UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

**SPARTAN PRODUCTS, LLC,
A WHOLLY OWNED SUBSIDIARY
OF U.S. CONCRETE, INC.**[1]

and **Case 12-CA-192417**

**INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO**

Manijée Ashrafi-Negroni, Esq.,
for the General Counsel.
Michael C. Quinn, Esq. **and *Lisa Michelle Komives, Esq.*** [2](*Dudley, Topper and Feuerzeig, LLP*), of St. Thomas, USVI,
for the Respondent.
Javier Almazan, Sr. (IAMAW), of Loxahatchee,
Florida, for the Charging Party

DECISION

STATEMENT OF THE CASE

ELIZABETH M. TAFE, Administrative Law Judge. This case was tried in Christiansted, St. Croix, United States Virgin Islands on June 12 and 13, 2018. The International Association of Machinists and Aerospace Workers, AFL-CIO (Charging Party or Union) filed the charge on February 3, 2017,[3] which was amended on March 2, April 28, and May 31. The General Counsel issued the complaint on June 30, as amended at the hearing (the complaint). The complaint alleges that Spartan Products, LLC (Respondent or Spartan) laid off two bargaining unit employees without giving the Union prior notice and an opportunity to bargain about the decision and/or effects of the layoff, and that the Respondent later subcontracted and/or assigned bargaining unit work to nonunit employees without giving the Union prior notice or an opportunity to bargain, in violation of Section 8(a)(5) and (1). The complaint also alleges that the Respondent unreasonably delayed in producing requested information to the Union in violation of Section 8(a)(5) and (1).

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[1] The Respondent's name in the caption is amended to conform to the record evidence and the Respondent's admission on brief (Tr. 6, 24, 120-122, 2200-202; R. Br. 1, fn. 1).

[2] Ms. Komives entered an appearance after the case was litigated and the briefs had been filed.

[3] All dates are in 2017 unless otherwise indicated.

The parties were given a full opportunity to participate in the hearing, to introduce relevant evidence,[4] to call, examine, and cross-examine witnesses, and to file briefs.[5] On the entire record, including my observations of the demeanor of the witnesses,[6] and after carefully considering the posthearing briefs filed by the Respondent and the General Counsel, I make the following findings, conclusions, and recommendations.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a limited liability company,[7] engages in the manufacture and delivery of ready mixed concrete and aggregates at its facility in St. Croix, United States Virgin Islands, where it annually purchases and receives at its St. Croix facility goods valued in excess of $50,000 directly from points outside the United States Virgin Islands. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[4] I grant the parties' August 3, 2018 Joint Motion to Substitute Jt. Exhs. 17 and 18, and R. Exh. 3, which was filed after the hearing concluded in order to provide clearer and more complete copies. The corrected copies of the exhibits, which are hereby made part of the record, were attached to the parties' joint motion.

[5] I grant the Respondent's unopposed motion to receive its brief, which was apparently submitted less than 1 minute after the deadline, due to technical challenges.

[6] Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on the highlighted evidence but upon my review and consideration of the entire record. My findings of fact encompass the credible testimony, evidence presented, and logical inferences from the evidence. The credibility analysis may rely upon a variety of factors, including, but not limited to, the context of the witness testimony, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 303−305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings regarding any witness are not likely to be an all-or-nothing determination and I may believe that a witness testified credibly regarding one fact but not on another. *Daikichi Sushi*, 335 NLRB at 622.

[7] On brief, counsel for the Respondent reports that, after the hearing in this matter, the Respondent transferred all of its assets and employees to a "sister" company, Heavy Materials, LLC, also a subsidiary of U.S. Concrete, Inc., and that Spartan Products, LLC is now a shell corporation. I proceed with this decision and recommended order based on the facts in the record. The change in corporate form or transfer of assets was not litigated on this record. Any question about derivative or successor liability will be addressed, if necessary, in subsequent proceedings.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

1. The Respondent and its operations

To a large extent, the facts in this case are not in dispute. (See Jt. Exhs. 1 to 18). At all times material to this case, the Respondent has been in the business of manufacturing and delivering concrete from its facility in St. Croix, United States Virgin Islands. Delivery is done by trucks. The Respondent is owned by U.S. Concrete, Inc., which owns companies in the concrete and aggregate industries in the Virgin Islands and the mainland United States. Spartan Concrete Products, Inc., the predecessor of the Respondent, was acquired by U.S. Concrete in October 2015. In January 2017, the Respondent employed drivers, a dispatcher, a general manager, mechanics, a head mechanic, mechanic helpers, three yardmen (laborers), and a welder. At its facility in St. Croix, the Respondent's operation includes a batch plant (to mix materials for concrete), two garages to maintain trucks and equipment, a yard, and an office.

Heavy Materials, LLC, is also located in the Virgin Islands, with a facility in St. Croix that is located about a 10 minute drive from the Respondent's facility. Heavy Materials is in the business of crushed aggregates and operates a quarry. It is also owned by U.S. Concrete and is referred to in the record as a "sister" company to the Respondent. On occasion, employees from Heavy Materials perform work at the Respondent's facility, including what the Respondent describes as emergency welding work. Both the Respondent and Heavy Materials use U.S. Concrete's accounting system to keep and balance their books at the end of the month, including accounting for any purchases of materials by the Respondent from Heavy Materials. Through the accounting system, changes are made to both companies' profit and loss statements that reflect, for example, the use of Heavy Material's personnel at the Respondent, although exchanges of services, particularly short-term or emergency welding work, are not always reflected in the records. Heavy Materials is a significant supplier of materials to the Respondent.

Dion Alibocas, who testified at the trial, has been the Respondent's general manager since it was acquired by U.S. Concrete in October 2015. He had worked for Spartan Concrete Products, Inc. since 2012. He testified that he is employed by both U.S. Concrete and the Respondent. Halvor Berg was batch plant manager as of and before January; he resigned in July. The Respondent admits that Alibocas and Berg are supervisors and agents of the Respondent, within the meaning of Section 2(11) and (13) of the Act. In January, Kurt Nose, was executive vice president of U.S. Concrete. At trial, apparently having replaced Nose in this role, Pete Myers was executive regional vice president of U.S. Concrete for the U.S. Virgin Islands region, and he oversees both the Respondent and Heavy Materials. Alibocas reports to Myers. Shirley Winslow, who testified at trial, is the Respondent's accountant, and had worked for Spartan Concrete Products or the Respondent since 2012.

As general manager, Alibocas understands the operations and what employees do. Generally, his duties include: ensuring the safety of employees; providing sales and service to customers; selling concrete; and supervising employees. He handles some personnel matters, including making decisions about and carrying out the layoffs at issue in this case. On a daily basis, Alibocas reviews logs taken by the dispatcher regarding the operations of the plant and the

delivery of products. As general manager, he is aware of invoices, orders, or other records related directly to the operations and generally reviews and signs off on this type of paperwork. Alibocas also served on the bargaining team for the Respondent in first contract negotiations with the Union. Also on the bargaining team for the Respondent were: George Dudley (legal counsel), regional vice president of U.S. Concrete Nose, and two other individuals.

Although the Respondent and its predecessor reportedly enjoyed a thriving business is past decades, due significantly to the winding down and eventual closing of a large oil refinery on St. Croix (Hovansa) in about 2012, which was a major customer of the Spartan Concrete Products, and, in part due to other aspects of the local economy, the availability of work changed. Although the Respondent performed work on several substantial, commercial construction projects after that, including a residential care community, a condominium project, and work at the airport, those projects were near completion by mid-2016. In about August 2016, accountant Winslow and general manager Alibocas began talking about the economic condition of and considering projections for the Respondent. As discussed in more detail below, in about January, the Respondent laid off several employees citing economic reasons. According to Winslow, although there was some thought that business might pick up in late-2017 due to potential reconstruction projects following the severe hurricane damage in September 2017, that had not transpired by June 2018. In general, individual residential construction does not bring as high a price per yard for concrete or utilize as high a grade of concrete as larger, commercial construction projects. According to Alibocas, a new competitor, High Quality Concrete, had entered the market in 2015 and regularly underbid the Respondent. Moreover, as a general matter, economic prospects in the Virgin Islands appeared bleak to the Respondent.

2. The bargaining unit

Following a Board-conducted election, the Union was certified on October 3, 2016, as the exclusive collective-bargaining representative of the following unit (the Unit):

> All full-time and regular part-time truck drivers, mechanics, welders, painters, laborers, and loaders or loader operators; excluding: All office clerical employees, professional employees, managerial employees, confidential employees, guards, and supervisors as defined by the Act.

The Unit is appropriate for collective bargaining within the meaning of Section 9(b) of the Act, and at all material times since October 3, 2016, the Union has been the exclusive representative of the Unit pursuant to Section 9(a) of the Act. In October 2016, there were about 15 employees in the bargaining unit; by June 2018, there were eight unit employees.

3. The Union

Javier Almazan, Sr., who testified at trial, has been Grand Lodge representative of the Union for 4 to 5 years; before that he was an organizer for the Union's district lodge for about 9 years. As Grand Lodge representative, Almazan has broad duties, including: organizing employees, servicing contracts, negotiating first contracts, and duties related to education sessions and internal affairs. He has served on the bargaining team for the Union in the first

contract negotiations with the Respondent since their first bargaining session on March 1.[8] Angel Rexach Ramos (Rexach), a driver in the Unit and the Union steward, Mervyn Constantine, the local Union president, and another individual served on the bargaining team for the Union.[9]

B. The January/February 2017 Layoffs

On January 30, at about 3:11 in the afternoon, union president Constantine received an email with an attached letter from the Respondent's legal representative, Michael Quinn. (Jt. Exh. 1.) The letter was also emailed to Almazan at about 4:08 that afternoon. The letter from Quinn stated, in relevant part:

> As you know, the economic climate of the Virgin Islands general and St. Croix in particular is poor, and continues to deteriorate. Spartan has experienced a material loss of revenue, especially during 2016. The company does not project an improvement in the local economy for the foreseeable future. In fact, the opposite. In addition, a new competitor has entered the market and appears to be undercutting Spartan by predatorily underpricing their products in the apparent hope that it will drive Spartan out of business, after which it can raise its prices as high as the market will deliver. As a result, Spartan must make adjustments to its operating expenses if it is to continue to survive.
>
> Effective at the close of business on Tuesday, January 31, 2017, the employment of Spartan employees and union members Ramon Murrain-Benjamin, a welder, and Benson Morton, a yard man, will be terminated.
>
> Negotiations continue, but there is no collective bargaining agreement yet in place. Spartan nevertheless recognizes that IAMAW has the right to be notified of Spartan's decision, and because Murrain-Benjamin and Morton are union members, the company has not independently communicated this decision to either of them.
>
> Even without a collective bargaining agreement in place, Spartan wishes to cooperate with IAMAW in these employment matters. You may communicate with me, Regional Vice President Kurt Nose, or other member[s] of Spartan's management consistent with established practices. (Jt. Exh. 1)

The Respondent admitted that the emails and attached letter in Joint Exhibit 1 were the first communications to the Union regarding the layoffs of welder Ramon Murrain-Benjamin and yardman Benson Morton.[10] (Jt. Exh. 18; Tr. 28.)

The next morning, at 9:49, Constantine emailed Quinn requesting to meet with Quinn or any of Spartan's management team to discuss the matter. (Jt. Exh. 3.) He copied Almazan and requested that Quinn include Almazan on correspondence. At 10:50 that morning, Constantine sent another email, this time to Alibocas, copying Quinn, Nose, and Almazan, stating that Union

[8] The parties had been meeting in bargaining sessions, but had not reached agreement on a first contract at the time of the trial. Another union representative, David Porter, had also represented employees before retiring, but was not present at any bargaining sessions.

[9] Rexach and Constantine are related by marriage.

[10] Based on the language of the complaint and the related stipulations of the parties, I proceed under the General Counsel's theory that these terminations were layoffs.

received the letter from Quinn "terminating the employment of our members [Murrain-Benjamin and Morton], by close of business today." (Jt. Exh. 2.) The letter further states that the Union "would like you to cease and desist this action, prior to implementation, in order for us to discuss the matter." (Id.) The letter then asks for available dates to meet. Alibocas did not respond to the letter or discuss the layoffs or the effects of the layoffs with the Union, but referred it to his general counsel.

The parties did not meet to confer or bargain about the layoffs before they were implemented. On January 31, the Respondent laid off welder Murrain-Benjamin, and on February 1, the Respondent laid off yardman Morton. (Jt. Exh. 18.) Murrain-Benjamin was on vacation, and so the Respondent mailed his layoff letter, which he retrieved from his post office box about a week later. (Jt. Exh. 4.) Alibocas notified Morton of his layoff in person on February 1 with union steward Rexach present, and gave Morton the layoff letter. (Jt. Exh. 5.) When Alibocas notified Morton of the layoffs, Rexach asked Alibocas if he had notified the Union because they were supposed to cease and desist until it could be negotiated with the Union. According to Rexach, Alibocas told him that (vice president) Nose had spoken to the Union and that "they would do the firings" and that the company thought they were within their rights. (Tr. 90.) Alibocas did not tell Rexach what, if anything, the Union said to Nose.

In explaining the reasons for the layoff of Murrain-Benjamin, Alibocas emphasized that there was not enough welding work to keep Murrain-Benjamin busy and that, as a welder, Murrain-Benjamin earned the highest salary in the bargaining unit. He further explained that he decided to lay off Morton because Morton was the least skilled yardman. Alibocas also noted that the head mechanic, who was not in the bargaining unit, was laid off at the same time. I credit Murrain-Benjamin's testimony that, before he was laid off, there was regular welding work to do at the Respondent's facility and that, when there was no welding, he performed mechanics assistant work. Murrain-Benjamin testified without refute that he had postponed a planned vacation in December 2016 at the request of his supervisor, the head mechanic, due to the need for Murrain-Benjamin's welding services to make needed repairs at that time, which was why he was on vacation in late-January/early-February. The Respondent was in the best position to support its assertion that there was not enough welding work for Murrain-Benjamin leading up to his termination, and it failed to offer any documentary evidence or corroborative testimony to support Alibocas' claim to that effect.

On February 3, Almazan notified Alibocas by letter that he had filed unfair labor practice charges with the NLRB, attaching two charges together alleging that the employees were laid off in violation of Section 8(a)(5), (4), (3), and (1).[11] Although as of March 1, the Respondent and Union began meeting to negotiate a first contract, they did not engage in bargaining about the layoffs of Murrain-Benjamin and Morton.

[11] It appears that the 8(a)(5) allegation was not docketed at that time. Compare Jt. Exh. 6 and 7. A month later, on March 2, the Union amended the charge to include a general unilateral change and bad faith bargaining allegation in violation of Sec. 8(a)(5), and on April 28, the Union further amended the charge to allege that the layoff of Murrain-Benjamin and Morton were made without notice to or an opportunity to bargain with the Union, in violation of Sec. 8(a)(5). (GC Exhs. 1(c) and (e).)

C. The Union's Request for Information

On February 3, Almazan sent a letter to Alibocas, copying, inter alia, Quinn, requesting information that the Union believed was necessary to represent its members. In pertinent part, it states:

> This is in response to your indication to us that due to financial difficulties the company is proposing changes to the work force for which we are the exclusive and certified collective bargaining representative. The IAM has a vital stake in being able to assess the economic justification of the company's decision to terminate two employees, the effects that any company decision may have on the affected employees we represent, and to consider available alternatives. (Jt. Exh. 17.)

The letter then lists in detail various financial documents, company projections or planning documents, documents related to purported competition, and information specific to wages and working conditions of bargaining unit employees. (Id.) Neither Respondent nor its legal counsel responded to this request until after Almazan on April 28 sent another letter to Respondent's counsel (Dudley), copying, inter alia Nose, regarding scheduling contract negotiation sessions. (Jt. Exh. 8.) In that letter, Almazan notified the Respondent that the Union had not received the information it requested. (Id.) Two weeks later, on May 15, the Respondent, by Quinn, responded by letter to Almazan asserting that some of the information the Union requested was sensitive financial and other data from Spartan's files, and requesting that the Union review and execute an attached confidentiality agreement. (Jt. Exh. 9.) This was Respondent's first response to the Union regarding the February 3 request for information. (Jt. Exh. 18; Tr. 78−79, 80.) On that same day, Almazan responded that he would consult legal counsel and then, on May 22, he offered alternative language to the confidentiality agreement. The parties exchanged additional emails and, ultimately, the Union and Respondent entered into a signed confidentiality agreement on June 2. (Jt. Exh. 15.)

On July 21, 7 weeks after the confidentiality agreement was signed, the Respondent sent a letter to the Union attaching some of the requested documents, and offering to make other documents available by inspection. The Union arranged to review the documents available for inspection. The complaint does not allege that any necessary and relevant information requested by the Union was not, ultimately, furnished by the Respondent. The Respondent offered no explanation for the delay, other than the confidentiality concern addressed in the correspondence above and the Union's purported failure to remind them of the outstanding and unanswered February 3 request before April 28, or request for the information again, despite the Union and Respondent's ongoing communication regarding collective bargaining during that time.

D. The Alleged Subcontracting and/or Assignment of Welding Work to Nonunit Employees

There is some dispute regarding the nature and extent of the welding work performed at the Respondent's facility after the Murrain-Benjamin was laid off. At a minimum, the record establishes that welding work was performed at the Respondent's facility by a welder from Heavy Materials, "an entity separate from Respondent at all material times…." (Jt. Exh. 18, par. 6). Those dates are: February 23, two dates in mid-April, May 11, July 24, October 20, November 15, February 13, 2018, February 27, 2018, and March 7, 2018. Alibocas characterized

these incidents as "emergency repair." (Id.; R. Exh. 3.) Although his testimony was not entirely consistent on this issue, Alibocas eventually admitted that there could have been other incidents of "emergency" welding work performed by a Heavy Materials employee. I find, based on the record as a whole, that there likely were other incidents.

Alibocas admitted that welding work formally performed by Murrain-Benjamin was performed by Heavy Materials employee Evelle Walters. (Tr. 42, 145.) Union Steward Rexach testified that, at times, he observed a welder from Heavy Materials performing welding work at the facility after Murrain-Benjamin was laid off, including in March 2017. Rexach recognized workers from Heavy Materials because he used to work there.[12] Rexach observed welding work being done on the water tank, the batch plant, the concrete plant, the silo, and the scale after Murrain-Benjamin was laid off. The work was done by Heavy Materials employees Julius James, a mechanic, and Walters, a welder (Tr. 95). Rexach knew James to be a mechanic, who also performed welding work. Although, as a driver, Rexach was often not at the facility, he took notes of his observations. Walters' presence at the Respondent's facility was also corroborated by Murrain-Benjamin, who testified that he saw Walters engaging in welding work on about three occasions when Murrain-Benjamin went to the company next door to the Respondent looking for work, the most recent time in June 2018.

Alibocas eventually admitted that Heavy Materials employee Julius James regularly worked at the Respondent's facility as a mechanic, and that he sometimes performed welding work, as needed, when he was there. (Tr. 184.) Alibocas also eventually admitted that this individual punched in and out using the time clock at Spartan, and that James' time was accounted for between the Respondent and Heavy Materials. Rexach observed James performing welding on company trucks and on the batch plant. Rexach observed James performing welding repairs on Rexach's truck more than 10 times. Winslow testified that she accounts for James' time in her end of the month records, making adjustments in the Respondent's and Heavy Materials' books, which is shown in their profit and loss statements. This adjustment in the companies' books appeared to record that the Respondent reimbursed Heavy Materials for James' work, while no actual payment of reimbursement funds occurred.

The Respondent admits that some welding work was performed at its facility by a customer, Cemex, as part of the construction of a windbreak structure. The Respondent asserts that this work, which was performed after the layoffs, was part of restitution by Cemex for having provided subpar cement to the Respondent, causing $80,000 of loss. According to Alibocas, Cemex estimated the value of the windbreak construction as $13,000, and the rest of the restitution was handled as a credit. During the construction of the windbreak, there were 5 workers, purportedly from Cemex, at the Respondent's facility, and some welding work was performed. Alibocas testified that the Respondent played no role in this project. It seems unlikely that Alibocas would have no involvement with the construction of an edifice on the company's premises, particularly considering that this project was performed as restitution for subpar

[12] Rexach also saw an employee he knew from Heavy Materials, Caifas (Hardy) Samuel, working at the Respondent's facility performing some yard work soon after Morton was laid off. Specifically, Samuel helped Rexach fill the silos with cement, which was work that Morton had performed. Alibocas described Caifas as a runner, an individual who transports documents, parts, and supplies, as needed, who did not perform yard work. For the reasons described herein, I credit Rexach's testimony and find that Samuel performed at least some yard work at the Respondent's facility after Morton was laid off.

materials being sold by Cemex, and Alibocas' ignorance of the details of this project seemed somewhat evasive.

I do not credit Alibocas' assertion that there were only a limited number of times that the Respondent borrowed a welder from Heavy Materials. First, if the incidents were as rare and limited only to emergencies, as Alibocas asserts, then it would seem that the incidents would be more memorable. Alibocas had little specific memory of these incidents, although he insisted that they were all emergencies, in a circular argument (reasoning, in essence, that they must have been emergencies, because we only called the welder for emergencies). Second, despite the parties' stipulation that Heavy Materials and the Respondent were "separate entities" at the time, Alibocas, supported by Winslow, testified that the Heavy Materials just sent over welders to do repair work with no payment or reimbursement required from the Respondent. Alibocas asserts that the welders were being paid by Heavy Materials, although the Respondent produced no records to support this assertion. It strikes me that either the Respondent is being untrustworthy in its assertion that the two entities were separate, or they did account for the welding work in some manner. In either case, the testimony of Alibocas struck me as internally inconsistent and misleading. Third, Alibocas exhibited lack of candor when asked by the General Counsel and the Union about how the welding work was accounted for between Heavy Materials and Spartan. His lack of candor was evident in what appeared to be a feigned inability to understand what they meant by the words "invoice" or "work order."

Finally, as a general observation, I found Alibocas' testimony to generally lack candor. At several times during the General Counsel's questioning, Alibocas was evasive and exhibited a demeanor that was obstinate rather than one that revealed an honest attempt to answer the questions. For example, when called by the General Counsel, Alibocas, the Respondent's general manager, testified that he is not a welder and cannot ascertain the time it takes to weld something, but when asked by the judge, he admitted that some log entries show how long a welding task takes (Tr. 42). Then, on the second day of hearing, he admitted that he can estimate how long a welding task takes from notes in the dispatcher's log as well his 30 years of experience. (Tr. 187−188.) His reluctance to admit that his substantial experience contributed to an ability to estimate how long a welding task would take in the first instance contrasts with his reliance on that experience in the second. Similarly, when counsel for the General Counsel attempted to identify whether welders from Heavy Materials were paid by the Respondent, and if so, how, Alibocas' initial responses were evasive, and at times, misleading. (See Tr. 171−173, 184.)

In contrast, I credit the testimony of Rexach and Murrain-Benjamin. Rexach and Murrain-Benjamin testified in serious, straight-forward manners, listening to the questions and appearing to do their best to carefully answer the questions asked, without evasiveness or exaggeration. Based on their credited testimony and the record as a whole, I conclude that there had been, and remained, significant welding work to perform at Respondent's facility.

III. Legal Analysis

A. Did the Respondent unlawfully lay off employees Murrain-Benjamin and Morton?
(Complaint par. 6(a), (b), (d) and (e))

The General Counsel argues that the Respondent violated Section 8(a)(5) and (1) of the Act when it laid off two employees, Murrain-Benjamin and Morton, without giving the Union prior notice or an opportunity to bargain about the layoff decision or its effects on the bargaining unit. It is well settled that the decision to lay off employees is a mandatory subject of bargaining. *Tri-Tech Services*, *Inc.,* 340 NLRB 894, 894−895 (2003); *NLRB v. Advertisers Mfg. Co.*, 823 F.2d 1086, 1090 (7th Cir. 1987) ("Laying off workers works as a dramatic change in their working conditions (to say the least) … . Layoffs are not a management prerogative. They are a mandatory subject of collective bargaining."). Where a layoff occurs solely for economic reasons, the union has the right to bargain over the layoff decision itself and not just the effects of that decision. See *Pan American Grain Co*., 351 NRB 1412, 1413−1414 (2007); *Lapeer Foundry & Machine*, 289 NLRB 952, 953−954 (1988); see also, *NLRB v. 1199 National Union of Hospital and Health Care Employees*, 824 F.2d 318 (4th Cir. 1987) (an employer's decision to lay off employees based on a desire to reduce labor costs is amendable to resolution through the collective-bargaining process). In order to be excused of a duty to bargain about the decision to lay off employees for economic reasons, an employer must meet a high burden to demonstrate that "economic exigencies" compelled immediate action. *RBE Electronics of S.D., Inc.*, 320 NLRB 80, 81 (1995). In the absence of such economic exigencies, an employer must provide adequate, prior notice to the union to provide a reasonable opportunity to bargain about both the layoff decision and its effects on the bargaining unit. See *Lapeer Foundry & Machine*, above at 954−955; see also *Pan American Grain*, above; *Tri-Tech Services*, above at 895 fn. 6. Even if an employer is able to meet the heavy burden to establish under the circumstances that exigent circumstances required it to take action before bargaining with the Union, the employer still is required to bargain about the effects of that decision. *Pan American Grain Co.*, above; *RBE Electronics of SD*, above; accord *First National Maintenance*, 452 U.S. 666 (1981).

Here, the Respondent gave insufficient prior notice to the Union about the decision to lay off Murrain-Benjamin and Morton for economic reasons.[13] The Respondent provided notice by email in the afternoon the day before the layoffs were scheduled to be implemented. This emailed letter was the first and only notice provided to the Union. Although the Respondent through its legal counsel states in the letter that it wishes "to cooperate" with the Union in employment matters and advises that "you may communicate with me, Vice President Kurt Nose, or other member[s] of Spartan's management consistent with established practices" it does not offer to bargain about the layoff decision. (Jt. Exh. 1.) Moreover, the Union, by the union president, Constantine, requested bargaining and demanded that the Respondent "cease and desist" the layoffs and arrange to bargain about the layoffs. On this record, the Respondent did not respond to that request. Instead, the Respondent implemented its announced decision that same day as a done deal, a fait accompli. *Ciba-Geigy Pharm. Div*. 264 NLRB 1013, 1017 (1982),

[13] The Respondent raised no reasons other than economic reasons for the layoffs and continued running its business in the same manner as before the early-2017 layoffs until at least June 2018. There are no contentions that the layoffs were related to entrepreneurial concerns, such as modernization or a change in the scope of their business model. See generally, *First National Maintenance*, above.

enfd. 722 F.2d 1120 (3d Cir. 1983). See also, *Harley-Davidson Motor Co.*, 366 NLRB No. 121, slip op. at 2 (2018); *Tesoro Refining & Marketing Co.*, 360 NLRB 293, 294 (2014); *Toma Metals, Inc.*, 342 NLRB 787, 787 fn. 1 (2004); and *UAW-DaimlerChrysler National Training Center*, 341 NLRB 431, 433 (2004).

The Respondent has cited no legal precedent in its defense in its posthearing brief. Although it raised with the Union in the January 30 letter announcing the layoffs that the layoff decision was made based on economics, and it presented anecdotal evidence of a struggling local economy and other economic challenges to its business, there is no evidence that the decision was based on circumstances that would have precluded delaying the decision to allow time to consult and bargain with the Union. See *RBE Electronics of S.D.*, above; *Tri-Tech Services*, above. Certainly, on this record, the Respondent has failed to meet its heavy burden to show that exigent circumstances compelled an immediate decision, in the absence of prior notice or and bargaining with the Union. The mere fact of economic hardship or a desire to reduce labor costs is not enough to meet that burden. Id.

To the extent the Respondent implies on brief that a discussion between the union steward Rexach and general manager Alibocas, *while* Alibocas was advising Morton of his termination and handing him a layoff letter on the day Rexach learned of the layoffs, may constitute an opportunity to bargain, that proposition is preposterous. This exchange reveals no indication that the Respondent had any intent to bargain with the Union about the layoffs, and, it occurred during the implementation of the completed decision to make the material change to employees' terms of employment. To the contrary, the layoffs, were presented as a fait accompli. Section 8(a)(5) and 8(d) require that bargaining be performed in good faith, which is defined as more than just going through the motions, but requires parties to approach bargaining with a "serious intent to adjust differences and to reach an acceptable common ground." *NLRB v. Truitt Mfg*, 351 U.S. 149, 155 (1956). Moreover, the substance of the reported verbal exchange, which suggests that vice president Nose spoke with "the Union" and declined to bargain before the layoffs, does not help the Respondent's case; first, the record does not establish that such a discussion took place and, second, if it did, it supports a finding that the Respondent refused to bargain.[14]

The Respondent's assertions on brief suggest that its actions are excusable because either the Union or the General Counsel failed in their obligations during the investigation after the alleged unlawful conduct occurred are misplaced and without merit. First, it is simply immaterial that the law of the United States Virgin Islands permits various causes of action for unlawful discharge. Second, the fact that the Union amended the unfair labor practice charges to reflect evolving theories of the violations in the several months after the discharge raises no procedural abnormalities under Section 10(b) of the Act, as all the amended charges were made within 6 months of alleged unfair labor practices and meet the Board's notice pleading requirements. Finally, there is no cognizable legal defense in the Respondent's contention that, had there been a collective-bargaining agreement in place, it might have contained language offered by the Union in bargaining that might have given the Respondent a contractual right to implement the layoffs without bargaining with the Union. The fact is, there was no such contract in place and, therefore, no contractual rights to consider.

[14] The Respondent failed to call vice president Nose.

Based on the above, I find that the Respondent violated Section 8(a)(5) and (1) of the Act by laying off employees Ramon Murrain-Benjamin and Benson Morton without giving the Union prior notice or an adequate opportunity to bargain about the decision or the effects of layoffs on the bargaining unit.

B. Did the Respondent unlawfully delay in furnishing information to the Union?
(Complaint par. 7(a)−(c))

The General Counsel alleges that the Respondent unreasonably delayed providing information requested by the Union from February 3 to May 15 in violation of Section 8(a)(5) and (1).[15] It is axiomatic an employer has a duty to provide information to the union, upon request, when that information is relevant and necessary to carry out its statutory responsibilities. *NLRB v. ACME Industrial Co.*, 385 U.S. 432, 435−437 (1967) and *NLRB v. Truitt Mfg.*, 351 U.S. at 152−154. Failure to provide such information, or to provide an adequate reason why an employer cannot supply the information, violates an employer's statutory duty to bargain in good faith. *A-Plus Roofing, Inc.*, 295 NLRB 967, 970 (1989). The duty to furnish information also requires a reasonable good-faith effort to respond to the request as promptly as circumstances allows. *Woodland Clinic*, 331 NLRB 735, 737 (2000); *Leland Stanford Junior University*, 307 NLRB 75, 80 (1992). Therefore, an undue delay in furnishing information also violates Section 8(a)(5). *Woodland Clinic*, above; *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989). Thus, the Board considers the reasonableness of the length of the delay in light of all the circumstances. Accord *NLRB v. Truitt Mfg*., above at 153−154.

The record is undisputed that the Union provided a written request for information on February 3, which included itemized requests for a variety of financial information, business plans, studies and reviews, information about competition, and wage and benefit information related to bargaining unit employees. There is no contention regarding the relevance or necessity of these requests. The Respondent did not respond to the request until May 15, after, Almazan reminded the Respondent, in writing on April 28, that the Respondent had not provided the requested information. Between February 3 and April 28, representatives from the Union and Respondent's counsel had communicated by phone at least 12 times regarding ongoing negotiations for an initial collective-bargaining agreement, and during that time the Union did not make a second request for the documents it requested on February 3. The Respondent provided no reason for this delay, other than implying that the Union should have reminded it sooner. However, a union is not obligated to re-request information in order to trigger an employer's obligation to reply. Here, the Respondent delayed in providing any response to the request for over 3 months.

Although the Respondent asserts on brief that the information request was onerous and called for confidential information, neither of these assertions are defenses to the Respondent's

[15] Although the provision of information was not completed until July, the complaint clearly only alleges that the delay from February 3 to May 15 was unlawful. No assertion is made by the parties that the latter periods from June 2 (when the parties reach agreement regarding the Respondent's confidentiality concerns) and July 21 (when the Respondent began producing the information) was an unlawful delay or that a continued delay in furnishing the non-confidential information from May 15 to July 21 was unlawful. Therefore, I make no legal conclusions regarding the periods after May 15.

failure to respond to the request for 3 months. The Respondent notably does not assert that information is not relevant or necessary, and, on its face, the issues addressed appear at least facially relevant in the broad, discovery-type standard applied by the Board to issues directly affecting the terms and conditions of employment in the bargaining unit and other issues raised by the Respondent as affecting the bargaining unit. *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 258–259 (1994). Neither issue raised—not the burdensomeness of the request nor the assertion that some information requested was deemed confidential by the employer—absolves the Respondent of an obligation to respond reasonably promptly to the request. The Board requires the Respondent to explain its confidentiality needs and offer to bargain about confidentiality, which it eventually did, albeit 3 months after the request. Thus, even assuming that the Respondent asserted legitimate confidentiality interests, it may not simply refuse to provide the requested information, but must seek an accommodation that would allow the requester to obtain the information while protecting the producer's confidentiality interests. *Borgess Medical Center*, 342 NLRB 1105, 1106 (2004). Similarly, assuming that the Respondent can show it has a legitimate claim that the Union's requests for information were unduly burdensome, it must articulate those concerns to the union and make a timely offer to cooperate with the union to reach a mutually acceptable accommodation. *Tower Books*, 273 NLRB 671 (1984); *Mission Foods*, 345 NRLB 788, 789 (2005). No such articulation of concerns or offers to discuss accommodations occurred during the 3-month delay.

When, like here, the Respondent offers no excuse for the delay in furnishing information the Board has found delays of less than 3 months to be unreasonable. See, e.g., *Woodland Clinic*, above, at 736 (7-week delay unreasonable in absence of explanation); *Bundy Corp*., 292 NLRB 671, 672 (more than 2-month delay unreasonable in absence of an adequate explanation); *Quality Engineering Products*, 267 NLRB 593, 598 (1983) (even when employer provided some information promptly, 6-week delay in providing the rest of the information, without an explanation, found to be unreasonable).

In the absence of any reasonable explanation for the failure to provide the information in a timely manner, I find that the Respondent unduly delayed furnishing the requested information in violation of Section 8(a)(5) and (1), as alleged in the complaint.

C. Did the Respondent unlawfully subcontract or assign bargaining unit welding work to nonunit employees?

(Complaint par. 6(c)–(e))

The General Counsel alleges that the Respondent violated Section 8(a)(5) and (1) of the Act when it either subcontracted or assigned welding work to employees outside the bargaining unit. An employer has an obligation to bargain in good faith with the collective-bargaining representative of its employees regarding material changes to employees' terms and conditions of employment. *NLRB v. Katz*, 369 U.S. 736 (1962); see also *Rigid Pak Corp*., below, and *Harley-Davidson Motor Co.*, above. As such, the employer may not make unilateral changes to employees' terms and conditions of employment without giving the Union prior notice and a meaningful opportunity to bargain about the changes. Id. *Rigid Pak Corp.*, 366 NLRB No. 137, slip op. at 1, 4–6 (2018); *Fibreboard Paper Products v. NLRB*, 379 U.S. 203, 209 (1964). Contracting out bargaining unit work that unit employees are capable of performing is a mandatory subject of bargaining about which the employer must bargain in good faith with the

Union, within the meaning of Section 8(d) of the Act. *Fibreboard Paper Products v. NLRB*, above. The Supreme Court explained in *Fibreboard Paper Products* that an employer's decision to contract out bargaining unit work that was based on economic considerations and a desire to reduce labor costs was "peculiarly suitable for resolution within the collective-bargaining framework" and the employer's entrepreneurial freedom was not implicated. Id. at 213–214. When all that is changed through the subcontracting is the identity of the employees doing the work, the Board finds that an employer must bargain with its employees' collective-bargaining representative before subcontracting the work. *Torrington Industries*, 307 NLRB 809, 811 (1992); *Fibreboard Paper Products v. NLRB*, above.

I have found above that the Respondent unlawfully laid off welder Murrain-Benjamin by failing to bargain with the Union about the decision to engage in layoffs and the effects of the layoffs on the bargaining unit. As a result of laying off Murrain-Benjamin, the Respondent needed to obtain welder services from another source: clearly, welding work was still needed at the Respondent's facility. The trucks had to be maintained and repaired, which often required welding in the preparation of parts, and the batch plant equipment had to be maintained and repaired. The Respondent admits that the work performed by the Heavy Materials employees, James and Walters, was work formerly performed by Murrain-Benjamin. With respect to the work James performed, the record makes clear that the Respondent paid for his services, though it was effectuated through a bookkeeping adjustment. With respect to the "emergency" work performed by Walters, the record is not clear how Walters was paid for the work, although the assumption by the Respondent is that he was paid by Heavy Materials, and the Respondent was not billed for his time. When these jobs were performed, there was no one in the bargaining unit capable of performing the work. However, because the Respondent admits it removed Murrain-Benjamin, the bargaining unit welder, based on economic reasons, the absence of a welder in the unit does not absolve the Respondent of a duty to bargain about assigning the work to Heavy Materials employees. Therefore, I find that the assignment of welding work to Walters, who was outside the bargaining unit, was akin to subcontracting out that work.

The Respondent asserts that the work performed by James and Walters was done on an "emergency" basis, implying that it was not regular bargaining unit work. However, this work was not unanticipated, as the record establishes that there was a routine need for welding in the repair and maintenance of trucks, equipment, and the batch plant. Indeed, Murrain-Benjamin performed "emergency" work before he was laid off. Therefore, I find that the Respondent has not demonstrated exigent circumstances that would require it to engage in subcontracting of welding work or assigning the work to employees outside the Unit without consulting the Union. The Respondent unlawfully removed its only welder from the bargaining unit, which created the mini crises it later unilaterally addressed by assigning welding work to employees of its sister company, Heavy Materials.

Based on the above, I conclude that the Respondent violated Section 8(a)(5) and (1) of the Act by subcontracting and assigning bargaining unit work to employees of Heavy Materials, which are employees outside the bargaining unit, without giving the Union prior notice and an opportunity to bargain about the change.

Regarding the welding work performed during the construction of the windbreak by Cemex, however, the General Counsel has not met his burden to show that this was bargaining

unit work. Although I have found the Respondent's evidence to be weak with respect to the details of the Cemex project, and I have found it doubtful that the general manager Alibocas did not know more than he was sharing about the project, there is no evidence in this record refuting the assertion that it was performed by individuals associated with Cemex for the benefit of Cemex. Therefore, I conclude that the General Counsel has not shown that the Respondent violated Section 8(a)(5) by failing to bargain with the Union about "subcontracting" that work.

There is some evidence in the record that the Respondent subcontracted or assigned to Heavy Materials' employees significant mechanic's work and at least some yardman work. However, the record does not fully establish that the mechanic's work was actual bargaining unit work, as although the unit description includes mechanics, the Respondent had utilized a "head mechanic" in the past who was not in the bargaining unit. The yard work described as being down by a Heavy Materials worker was not established on this record to having been assigned to this worker, or having been more than an incidental event. Moreover, the complaint does not specifically allege that the mechanic or yardman work had been unlawfully subcontracted or assigned outside the Unit. Based on the above, I decline to find, on this record, that the mechanic work performed by Heavy Materials employees James or the yard work performed by Heavy Materials employee Samuel was unlawfully subcontracted or assigned outside the Unit.

CONCLUSIONS OF LAW

By laying off employees without providing the Union prior notice and a meaningful opportunity to bargain, by unreasonably delaying in furnishing information that is relevant and necessary to the Union's role as bargaining representative, and by subcontracting unit work and/or assigning unit work outside the bargaining unit without providing the Union prior notice or a meaningful opportunity to bargain, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) that affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having engaged in unlawful unilateral changes, must rescind the unilateral changes made and restore the status quo. Upon request, the Respondent must bargain with the Union about its decision to lay off employees and the effects of that decision, and about the need, if any, to subcontract bargaining unit work.

The Respondent, having unlawfully laid-off employees, must rescind the unlawful layoffs. The Respondent must offer employees Ramon Murrain-Benjamin and Benson Morton reinstatement and make them whole for any loss of earnings and other benefits. Backpay 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), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), the Respondent shall be ordered to compensate employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work expenses and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *Kentucky River Medical Center*, above.

In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas,* 361 NLRB 101 (2014), the Respondent shall compensate Ramon Murrain-Benjamin and Benson Morton for the adverse tax consequences, if any, of receiving a lump-sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.,* 363NLRB No. 143 (2016), 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 12 a report allocating backpay to the appropriate calendar year(s). The Regional Director will then assume responsibility for transmitting the report to the Social Security Administration at the appropriate time and in the appropriate manner.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended order.[16]

ORDER

The Respondent, Spartan Products, LLC, a Wholly Owned Subsidiary of U.S. Concrete, Inc., Christiansted, St. Croix, United States Virgin Islands, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing the terms and conditions of employment of bargaining unit employees.

(b) Laying off bargaining unit employees without giving prior notice to and a meaningful opportunity to bargain with the International Association of Machinists and Aerospace Workers, AFL–CIO (the Union) as their exclusive collective-bargaining representative of employees in the bargaining unit described below.

(c) Subcontracting bargaining unit work and/or assigning bargaining unit work to nonunit employees without giving the Union prior notice and a meaningful opportunity to bargain about the proposed changes.

(d) Refusing to bargain with the Union by unreasonably delaying furnishing information requested by the Union that is relevant and necessary to the Union's role as the exclusive collective-bargaining representative of bargaining unit employees.

[16] 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.

(e) 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) Before implementing any changes in wages, hours, or other terms and conditions of employment of bargaining unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following unit:

> All full-time and regular part-time truck drivers, mechanics, welders, painters, laborers, and loaders or loader operators, excluding: All office clerical employees, professional employees, managerial employees, confidential employees, guards, and supervisors as defined in the Act.

(b) Specifically, on request, provide the Union with prior notice and a meaningful opportunity to bargain about any proposed layoff of bargaining unit employees, and/or about any proposed subcontracting or assignment outside the bargaining unit of any bargaining unit work.

(c) Rescind the layoffs of employees Ramon Murrain-Benjamin and Benson Morton.

(d) Within 14 days from the date of the Board's Order, offer Ramon Murrain-Benjamin and Benson Morton 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.

(e) Make Ramon Murrain-Benjamin and Benson Morton whole for any loss of earnings and other benefits suffered as a result of the unlawful layoffs, in the manner set forth in the remedy section of the decision.

(f) Compensate Ramon Murrain-Benjamin and Benson Morton for their search-for-work and interim expenses regardless of whether those expenses exceed their interim earnings.

(g) Compensate Ramon Murrain-Benjamin and Benson Morton for the adverse consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director of Region 12, 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.

(h) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful layoffs, and within 3 days thereafter notify Ramon Murrain-Benjamin and Benson Morton in writing that this has been done and that the layoffs will not be used against them in any way.

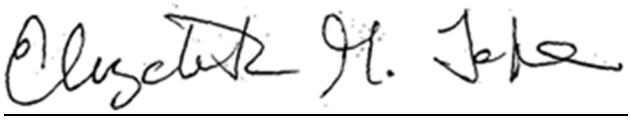
(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records

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.

(j) Within 14 days after service by the Region, post at its facility in St. Croix, United States Virgin Islands, copies of the attached notice marked "Appendix"[17] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 12, 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, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, 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 January 31, 2017.

(k) 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.

Dated, Washington, D.C., March 19, 2019.



Elizabeth M. Tafe
Administrative Law Judge

[17] 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."

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 unilaterally change your terms and conditions of employment.

WE WILL NOT lay you off without giving prior notice to and a meaningful opportunity to bargain with the International Association of Machinists and Aerospace Workers, AFL–CIO (the Union) as your exclusive collective-bargaining representative.

WE WILL NOT subcontract your work and/or assign your work to employees outside your bargaining unit without giving the Union prior notice and a meaningful opportunity to bargain about the proposed changes.

WE WILL NOT unreasonably delay responding to your Union's request for information that is relevant and necessary to its role as your exclusive bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, before making any changes to your terms and conditions of employment, notify and, on request, bargain with the Union about the changes to your terms and conditions of employment for our employees in the following bargaining unit, and about any effects of those changes on the bargaining unit:

All full-time and regular part-time truck drivers, mechanics, welders, painters, laborers, and loaders or loader operators, excluding: All office clerical employees, professional employees, managerial employees, confidential employees, guards, and supervisors as defined in the Act.

WE WILL, on request, provide the Union with prior notice and a meaningful opportunity to bargain about any proposed layoff of unit employees, and/or about any proposed subcontracting of or assignment of your work outside the bargaining unit.

WE WILL rescind the layoffs of Ramon Murrain-Benjamin and Benson Morton.

WE WILL, within 14 days from the date of this Order, offer Ramon Murrain-Benjamin and Benson Morton 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 Ramon Murrain-Benjamin and Benson Morton whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest compounded daily, and WE WILL make those employees whole for reasonable search-for-work expenses and interim employment expenses, plus interest.

WE WILL compensate Ramon Murrain-Benjamin and Benson Morton for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful layoffs of Ramon Murrain-Benjamin and Benson Morton, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the layoffs will not be used against them in any way.

Spartan Products, LLC,
a Wholly Owned Subsidiary of U.S. Concrete, Inc.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

South Trust Plaza, 201 East Kennedy Boulevard, Suite 300, Tampa, FL 33602-5824
(813) 228-2641, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-192417 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.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (813) 228-2641.