same situation. Matt was the
10 then oiler on the crane, and he was paid the wrong rate, and
11 asked me to correct it. I immediately knew what he was
12 talking about because we had already done it once. I said,
13 yeah, I think I know what happened and we'll get it fixed.
14 Q. Anything else you can remember about that discussion?
15 A. That was the end of the conversation.
16 JUDGE SANDRON: Do you recall what time of the day it
17 occurred?
18 THE WITNESS: No.
19 Q. BY MR. EASTLAND: Back to Mr. Ocampo. Mr. Ocampo had
20 recalled a discussion or a conversation that you and he had
21 in the middle to end of June of 2016. This would have been
22 prior to his layoff. Do you remember a conversation
23 sometime in June of 2016 with Mr. Ocampo?
24 A. I assume regarding a wage issue?
25 Q. No, involving a maintenance issue.

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1 A. Oh, yes. Okay. Carlos called me and there was --
2 Q. Do you remember talking to him about a maintenance
3 issue?
4 A. Yes, I do.
5 Q. When did that conversation occur?
6 A. Early June 2016.
7 Q. How was the conversation initiated?
8 A. Carlos called and asked about a maintenance issue on his
9 crane which was a little bit of a surprise because they
10 don't normally call me on maintenance issues. There is a
11 maintenance department for that. And then he --
12 Q. Let's go through what was said.
13 A. He just asked me if, you know, he had an oil leak on his
14 crane and should it be taken care of or could he continue to
15 run it.
16 Q. Did you respond?
17 A. My response was check with the maintenance department
18 and see how bad the leak is and where it is. It's a safety
19 issue.
20 Q. Anything else said? Was anything else said?
21 A. Then he asked me if he was, if he was going to be laid
22 off next.
23 Q. Did you respond to that?
24 A. I said not now, but probably.
25 Q. Did you say anything about why?

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1 A. No, I don't think we got into it in that conversation.
2 He was still working on a project.
3 JUDGE SANDRON: Do you happen to recall what time the
4 conversation occurred?
5 THE WITNESS: That one was late afternoon, towards the
6 end of the day conversation.
7 Q. BY MR. EASTLAND: Anything else discussed during that
8 conversation?
9 A. No.
10 Q. How long did it last?
11 A. A minute or two. It was very short.
12 Q. Now, how was Mr. Ocampo notified that he would be laid
13 off?
14 A. Again, I brought him into work -- or actually, no, he
15 was at the end of a day. He finished up his day. I called
16 him into the office.
17 Q. On July 7, 2016?
18 A. Yes.
19 Q. Where was it?
20 A. Grand Rapids office.
21 Q. Do you remember what part of the facility?
22 A. I believe I was in an engineering office.
23 Q. What time of day?
24 A. 4:30, 5:00.
25 Q. How did the meeting begin?

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1 A. Carlos walked in. I said let's go down to this office.
2 We walked in and closed the door. When I walked in, he had
3 his keys and his fuel card and things in his hand. I said
4 to him, I said, well, obviously, you know why you're here.
5 He said, yeah, I've been expecting this. I said you
6 understand you're getting laid off because I'm no longer
7 using the 40 and 60-ton cranes; it's nothing that you did,
8 it's just a change of business cycle for us. He said I
9 understand. And we were done. It was a very short meeting.
10 Q. Anything else you can remember about that discussion or
11 exchange?
12 A. No.
13 Q. Did you say anything about Mr. Ocampo returning in the
14 future?
15 A. I told everybody, yeah, they're all welcome to come
16 back.
17 Q. Did you say anything to Mr. Ocampo about that during the
18 conversation?
19 A. Yeah, I says you're welcome to come back anytime. We're
20 just going to come through -- if you come through a referral
21 from the hall, you're more than welcome to come back.
22 Q. Anything else?
23 A. No.
24 Q. During that meeting with Mr. Ocampo, did you have any
25 discussions about Mr. Popps?

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1 A. No.
2 Q. Did you say that Mr. Popps was relentless?
3 A. No.
4 Q. Hang in there. I think I'm almost finished. I want to
5 ask about a few more conversations or alleged conversations.
6 I guess we'll find out. Mr. Popps, Brandon Popps testified
7 about regarding a conversation concerning an operator issue
8 at the University of Notre Dame, mid-December of 2015.
9 A. Yes.
10 Q. Do you remember having a conversation related to that
11 subject matter with Mr. Popps?
12 A. Yes.
13 Q. When was that?
14 A. Whatever date you said.
15 JUDGE SANDRON: Well, if you remember.
16 Q. BY MR. EASTLAND: When do you remember that?
17 A. I don't remember the date. It was early January, I
18 think, in 2016.
19 Q. What time of day did the discussion take place?
20 A. Early morning. It was 8 or 9 o'clock.
21 Q. Who initiated the conversation?
22 A. I did. I called him.
23 Q. Why did you call him?
24 A. I was looking for an operator to run a crane down in
25 Notre Dame. One of our operators had not showed up for work

1 that day and the local, Local 150 out of Chicago had nobody
2 qualified to run the crane so they said I was free to check
3 with Local 324 to see if they had anybody. So I called
4 Brandon to see if he had anybody available.
5 Q. When you called Mr. Popps, I take it he answered?
6 A. Yes.
7 Q. What did you say to him?
8 A. I asked him if he had an operator that was available
9 that could run the 300-ton crawler with a luffing jib in it
10 at Notre Dame.
11 Q. What did Mr. Popps say in response?
12 A. I think he said he was going to check with dispatch to
13 see who was available and then get back to me.
14 Q. Any other statements about the Notre Dame issue?
15 A. No.
16 Q. Was there any further conversation or discussion between
17 you and Mr. Popps?
18 A. He did ask me about resolving some outstanding issues
19 that we had and I basically told him at the time, I said,
20 look, I need to get this crane staffed. I don't have time
21 to discuss any other issues at this point in time. I need
22 to get this crane staffed. So I was in a hurry to find an
23 operator.
24 Q. What did Mr. Popps say in response to that?
25 A. I think he said, okay, thank you, and that was the end

1 of the conversation.
2 Q. Anything else you recall about that discussion with
3 Mr. Popps?
4 A. Not that I recall.
5 Q. Was there any discussion about the Union potentially
6 filing a legal action or an unfair labor practice?
7 A. I think that was -- his initial conversation was we need
8 to resolve some outstanding issues or there could be charges
9 brought.
10 Q. Did he say that in that discussion?
11 A. Yes. That was the question he asked, yeah.
12 Q. Your response was?
13 A. My response was I didn't have time to discuss issues.
14 At that point in time I needed to find an operator so I did
15 not entertain the conversation.
16 Q. How long was that conversation?
17 A. A minute or two. It was rather short.
18 Q. Were you able to work with Mr. Popps to resolve the
19 missing operator concern that the Company had?
20 A. I don't know where -- the resolution came, we picked up
21 another operator, but I don't think he came from 324. I
22 found one at another company.
23 Q. I want to ask you about one more discussion or potential
24 discussion with Mr. Popps. There's some testimony before
25 that you and Mr. Popps may have had a discussion sometime in

1 June of 2016 concerning the unfair labor practice charges.
2 Do you remember that?
3 A. Yes. We've had conversations.
4 Q. Do you remember a separate conversation, separate from
5 the one you just testified about?
6 A. We've had many conversations. I don't know that I
7 recall a specific conversation.
8 Q. Did he call you in June of 2016?
9 MS. BACHELDER: Objection; asked and answered.
10 JUDGE SANDRON: Well, I think he can try to refresh.
11 Q. BY MR. EASTLAND: Mr. Popps testified that the
12 conversation occurred in June of 2016 regarding unfair labor
13 practices. Do you remember him calling you on your cell
14 phone in June of '16 regarding the unfair labor practice?
15 A. We've had many conversations on the phone.
16 JUDGE SANDRON: Do you remember that one specifically?
17 THE WITNESS: I don't know the specific one that we're
18 talking about. I really can't tell you that I remember
19 that.
20 JUDGE SANDRON: Well, since he doesn't recall, you can
21 get a little more specific about the subject.
22 MR. EASTLAND: Sure.
23 JUDGE SANDRON: See if that helps.
24 Q. BY MR. EASTLAND: There was some discussion about
25 attempting to resolve the unfair labor practice charges.

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1 settlement part.
2 MR. EASTLAND: I understand. But I want to make sure
3 the flow of the conversation from my witness's perspective
4 is established because I think that's important for my
5 argument, Your Honor.
6 JUDGE SANDRON: Well, I think I'm just going to take --
7 just take over for a second. Did you say anything negative
8 about Mr. Popps when you were talking to him during that
9 conversation, anything negative about him personally?
10 THE WITNESS: No. I don't think I made a personal
11 attack on him. I just said that you and I are not able to
12 fix this and we need to have other people involved to get
13 this done.
14 JUDGE SANDRON: Did you call him incompetent?
15 THE WITNESS: No.
16 JUDGE SANDRON: No. So you have the specific denial.
17 THE WITNESS: I think incapable was the word I was
18 using, we are incapable of completing, getting this settled.
19 Q. BY MR. EASTLAND: Mr. Erickson, there is also some
20 testimony from Jamey Foster. Do you know Mr. Foster?
21 A. Yes.
22 Q. He still works at Erickson's?
23 A. Crane operator, yes.
24 Q. There was testimony from Mr. Foster that there was
25 conversation between the two of you on January 12th of 2016

1 regarding -- in the Muskegon yard about a project. Do you
2 remember?
3 A. Yes.
4 Q. You remember that?
5 A. Yes, I do.
6 Q. Would you agree with that date? When did it occur?
7 A. Yeah, I would agree with that date. January 12th seems
8 right.
9 Q. Of 2016?
10 A. Correct.
11 Q. Tell us what you remember about how that conversation
12 started -- or let me ask you this, where in the Muskegon
13 yard was it?
14 A. It was in my office, end of the day, 5:30, 6:00,
15 sometime after working hours.
16 Q. Explain what happened then.
17 A. Called Jamey in to review a job for the next day, where
18 to set his crane up. I had some particular sketches, and
19 drawings, and things on how he was supposed to set it up so
20 we called him in to review those items. We went through
21 those items pretty much at length. There were some
22 pictures. There were some drawings. There was some
23 discussion. It was a tough jobsite and I was trying to
24 explain to him so he didn't have any trouble the next day.
25 We spent a fair amount of time, 10, 15 minutes discussing a

1 job.
2 Q. Were there any other issues discussed other than the
3 job?
4 A. Yes. I asked Jamey about his recent -- he had recently
5 been appointed steward in our shop and the current steward,
6 Don Deuling, had been kicked out of the steward position.
7 So I asked Jamey if he thought that was a wise thing for him
8 to do. A lot of the guys were unhappy that, you know, we
9 had always in our shop, always voted in the steward. It was
10 never an assigned --
11 JUDGE SANDRON: Just so we don't get confused, why don't
12 you just limit to what was said in there. And if your
13 attorney wants other information, he'll ask. Otherwise, it
14 might get confusing as to what you actually said.
15 Q. BY MR. EASTLAND: Right. So you said what to
16 Mr. Foster?
17 A. I said to Jamey, I said do you think that was a good
18 decision to push your -- push Donny out and you to take that
19 position over. And he said --
20 Q. Did he respond?
21 A. He said I think it is. He says I believe it is not a
22 problem.
23 JUDGE SANDRON: Anything else on that subject?
24 THE WITNESS: I mentioned to him that I, I said there's
25 a lot of guys here that are unhappy with you for doing that.

1 Donny was a very well respected employee.
2 JUDGE SANDRON: All right, you don't have to go on.
3 Q. BY MR. EASTLAND: Right. So you said there are guys
4 here that --
5 A. I said there are guys here that are unhappy with you
6 over this move.
7 Q. Did Mr. Foster respond?
8 JUDGE SANDRON: I think he already said he -- well, did
9 he respond specifically to that?
10 THE WITNESS: Not to that, no.
11 JUDGE SANDRON: Okay, that's fine.
12 Q. BY MR. EASTLAND: Do you remember anything else about
13 that discussion?
14 A. No. At that point it was pretty much over.
15 Q. During that discussion, did you say anything about
16 Brandon Popps?
17 A. No.
18 Q. Did you say that Brandon Popps was playing games?
19 A. No.
20 Q. Anything like that?
21 A. No. I'm going to retract that no. I think Brandon
22 Popps, I did bring -- I said I don't think Brandon is
23 helping you by appointing you steward. I did question the
24 logic of Brandon appointing him steward. I thought he put
25 Jamey in a bad position with the rest of the crew, so I did

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1 make that statement.
2 Q. What statement?
3 A. I said I think Brandon's putting you in a bad position.
4 Q. Why did you have that conversation with Mr. Foster?
5 A. Several of the guys had approached me and asked me about
6 what was going on, why Donny was --
7 MS. CAROL: Objection, hearsay.
8 JUDGE SANDRON: As I said, hearsay can be put in the
9 record then determined later whether it's to be reliable.
10 Q. BY MR. EASTLAND: You can continue.
11 A. Several of the guys had approached me and asked me about
12 what was going on, and why Don had been pushed out, and why
13 Jamey was put into that position, and expressed their
14 unhappiness with it. They felt we voted him in there, he
15 should be able to remain there. I said we looked up the
16 contract, it's they have the right to appoint the steward so
17 they are well within their reasons that they can do that.
18 Q. But why did you feel there was a need to raise that with
19 Mr. Foster?
20 A. I thought Jamey ought to know that there was guys that
21 were unhappy with him. He has to work with those guys every
22 day and I don't like disharmony in the shop so I wanted him
23 to be aware that he may have made a decision that caused a
24 lot of friction.
25 Q. I want to ask you just two more questions about your

1 conversation with Mr. Foster on January 12, 2016. During
2 that discussion did you tell Mr. Foster that he was on the
3 wrong road and that it would jeopardize his employment
4 opportunities?
5 A. No.
6 Q. Did you tell Mr. Foster that he was create -- anything
7 like that, anything like that?
8 A. No. Jamey still works there. He runs my second biggest
9 crane.
10 Q. Did you say anything to Mr. Foster about a hostile work
11 environment?
12 A. That was part of what I said earlier. I thought some of
13 the guys were not happy with him and I didn't think that was
14 a good thing for the shop to have guys that were, you know,
15 we had two camps now. They were Donny camp and Jamey camp.
16 I didn't think that was a good thing.
17 Q. Anything else about that?
18 A. No.
19 MR. EASTLAND: If I could just have a minute, Your
20 Honor, to confer.
21 JUDGE SANDRON: Yes. We'll go off the record.
22 (Off the record from 11:53 a.m. to 11:54 a.m.)
23 JUDGE SANDRON: Back on the record.
24 MR. EASTLAND: That's all the questions I have for
25 Mr. Erickson at this time.

1 JUDGE SANDRON: All right. It's 5 to 12:00. I don't
2 know, I assume that opposing counsels would like some time
3 to be able to confer.
4 MS. CAROL: Sure.
5 MS. BACHELDER: Please.
6 JUDGE SANDRON: We could take our lunch hour now and
7 maybe come back at 1:00 or 12:55.
8 MS. BACHELDER: We had talked about taking a shorter
9 break.
10 JUDGE SANDRON: I'm certainly willing to do that. If
11 the parties would like to just keep going, we might --
12 MS. CAROL: I need some time, but I don't know that I
13 need a whole hour.
14 JUDGE SANDRON: We can make it shorter.
15 MS. CAROL: Want to make it 45 minutes and that way we
16 can, you know, if that's okay with everybody.
17 JUDGE SANDRON: That's fine with me.
18 MR. EASTLAND: We have one more witness I think will be
19 short. I don't know what the Judge's travel plans are.
20 MS. CAROL: 12:40?
21 JUDGE SANDRON: All right, 12:40 is fine. We'll recess
22 until 12:40.
23 (Whereupon, at 11:54 a.m., a lunch recess was taken.)
24
25

1 AFTERNOON SESSION
2 (Time Noted: 12:46 p.m.)
3 JUDGE SANDRON: On the record.
4 The Respondent has submitted Respondent's Exhibit 8(b),
5 which we discussed yesterday. It is admitted.
6 (Respondent's Exhibit 8(b) marked for identification and
7 received in evidence.)
8 JUDGE SANDRON: Cross-examination?
9 MS. CAROL: Yes, Your Honor. Thank you.
10 CROSS-EXAMINATION
11 Q. BY MS. CAROL: Good afternoon, Mr. Erickson. I have
12 some questions about your testimony. The first thing I
13 wanted to ask is about the employees that are working versus
14 employees that are dispatched from the hall. The employees
15 that you have, I think you referred to them before as being
16 in a pool or a stable. Is that a colloquialism for --
17 A. There is a group that are assigned to cranes that stay
18 pretty much all the time.
19 Q. And they're year round employees, right?
20 A. As much as it can be, yes.
21 Q. And often for a number of years?
22 A. Yes.
23 Q. So they're not job specific, meaning that at the end of
24 a job --
25 A. No, they don't get laid off at the end of a job.

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1 Q. -- they wouldn't go. They'd come back and maybe get
2 another job.
3 A. Right, yeah.
4 Q. Okay.
5 JUDGE SANDRON: Just make sure you give him time to
6 finish his answer.
7 Q. BY MS. CAROL: Sorry. That's not to say that those
8 employees don't get laid off from time to time.
9 A. They do.
10 Q. That's usually when work is slow?
11 A. Pardon me?
12 Q. That's usually when work is slow?
13 A. Yes.
14 Q. Then work picks back up you would call them directly and
15 have them report back to work?
16 A. Yes.
17 Q. Additionally, when you're busy, you can get additional
18 help from the union hall, right?
19 A. Correct.
20 Q. So you can call the union hall and just ask for a type
21 of crane operator or how does that usually happen?
22 A. We usually ask for an oiler or ask for a crane operator
23 with specific skill set.
24 Q. Then the Union would pick who to send?
25 A. Yes.

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1 Q. You could pick who to send if you --
2 A. I can request a guy. There is a procedure for
3 requesting.
4 Q. Those people who are dispatched are assumed to be
5 qualified to perform the position that you are seeking to
6 have filled?
7 A. Yes.
8 JUDGE SANDRON: One question. Can you reject somebody?
9 Is there a formal procedure for you to turn someone down?
10 THE WITNESS: I don't know if there is a formal
11 procedure for that or not. I have never done it. My
12 assumption would be no, that I don't get a choice unless
13 there is a cause. Unless they're not capable there would be
14 no reason for me to reject anybody.
15 JUDGE SANDRON: But it's never happened then?
16 THE WITNESS: It's never happened that I'm aware of.
17 Q. BY MS. CAROL: Once someone is dispatched from the union
18 hall, you could ostensibly if necessary hire that person
19 directly and to be one of these core employees?
20 MR. EASTLAND: I'm going to object, misstates the prior
21 testimony.
22 MS. CAROL: I'm just trying to understand.
23 JUDGE SANDRON: I think he can answer it. Go ahead.
24 Q. BY MS. CAROL: Did you understand the question?
25 A. Could you repeat it?

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1 Q. Yeah, no problem. If the Union dispatches someone to
2 you and they perform a job, you could hire that person to be
3 a permanent employee?
4 A. Oh, I could --
5 MR. EASTLAND: Same objection.
6 JUDGE SANDRON: Overruled.
7 Q. BY MS. CAROL: And in the same manner, you could hire
8 someone directly like if someone applied you could hire
9 them --
10 A. Yes.
11 Q. -- without the Union's involvement.
12 A. Yes. We hire them and then they go to the union hall
13 and get hired into the union hall.
14 Q. You also in addition to using employees through the
15 hiring hall, you've used some retirees, correct?
16 A. Occasionally, yes.
17 Q. Retirees are not dispatched through the union hall.
18 A. I've never asked for one through the union hall, no.
19 Q. You can call them directly and ask them to come perform
20 a specific --
21 A. Right. They're usually my retirees that I call.
22 Q. Do you use those regularly throughout the year?
23 A. Sporadically. They're only allowed 39 hours a month.
24 Q. When you say sporadically, does that mean that you would
25 use them only 39 hours each month?

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1 A. They don't get 39 every month. They could work up to
2 39. Typically, they're used on short jobs. Some of the
3 guys might get 10 hours a month, some might get 20.
4 JUDGE SANDRON: Who sets that 39?
5 THE WITNESS: That's a union rule.
6 Q. BY MS. CAROL: Do you use retirees every month?
7 MR. EASTLAND: I'm going to object on relevance grounds.
8 You're talking about retirees and the witness has testified
9 it's a small portion of the work. I don't believe this was
10 addressed on direct or is relevant to any matter in dispute.
11 MS. CAROL: It is relevant going forward to see whether
12 or not the retirees were utilized to do jobs after the
13 discriminatees were laid off.
14 MR. EASTLAND: Well, this line of questioning isn't
15 relevant to that, Your Honor.
16 JUDGE SANDRON: If they were used to do the same work --
17 MR. EASTLAND: Then it doesn't matter how many hours
18 they work or the rules. I mean that's irrelevant. This
19 whole line of case is irrelevant.
20 MS. CAROL: It's a basic question for a basis of
21 comparison whether it changed or didn't change after they
22 were laid off.
23 JUDGE SANDRON: I'll allow it.
24 Q. BY MS. CAROL: Sorry. So do you use them each month?
25 A. Not every month. If we don't have work for them, they

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1 don't work.
2 Q. So out of let's say use 2016 as an example, how many
3 months did you not use retirees?
4 A. I would have to look at the payroll records. My guess
5 would be -- they work in the summertime but not in the
6 wintertime. My guess would be they may get six months a
7 year where they get some hours.
8 JUDGE SANDRON: We don't have records pertaining to
9 those, do we?
10 MS. CAROL: I do, yes. That's my next question.
11 JUDGE SANDRON: Oh, you have those.
12 MS. CAROL: Yes.
13 Q. BY MS. CAROL: Do you know if you used the work of any
14 retirees during the summer of 2016?
15 A. I'm sure we did.
16 Q. I'm going to show you General Counsel's 14.
17 (General Counsel's Exhibit 14 marked for identification.)
18 MS. CAROL: Hold on, Your Honor. I'm sorry. Forgive
19 me. I have an extra document that's not supposed to be on
20 there. There are 23 pages, okay. All right, sorry about
21 that.
22 Q. BY MS. CAROL: Just take a look at this document for me
23 and see if you can identify that. Are those payroll records
24 for 2016?
25 A. Yes, that's what they look like.

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1 Q. It goes through and shows each employee, when they
2 worked, and how much they earned when they were working
3 there. Is that accurate?
4 A. Yes.
5 MR. EASTLAND: I'm only going to object to the extent it
6 has a check date, if you're asking about the check date. I
7 don't believe it shows when they worked.
8 MS. CAROL: Fair enough, fair enough.
9 Q. BY MS. CAROL: So this would be when they were paid,
10 right? This would show when they were paid and how much
11 they were paid?
12 A. The check should, yes.
13 Q. Yes, okay.
14 MR. EASTLAND: Sorry. Clarification.
15 MS. CAROL: Fair enough, that's fine.
16 Q. BY MS. CAROL: On the first page numbered 1, is
17 Mr. Whitman a retiree?
18 A. He is.
19 Q. Then Joseph Willer is also a retiree, correct?
20 A. Correct.
21 Q. Going through here, I believe that there is on page --
22 I'm just thumbing through her to see if any of these other
23 individuals are retirees. Would you look through that and
24 see if you can identify anyone else? Oh, Frank Seaman
25 (ph.), I'm sorry, on numbered page 10?

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1 A. Page 10, right.
2 Q. Are those the only three retirees you use regularly or
3 are there others?
4 A. Those are the only three current operator retirees that
5 are working.
6 MS. CAROL: Your Honor, I'd like to enter into evidence,
7 General Counsel's 14.
8 JUDGE SANDRON: Any objection?
9 MR. EASTLAND: No objection.
10 MS. BACHELDER: No objection.
11 JUDGE SANDRON: General Counsel's Exhibit 23 is
12 received.
13 MS. CAROL: 14.
14 JUDGE SANDRON: Excuse me, 14 is received.
15 (General Counsel's Exhibit 14 received in evidence.)
16 Q. BY MS. CAROL: You had some testimony about the history
17 of your company, the type of work it does. The Company has
18 a long-term relationship with three unions, right?
19 A. Um-hum.
20 Q. So we've got the operating --
21 JUDGE SANDRON: You have to say answer.
22 Q. BY MS. CAROL: Sorry, you have to say or no.
23 A. Yes.
24 Q. The Operating Engineers?
25 A. Yes.

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1 Q. And then the Teamsters?
2 A. Correct.
3 Q. And the Iron Workers?
4 A. Correct.
5 Q. During the entire history that you've been there until
6 2015, has there ever been a grievance filed by any of the
7 Unions that you can recall?
8 A. Grievance filed by a union? I would think there
9 probably has been, but I can't remember one.
10 Q. Can you remember if any were filed by Local 324?
11 A. A grievance? Other than prior -- prior to 2015 are we
12 talking about?
13 Q. Right.
14 A. Not that I'm aware of.
15 Q. Are you aware if the Union has ever filed an unfair
16 labor practice charge before 2015?
17 A. Not that I'm aware of.
18 Q. And the operating engineers, I think you testified they
19 have nine agreements that they work under?
20 A. They have a lot of them, yeah.
21 Q. For the most part before 2015, this relationship with
22 the Union was generally speaking not controversial?
23 A. Correct.
24 Q. That did change in 2015, right?
25 A. At some point.

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1 Q. Part of what happened in 2015 was a dispute about what's
2 called the AGC?
3 A. A different agreement, yes.
4 Q. What is the AGC?
5 A. It's Association of General Contractors. They negotiate
6 a different agreement for part of the state of Michigan.
7 Actually, I think they do the whole state now.
8 Q. You're signatory to that contract, right?
9 A. I am not.
10 Q. You're not?
11 A. It's referenced in our contract, but I am not a member
12 of the AGC.
13 Q. Are you bound by the terms of that contract when you do
14 work under that contract?
15 A. Yes, as it is referenced to our contract. When I get
16 out of our contract area then I am bound to use those
17 contracts.
18 MR. EASTLAND: I'm just going to place an objection.
19 The contracts will speak for themselves.
20 JUDGE SANDRON: Well, I think this was to have it in the
21 record.
22 MR. EASTLAND: For background and stuff.
23 MS. CAROL: Just for my next question, sure.
24 Q. BY MS. CAROL: In 2015 there was some dispute about the
25 wages in the AGC, correct?

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1 A. I believe there was a big contract dispute with the
2 agency in 2015, yes.
3 Q. That was whether or not -- well, first let me ask you
4 this, the wages in the AGC are higher than the wages in your
5 shop agreement, right?
6 A. Some of them are. Some of mine are higher than the
7 AGC's.
8 Q. But there was a dispute as to whether or not the higher
9 wages would apply to your particular employees, correct?
10 A. In reference to a particular employee or general? I'm
11 not understanding the question.
12 Q. I guess any employee that you would dispatch to do work
13 under the AGC, there was a dispute as to whether they would
14 be paid the higher wages under the AGC or the shop agreement
15 wages.
16 JUDGE SANDRON: Well, maybe we could clarify who was the
17 dispute between. When you say there was a dispute, who was
18 it between?
19 THE WITNESS: I don't know. There are occasionally
20 questions between contracts, yes. In this particular
21 application, I don't know what we're talking about. But
22 there are, you know, that's a lot of times the payroll
23 issues is whether it belongs to this contract or that
24 contract.
25 Q. BY MS. CAROL: Okay. So the AGC in general represented

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1 or created a 30 to 40 percent increase in your labor costs,
2 correct, in 2015?
3 A. No, because basically I -- only if I work on an AGC
4 project does my rate go up. On my projects, nothing
5 changed. My contract has been in place for quite some time.
6 Q. Right. But if you're working on an AGC contract, you
7 would have to pay these higher wages?
8 A. Yes. They had a new contract come out sometime in 2015,
9 yes.
10 Q. Those were 30 to 40 percent higher than your regular
11 labor costs?
12 A. I don't know a percentage number of what those
13 increases. I have not looked at that contract lately.
14 Q. Do you recall during the investigation of this
15 particular unfair labor practice providing information to
16 your attorney to help assist in your defense?
17 A. Yes.
18 Q. That information was taken by your attorney and created
19 into a letter to submit to the Labor Board on behalf of the
20 Company?
21 A. Yes.
22 Q. You were copied with a copy of that letter as it was
23 submitted to the Labor Board?
24 A. I don't know.
25 Q. Did you ever see or read any of those letters that your

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1 lawyer submitted on your behalf?
2 JUDGE SANDRON: We'll assume that they accurately
3 reflect what his client told counsel.
4 MS. CAROL: Okay. Let me take a look at one of those
5 statements from August 3rd of last year, and I'll mark it as
6 General Counsel's 15.
7 (General Counsel's Exhibit 15 marked for identification.)
8 MS. CAROL: I apologize. I made these a while ago. I
9 did not paginate them, but I promise to do so.
10 JUDGE SANDRON: Yes, that's fine.
11 MR. EASTLAND: Can we go off the record for a minute?
12 JUDGE SANDRON: Yes.
13 (Off the record at 1:02 p.m.)
14 JUDGE SANDRON: Back on the record.
15 Q. BY MS. CAROL: Do you recognize that document?
16 A. Yes.
17 Q. If you could turn to page 6 for me -- or, I'm sorry,
18 page 5.
19 JUDGE SANDRON: And you will paginate it later.
20 MS. CAROL: Yes, I will.
21 MS. BACHELDER: Are you saying page 5 of their --
22 MS. CAROL: Yes, the page 5 -- there is a page number at
23 the top left that was original, but I'll put it at the
24 bottom right also.
25 Q. BY MS. CAROL: If you look at the very bottom two

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1 paragraphs where it starts with 30 to 40 percent increase in
2 operating labor costs?
3 A. Yes.
4 Q. So that indicates that the work under this agreement was
5 significantly higher than it was under your own shop
6 agreement, correct?
7 A. Yes.
8 Q. Additionally, the higher -- if you will turn on page
9 6 -- well, let me ask you this first. So the additional
10 higher wages that were being sought, you had an expectation
11 that these were going to be sought by the Union in their
12 upcoming collective bargaining agreement that expired in
13 2017. Is that accurate?
14 A. They presented to me in 2015 and asked me to accept that
15 instead of my existing contract.
16 Q. So they came to you directly and asked --
17 A. Yes.
18 Q. -- to increase wages during the term of a contract?
19 A. In the middle of a contract, yes.
20 Q. There was a concern on your part that these higher --
21 the demand for higher wages could result in a strike?
22 A. No.
23 Q. While you've got that in front of you, if you would turn
24 to page 6 and look at the second paragraph from the top and
25 the last sentence where it indicates the Company will be

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1 expected to pay the increased rates or face a possible
2 strike?
3 A. Okay.
4 Q. Is that accurate?
5 A. I've got to read the whole thing so I understand what it
6 says.
7 Q. Go ahead.
8 JUDGE SANDRON: Read the whole paragraph.
9 THE WITNESS: The paragraph anyway.
10 JUDGE SANDRON: To yourself.
11 THE WITNESS: Yes. I believe that was in reference to a
12 comment made by some of my employees that the Union had --
13 JUDGE SANDRON: That's fine. You don't need to explain
14 unless you're asked.
15 THE WITNESS: Oh, okay.
16 JUDGE SANDRON: And then you can explain it.
17 Q. BY MS. CAROL: But that reflects your understanding at
18 the time?
19 A. That reflects the comments made by some of my employees
20 at that time.
21 Q. And that was your understanding? That's what you based
22 your understanding on?
23 A. Yes.
24 Q. This increased wage or I guess potential increased wages
25 would impact your bottom line as a business, correct?

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1 A. Always.
2 Q. Yes. I think you testified before that this is -- that
3 your company is the only unionized, I think it's called the
4 rigging barn in Western Michigan, correct?
5 A. Correct.
6 Q. And that that caused you some additional costs that the
7 other contractors did not have, correct?
8 A. Certainly.
9 Q. Part of that also was, and I'm using a legal term I
10 guess I'll -- are you familiar with the term "jurisdictional
11 rigidity"?
12 A. I understand what it means.
13 Q. All right. I'm going to ask you a couple of questions
14 about that. Before 2015, were operators, and iron workers,
15 and Teamsters to some degree interchangeable in the work
16 that they would do with each -- that they would do on the
17 job?
18 A. Yes.
19 Q. In 2015 that changed, correct?
20 A. Yes.
21 Q. That changed because the Operating Engineers were
22 insisting that operators do operator work, Teamsters do
23 Teamster work, iron workers do Iron Worker work.
24 A. They were insisting that operators do only Operator
25 work. They were not interested in giving up doing the other

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1 work.
2 Q. Oh, okay, okay. They were seeking not only their own,
3 but they also wanted to do other --
4 A. Correct.
5 Q. Is it true that the engineers -- I'm sorry, the
6 Operators are the highest paid of the three generally
7 speaking, as in an aggregate, they're the highest paid
8 employees?
9 A. Not truthfully. The crane operator's rates go up by
10 classification. The forklift operator rate is designed to
11 match the iron worker rate so that they are always the same
12 in the crew. When I put a crew out, all members of the crew
13 are getting paid the same thing. That's why I try to keep
14 my rates between my unions the same.
15 Q. But someone who operates a 900-ton crane is probably
16 paid the most out of any of the workers.
17 A. If he's running his crane. If he's running his
18 forklift, he's back to a different rate.
19 Q. Correct. So the crane operator rate I guess is maybe a
20 more accurate way for me to ask the question, those are
21 higher than the other wages.
22 A. Crane operator wage rates are higher, yes.
23 MS. CAROL: Your Honor, I'd like to enter General
24 Counsel's 15 into evidence.
25 JUDGE SANDRON: On what basis?

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1 THE WITNESS: On the basis of -- I probably should have
2 done it at the time, but when asked about the higher wage
3 rates.
4 JUDGE SANDRON: Yes.
5 MS. CAROL: And he indicated that they were not higher
6 wage rates. This is a -- we would like to enter it for the
7 purpose of credibility.
8 JUDGE SANDRON: Didn't he confirm that, though, when you
9 asked him about it after he went over the statement?
10 MS. CAROL: And also, yeah, I probably should have done
11 this one at a time, whether or not there was a possibility
12 of a strike.
13 JUDGE SANDRON: Which you have it in the record. So I'm
14 not sure you need the whole position statement, if that's
15 the only reasons you want it in.
16 MS. CAROL: Yes, those are the only reasons.
17 JUDGE SANDRON: And that's in the record. You read from
18 the position statement and he confirmed the statements.
19 Q. BY MS. CAROL: And that was about the same time, we're
20 talking 2015 again, when Mr. Popps came on as a business
21 representative.
22 A. Correct.
23 Q. He took over -- strike that, sorry. When he came on, he
24 was part of these discussions about increasing the wages
25 during the term of the contract?

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1 A. Brandon was the one that offered me the new contract,
2 yes.
3 Q. Mr. Popps was also involved with individual employees
4 who had payroll issues when he came on board as well,
5 correct?
6 A. Not immediately but eventually he did become involved
7 with payroll issues, yes.
8 Q. During that time when he first came on, these AGC
9 disputes were -- I'm trying to think of a good word -- were
10 ongoing at the time when he first came on?
11 A. We've had I don't know if you would call them disputes.
12 The question is whether it's one contract or another, yes,
13 those have been going on for 100 years.
14 Q. We had talked about the wage disputes. There's been a
15 lot of testimony about --
16 MR. EASTLAND: Objection; mischaracterizes the witness's
17 statement. He just explained he wouldn't call them
18 disputes.
19 JUDGE SANDRON: I think earlier and --
20 MS. CAROL: I mean to the extent we've got a lot of
21 evidence that employees think they were disputes, that's
22 what I'm referencing is --
23 JUDGE SANDRON: Or disagreement might be --
24 MS. CAROL: Disagreements? All right, if that helps,
25 I'll call it disagreements.

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1 JUDGE SANDRON: -- more neutral.
2 Q. BY MS. CAROL: So there were disagreements about the
3 wage rates, let's put it that way.
4 A. Okay.
5 Q. There has been some testimony, I think you testified
6 about two in particular in December, Cody Velat and Jamey
7 Foster, right?
8 A. Correct.
9 JUDGE SANDRON: December 2015.
10 MS. CAROL: 2015, yes. I'm sorry.
11 Q. BY MS. CAROL: You had called -- I'm sorry, you had
12 spoken to Mr. Popps about those disagreements in December?
13 A. Yes.
14 Q. They were not resolved during that phone conversation?
15 A. They were not resolved when?
16 Q. The first time you spoke about it with Mr. Popps.
17 A. No.
18 Q. After you spoke with him, you were contacted by the
19 Union's attorney, correct?
20 A. Yes.
21 Q. That was by letter?
22 A. Yes.
23 Q. Then you responded to that letter as well, correct?
24 A. Yes.
25 MS. CAROL: All right, let's take a look at those.

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1 Those are I'm going to mark as General Counsel's Exhibits --
2 JUDGE SANDRON: 16.
3 MS. CAROL: -- 16 and 17, but we'll look at them one at
4 a time.
5 (General Counsel's Exhibits 16 and 17 marked for
6 identification.)
7 JUDGE SANDRON: Ms. Carol, I'm going to give you back
8 the General Counsel's 15 for identification. I won't
9 consider it.
10 MS. CAROL: Great, thank you.
11 (General Counsel's Exhibit 15 withdrawn.)
12 Q. BY MS. CAROL: Let's look at 16 and see if you can
13 identify that document.
14 A. I do recognize it.
15 Q. Is it addressed to you?
16 A. Yes.
17 Q. Do you recall receiving this on about the date on
18 December 22nd listed upon --
19 A. Yes.
20 Q. -- the letter.
21 MS. CAROL: I'd like to offer General Counsel's 16 into
22 evidence.
23 JUDGE SANDRON: Any objection?
24 MS. BACHELDER: No objection.
25 MR. EASTLAND: I have several objections, Your Honor,

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1 first relevance. I do not understand why a letter written
2 by the Sachs Waldman firm to Mr. Erickson is relevant to
3 these proceedings. In addition, all of these allegations
4 have been resolved by the settlement agreement. It's
5 hearsay because the Union has taken the position that
6 they're not a party to this case and sometimes taken a
7 position that they are a party to this case, and I'm not
8 quite sure what position they'll take here so I would say
9 it's hearsay.
10 In addition, I have serious concerns because I believe
11 Ms. Bachelder is a member or associated with Sachs Waldman.
12 It's the same firm. And if they were going to offer
13 Mr. Nickelhoff as a potential witness in this case that
14 should have been disclosed prior to her sitting through the
15 entire trial as a representative of one of the involved
16 parties, the Charging Party. That was not disclosed and,
17 therefore, I have a significant concern that now
18 Ms. Waldman -- I mean Ms. Bachelder as an agent of Sachs
19 Waldman has been in here in violation potentially and
20 there's an imputed conflict in the sense of knowing now
21 everything that's gone on and then now we have a new
22 potential witness in the case.
23 So I don't see why it's relevant. It's hearsay. And I
24 think it would cause significant problems with potential
25 future witnesses.

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1 JUDGE SANDRON: Ms. Carol, you're offering it for what
2 purpose?
3 MS. CAROL: The response to this letter which is General
4 Counsel's 17 is evidence of animus. Statements are made
5 within that I'll argue are evidence of animus.
6 MR. EASTLAND: We're talking about 16.
7 MS. CAROL: Correct. I'm putting them -- that's why I
8 showed them to him together.
9 JUDGE SANDRON: Why don't you --
10 MR. EASTLAND: Well, I'm objecting to 16.
11 MS. CAROL: I can lay a foundation for 17 and --
12 JUDGE SANDRON: Why don't you then go on to 17 and offer
13 them together.
14 Q. BY MS. CAROL: If you could take a look at 17 for me and
15 see if you recognize that document.
16 A. I do.
17 Q. At the top it says Brandon Popps. That's not you,
18 correct?
19 A. Correct.
20 Q. But the "from" is Steve Erickson, and that's you, and
21 that's your email address, right?
22 A. Correct.
23 Q. This was created by you on about December 23rd, correct?
24 A. Yes.
25 Q. And it was sent to the individuals listed in the "to"

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1 and the "cc" lines, correct?
2 A. Yes.
3 MS. CAROL: So, Your Honor, at this point I'd like to
4 offer General Counsel's 16 and 17.
5 JUDGE SANDRON: Any objection to the documents taken
6 together?
7 MR. EASTLAND: Same objection with respect to General
8 Counsel's 16, same objections.
9 JUDGE SANDRON: Inasmuch as General Counsel Exhibit 17
10 is a response to General Counsel's Exhibit 16 and they are
11 necessarily related, I will admit both documents. So
12 General Counsel's Exhibits 16 and 17 are admitted.
13 (General Counsel's Exhibits 16 and 17 received in evidence.)
14 Q. BY MS. CAROL: These were in December 22nd and 23rd. It
15 was shortly after that that the grievances and the first
16 unfair labor practice charges was filed, correct?
17 A. Correct.
18 Q. And like you had said, those ended up getting resolved.
19 A. Correct.
20 Q. That was after the first of the year, in January I think
21 you may have testified, does that sound right?
22 A. I believe you're correct.
23 Q. The disagreements between employees about their wage
24 rates continued not through grievances but continued as they
25 had before --

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1 A. Correct.
2 Q. -- after that, okay. You had testified about the
3 selling of certain cranes and you said that Erickson's
4 engages in buying and selling cranes on a pretty regular
5 basis, right?
6 A. Correct.
7 Q. Talking about May of 2016 specifically, I think you
8 testified that you had gotten all your equipment appraised.
9 A. Yes.
10 Q. Was that just the cranes or are we talking trucks and --
11 A. Everything.
12 Q. Everything, okay. Were you intending on selling just
13 cranes or were you intending on selling any other equipment?
14 A. We sell trucks, trailers, fork trucks, cranes every
15 year. The appraisal is just part of that process.
16 Q. You had also testified that you had considered selling
17 the 60- and 40-ton cranes in May?
18 A. May of?
19 Q. Of 2016.
20 A. I think it was considered quite a bit before that. But,
21 yes, it was being considered in May.
22 Q. I think if all the exhibits are in front of you there
23 was an email that you had sent in May that I think you
24 testified referenced this possible sale. That is
25 Respondent's 14 -- sorry, 21. If you can take a look at

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1 that?
2 A. Yes.
3 Q. Emails are difficult so bear with me. I'm going to go
4 to page 4, which appears to be the first email of the chain.
5 A. Yes.
6 Q. That's from a salesperson to you, correct?
7 A. Yes.
8 Q. The salesperson is asking you if there is anything
9 coming up for sale or if you're looking for anything.
10 A. Correct.
11 Q. So you didn't contact the salesperson first, he
12 contacted you first about potential sales of cranes.
13 A. In this particular application, I think you're correct.
14 We have ongoing conversations throughout the year. But in
15 this particular chain he was the first in line.
16 Q. If you go back to page 3, there is a response from you
17 where it says we do have an 1100 available. What crane is
18 that, what size crane?
19 A. It's a 110-ton Liebherr.
20 Q. Unit 293, what is that?
21 A. 293 is a 300-ton crawler crane.
22 Q. Then there is a response back. And if you go to page 2,
23 the middle section there is again from you to Gene. I think
24 is it Landress or Landrees?
25 A. Landres.

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1 Q. You indicate that you weren't looking to sell the 1100
2 there. But I'm looking through, there is no mention in the
3 document about any 60- or 40-ton cranes in this email
4 exchange.
5 A. Not specifically. But if you go back to page 3, the
6 bottom paragraph, it says I will have 6 to 10 machines for
7 sale this year, details in a couple of weeks.
8 Q. Couple of weeks, yeah, so okay. But there was no
9 mention of the 60s or 40s in this particular --
10 MR. EASTLAND: Objection; asked and answered.
11 MS. CAROL: That's fine. He's right.
12 Q. BY MS. CAROL: So in May you had this conversation with
13 the salesperson. But at that time you didn't have any 60s
14 or 40s for sale, listed for sale.
15 A. No.
16 Q. Those weren't put up for sale until July of 2016; is
17 that correct?
18 A. I believe that's an official listing date. Gene and I
19 had been discussing them prior to that. And as I stated
20 yesterday or earlier today, I'm not sure which day it was,
21 we brought them in and had to get them cleaned up, get
22 photographs taken and things. So the process was started
23 back in May.
24 Q. But the listing, the answer, the listing wasn't in July
25 of 2016?

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1 A. I believe the official listing date would have been
2 July.
3 MS. CAROL: Let's look at the listing. I'll do General
4 Counsel's 18.
5 (General Counsel's Exhibit 18 marked for identification.)
6 THE WITNESS: What are we looking for?
7 Q. BY MS. CAROL: Oh, you don't have it. I'm sorry. I'm
8 going to show it to you.
9 A. Oh, sorry.
10 Q. I have to paginate it.
11 JUDGE SANDRON: Let's go off the record just for one
12 minute.
13 (Off the record at 1:24 p.m.)
14 JUDGE SANDRON: Back on the record.
15 Q. BY MS. CAROL: Here is GC-18. Take a look at that and
16 see if you recognize that.
17 A. Yes.
18 Q. That is an email from you to sales people, from brokers
19 I think you had identified them.
20 A. Three different brokers, yes.
21 Q. Then the second page of that is the listing of the
22 machines that are for sale and the pricing that you're
23 looking to get, correct?
24 A. Correct.
25 MS. CAROL: I'd like to offer General Counsel's 18 into

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1 evidence.
2 JUDGE SANDRON: Any objection?
3 MS. BACHELDER: No objection.
4 MR. EASTLAND: Ms. Carol, this may be just how it was
5 provided, but I notice lines cut off from the copy, the
6 numbers on the second page, the beginning numbers.
7 MS. CAROL: Yeah, so is mine. Might be how we have it.
8 MR. EASTLAND: I have no objection and if we have a
9 clean version it would be good to --
10 MS. CAROL: I'll check it out. I think that might be
11 the only one we have, but I'll look and see.
12 MR. EASTLAND: Okay, thank you.
13 JUDGE SANDRON: Can we make out what the first --
14 THE WITNESS: The first digit is a 2 on every number.
15 MS. CAROL: That makes it easy.
16 MR. EASTLAND: With that then no objection.
17 JUDGE SANDRON: General Counsel Exhibit 18 is received
18 (General Counsel's Exhibit 18 received in evidence.)
19 Q. BY MS. CAROL: And so after you listed these for sale,
20 the crane brokers did respond to the prices that you were
21 seeking very next day, right?
22 A. They responded. I don't know if it was --
23 Q. Shortly thereafter?
24 A. I don't know if it was the next day.
25 JUDGE SANDRON: No, it's better if you --

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1 MS. CAROL: Yeah, no, I've got documents.
2 JUDGE SANDRON: -- don't get too specific.
3 MS. CAROL: I'll show you GC-19.
4 (General Counsel's Exhibit 19 marked for identification.)
5 Q. BY MS. CAROL: See if you recognize that.
6 A. I do.
7 Q. Again, you're not -- underneath that, it's from and
8 that's, is that Gene Landres that we were discussing
9 earlier?
10 A. Yes.
11 Q. And that's to you, Steve Erickson. Then again the
12 second page is the same document as in GC-18, the same
13 listing.
14 A. Yes.
15 MS. CAROL: I ask to put General Counsel's 19 into
16 evidence.
17 MS. BACHELDER: No objection.
18 JUDGE SANDRON: I think we have the same thing with --
19 MS. CAROL: Yes. And like I said, that might be as good
20 as I have it.
21 JUDGE SANDRON: The witness has said what first column
22 represents. Any objection?
23 MR. EASTLAND: I guess I'm struggling with relevance in
24 terms of -- well, as to authenticity I have no objection.
25 But on relevance I guess I have some uncertainty as to why

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1 it would be relevant. This is -- that's fine. Fine, no
2 objection. Go ahead.
3 JUDGE SANDRON: General Counsel Exhibit 19 is received.
4 (General Counsel's Exhibit 19 received in evidence.)
5 Q. BY MS. CAROL: After they responded on July 14th, there
6 was some back and forth between you and Mr. Landres
7 regarding the sailing -- I'm sorry, the sale and the pricing
8 of these particular cranes you had for sale, correct?
9 A. Correct.
10 Q. That continued throughout the fall of 2016?
11 A. Yes.
12 Q. During that time, the cranes were not being sold during
13 that time. That's what these discussions --
14 A. Right. The cranes have still not been sold.
15 MS. CAROL: So let's, all right, do it like this, do
16 General Counsel's 20.
17 (General Counsel's Exhibit 20 marked for identification.)
18 Q. BY MS. CAROL: As you testified to, this -- take a
19 minute to look at it if you want. This is communications
20 between you and Mr. Landres about the sale of those cranes?
21 A. Yes.
22 JUDGE SANDRON: Do you have more of these?
23 MS. CAROL: More copies?
24 JUDGE SANDRON: More exhibits because --
25 MS. CAROL: One more.

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1 JUDGE SANDRON: Because it might almost be better --
2 MS. CAROL: Do them together?
3 JUDGE SANDRON: Let's go off the record and show them to
4 opposing counsel. It might be better to go off the record,
5 show them to opposing counsel. If there's no question of
6 authenticity, you can just get them in the record.
7 MS. CAROL: All right.
8 JUDGE SANDRON: So why don't we go off the record.
9 (Off the record from 1:29 p.m. to 1:30 p.m.)
10 JUDGE SANDRON: Back on the record.
11 The General Counsel has, as indicated on the record,
12 proffered GC Exhibit 20. She is also proffering GC Exhibit
13 21 for identification.
14 (General Counsel's Exhibit 21 marked for identification.)
15 JUDGE SANDRON: These are similar in format to the
16 earlier exhibits, GC Exhibits 18 and 19. Are there any
17 objections to these documents?
18 MS. BACHELDER: No objection.
19 MR. EASTLAND: No objection.
20 JUDGE SANDRON: General Counsel's Exhibits 20 and 21 are
21 received.
22 (General Counsel's Exhibits 20 and 21 received in evidence.)
23 Q. BY MS. CAROL: I did have one question about GC-21. You
24 had indicated before that they had taken photos of these in
25 May of 2016. But I'm looking at the second page of General

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1 Counsel's 21, and again I apologize, where there is an
2 indication near the top, where the salesperson is asking if
3 they can schedule a visit and take sales photos.
4 A. Correct.
5 Q. They came twice then in --
6 A. Yes.
7 MR. EASTLAND: I'm going to object. That
8 mischaracterizes the witness's testimony.
9 JUDGE SANDRON: I think he had said --
10 MR. EASTLAND: I don't want to say -- I mean it's going
11 to say what it -- the record is going to show what it shows,
12 but I don't believe that's an accurate characterization.
13 JUDGE SANDRON: Of his prior testimony?
14 MR. EASTLAND: Of his prior testimony.
15 JUDGE SANDRON: I believe he did say that he had taken
16 photos earlier.
17 MR. EASTLAND: No, Your Honor. I believe he said that
18 they had to come out and take photos. He talked with them
19 in May and they had to come out and take photos. I think
20 the testimony is clear, but I'm sure that's what he said.
21 JUDGE SANDRON: I think Mr. Erickson had already
22 answered, correct me if I'm wrong, we don't want to put
23 words in your mouth, that they came out twice.
24 THE WITNESS: Yes. All the cranes weren't there the
25 first time. Some of them were on jobsites so they had to

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1 come back and take pictures of more cranes. As they got off
2 the jobs, they had to come back and take more pictures.
3 JUDGE SANDRON: I see. So they took some in May and
4 then others later.
5 THE WITNESS: He sometimes comes himself and sometimes
6 he sends a local Grand Rapids photographer to get them. A
7 lot of it depends on what's available. If there's only one
8 or two cranes in the yard, he's going to have the local guy
9 do it. But I tried to get a bunch in so he could come
10 himself that time. So, yes, there are different trips.
11 Q. BY MS. CAROL: You had testified that these cranes are
12 still for sale. They haven't been sold?
13 A. Those --
14 Q. I'm sorry, the 40s and 60s.
15 A. The four particular ones have not gone, not been sold
16 yet.
17 Q. Those continued to be used throughout the summer of 2016
18 to the present, correct?
19 A. We use them occasionally when we have work for them.
20 Q. You wouldn't characterize the use as fairly regular use
21 of those four cranes?
22 A. No.
23 MS. CAROL: Can we go off the record for a second?
24 JUDGE SANDRON: Yes.
25 (Off the record.)

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1 JUDGE SANDRON: We've had some extensive discussion off
2 the record of how to treat the voluminous quantity of daily
3 work orders that the Respondent has produced pursuant to
4 subpoena. There are several boxes of those as I understand.
5 We had some discussion how best to handle that. I think we
6 have all come to the conclusion that perhaps the best
7 approach would be to leave the record open for the parties
8 to review the documents and then be able to enter into a
9 stipulation as to what those records show rather than trying
10 to get them into the record in their totality either in
11 paper form or even electronically since there are so many of
12 them.
13 As we discussed, I will leave the record open at the
14 conclusion of today's proceeding and set a deadline of
15 Friday, May 26, 2017, for receipt of the parties'
16 stipulations. At that time I will issue an order closing
17 the record. As I suggested, you might want to put in your
18 joint exhibit a joint motion to close the record. If by
19 chance you are not able to get the stipulation done by May
20 26th then I will entertain a motion to extend the time
21 period.
22 Is there anything that any counsel wanted to add to what
23 I've stated?
24 MS. CAROL: I think that sums it up.
25 MR. EASTLAND: Just a clarification, Your Honor.

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1 Obviously, we'll work and hopefully get the stipulation.
2 And to the extent there isn't, then we would work to find a
3 way to get all of the documents in, in an acceptable format.
4 JUDGE SANDRON: In that eventuality, yes, we will
5 consider that.
6 MR. EASTLAND: Thank you.
7 Q. BY MS. CAROL: Okay. So I think you had testified and I
8 think I may have already asked you this and I apologize if I
9 did that you buy and sell cranes every year.
10 A. Yes.
11 Q. In some years, I believe that you actually sold quite a
12 few of them, correct?
13 A. Some years we sell a lot. Some years we buy a lot.
14 Q. You buy a lot, right. So I think it was Respondent's 7
15 is a list of ones that were sold. If you could just take a
16 look at that real quick? I think if my -- well, I'll wait
17 till you get it.
18 JUDGE SANDRON: May I just ask one quick question.
19 MS. CAROL: Sure.
20 JUDGE SANDRON: On those work orders, they go from what
21 period?
22 MS. CAROL: I was seeking to do July of 2016 through
23 April, to current I think they were given to me for the
24 hearing as part of the subpoena, so through today of 2018 --
25 or 2017.

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1 MR. EASTLAND: Agreeable, July 2016 through April 2017,
2 consistent with the production.
3 Q. BY MS. CAROL: Do you have it in front of you?
4 A. Yes.
5 Q. I think in 2003 it looks like there were nine cranes
6 that sold.
7 A. I'm sorry, would you repeat?
8 Q. 2003, there were nine cranes that were sold?
9 A. I see two.
10 Q. I must have the wrong document. Sorry, I have the wrong
11 document. 2009.
12 A. Okay, 2009.
13 Q. And so there were --
14 A. Yes, there were nine cranes that year.
15 Q. Were any of your core employees laid off in 2009
16 permanently?
17 MR. EASTLAND: I object to the term "core employees."
18 I'm not sure it's been established what that entails.
19 MS. CAROL: I think he did testify. I asked him if they
20 were core or stable he had referred to it as.
21 JUDGE SANDRON: Maybe stable employees. That might --
22 MS. CAROL: Okay, stable employees.
23 THE WITNESS: I would suspect so, but I don't know for
24 sure. I'd have to look at the records.
25 JUDGE SANDRON: We have the records, right? We will be

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1 able to see --
2 MR. EASTLAND: Subject to the prior qualifications, yes.
3 MS. CAROL: Yes.
4 MR. EASTLAND: And the limitations expressed on the
5 record.
6 MS. CAROL: Yes. I believe those records are in the
7 record.
8 JUDGE SANDRON: Yes.
9 Q. BY MS. CAROL: You sold two cranes in 2017, right?
10 A. So far.
11 Q. Were any of the stable employees permanently laid off
12 this year?
13 A. No.
14 Q. You said that it was 10 years ago you started seeing the
15 trend and going from smaller to larger cranes.
16 A. It's been a long time, yes.
17 Q. In 2015, you had testified that Mr. Stephenson went from
18 being a teamster to an oiler.
19 A. Yes.
20 Q. At that time you knew that you were making that
21 transition from large to small cranes?
22 A. Yes, we had been in the process of it. I think if
23 you'll look at the cranes that were sold in 2009, there's a
24 lot of smaller cranes in these mixes here.
25 Q. When he transferred from -- when he switched from a

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1 teamster to an operator, was he provided any training that
2 you had testified about earlier, training on how to operate
3 certain cranes?
4 A. No, he had not begun any training at our facility yet
5 because he had no certifications from the Union yet or from
6 the NCCO yet.
7 Q. You had testified when you say qualifications, that's
8 different than certifications, correct?
9 A. Correct.
10 Q. So certifications are from the NCCO and qualifications
11 are determined by you?
12 A. Correct.
13 Q. Part of that is experience on a particular crane?
14 A. Yes.
15 Q. Whether or not one of your stable employees would get
16 such experience would be determined by you?
17 A. Yes.
18 Q. Then that experience at Erickson's is what you would use
19 to determine whether or not you thought someone was
20 qualified, correct?
21 A. It's a part of what I use.
22 Q. I think you had testified about whether or not
23 experience outside of Erickson's would also go into that
24 consideration.
25 A. It does, yes.

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1 Q. You had talked a little bit about Matt Rowe not having
2 any experience. Do you know if he had any experience away
3 from Erickson's running a crane?
4 A. I do not know.
5 Q. Talking about the May layoffs between Mr. Stephenson and
6 Mr. Rowe, you told them that it was for lack of work.
7 A. Correct.
8 Q. But I think it was Mr. Rowe was dispatched from the hall
9 for a job two days later.
10 A. Stephenson.
11 Q. Stephenson was dispatched from the hall two days later,
12 correct?
13 A. Correct.
14 Q. Okay. And that was for 3 days?
15 A. Two or three days.
16 Q. So I guess my question is was there a reason you didn't
17 just keep him on to finish that job before you laid him off?
18 A. I was probably not aware of that job. Jobs come in
19 every day. They get called in. When Keith was laid off
20 that job wasn't there. That job came in a day or two later.
21 We needed a person for it so we called the hall.
22 Q. How far in advance are job -- you can actually pick up
23 and do a job within a day of getting the call?
24 A. We do a lot of jobs the same day we get the call.
25 Q. In those cases, if you didn't have employees you would

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1 call the hall?
2 A. I wouldn't call the hall for anything less than a day.
3 It's not productive.
4 Q. You had testified that the six employees who had been
5 laid off were primarily operating either 40 ton or 60-ton
6 cranes.
7 A. Or didn't have a crane assigned to them.
8 Q. Or didn't have a crane assigned.
9 A. Yeah.
10 Q. When you say that they have a crane assigned to them is
11 that exclusively the work that they do 40 hours a week or
12 50 hours a week?
13 A. It's not exclusive, but that's who -- if you have a
14 crane assigned to you, you are the one that goes out on that
15 crane unless you're not available or you're sick or
16 something somebody else will take that crane. But we
17 generally like to try to keep the guy. They take better
18 care of their equipment if they are assigned to it and
19 nobody else is leaving McDonald's bags in it.
20 Q. Do you run every crane every day?
21 A. No.
22 Q. So if you don't run a crane that somebody is assigned to
23 what does that person do?
24 A. We try to find another job for them.
25 Q. Is that just operating a crane or would that be doing

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1 other work as well?
2 A. It could be forklift work. We could put them in the
3 rigging department.
4 Q. I want to talk a little bit about June 20th when you
5 laid off the three, the two Baerman brothers and Nick
6 Willer. You testified that you had a meeting with them in
7 the Grand Rapids -- I'm sorry, in the Muskegon facility,
8 right?
9 A. Correct.
10 Q. You informed them of that meeting by work order, right?
11 A. Correct.
12 Q. If you look in front of you that's General Counsel's 10,
13 just take a look at it.
14 A. Yes.
15 Q. It has a job order number on it, right?
16 A. It does.
17 Q. And 324. When you posted this, you knew they were going
18 to be laid off. You already made that decision.
19 A. Correct.
20 Q. You didn't call them directly to tell them that they
21 were laid off over the phone. You said you like to do it
22 face to face.
23 A. Correct.
24 Q. And you didn't tell them to meet you through a text
25 message or a phone call.

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1 A. Texted them to come into work at 8 o'clock.
2 Q. At 8 o'clock. You made up a work order to post for them
3 to report to get laid off, correct?
4 A. Correct.
5 Q. Do you do that every time you lay off employees?
6 A. Not every time. In this particular case, the meeting
7 was at 8 o'clock in the morning. If I don't put up a work
8 order for them or something they're going -- a lot of guys
9 will come in early and they're going to come in and look for
10 something, then they'll come in the office and ask if there
11 is a job for them. They'll start calling dispatch. So I
12 put up a work order so that they knew to meet with me at 8
13 o'clock.
14 Q. What is Job Number 324.
15 a. It's just a reference to their union number. I could
16 have said layoff, but I felt that was inappropriate so I
17 just put their union number on it.
18 Q. So these six layoffs, there were three on June 20th, two
19 in May, and then one, Carlos was in early July.
20 A. Correct.
21 Q. You testified that you already decided to sell the -- to
22 sell these cranes. Why didn't you just wait until they were
23 finished with their job and do it all at the same time? Why
24 did you stagger it like that?
25 A. They were finished with their jobs, whatever particular

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1 job they were on. I started laying them off as they got
2 done with their jobs.
3 Q. The cranes when these layoffs took place were not yet
4 listed for sale.
5 A. I believe they were listed for sale with the brokers. I
6 believe I had had a conversation with the brokers. We're
7 trying to talk about is there an official date. I think the
8 date was in May when I initially notified them and we had
9 started some conversations about what machines would be
10 available and when. But we have talked about a July date,
11 too, when they took a second set of pictures or a first set
12 of pictures I guess it was, so I think the date moves
13 around. It depends on which one you're looking for.
14 Q. So you had talked about it, but the actual listing
15 wasn't until that July 13th email with the price list; is
16 that correct?
17 A. I had told them they were available, so they're free to
18 put them out for that. There was more discussions and more
19 things that went on afterwards.
20 Q. But during this time between May and July, the 40s and
21 the 60s were still being used, correct?
22 A. Between May -- yes, yeah. I didn't bring them in to do
23 prep work on them until June 20th I think, I believe is when
24 we brought them in to service them and get them ready for
25 sale.

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1 Q. But they were continuing to be used by operators on jobs
2 even after that point, correct?
3 A. Not right away. We put them in the shop -- it was my
4 impression that they would sell quickly. That's been our
5 traditional history. We'd put up a machine for sale. It's
6 usually sold pretty quickly. The market has been quite,
7 quite different this time. We're not getting any traction
8 on sales so we eventually put them back to work.
9 JUDGE SANDRON: Do you remember when they went back to
10 work?
11 THE WITNESS: I think it will -- I'd have to look at the
12 work orders.
13 JUDGE SANDRON: All right. We can look at --
14 THE WITNESS: Yeah.
15 MS. CAROL: It's in those documents.
16 Q. BY MS. CAROL: After you let these individuals go, I
17 believe you were down to nine operators?
18 A. Probably 14.
19 Q. So after this date, after you lost six guys out of this
20 group, you would call the hall to fill in any gaps you had
21 where crane operators would be necessary to run those, that
22 equipment?
23 A. I was calling the hall for oilers usually. I would
24 doubt that I called for many operators.
25 Q. If there were overbookings then you would subcontract

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1 that to a different firm then?
2 A. Not as a general rule. I think you're making reference
3 to another discussion that I had.
4 Q. Well, I guess my question is if there were overbookings
5 that's what you did is you would subcontract the work out?
6 A. If we only have operators to run the big cranes and
7 there is no little crane operator then we can't do the job.
8 So at that point we could sub that -- I will let the
9 salesman sub that job to another contractor.
10 Q. That's what you would do in say fall of 2016?
11 A. Yes, that the general rule, yes.
12 JUDGE SANDRON: That's been a consistent practice?
13 THE WITNESS: Yes.
14 MR. EASTLAND: The rule, Your Honor.
15 JUDGE SANDRON: Yes.
16 MR. EASTLAND: Okay.
17 Q. BY MS. CAROL: So when you run big cranes, do running
18 the big cranes require more than one operator to use them?
19 A. Not generally. One operator is all that's really
20 required.
21 Q. What about oilers, when would you use those?
22 A. Oilers are working with the Operators and generally
23 starts, well, there's a -- for us it's in the 120 to, well,
24 90-ton cranes require an oiler, so 90 and above. 60 ton
25 sometimes can require an oiler. It's in classifications,

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1 different locals, different rules, different places. In
2 Chicago, it's 50 ton. Around here it has been 60, so it
3 varies.
4 Q. So there are times when you would use an oiler and
5 sometimes you would not.
6 A. There are times when I would and there are times when --
7 JUDGE SANDRON: Wait till he finishes his answer.
8 MS. CAROL: Okay.
9 JUDGE SANDRON: And wait till she finishes the question.
10 THE WITNESS: Got it.
11 MS. CAROL: Sorry.
12 Q. BY MS. CAROL: So you testified that you would have a
13 conversation with Mr. Ocampo about whether or not he was
14 going to be laid off before he was laid off, in early June I
15 think you had testified.
16 A. We talked about it.
17 Q. Yeah. At that point you already decided to sell the
18 cranes, according to your testimony. Is there a reason you
19 didn't tell him?
20 A. I don't believe it's appropriate to, you know, I'm going
21 to lay you off in 3 weeks. That just doesn't seem right to
22 me. I alluded to the fact, but I didn't say that. I think
23 it's mean, I don't know, just me.
24 Q. You said in June you also had a conversation with
25 Mr. Popps where you had indicated that there were -- that

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1 the parties were incapable of settling their differences.
2 What made you -- what did you mean by that?
3 A. Brandon and I have had some differences. I found out
4 along the way that Brandon was going to my customers,
5 reaching out to them to try to get them to hire men direct
6 from the hall and not hire them from me. I didn't think
7 that was an appropriate for a business agent to act so I
8 didn't feel that he was -- him and I were not going to be
9 able to settle some differences after that.
10 Q. Did you attempt to work it out with him? Did you ever
11 talk to him personally about these things you were hearing
12 about what you thought he was doing?
13 A. No. I believe I terminated all conversation with him.
14 JUDGE SANDRON: When did you first learn of that, do you
15 recall?
16 THE WITNESS: June 2016 maybe, June or July. There were
17 some projects going on and the customers came to me and said
18 why is your business agent trying to do this, so I became
19 aware of what was going on like in June or July of 2016.
20 Q. BY MS. CAROL: This issue that you had spoken about
21 with -- I'm sorry, that we had spoken about in 2015 about
22 there being some dispute about higher wages, did you ever
23 discuss your opinions about the Union or the Union
24 representative with any of the employees that you worked
25 with?

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1 A. No.
2 Q. Did you discuss it from time to time with them, state
3 your opinion on how the Union -- what kind of job the Union
4 was doing?
5 MR. EASTLAND: Object, vague.
6 JUDGE SANDRON: Go ahead, you can answer.
7 THE WITNESS: What was the question? I'm sorry.
8 Q. BY MS. CAROL: Did you ever have discussions with
9 employees from time to time about your opinion on what the
10 job, the job the Union was doing?
11 A. I don't generally discuss my opinions with people from
12 the crew. That's just not a normal practice for me.
13 Q. It's not a normal practice. Have you ever done it?
14 A. I can't say that I've never done it, but it's not a
15 normal practice for me.
16 MS. CAROL: Your Honor, could I just have one minute?
17 JUDGE SANDRON: Yes, off the record.
18 (Off the record.)
19 JUDGE SANDRON: I had one follow-up question. When you
20 had heard these reports that Mr. Popps was trying to
21 undercut your business basically, did you ever mention that
22 at all to any of the employees?
23 THE WITNESS: Yes.
24 JUDGE SANDRON: Do you recall what you said to them, as
25 best as you can?

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1 THE WITNESS: At one point I said to a group of guys
2 that it's not helping that Brandon is out taking the work
3 away from us, that's part of what's causing the slowdown.
4 Again, it's probably an insignificant part, but it's an
5 issue. I believe I said that to a group of guys one day. I
6 think it was during the June 20th layoff. It was one of the
7 questions that came up.
8 JUDGE SANDRON: When you laid off the three individuals?
9 THE WITNESS: Yes.
10 JUDGE SANDRON: Is that the only time you recall that
11 you mentioned that particular issue?
12 THE WITNESS: Yes. It's the only time I recall.
13 Q. BY MS. CAROL: You had testified about Ms. Tejchma being
14 a payroll clerk, right?
15 A. Correct.
16 Q. As her role as a payroll clerk, she will often
17 communicate issues between you and the employee with a
18 question. Does that sound right?
19 A. Correct.
20 Q. Sometimes she'll relay messages from you to the
21 employees and vice versa?
22 A. Yes, that's fair.
23 Q. She would be involved in any pay adjustments that were
24 made?
25 A. Eventually she will be because she's going to fix the

1 check.
2 Q. She also prepares all the Company's taxes, right?
3 A. Not taxes.
4 Q. I'm sorry. She submits the taxes, maybe not prepares
5 them. She submits them and signs on behalf of the Company?
6 A. No, not tax returns. I sign the corporate tax returns.
7 Q. What about the quarterly taxes?
8 A. Payroll taxes?
9 Q. Sure.
10 A. Yeah, she would do payroll taxes.
11 Q. She would sign on behalf of the Company?
12 A. I don't know if they are signed, tell you the truth.
13 I've never done one.
14 Q. She also does -- has some activity with the Company in
15 regard to its relationship with the banking?
16 A. She signs paychecks.
17 Q. She signs the paychecks.
18 A. And accounts payable checks, yeah, so she signs checks.
19 Q. And she's specifically authorized to do that?
20 A. Yes. There are three of us.
21 JUDGE SANDRON: Who is the third one?
22 THE WITNESS: Brent, myself, and Nancy. They still let
23 me do that once in a while.
24 MS. CAROL: I've got General Counsel's 22. I'll just
25 show you real quick.

1 (General Counsel's Exhibit 22 marked for identification.)
2 Q. BY MS. CAROL: Can you identify that document?
3 A. It's a document from Comerica. I'm not exactly sure
4 what it is, but it's a document from Comerica Bank, which is
5 our bank.
6 Q. The second page, that's your signature it looks like
7 three times on it?
8 A. Yes.
9 MS. CAROL: I'd like to offer General Counsel Exhibit
10 22.
11 MR. EASTLAND: No objection.
12 MS. BACHELDER: No objection.
13 JUDGE SANDRON: General Counsel Exhibit 22 is received
14 (General Counsel's Exhibit 22 received in evidence.)
15 MS. CAROL: Your Honor, that's all I have on cross.
16 JUDGE SANDRON: Ms. Bachelder?
17 MS. BACHELDER: Yes. I wonder if could I -- could you
18 get somebody in there to make copies.
19 MS. CAROL: Um-hum.
20 JUDGE SANDRON: Do you need a few minutes?
21 MS. BACHELDER: Just five minutes.
22 JUDGE SANDRON: We'll go off the record.
23 (Off the record.)
24 JUDGE SANDRON: Back on the record.
25 Ms. Bachelder, cross-examination.

1 CROSS-EXAMINATION
2 Q. BY MS. BACHELDER: Mr. Erickson, the 40- and 60-ton
3 cranes were not losing money; is that correct?
4 A. No, I would say that's not correct. I would think they
5 are losing money. They weren't making enough hours to earn
6 above what my payment was.
7 Q. Did you have payments on those?
8 A. I have payments on every piece of equipment I have.
9 Q. I thought your son testified that they made money, just
10 not as much money as the other cranes.
11 A. I think he was grouping small cranes together. The
12 group of small cranes makes, you know, I think he was
13 referring to sales, not profits. But profits per crane is
14 based on a number of hours. It ties into sales, but profit
15 is a portion of that.
16 Q. Was your son talking about sales?
17 MR. EASTLAND: Objection, lack of foundation.
18 JUDGE SANDRON: He heard his son's testimony.
19 MR. EASTLAND: But he doesn't know. He's not inside his
20 head.
21 MS. BACHELDER: Maybe he can answer.
22 JUDGE SANDRON: Do you know to what he was referring?
23 You heard his testimony. Do you --
24 THE WITNESS: Yeah, I think --
25 JUDGE SANDRON: And what part of the testimony, Your

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1 Honor. I mean my goodness he testified for a long time.
2 MS. BACHELDER: Well, he can answer that.
3 JUDGE SANDRON: Which portion of his testimony?
4 MR. EASTLAND: And the testimony speaks for itself, Your
5 Honor, so a relevance objection. What Mr. Brent Erickson
6 testified is already in the record.
7 MS. BACHELDER: This is cross-examination. I am
8 entitled to a little bit of latitude.
9 JUDGE SANDRON: I think --
10 MR. EASTLAND: She had an opportunity to cross-examine
11 Mr. Brent Erickson.
12 JUDGE SANDRON: I think there is a question of to what
13 he was referring in his testimony yesterday as compared to
14 what the witness is testifying.
15 MR. EASTLAND: Your Honor, the question was what was
16 Brent referring to in his testimony. This witness can't
17 answer that question.
18 JUDGE SANDRON: That's true. Maybe you can rephrase it.
19 MS. BACHELDER: Let me ask another question.
20 Q. BY MS. BACHELDER: My recollection of your son's
21 testimony was that he said that the small cranes produce
22 revenue, but less revenue than the larger cranes. Is that
23 what you understood him to say?
24 JUDGE SANDRON: Well, actually maybe --
25 MR. EASTLAND: Yeah, it's --

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1 JUDGE SANDRON: I'll tell you what, Ms. Bachelder, why
2 don't you just ask him if it's correct.
3 Q. BY MS. BACHELDER: Is it correct?
4 A. Yeah, small cranes produce less revenue than big cranes.
5 Q. You talked about Brandon Popps dropping off a collective
6 bargaining agreement that he wanted you to sign. Do you
7 recall that testimony?
8 A. Yes.
9 Q. Was that the Western Michigan agreement?
10 A. I believe it was the Great Lakes Fabricators agreement.
11 Q. When you discussed during direct about wage issues and
12 not wanting to discuss them with Mr. Popps, you said you
13 were concerned about employee privacy, correct?
14 A. Correct.
15 Q. You said that you didn't understand at that time that
16 that wasn't a legitimate action, correct?
17 A. That was my understanding at the time.
18 Q. You have since learned something else, correct?
19 A. The National Labor Relations Board has since educated me
20 on what is proper and what is improper.
21 Q. Your reluctance to talk to Brandon was not just a
22 privacy concern, isn't that true?
23 A. No. It was a privacy concern. I genuinely believed
24 that no payroll or information about employees is supposed
25 to be shared with anybody else without their permission.

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1 That is the way I was always taught.
2 Q. Isn't it true you were also concerned because your
3 employees did not follow your rules about who they should
4 talk to and in what order?
5 A. At that point in time we had a procedure in place that I
6 expected that to be followed, yes.
7 Q. So apart from privacy you were concerned about their
8 failure to follow that procedure, correct?
9 A. Yes, I would -- I don't know if concern is the right
10 word, but yes.
11 Q. Do you have General Counsel's 17 in front of you?
12 A. Yes.
13 Q. That's your response to Mr. Nickelhoff's letter. In the
14 text, it says that there is a document attached. It appears
15 from the heading there was also a document attached. Do you
16 agree?
17 A. Yes.
18 (Charging Party's Exhibit 1 marked for identification.)
19 Q. BY MS. BACHELDER: I'm going to place in front of you a
20 document I've had marked as Charging Party 1. And ask you
21 is that the document that was attached?
22 A. I believe it was.
23 MS. BACHELDER: I offer Charging Party 1.
24 JUDGE SANDRON: Any objection?
25 MR. EASTLAND: No.

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1 JUDGE SANDRON: Ms. Carol?
2 MS. CAROL: No objection.
3 JUDGE SANDRON: Charging Party's Exhibit 1 is received.
4 (Charging Party's Exhibit 1 received in evidence.)
5 Q. BY MS. BACHELDER: Your concern was not just privacy.
6 It was also that they talk to you and/or Nancy before going
7 to the Union, correct?
8 A. That was the general practice that we had. When you
9 have a payroll issue, you come in and you try to get it
10 figured out with Nancy, see if it's a clerical issue, a time
11 card issue or what not. Then if it becomes apparent that
12 it's more than that it goes to me to determine if it's a
13 contract or jurisdictional issue. And then we normally went
14 to the business agent. That's the way we had done it for 35
15 years that I'd been around there.
16 Q. You thought that employees should have to go to you or
17 Nancy before talking to the Union, correct?
18 A. I just thought that was a better procedure. Again,
19 since been corrected by the National Labor Relations Board
20 and do understand now that they can avert this completely.
21 Q. They can avert this completely meaning?
22 A. They can go right to Brandon is what I was told.
23 Q. Okay. The settlement agreement that you signed
24 concerning this issue is already in the record. As part of
25 that settlement agreement, you had to post a notice, isn't

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1 Q. Were any of the more year-round employees assigned to
2 those machines when they were sold?
3 A. No. The two machines that were sold were really small,
4 unassigned, general purpose machines.
5 MR. EASTLAND: Take a look at Charging Party 1. I'm
6 sorry. I should have asked this question. I have another
7 Charging Party 1 that Ms. Bachelder marked, but I think
8 that's the rejected one, so I just want to verify --
9 JUDGE SANDRON: The reminder is the --
10 MR. EASTLAND: Yes, okay.
11 JUDGE SANDRON: -- Charging Party 1.
12 MR. EASTLAND: Yes, okay. Thank you.
13 Q. BY MR. EASTLAND: So this one here.
14 A. Oh, yes, the document, yeah, I've got it.
15 Q. Was this policy in place at the time that you had the
16 misconception about employee privacy and whether you could
17 share that information?
18 A. Yes.
19 Q. Does your policy contemplate union involvement even when
20 you had the privacy concerns for employees?
21 JUDGE SANDRON: I think it speaks for itself.
22 MR. EASTLAND: Okay, fair enough. I'll move on.
23 Q. BY MR. EASTLAND: Mr. Erickson, have you ever in the
24 past before -- take a look at General Counsel's 10, I
25 believe it is, it's a work order. Do you have that?

1 A. Yes.
2 Q. Have you ever scheduled meetings by posting work orders
3 for other employees before June 20, 2016?
4 A. Yes. That's fairly routine.
5 Q. Can you explain what you mean by that?
6 A. If I'm going to take a foreman to a jobsite or
7 something, I'll just post a work order to see me and 8
8 o'clock, and then I'll take him to the jobsite. That's
9 normal procedure. Like I said, you don't let them come in
10 without anything posted otherwise they start looking for
11 something.
12 Q. I believe you were asked some questions by Ms. Carol
13 about what she identified as permanent layoffs. Would you
14 say that the layoffs for the six individuals involved in
15 this case are permanent?
16 A. They were all told they're welcome to be called back
17 through the union hall. So it's permanent as far as I'm not
18 going to call them back, but we will call them back through
19 the Union any time.
20 Q. What would cause you to call them back?
21 A. If we have more work then we call them back or call
22 them.
23 Q. Now, you were also asked some questions about some
24 employees who work year-round.
25 A. Yes.

1 Q. Is that the same thing as full-time?
2 A. Yes.
3 Q. What does full-time mean then?
4 A. The crane operators that are assigned to a crane are
5 generally they come in every day unless I don't have work
6 for a day or so. But we generally keep those guys busy.
7 MR. EASTLAND: That's all I have.
8 JUDGE SANDRON: Recross from the General Counsel?
9 MS. CAROL: Yes, briefly.
10 RECROSS-EXAMINATION
11 Q. BY MS. CAROL: General Counsel's 10 that we talked
12 about, you said you post memos for meetings and it is your
13 normal practice to do that.
14 A. I have done that, yes.
15 Q. Is it your normal practice to include the local number
16 as the job number?
17 A. Normally, it would be a job number. If I'm taking a guy
18 to a jobsite or something, it would normally be a job
19 number. So, no, the union number wouldn't, you know, unless
20 it was for an Iron Worker meeting, for a general meeting
21 with the Iron Workers, it would be posted as 340. If it was
22 a general meeting for the Teamsters, it would be posted as
23 whatever, 406.
24 Q. 406.
25 A. So, yeah, it's just a way of identifying it.

1 Q. When you talked about whether or not these layoffs were
2 permanent, you said they were welcome to come back I think
3 you said through the hall.
4 A. Um-hum.
5 Q. So you would accept them --
6 JUDGE SANDRON: Wait, he's got to --
7 MS. CAROL: Sorry. You have to say yes or no.
8 JUDGE SANDRON: Is your answer yes? You said um-hum.
9 You have to say yes.
10 THE WITNESS: Yes.
11 Q. BY MS. CAROL: So you would accept them if they were
12 referred from the union hall?
13 A. Yes.
14 Q. But you've never called any of them directly to have
15 them come back to work full-time?
16 A. I have not.
17 MS. CAROL: That's all on recross.
18 JUDGE SANDRON: Ms. Bachelder?
19 MS. BACHELDER: No questions.
20 JUDGE SANDRON: Okay, thank you, Mr. Erickson.
21 (Witness excused.)
22 JUDGE SANDRON: Mr. Eastland, you have one more witness?
23 MR. EASTLAND: Mr. O'Rourke will be handling the
24 witness. He promises it'll be short.
25 JUDGE SANDRON: Please raise your right hand. I'll

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