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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

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In the Matter of: Case No.: 09-CA-251578  
09-CA-252487  
09-CA-255573  
09-CA-258273

SMYRNA READY MIX CONCRETE, LLC,

Respondent

AND

GENERAL DRIVERS, WAREHOUSEMEN

AND HELPERS, LOCAL UNION NO. 89,

AFFILIATED WITH THE INTERNATIONAL

BROTHERHOOD OF TEAMSTERS

Charging Party

~~~~~

The above-entitled matter came on  
for hearing pursuant to notice, before Arthur  
Amchan, Administrative Law Judge, via Zoom, on  
Monday, June 29, 2020, at 9:00 a.m.

1 APPEARANCES:

2 On behalf of Respondent Smyrna Ready Mix:

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	E X H I B I T S		
	EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
1	General Counsel		
2	1A - 1HH	12	13
3	2	63	65
4	3	202	208
5	8	71	71
6	9	71	73
7	Respondent's		
8	13A	83	85
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12	38A	208	211
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1 P R O C E E D I N G S

2 10:34 a.m.

3 ADMINISTRATIVE LAW JUDGE: We'll go  
4 on the record. I'm Administrative Law Judge  
5 Arthur Amchan. I'm here to conduct an  
6 evidentiary hearing in Smyrna Ready Mix  
7 Concrete, LLC and General Drivers Warehousemen  
8 and Helpers Local Union No. 89, affiliated with  
9 the International Brothers of Teamsters. The  
10 Case No. is 09 CA 251578.

11 We'll start by having the parties  
12 make -- enter formal appearances. We'll do the  
13 General Counsel, Respondent, and then the  
14 Charging Party.

15 MS. MURAROVA: Zuzana Murarova for  
16 the General Counsel.

17 ADMINISTRATIVE LAW JUDGE: And for  
18 Respondent?

19 MR. WATRING: Steve Watring for  
20 Respondent.

21 MR. HORTON: Robert Horton for  
22 Respondent.

23 MR. GARRETT: Tim Garrett for  
24 Respondent.

25 ADMINISTRATIVE LAW JUDGE: There's

1 some feedback.

2 MS. PIRTLE: Mary Leigh Pirtle for  
3 Respondent.

4 ADMINISTRATIVE LAW JUDGE: Okay.  
5 Anyone else?

6 For the Charging Party Union?

7 MS. NEWPORT: Pamela Newport for  
8 Charging Party.

9 MR. SUETHOLZ: And David Suetholz  
10 for the Charging Party, Your Honor.

11 ADMINISTRATIVE LAW JUDGE: All  
12 right. What's the next order of business?

13 MR. ESKENAZI: Your Honor, do you  
14 want to get me in there, or is that at another  
15 time? I'm sorry.

16 ADMINISTRATIVE LAW JUDGE: On the  
17 record is bailiff -- I guess that would stand  
18 to be make some sense. And I think we've  
19 explained before, Mr. Eskenazi is an attorney  
20 in the executive secretary's office, and his  
21 role here is basically bailiff. Actually,  
22 right now, he's host, and his job is to help me  
23 with the technical aspects of handling the Zoom  
24 hearing, which hopefully will allow me to do  
25 what I am supposed to be doing, instead of

1 worrying about Zoom.

2 Okay. Anything -- does the General  
3 Counsel have an opening statement they want to  
4 make? I've read the complaint and the answer,  
5 so I kind of know what the case is about, so --  
6 you know, the parties can make opening  
7 statement, but I would ask that it would be  
8 fairly brief.

9 MR. WATRING: Judge, if I could --  
10 and I understand they can sit through opening  
11 statements, I would move for a sequestration of  
12 witnesses, please.

13 ADMINISTRATIVE LAW JUDGE: Yeah.

14 MR. WATRING: Including all alleged  
15 discriminates, including Mr. Copher and Mr.  
16 Highly.

17 ADMINISTRATIVE LAW JUDGE: Okay.  
18 Well, I'm going to grant the motion for  
19 sequestration, but we had an off-the-record  
20 discussion, where Mr. Copher is going to be the  
21 party representative of the Union, and Mr.  
22 Highly is going to be party representative, or  
23 helping the General Counsel, and I'm going to  
24 allow that.

25 They will not be in the room when

1 each other is testifying, as Mr. Copher will  
2 not be in the room when Mr. Highly is  
3 testifying. Mr. Highly won't be in the room  
4 when Mr. Copher is testifying.

5 Other witnesses -- and I will leave  
6 it to the parties to instruct the witnesses,  
7 tell them the point of sequestration is that  
8 when they're testifying, I only hear what they  
9 know and remember and not by the testimony of  
10 other witnesses, and that it's also important  
11 they not tell other witnesses in advance what  
12 they're going to testify to, or after they  
13 testify, contacting other witnesses and, "Hey,  
14 heads up. Here's what I was asked, and here's  
15 what I said." I don't want that either.

16 Mr. Watring, do you want to --

17 MR. WATRING: Judge, can I quickly  
18 make a record on this?

19 ADMINISTRATIVE LAW JUDGE: Yeah.

20 MR. WATRING: Specifically as to  
21 Mr. Highly, I find this to be extremely  
22 irregular. Mr. Highly was employed by my  
23 client and by Respondent as a 211 supervisor.  
24 He has had no association with the Charging  
25 Party, the Union, and I do not believe it's

1 appropriate to designate the former 211  
2 supervisor of our client as, essentially, the  
3 representative under these circumstances.

4 I think certainly they could  
5 designate somebody with the Union, but -- or  
6 somebody else. I don't think that is  
7 appropriate at all.

8 And also the Union has indicated  
9 before, if I remember correctly, when we served  
10 subpoenas, they said they are not representing  
11 Mr. Copher, and I don't know that Mr. Copher is  
12 an appropriate representative for the Union. I  
13 merely repeated my objection.

14 ADMINISTRATIVE LAW JUDGE: Okay.  
15 Are we ready for your opening statement,  
16 General Counsel?

17 MS. MURAROVA: Yes. Before we  
18 start with the opening statement, I did want to  
19 address two things as well. One is the  
20 subpoena issue, and I believe there still may  
21 be some -- the documents, at the very least,  
22 were not organized in a way that was by the  
23 subpoena, and we only received them -- they  
24 were sent late Sunday night, like yesterday,  
25 and I started reviewing them this morning, so

1 I'm not -- I'm not sure at this point if we  
2 have everything that we have requested, but  
3 we're ready to proceed, and, hopefully, we can  
4 resolve that during the break or at the end of  
5 today. I just wanted to state that for the  
6 record.

7 Also, before we start, I would like  
8 to introduce the formal papers in this case.  
9 They've been marked for identification as  
10 General Counsel's Exhibit 1A through 1HH  
11 inclusive, with Exhibit 1HH being an index and  
12 description of the entire exhibit. I e-mailed  
13 this exhibit to all the parties this morning,  
14 and I'm about to also send it through as a chat  
15 in case I missed anyone, so everyone sees it.  
16 And it says it's going through right now.

17 - - - - -

18 (Thereupon, General Counsel Exhibit  
19 1A through 1HH, were marked for  
20 purposes of identification.)

21 - - - - -

22 MS. MURAROVA: So I move for the  
23 admission of the formal papers.

24 ADMINISTRATIVE LAW JUDGE: Any  
25 objection to my receiving them, or do you need

1 a moment to look at them?

2 MR. WATRING: Judge, I'm assuming  
3 the formal papers are nothing unusual, and what  
4 I would suggest is we proceed and give us a  
5 chance to look at them at a break. I suspect  
6 there will not be an objection, but I don't  
7 want to hold up the hearing for us to review  
8 them. That would be my suggestion.

9 I would like to speak to the  
10 subpoena issue on the record before -- and I  
11 also have a subpoena issue before General  
12 Counsel starts with their opening.

13 ADMINISTRATIVE LAW JUDGE: Okay.  
14 With regard to the formal papers, I'm going to  
15 receive them, and if you have an issue with  
16 them, I can change my ruling after you've had a  
17 chance to look at them.

18 MR. WATRING: Very good, Your  
19 Honor.

20 - - - - -

21 (Thereupon, General Counsel's  
22 Exhibits 1A through 1HH were  
23 received.)

24 - - - - -

25 ADMINISTRATIVE LAW JUDGE: And then

1 go ahead with your subpoena issue.

2 MR. WATRING: Okay. So in the  
3 characterization that they were sent to General  
4 Counsel late yesterday evening, I think is a  
5 little misleading. The e-mail I saw said that  
6 she was notified they were available at 7:11.  
7 I don't think that's late in the evening. And,  
8 again, the -- we were told by the judge when we  
9 did our petition to revoke to make existing  
10 effort to comply, and that's exactly what we  
11 did.

12 Both the Union and the General  
13 Counsel received over 40,000 pages of documents  
14 in response to subpoenas, and those were not  
15 always the same documents. So we certainly  
16 made a good faith effort to comply.

17 I regret that we could not serve as  
18 Ms. Murarova's assistant and have them -- and  
19 put them in the order she would like. We were  
20 on limited time. We did our absolute best  
21 under the circumstances and without sacrificing  
22 our own preparation, quite frankly.

23 So -- and, again, as I offered  
24 before the hearing, if there's something  
25 that Ms. Murarova thinks is missing, if she

1 brings that to my attention, we can address  
2 that at the time, but we certainly did what the  
3 judge instructed and made a good faith effort.

4 ADMINISTRATIVE LAW JUDGE: Okay.  
5 We'll see whether there's a problem later on.  
6 And then you said you had an issue -- a  
7 subpoena issue?

8 MR. WATRING: We did our own  
9 subpoena to the Union. If I remember right, it  
10 was -- the Union and Respondent's counsel  
11 agreed to accept subpoenas on behalf of each  
12 other. I believe that was on July 12th, that  
13 it was -- that subpoena was served on them.  
14 I'm getting ahead of myself. I was looking at  
15 July. June 12.

16 There was no petition to revoke on  
17 that subpoena. We were given a what I will  
18 characterize as barely a handful of documents  
19 in response, and those documents included  
20 redactions, based upon that they did not view  
21 these -- these specific line items to be  
22 responsive up to the subpoenas.

23 Our position is that was  
24 inappropriate. They should have produced them  
25 in unredacted form, and they should have filed

1 a petition to revoke if they had some kind of  
2 objection. I think we should get the documents  
3 in unredacted form.

4 Alternatively, Judge, there's not  
5 -- I think there's been like five or six  
6 redactions, not big. If you would prefer to  
7 see those in camera and make a decision, I  
8 would be comfortable with that.

9 MS. NEWPORT: So the redactions  
10 were --

11 MR. ESKENAZI: Ms. Newport, I'm  
12 sorry. We have someone who's waiting in the  
13 waiting room. Maybe we can just identify them  
14 and then get to your response, if the judge is  
15 okay with that.

16 ADMINISTRATIVE LAW JUDGE: Yeah.

17 MR. ESKENAZI: I think we have  
18 a Ms. DeAngelo who just joined. Can you  
19 identify yourself, please? She's not on the  
20 list that I received.

21 Ms. DeAngelo, it looks like you're  
22 not on video, but you're on audio. Can you  
23 hear?

24 ADMINISTRATIVE LAW JUDGE: Well, do  
25 any of the parties recognize who she is?

1 MS. NEWPORT: No.

2 MS. MURAROVA: No.

3 MR. ESKENAZI: I can send her back  
4 to the waiting room, and if she gets her things  
5 together -- oh, if she dropped off. Okay.

6 ADMINISTRATIVE LAW JUDGE: So,  
7 Ms. Newport --

8 MS. NEWPORT: Yes. So there were a  
9 couple of forwards basically to counsel, so it  
10 was just essentially our e-mails between the  
11 parties who were on my e-mail address that was  
12 redacted.

13 There was some personally  
14 identifying information that was redacted, and  
15 in addition, there were some text messages that  
16 had -- between two Union representatives that  
17 had nothing to do at all with Smyrna, and so we  
18 redacted those as nonresponsive.

19 I think it was appropriate to do  
20 so. We weren't attempting to revoke the whole  
21 subpoena. We wanted to act in good faith and  
22 get the documents, and honestly, we didn't have  
23 that much to turn over, but I'm also happy to  
24 let you review them in camera if you would  
25 like.

1 ADMINISTRATIVE LAW JUDGE: Yeah.

2 Well, I mean, Mr. Watring, if you want me to do  
3 that, I think that's the best -- if you want me  
4 to take a look at that.

5 MR. WATRING: That's -- would be  
6 fine, Judge, and I think it's the last few  
7 pages in your review. Certainly, on the  
8 personally identifiable information, that's not  
9 a problem. It's where they've designated  
10 something as nonresponsive, we would like you  
11 to take a look.

12 ADMINISTRATIVE LAW JUDGE: All  
13 right.

14 MR. WATRING: And, Judge, I have  
15 one other quick point. As far as Mr. Trafford  
16 sitting in as a representative, I believe  
17 Mr. -- or as an observer. I believe that some  
18 of the charges were, in fact, filed by Mr.  
19 Trafford. I have no objection to him sitting  
20 in as an observer, as long as it is absolutely  
21 clear no matter what happens, he is not to  
22 testify. If that is not going to be an  
23 absolute clear, then I would object.

24 ADMINISTRATIVE LAW JUDGE: Well, I  
25 won't let him testify.

1 MR. WATRING: Okay. That's all I  
2 ask, Judge.

3 ADMINISTRATIVE LAW JUDGE: I mean,  
4 either he's sequestered, or he doesn't testify,  
5 one or the other.

6 MR. WATRING: That's all I'm  
7 asking, Judge.

8 ADMINISTRATIVE LAW JUDGE: All  
9 right. Mark, you may have to help me with how  
10 I take a look at the --

11 MR. ESKENAZI: Formal papers?

12 ADMINISTRATIVE LAW JUDGE: No. No.  
13 The stuff that's redacted, to see -- the in  
14 camera inspection.

15 MR. ESKENAZI: Yeah, I can take --  
16 we can take -- Ms. Newport, I think has it.

17 Ms. Newport, do you have the  
18 document? Is that correct?

19 MS. NEWPORT: Yeah, I'm going to  
20 have to take a minute to get the unredacted  
21 version available to -- so that you can view  
22 it, but, yes, we have them.

23 MR. ESKENAZI: Yeah, there's a  
24 couple ways to do it. So, Judge, is this  
25 something you want to do now so she can get

1 that ready, or it sounds like she has to do  
2 some legwork to get that ready. Or do you want  
3 to wait?

4 ADMINISTRATIVE LAW JUDGE: Could we  
5 put this up for a while? Maybe sometime today  
6 you send me --

7 MR. WATRING: There's no -- I don't  
8 think this is an impediment to getting started,  
9 Judge --

10 ADMINISTRATIVE LAW JUDGE: All  
11 right. Why don't we -- at a break and get  
12 moving.

13 MS. NEWPORT: Okay.

14 ADMINISTRATIVE LAW JUDGE: Okay.  
15 So we're up to --

16 MR. WATRING: I believe the  
17 redacted form, we had just made an exhibit,  
18 which places -- and I don't know the exhibit  
19 number, but it's one of our last exhibits we  
20 just supplemented the days that you already  
21 have available --

22 THE JUDGE: All right --

23 MS. NEWPORT: Mr. Watring, did you  
24 object to the judge, or did you send anything  
25 to us?

1 MR. WATRING: Nobody has exchanged  
2 exhibits yet, other than General Counsel just  
3 did.

4 MS. NEWPORT: Okay. Okay.

5 ADMINISTRATIVE LAW JUDGE: I think  
6 we're ready for your opening statement.

7 MR. WATRING: I intend to reserve  
8 opening statement to the beginning of our case,  
9 so perhaps that might be a good time for a  
10 break after Ms. Murarova's opening statement,  
11 and then we can take care of the technical  
12 issue, because I won't be talking much during  
13 her opening statement, I assume.

14 ADMINISTRATIVE LAW JUDGE: Okay.

15 MS. MURAROVA: I'll go ahead, Your  
16 Honor. I'll give a brief opening and go  
17 forward with putting our evidence on.

18 Your Honor, this is actually a very  
19 straightforward case of retaliation in the face  
20 of union organizing campaign. Smyrna Ready Mix  
21 provides ready mix concrete material hauling  
22 and concrete pumping services to commercial and  
23 residential clients across the country.

24 It acquired the plant in  
25 Winchester, Kentucky, in about 2017. The plant

1 was managed by plant manager Aaron Highly,  
2 until he was discharged on November 18, 2019.

3 The evidence will show that  
4 starting in October of 2019, SRM employees  
5 began talking about getting a union to  
6 represent the employees.

7 Employees were upset about several  
8 working conditions, including having to travel  
9 to Florence, Kentucky, for work and not being  
10 paid the same wages as the regular employees of  
11 that facility.

12 Employee Sunga Copher first talked  
13 to the International Brotherhood of Teamsters  
14 on about October 25th, and by November 8th,  
15 several drivers met with a union  
16 representative.

17 Following the meeting, general  
18 manager Ben Brooks, who manages 15 of the  
19 company's facilities in the central Kentucky  
20 region, told plant manager Highly to come up  
21 with some names of employees who were involved  
22 in the union effort and to see what he could  
23 find out. Mr. Highly confronted and  
24 interrogated Mr. Copher about that union  
25 activity.

1                   Later that same day, Mr. Brooks  
2                   terminated Sunga Copher, allegedly for bad  
3                   attitude and poor work performance. This was  
4                   the first time Mr. Copher received any kind of  
5                   discipline while working for SRM.

6                   After the termination, Mr. Highly  
7                   asked Brooks if that was the best he could do,  
8                   and that Mr. Copher had never been written up  
9                   and was one of his best drivers.

10                  And Brooks said that was all he  
11                  could come up with off the top of his head,  
12                  that they would not run a concrete plant with  
13                  their hands tied around their plant, and that  
14                  they would not have a union. Mr. Brooks said  
15                  if they had to shut it down to keep it from  
16                  happening, it would.

17                  The evidence will show that  
18                  following Mr. Copher's termination, Mr. Brooks  
19                  started showing up at the plant a lot more, and  
20                  a week later, on about November 15th,  
21                  Mr. Brooks conducted a meeting with all the  
22                  drivers at the Winchester plant, in which he  
23                  commended employees on their performance at the  
24                  plant, said employees could come to him if they  
25                  had any issues, and said employees would no

1 longer be expected to travel to the company's  
2 Florence, Kentucky, location. Mr. Brooks ended  
3 the meeting by giving all the drivers \$100  
4 cash.

5 After telling everyone how great  
6 they were doing, three days later, on or about  
7 November 18th, Mr. Brooks fired plant manager  
8 Highly. In the termination meeting, Mr. Brooks  
9 told Highly he had given him a week to get him  
10 the list of names.

11 The evidence will show that after a  
12 month of reassuring the remainder of the  
13 employees that their jobs were safe, on January  
14 6, 2020, Mr. Brooks notified employees at the  
15 Winchester plant that the Winchester plant  
16 would be closing.

17 On November 10th, employees were  
18 told that they would receive a month of  
19 severance, and the plant closed on January  
20 13th, 2020.

21 In order to get the severance,  
22 employees had to sign a release, with three  
23 unlawful provisions, a nondisparagement clause,  
24 a covenant not to sue, and a covenant not to  
25 re-apply.

1           The evidence will show that since  
2           terminating the Winchester drivers, the company  
3           had continued running the plant with different  
4           employees as an on-demand plant.

5           By terminating all of these  
6           employees and a supervisor, making unlawful  
7           statements, providing unlawful benefits, making  
8           employees sign a separation agreement, with  
9           unlawful provisions, and ultimately shutting  
10          down the plant, as Mr. Ben Brooks threatened he  
11          would do in response to the union activity, the  
12          company has violated Section 8(a)(1) and (3) of  
13          the Act.

14                   ADMINISTRATIVE LAW JUDGE: Okay.  
15          So we're going to take a short break now to see  
16          whether Mr. Watring can resolve his audio  
17          problems? Is that what we're going to do?

18                   MR. WATRING: That's my  
19          understanding, Judge.

20                   ADMINISTRATIVE LAW JUDGE: Okay.

21                   MR. ESKENAZI: Mr. Watring, I would  
22          suggest two things, not just a new mic, but I  
23          think one of your colleagues, either Mr. Horton  
24          or Mr. Garrett, also has the phone call-in  
25          option. Maybe someone could set you up with a

1 phone call-in that's audio only into the Zoom  
2 hearing, so you can discuss that with your tech  
3 people, but that might be another option for  
4 you.

5 MR. WATRING: Very good. We'll see  
6 what we can do.

7 ADMINISTRATIVE LAW JUDGE: Okay.  
8 We'll go off the record for a couple minutes.

9 (Recess is taken.)

10 ADMINISTRATIVE LAW JUDGE: If the  
11 General Counsel would like to call its first  
12 witness.

13 MS. MURAROVA: Yes, Judge. The  
14 General Counsel would like to call Sunga Copher  
15 as our first witness.

16 MR. WATRING: Our company  
17 representative is not on right now.

18 MS. NEWPORT: And I need to step  
19 away to make sure Mr. Copher can log on, so I  
20 will be right back.

21 ADMINISTRATIVE LAW JUDGE: Okay.

22 (Discussion held off record.)

23 ADMINISTRATIVE LAW JUDGE: I'm  
24 going to swear you in.

25 (Witness sworn.)

1 MR. WATRING: Judge, may I say two  
2 more things for the record?

3 ADMINISTRATIVE LAW JUDGE: Sure.

4 MR. WATRING: First of all, I  
5 should have said this before, but I'll say it  
6 within my answer. Based upon the confusion  
7 that has happened so far, I renew our objection  
8 to a Zoom hearing as opposed to in-person  
9 hearing, for the record. And I think it's in  
10 violation of the letter and not the spirit of  
11 10(b), that gives the Respondents a right to  
12 (inaudible) hearing.

13 And the other thing is my  
14 understanding is Mr. Highly is to be excluded  
15 during Mr. Copher's examination, at least I  
16 think that's where the judge landed on that, so  
17 I want to --

18 ADMINISTRATIVE LAW JUDGE: Yes. So  
19 Mr. Highly should not be observing this  
20 testimony.

21 MR. SUETHOLZ: And he's not.

22 ADMINISTRATIVE LAW JUDGE: Okay.  
23 With regard to objection of the Zoom hearing, I  
24 don't know that you ever objected, we had a  
25 conversation. You said you hadn't decided yet.

1 I mean, if you're going to -- I'm going to deny  
2 the objection, but the question is whether I do  
3 it in writing, which I have done in other  
4 cases.

5 MR. WATRING: Judge, I don't need  
6 you to do it in writing. We've already talked  
7 about this. I know we're moving forward.  
8 Again, I just wanted to preserve the objection.

9 MR. WATRING: Okay.

10 MR. WATRING: And we do not -- we  
11 don't know what records have been shared with  
12 Mr. Copher, and right now, I -- my  
13 understanding is documents were going to be  
14 e-mailed. I -- the last I looked at my phone,  
15 I haven't got an e-mail of any documents, so  
16 basically, the witness has been given documents  
17 that we do not have, as far as I know.

18 MR. SUETHOLZ: That's not true. We  
19 haven't received any documents. The witness  
20 has no documents in his room.

21 MR. WATRING: Okay.

22 ADMINISTRATIVE LAW JUDGE: All  
23 right.

24 Go ahead.

25 MS. MURAROVA: The only document

1 that I will be asking him about is what I've  
2 shared in the group chat already as General  
3 Counsel's Exhibit 2, and he shouldn't have it  
4 opened yet on his computer or in front of him  
5 at all at this point.

6 MR. WATRING: Judge, I don't have  
7 that document is what I'm saying.

8 MS. MURAROVA: If you click on the  
9 Zoom group chat on the right side, at the  
10 bottom of your screen, it may say "Chat," and  
11 if you click on that, a side bar will open, and  
12 GC2 is on the right in the chat.

13 MS. NEWPORT: I don't have that.

14 MS. MURAROVA: Oh, I'm sorry. It  
15 was sent only to the MR. ESKENAZI. I  
16 apologize. So I'm going to resend it.

17 MR. ESKENAZI: For everyone, while  
18 she's doing that, you're going to want to click  
19 the chat button on the bottom below all your  
20 picture video feeds. What that's going to do,  
21 that's going to open a chat bar. It should be  
22 on the right side of your screen, but if your  
23 screen is scrunched up, it could appear  
24 elsewhere. It should be on the right side.

25 When that shows up, you should see

1 a button that allows you to upload Ms.  
2 Murarova's documents. So you want to click  
3 that chat on the bottom of your screen, and  
4 then look on the right side. It came through  
5 for me just now.

6 ADMINISTRATIVE LAW JUDGE: I see  
7 it. I'm not going to click on it until she  
8 asks him about it.

9 ADMINISTRATIVE LAW JUDGE: Okay.  
10 Ready to go?

11 MS. MURAROVA: We're ready.

12 MR. SUETHOLZ: Ms. Murarova, can  
13 you e-mail that document, and we'll have it  
14 printed out? I'm sorry. My e-mail still  
15 hasn't come through.

16 MS. MURAROVA: Let me see what's  
17 going on.

18 MR. ESKENAZI: I would just say for  
19 other folks with the chat, there are a bunch of  
20 steps to kind of jump through with the upload,  
21 so if Ms. Murarova or others are comfortable  
22 with e-mailing it to others, that might be  
23 quicker, but there are some hoops to jump  
24 through.

25 You download it. Then you have to

1 find it on your computer. So if people have  
2 trouble with that, let me know. I can try to  
3 help you.

4 MS. MURAROVA: For me, it's just  
5 easier to share in a chat, because I've got a  
6 two-minute delay on my outbox, and I would have  
7 to figure out how to turn that off, which I can  
8 do on a break.

9 MR. WATRING: Judge, if they can be  
10 e-mailed, I have a separate computer, and I  
11 could actually look at the document on one  
12 screen and see the witness on the other screen.  
13 And, again, the Court's order said that the  
14 preference is -- I know it didn't say required,  
15 but the preference is to e-mail the documents,  
16 and that's what we would like to see done.

17 ADMINISTRATIVE LAW JUDGE: All  
18 right. Why don't you see if we can do that.

19 MS. MURAROVA: Okay. I will do it.  
20 I don't think it's going to be any faster,  
21 because I assume I have to send it to everyone,  
22 which is I think ten recipients each time that  
23 I -- maybe not ten, but a lot of recipients  
24 each time, and it's going to take a while, so  
25 whatever you --

1 ADMINISTRATIVE LAW JUDGE: All  
2 right. Let's do the best we can.

3 SUNGA Copher, called for examination and  
4 said as follows:

5 DIRECT EXAMINATION OF SUNGA COPHER  
6 BY MS. MURAROVA:

7 Q. So, Mr. Copher, can you state your  
8 full name, please?

9 A. Sunga Copher.

10 Q. Mr. Copher, are you familiar with  
11 the company Smyrna Ready Mix?

12 A. Yes ma'am.

13 Q. How do you know that company?

14 A. I was employed by the company.

15 Q. When did you first start working  
16 there?

17 A. I first started working for them  
18 when they took over -- when they bought out  
19 Central Ready Mix. I think it was 2017, if I'm  
20 not mistaken.

21 Q. Okay. So first I would like to  
22 talk to you about your time working for Central  
23 Ready Mix. When did you start working for  
24 Central Ready Mix?

25 A. I think it was around about a year

1 and a half before Smyrna bought out Central  
2 Ready Mix.

3 Q. Okay. And when Smyrna bought out  
4 Central Ready Mix, which locations did they  
5 buy?

6 A. From my understanding, Georgetown,  
7 Nicholasville, and the Winchester plant.

8 Q. Okay. Which plant did you work at?

9 A. Winchester plant, ma'am.

10 Q. At the time that Smyrna took over,  
11 did you have to reapply for your job?

12 A. No, ma'am.

13 Q. Did the workforce change?

14 A. At that time, no, but later on, we  
15 increased in our workforce.

16 Q. Okay. Did management stay the  
17 same?

18 A. Yes, ma'am.

19 Q. Who was the manager at that time?

20 A. Aaron Highly.

21 Q. Okay. What kind of work is done at  
22 the Winchester Smyrna plant?

23 A. We deliver customer orders of  
24 concrete on front dischargers.

25 Q. Okay. Is there -- can you walk me

1 through the process of how that happens at a  
2 concrete plant?

3 A. The customer will call in the order  
4 that they want, what type of concrete mix, give  
5 the address. The plant manager, Mr. Highly,  
6 will assign an associate a truck for that  
7 order. He'll go to the plant, and he will load  
8 that mix onto the truck.

9 We wash out the truck, and we will  
10 driver that truck to that location. When we  
11 deliver, we will help spread out, if it's a  
12 regular pour, if it's a pumpable pour into the  
13 pump truck. And then we'll wash our truck out  
14 and we'll come back to the plant for our next  
15 order.

16 Q. About how many orders are delivered  
17 in a typical day?

18 A. Average day at Winchester, we was  
19 averaging anywhere from four to five, sometimes  
20 six. On a busy day, we would do a lot more.

21 Q. Okay. How does the concrete get  
22 through the plant to be delivered?

23 A. It was brought in by a tanker. The  
24 powder form was brought in by a tanker that has  
25 been to a silo.

1 Q. Is that brought in by a Smyrna  
2 employee or someone else?

3 A. Yes, Smyrna employee, tanker  
4 driver.

5 Q. Okay. So what job classifications  
6 existed at the Winchester plant?

7 A. You had the plant manager. You had  
8 the operators, the drivers, and you had a  
9 tanker -- a spare tanker driver. And the next  
10 time when I was there, we had two maintenance  
11 -- we had one maintenance and assistant  
12 maintenance tech.

13 Q. Okay. So I would like to talk  
14 about how many of each of these classifications  
15 existed at the Winchester plant. How many  
16 plant managers were there?

17 A. At the Winchester plant, ma'am?

18 Q. Yes.

19 A. Just one.

20 Q. Were there any other members of  
21 management at the Winchester plant?

22 A. No, ma'am.

23 Q. What about drivers? How many  
24 drivers were there?

25 A. We had eight to nine drivers.

1 Q. Okay. Does that include the tanker  
2 driver?

3 A. No; he was separate.

4 Q. Okay. And how many tanker drivers  
5 were there?

6 A. At the Winchester plant, we had  
7 one.

8 Q. Okay. And who was the tanker  
9 driver?

10 A. Mr. Grimm, Chuck Grimm.

11 Q. Okay. Now, what about the  
12 mechanics? How many mechanics did you say  
13 there were?

14 A. We had one mechanic, Jeffrey Rudd,  
15 and one assistant mechanic, Kenny Snow.

16 Q. Do you know who the plant manager  
17 reported to?

18 A. Ben Brooks.

19 Q. Okay. The tanker driver, was that  
20 person only working delivering concrete to  
21 Winchester, or did they go anywhere else?

22 A. They went to other plants, ma'am,  
23 as needed.

24 Q. All right. So what did you do at  
25 Smyrna?

1           A.     I was their operator delivery on  
2     the trucks. I helped -- when we was busy, I  
3     helped answer the phones and receiving orders  
4     and input orders into the computer system. And  
5     I loaded the bins with the two types of rocks  
6     that we had in the sand. The wintertime, I  
7     would come in and fire up the heaters to keep  
8     the plant from freezing and fire up the  
9     computer system and break up some material in  
10    the back that was frozen up, so large pumps  
11    wouldn't go into the bins for material.

12           Q.     Okay. And in addition to all of  
13    that, you also drove --

14           A.     Yes, ma'am.

15           Q.     -- to customers? Did you work full  
16    time or part time?

17           A.     Full time, ma'am.

18           Q.     Was there a set time when you  
19    reported in?

20           A.     Our set time was scheduled for  
21    7:00, but there were times when we had to come  
22    in earlier due to customer demands.

23           Q.     Okay. When you had to get in  
24    early, how much earlier did you have to come  
25    in?

1           A.     It varied.  Sometimes we would be  
2     there at 4:00 in the morning.  Sometimes  
3     between 5:00 and 6:00.

4           Q.     Okay.  Now, I would like to direct  
5     your attention to the time when you still  
6     worked for Central before Smyrna took over.  
7     Were you ever laid off while you worked for  
8     Central?

9           A.     No, ma'am.

10          Q.     Was the plant ever closed  
11     seasonally?

12          A.     No, ma'am.

13          Q.     Now, can you tell me a little bit  
14     about concrete work, in terms of how workflow  
15     worked throughout the year and the nature --

16          A.     During your fall, spring, and  
17     summer, you stay pretty consistent, pretty  
18     busy.  Especially in spring and summer.

19                 Now, when you get to your winter  
20     months, it does slow down a little bit, but not  
21     -- the last year that we were hired, it didn't  
22     slow down a whole lot.  We stayed pretty  
23     consistent.

24          Q.     Okay.  How far can concrete travel?

25          A.     It can travel different distances.

1 It just depends on how the -- who the  
2 dispatcher plant manager can put the concrete.  
3 It's called the slate. You can put -- I forgot  
4 what the material was called, ma'am, but he can  
5 douse the cement to be put to sleep and he can  
6 travel.

7 Q. Okay.

8 A. Long distance.

9 Q. What is the -- what kind of factors  
10 are dependent in how far concrete can travel?

11 A. Your fees, your weather outside,  
12 the type of material, concrete it is. You've  
13 got different mixes, like a 24-hour mix. It  
14 sets up fast, so it can't travel real far.

15 Q. Okay. So how far would you guys  
16 deliver concrete from the Winchester plant?

17 A. We were in a rural area, so we had  
18 to travel a pretty good bit, a pretty good  
19 distance. On the average, I would say 20 to 30  
20 minutes, but we have delivered -- pretty far,  
21 we had delivered to Danville, Kentucky, which  
22 was over an hour away, because the Misto plant,  
23 something happened at the Misto plant, and they  
24 couldn't haul, and we had to haul it out of the  
25 Winchester plant at the time.

1 Q. Okay. So in terms of mileage or  
2 time, how big of a radius do you think you  
3 covered from the Winchester plant?

4 A. We covered, I would say no more  
5 than 30 to 40 minutes away, at the most.

6 Q. Okay. Are there any Smyrna plants  
7 east of the Winchester plant?

8 A. Not that I'm aware of.

9 Q. Who hired you at Smyrna?

10 A. Jason Stock. Ma'am, I retract from  
11 that. He hired me for Central Ready Mix. I  
12 was grandfathered in for Smyrna.

13 Q. Okay. What, if anything, was said  
14 to you about potential seasonal layoffs when  
15 Smyrna took over?

16 A. Nothing.

17 Q. Were you ever laid off while  
18 working for Smyrna?

19 A. No, ma'am.

20 Q. Did the plant ever seasonally shut  
21 down?

22 A. No, ma'am.

23 Q. Do you know how many Smyrna plants  
24 there are in Kentucky?

25 A. Not off the top of my head. I know

1 I could name some. I mean, we've got the  
2 Winchester, Nicholasville, Georgetown, Dry  
3 Ridge, Sparta, Florence, Somerset,  
4 Pattersville. You've got a couple of little  
5 ones that I know of, Elizabethtown. That's  
6 mainly all the ones I really know of, ma'am.

7 Q. Okay. What, if any, interaction  
8 did you have with those plants?

9 A. We would have to travel to some of  
10 those plants to help out with delivering  
11 concrete.

12 Q. Which plants did you go to most  
13 often?

14 A. Most often, it was -- Florence was  
15 quite a bit, but we would also go to the  
16 Georgetown and Nicholastown plants, and we  
17 would -- myself at the Georgetown,  
18 Nicholasville, and Florence and I went to Dry  
19 Ridge sometimes.

20 Q. Okay. What did helping out at  
21 these plants entail?

22 A. I'm sorry, ma'am?

23 Q. What did helping out at these other  
24 plants entail?

25 A. Just delivering the concrete orders

1 for the customer.

2 Q. Okay. So when you went to help out  
3 at the other plants, where did you clock in?

4 A. Clocked in at Winchester, ma'am.

5 Q. And then how did you get from  
6 Winchester to the other plants?

7 A. Drove the cement truck, the front  
8 load, front dispenser.

9 Q. Okay. Did you fill that up in  
10 Winchester?

11 A. We would fill up at Winchester and  
12 then at the other plants, on our way back --  
13 oh, are you talking about concrete? I'm sorry.

14 Q. Yes.

15 A. No; we would not load up the  
16 concrete. Sometimes when we made it --  
17 sometimes if it was like Georgetown or  
18 Nicholasville, and there was a site, a post in  
19 between us, we would take a load to the site  
20 and then go to the plant that we was assigned  
21 to go help that day, but --

22 Q. Okay.

23 A. No, not Florence --

24 Q. Okay. Why is that?

25 A. Because of the distance.

1 Q. What about the distance?

2 A. It was too far. We would -- the  
3 concrete couldn't make it that far, ma'am.

4 Q. Okay. And why couldn't concrete  
5 travel that far?

6 A. It would set up, ma'am.

7 Q. Okay. In the fall -- I guess I  
8 want to talk a little bit more detail about  
9 this traveling. How long does it take to get  
10 to Florence?

11 A. Hour and a half to two hours,  
12 depending on the traffic.

13 Q. Okay. So on days when you had to  
14 travel to Florence, what time did you have to  
15 show up to the Winchester facility?

16 A. Each -- a lot of times, we had to  
17 be at Florence at 8:00 or 7:00 in the morning.  
18 It varied between 7:00 and 8:00, so if it was  
19 7:00, we had to be there -- we would always get  
20 in the plant around about 5:30. Usually fill  
21 up, check our trucks, get them signed in and  
22 stuff, and then go to Florence.

23 And usually it's about 8:00. We  
24 used to get in there around about 6:00 or a  
25 little bit after, do the checks on our trucks

1 and everything, check our oil and everything,  
2 and then go to Florence.

3 Q. Okay. So what time would you be  
4 expected to be arriving in Florence?

5 A. At either 7:00 or 8:00, whatever  
6 they assign. Most of the time, it was either  
7 7:00 or 8:00, they would ask us to be there.

8 Q. During the fall of 2019, how often  
9 would you be in Winchester versus other  
10 facilities?

11 A. Probably about once or twice every  
12 day during the week, we would be in Florence  
13 myself.

14 Q. Okay. How would they decide who  
15 went up to Florence?

16 A. We had a rotation between the  
17 drivers, ma'am.

18 Q. In the fall of 2019, how busy was  
19 the Winchester plant?

20 A. It was very busy.

21 Q. Did you ever have to work overtime?

22 A. Yes, ma'am.

23 Q. Did you -- did you ever talk to  
24 your co-worker -- I guess how did you feel  
25 about going up to Florence?

1           A.     Me, when we first started doing it,  
2     we didn't mind it, but as time went on, it got  
3     to where we wasn't -- we didn't like it because  
4     they were letting their drivers go home early,  
5     and we were working really late, sometimes  
6     6:00, 7:00 in the evening.

7                     And then we would that hour and a  
8     half to two hour drive back to the plants. And  
9     then most of us would have anywhere from 30 to  
10    40-minute drive home, so we were -- when you're  
11    constantly doing that, it wears you out.

12           Q.     When you say "we," who are you  
13    referring to?

14           A.     Me and my fellow drivers.

15           Q.     Did you ever talk to your fellow  
16    drivers about these concerns that you had about  
17    going up there?

18           A.     Yes. We all discussed it amongst  
19    ourselves.

20           Q.     Can you give me some names of  
21    people --

22           A.     Myself, Nicole Long, James Bowling,  
23    Sheldon Walters. I'm trying to think of --  
24    David -- I can't think of his last name. He  
25    was a new hire that come there. Chuck Grimms,

1 Scott Kenny, Chris Sizemore. I'm forgetting  
2 some.

3 Q. Okay. What, if anything, do you  
4 know about the pay of the employees at the  
5 Florence location?

6 A. They were hourly. They made more  
7 on the hour than us.

8 Q. Is that something you were  
9 concerned about?

10 A. All of us were.

11 Q. Did you ever raise your concerns  
12 about traveling to Florence and the other  
13 locations with anyone in management?

14 A. Yes. We -- I expressed my concerns  
15 to Aaron Highly. And he stated that he would  
16 pass that along and relay those concerns to Ben  
17 Brooks.

18 Q. When did you first raise those  
19 concerns with Mr. Highly?

20 A. Back in the summer of 2019.

21 Q. Okay. And did he ever get back to  
22 you?

23 A. Yes. So we asked him about it and  
24 basically was told that Ben Brooks had stated  
25 to him that we would either go or we would

1 be --

2 MR. HORTON: Objection; Your Honor,  
3 hearsay. Actually, double hearsay, I think.

4 ADMINISTRATIVE LAW JUDGE: Well,  
5 the time -- it's overruled. At the time Mr.  
6 Highly was an agent, Respondent, so was -- and  
7 so was Mr. Brooks.

8 Q. I would like to move onto another  
9 subject, then. During your time in Smyrna,  
10 did you ever receive any discipline?

11 A. No.

12 Q. Did anyone ever tell you that you  
13 were underperforming?

14 A. No, ma'am.

15 Q. Did anyone tell you that the plant  
16 was underperforming?

17 A. No, ma'am.

18 Q. Did you ever receive any raises  
19 while you worked at Smyrna?

20 A. Yes, ma'am.

21 Q. When did you receive raises?

22 A. I think it was in April. We would  
23 -- we would have our yearly reviews, and we  
24 would receive our raises then.

25 Q. Okay. How did the reviews work?

1           A.       From what I saw on paperwork, it  
2       was like a numerical system, like a point  
3       system. It went on -- you could either get  
4       nothing, or it would go like \$.25 to \$.50 to  
5       \$.75, to a dollar being excellent.

6           Q.       Okay. In 2019, how much of a raise  
7       did you get?

8           A.       A dollar.

9           Q.       Did you ever receive anything less  
10      than a dollar raise?

11          A.       No, ma'am.

12          Q.       Do you know what the raise was  
13      based on?

14          A.       It was based on the overall  
15      performance.

16          Q.       Okay. Did you ever receive any  
17      bonuses while working for Smyrna?

18          A.       Just an annual Christmas bonus.

19          Q.       How would you receive that?

20          A.       Direct deposit.

21          Q.       How much was that bonus for?

22          A.       40-hour pay week.

23          Q.       Have you ever received money in  
24      cash from the company?

25          A.       No, ma'am.

1 Q. Have you ever received any kind of  
2 safety bonus?

3 A. No, ma'am.

4 Q. Have you ever heard of a safety  
5 bonus?

6 A. At that time, no.

7 Q. Did you ever have safety meetings  
8 at the Winchester location?

9 A. No. They wasn't really safety  
10 meetings. The only thing we had, like if there  
11 was an issue that come up, or with signing into  
12 our Jonel systems in our trucks. They would  
13 cover them with us.

14 Q. What's a G-mail system?

15 A. It's a computer system, GPS system  
16 that was in our trucks. Make sure everyone was  
17 signed into those. Just documenting the other  
18 issues we may have had come up. Nothing --  
19 really no safety meetings.

20 Q. Okay. Are you familiar with Ben  
21 Brooks?

22 A. Yes, ma'am.

23 Q. Who is he?

24 A. He was general manager.

25 Q. How often did you see him at the

1 Winchester plant when you worked there?

2 A. Not very often. Probably about  
3 once every two to three months.

4 Q. Have you ever seen him hold any  
5 kind of meeting for employees at the Winchester  
6 plant?

7 A. No, ma'am.

8 Q. Are you familiar with a James Goss?

9 A. Yes.

10 Q. Who is he?

11 A. I'm not sure what his title was.  
12 He came when Smyrna bought out Central. He  
13 first came there and was helping set up the  
14 plant to Smyrna computer system stuff. And  
15 then after that, I know he went and he was over  
16 the Pattersville plant, as far as I know.

17 Q. Okay. How often would you see him  
18 at the Winchester facility?

19 A. When Smyrna first bought us out, he  
20 was there -- probably be there the first month,  
21 and after that, it's very rarely I ever saw  
22 him.

23 Q. Okay. Are you familiar with Chris  
24 Newell?

25 A. Yes, ma'am.

1 Q. Who is he?

2 A. He's the sales -- he was the  
3 salesman.

4 Q. Okay. How often would you see him  
5 at the Winchester plant?

6 A. Between summer of 2019 and when I  
7 was discharged, he was in and out throughout  
8 the day, sporadic -- he was either talking on  
9 his phone and computer, and he was right back  
10 out the door. He was there, from what I saw,  
11 no more than maybe five to 15 minute at a time.

12 Q. Okay. During your time working for  
13 Smyrna, did you ever talk to your co-workers  
14 about the union?

15 A. Yes.

16 Q. When did you first do that?

17 A. It was in the early part of  
18 October.

19 Q. Okay. What did you -- who did you  
20 talk to about unions?

21 A. Who did I talk to, ma'am?

22 Q. Uh-huh.

23 A. To myself, Chris Sizemore. At  
24 first it was just me and him, and then -- until  
25 I got information. And then after I got

1 information and stuff, I discussed it with  
2 Sheldon Walters, Nicole Long, and Chuck Grimm.

3 Q. Okay. And what exactly did you  
4 discuss with these employees?

5 A. At first, myself and Chris  
6 Sizemore, we discussed maybe, you know, our  
7 issues weren't being heard. Our complaints --  
8 nothing was being done. We wasn't even -- they  
9 wasn't even coming and talking to us, see if  
10 there was anything they could do, so we thought  
11 maybe talk to the union rep and see what kind  
12 of steps, you know, what would happen from  
13 there.

14 And then after we got the info and  
15 stuff, and I spoke with Sheldon Walters, Nicole  
16 Long, and Chuck Grimm.

17 Q. Okay. So you said you weren't  
18 being heard. What specifically were the issues  
19 that led you to talking about maybe getting a  
20 union in?

21 A. Our traveling to Florence  
22 constantly, our hours being up there, the pay,  
23 and our health insurance was an issue at the  
24 time.

25 Q. Okay. When did you first reach out

1 to a union?

2 A. It was in -- it was early October.

3 Q. Okay. Who did you reach out to?

4 A. Stephanie -- I apologize. I'm  
5 going to slaughter her last name. Good Lord.  
6 I can't remember her last name. She was at --  
7 out of the Lexington area.

8 Q. Do you know what union she worked  
9 for?

10 A. No; I don't remember, because I  
11 only spoke to her a couple times, and then she  
12 recommended me to the Teamsters, Mr. John  
13 Palmer. She said that was out of her  
14 jurisdiction, her area.

15 Q. When did you first speak with  
16 Mr. John Palmer?

17 A. October 26th.

18 Q. Okay. Did you speak to him in  
19 person or over the phone?

20 A. Over the phone first.

21 Q. What did you guys discuss?

22 A. I just expressed to him our  
23 concerns that we had, our issues. And he said  
24 that he would like to set up a face-to-face  
25 meeting the next day.

1 Q. And did you meet the next day?

2 A. Yes, ma'am.

3 Q. All right. Where did you meet?

4 A. A restaurant called Taste of China  
5 in Winchester.

6 Q. Who all was at that meeting?

7 A. Just Mr. Palmer and myself.

8 Q. And what date did this meeting  
9 happen on?

10 A. October 27th.

11 Q. What happened at this meeting?

12 A. He just listened to my -- my  
13 grievances that I had, any concerns, and he  
14 just gave me -- told me what options I had,  
15 what steps we could take, and gave me some  
16 documentation, gave me some like information,  
17 pamphlet. You know, reading material. That  
18 was it.

19 Q. So what were the steps that were  
20 discussed?

21 A. He just said that basically he  
22 would like to -- after myself, he would like to  
23 meet with more associates who were -- had the  
24 same issues that I had, concerns. He would  
25 like to do it in small groups, maybe two to

1 three at a time, because it was more  
2 one-on-one.

3 And then once he had met with  
4 everybody that was interested, we would go to  
5 the next step.

6 Q. Okay. So after this meeting, what,  
7 if any, conversations did you have with your  
8 co-workers about the meeting or the union?

9 A. I come back, and I spoke to Chris  
10 Sizemore what happened, and I knew that Sheldon  
11 Walters, Chuck Grimm and Nicole Long was  
12 interested, and I told them. And then we set  
13 up another -- well, set up another meeting so  
14 we could talk to them.

15 Q. Did you ever talk to any employees  
16 at other Smyrna plants?

17 A. Yes. I talked to two other  
18 associates out of the Georgetown plant. David  
19 Crow and -- shoot. What was the other  
20 associate's name? Cantrell. I don't know his  
21 first name, but he just went by Cantrell.

22 Q. And where were you -- when did you  
23 talk to these --

24 A. We were at Florence, all of us,  
25 myself, Sheldon Walters, and David Crow, and

1 Cantrell. We were -- a lot of down time. At  
2 times, we would wait an hour to two hours to be  
3 loaded.

4 I was washing my truck. Sheldon  
5 came over and said that David and Cantrell was  
6 interested, and I asked if they wanted to speak  
7 with Mr. Palmer, and they did. So we come over  
8 to the side, and I put Mr. Palmer on speaker  
9 phone, and they asked him a couple questions,  
10 give him their concerns about Florence. And he  
11 explained to him that he would like to meet  
12 with them one-on-one if they would be  
13 interested.

14 Q. How long did that conversation with  
15 Mr. Palmer last?

16 A. 15 to 20 minutes, max.

17 Q. And about when was this, did this  
18 conversation happen in relation to your meeting  
19 with -- your initial meeting with Mr. Palmer?

20 A. It was after the initial meeting.  
21 It was -- it was probably about the first of  
22 November or last part of October, first of  
23 November.

24 Q. So I think you were about to tell  
25 me about this. You said, did you ever actually

1 meet with Mr. Palmer in person after that?

2 A. After the -- I met with him the  
3 Taste of China, the first meeting.

4 Q. Okay. Did you ever have a second  
5 meeting with him?

6 A. Yes, so on November 7th.

7 Q. Okay. Where was that November 7th  
8 meeting?

9 A. Taste of China, Winchester.

10 Q. Who all came to that meeting?

11 A. Sheldon Walters and Chuck Grimm and  
12 myself.

13 Q. Did you invite anyone else?

14 A. Nicole Long was originally  
15 scheduled. She was going to come, but it was  
16 -- the weather was inclement that day, rainy  
17 that day, and she had already left and went  
18 home, and she had messaged Sheldon Walters and  
19 us, told us that she wasn't going to come all  
20 the way back.

21 Q. What happened -- what was discussed  
22 at the November 7th meeting?

23 A. He -- Rich Palmer discussed  
24 grievances down and --

25 MR. WATRING: Your Honor, I'll

1 object as hearsay. I'm trying to be lenient,  
2 but it seems like we're really getting into  
3 hearsay at this point.

4 ADMINISTRATIVE LAW JUDGE: Well,  
5 it's admissible only for what he heard a person  
6 say, not for the truth of the matter of what  
7 the other person told him, which may or may not  
8 be relevant.

9 Q. Mr. Copher, can you go on again and  
10 explain what happened at the meeting?

11 A. Yes. He had -- Mr. Palmer listened  
12 to their grievances that they had and their  
13 issues. Then he explained to them what steps  
14 could be taken, and also that he would like --  
15 he asked if there were any more associates that  
16 were interested.

17 Sheldon and myself said yes, there  
18 were other associates at the Winchester plant.  
19 Actually, I was interested in what they talked,  
20 and he said, well, he would like to, you know,  
21 schedule some more meetings, small meetings  
22 like that one, and he just -- and that was it.  
23 And that was it.

24 Q. Did you go to work the next day  
25 after your meeting with Mr. Palmer?

1 A. Yes, ma'am.

2 Q. What happened when you got to work  
3 the next day?

4 A. I went to work the next day. I  
5 went up front. I was looking at the orders, as  
6 I often do. Mr. Sizemore come from the back,  
7 come leaned around the corner, and asked how  
8 our meeting went last night.

9 Q. Had you told Mr. -- I'm sorry; you  
10 can go ahead and finish.

11 A. And grinned and turned around and  
12 went back to the back.

13 Q. Had you told Mr. Sizemore about the  
14 November 7th meeting?

15 A. I personally didn't tell Sizemore,  
16 because he kind of would have threw himself in  
17 that.

18 Q. What did you do after that?

19 A. Nothing really. It just kind of  
20 caught me off guard. After that -- after that,  
21 it was just a normal day. Just went and  
22 delivered my orders.

23 Q. What, if any, conversations did you  
24 have with Mr. Aaron Highly that day?

25 A. That day, I think I had come back

1 in on my third or fourth load for that day, and  
2 he told me that Ben Brooks had been there to  
3 the facility and was asking him and told him  
4 that he had a concern that he heard that I was  
5 spearheading the union movement there, and  
6 asked if he had any information about that.

7 Aaron Highly asked if I knew  
8 anything, and I told him, you know, of course,  
9 you know, I was going to deny because I was  
10 afraid of retaliation, but -- and that was it.  
11 And he said that Ben Brooks had left after  
12 that.

13 And then I went and did another  
14 order. And then when I come back, I was  
15 waiting to see if there was a make up or  
16 anything for the remainder of the day, and Ben  
17 Brooks had called while I was there, and asked  
18 me if I was at the plant, and he told him that  
19 I was. And he told him to keep me there and on  
20 the clock, that he was leaving Nicholasville,  
21 and he would be there shortly.

22 Q. Okay. And so then what did you do?

23 A. I went back to the trucker's  
24 lounge, cleaned and straightened up, and waited  
25 on Mr. Brooks to arrive.

1 Q. Did you ask Mr. Highly any  
2 questions about --

3 A. Yes. I asked him, I said did he  
4 say anything about the union. Does he think  
5 I'm spearheading it? And he said, no, he  
6 didn't say at that time.

7 Q. Okay. And did Mr. Brooks ever  
8 arrive?

9 A. Yes.

10 Q. About when did he arrive?

11 A. It was maybe 20 minutes later or --  
12 it may have been about an hour. I'm not sure  
13 how long it took. It took a little bit because  
14 he come all the way from Nicholasville.

15 Q. What did he do after -- after he  
16 arrived? What happened and --

17 A. He came in, and I was back in the  
18 back by myself in the trucker's lounge, and he  
19 sat down with Mr. Highly, and they discussed  
20 topics for a few minutes, then he come back to  
21 the back where I was at, shut the door. Then I  
22 introduced myself to him, because I never  
23 really talked to him one-on-one before. I told  
24 him I wish this was better circumstances. I  
25 heard that you was here in regards to you

1 thought I was spearheading the union movement.

2 Q. Did he respond -- go ahead? I just  
3 asked if he responded. Go ahead.

4 A. And he -- and he responded, and he  
5 said, "And other things."

6 Q. So what happened next?

7 A. He explained to me that they were  
8 going to let me go due to poor work ethic and a  
9 negative attitude.

10 Q. What did you say?

11 A. I told him I didn't understand  
12 that. That I always work overtime, come in  
13 early, got along with everybody, had no  
14 complaints that I was aware of. I worked hard,  
15 extremely hard, never missed, and I was one of  
16 the most reliable associates they had.

17 Q. What, if anything, did you say  
18 about your evaluation?

19 A. I told him that -- during that  
20 conversation, I told him I had numerous  
21 evaluations, and they've always been perfect,  
22 and he stated, "We know otherwise."

23 Q. Okay. Did you ask him any  
24 questions?

25 A. Yes -- I apologize. I asked him

1 about the complaints. I said, "Well, who gave  
2 you the complaints? He said, "I can't tell you  
3 that." I see, "Well, what's the issue?" He  
4 said, "Just your work ethic and negative  
5 attitude."

6 Q. Okay. So what happened after that?

7 A. After that, he pulled out a paper.  
8 He had it kind of rolled up, and he showed it  
9 to me, that said that -- it was like a write-up  
10 paper, but it had termination, and he had wrote  
11 negative attitude and a poor work ethic, and he  
12 gave his signature at the bottom of it.

13 Q. Okay. I would like to now show you  
14 what's been marked as General Counsel Exhibit  
15 2. There are a couple ways you can look at  
16 this.

17 MS. MURAROVA: David, can we get  
18 him a hardcopy?

19 ATTY2: Yeah, I'm going to send our  
20 paralegal into the witness's room now.

21 MS. MURAROVA: Okay.

22 - - - - -

23 (Thereupon, General Counsel's  
24 Exhibit 2 was marked for purposes of  
25 identification.)

1 - - - - -

2 Q. Mr. Copher, let me know when you  
3 have the document in front of you.

4 A. Will do, ma'am. I have it, ma'am.

5 Q. What is this document?

6 A. It is a notification of  
7 disciplinary action support personnel, my name,  
8 my job title, location, the date, reason for  
9 action. It says, "Negative attitude and  
10 overall job performance was poor." Dated  
11 11-8-19 and signed by Ben Brooks.

12 Q. Is this the document you were just  
13 telling me about?

14 A. Yes, ma'am.

15 Q. And the date on there, November 8,  
16 2019, does that accurately reflect when you  
17 received this?

18 A. Yes, ma'am.

19 MS. MURAROVA: Your Honor, I move  
20 for the admission of General Counsel's Exhibit  
21 2.

22 ADMINISTRATIVE LAW JUDGE: Any  
23 objection? I'm having trouble accessing it.

24 MR. WATRING: No objection, Your  
25 Honor.

1 ADMINISTRATIVE LAW JUDGE: Okay.

2 I'm receiving it. I was going to look at it.

3 MR. ESKENAZI: I can e-mail it to  
4 you quickly, Judge. I'm e-mailing it to you  
5 right now.

6 MR. SUETHOLZ: Just so Mr. Eskenazi  
7 knows, on the chat, when we tried to click on  
8 it, it doesn't pull up the document either.

9 MS. MURAROVA: From now on, I will  
10 try -- I will e-mail the documents to everyone.

11 MR. ESKENAZI: The chat function is  
12 finicky. Things like what Mr SUETHOLZ said.  
13 It can work one minute and not the next. So  
14 yeah, it's finicky.

15 Judge, if you didn't get my e-mail,  
16 just let me know.

17 ADMINISTRATIVE LAW JUDGE: Okay. I  
18 receive the document.

19 - - - - -

20 (Thereupon, General Counsel's  
21 Exhibit 2 was received.)

22 - - - - -

23 Q. Mr. Copher, what happened after he  
24 handed you the paper?

25 A. After he handed me the paper, we

1 got up and went to the front. And I told him I  
2 wanted a copy of it. So I made a copy of it,  
3 and I told Mr. Highly that I had been fired  
4 over a negative attitude -- bad attitude, and  
5 overall poor job performance, and I said, "It  
6 was nice working with you. I appreciate it,"  
7 and I left.

8 Q. Okay. Did Mr. Highly respond?

9 A. No. He kind of looked -- his face  
10 turned red and he kind of looked like he was  
11 shocked.

12 Q. Let me ask you this: Was there any  
13 discussion about any kind of severance?

14 A. He told me that I would receive two  
15 weeks severance pay on my next paycheck. Ben  
16 Brooks did.

17 Q. Okay. Was that while you were  
18 still --

19 A. While I was in the back of the  
20 trucker's lounge, ma'am.

21 Q. Okay. So after you spoke with  
22 Mr. Highly, what did you do?

23 A. Proceeded out the door and went in  
24 my car. Left and called Mr. Palmer and told  
25 him I had been terminated.

1 Q. Did you tell him why you were  
2 terminated?

3 A. I told him I was terminated because  
4 I felt -- I gave him their reason that I was  
5 terminated, and I told him, I said I felt like  
6 I was terminated as retaliation for me talking  
7 to the union.

8 Q. Are you aware that the remaining  
9 drivers at Winchester have now been let go?

10 A. Yes.

11 Q. How did you find out about it?

12 A. Just calls, secondhand information.

13 Q. Do you -- when did you find out  
14 about it?

15 A. The day of.

16 Q. Do you remember when that was?

17 A. Not -- I really don't remember the  
18 date.

19 Q. Do you remember at least the month?

20 A. I think it was December, if I'm  
21 correct.

22 Q. Okay. So since then, when you  
23 found out that the plant was closing, have you  
24 ever driven past the plant?

25 A. Yes, ma'am.

1 Q. How often would you drive past the  
2 plant?

3 A. Every day. I had accepted a new  
4 position, and my job, I had to drive directly  
5 right past the plant for -- to go to my new  
6 job.

7 Q. Okay. When did you start that new  
8 position?

9 A. It was in January.

10 Q. How often -- when you say you drove  
11 by every day, how close to the plant would you  
12 get?

13 A. Oh, it was probably no more than  
14 50, 60 yards.

15 Q. What time of day would you pass by?

16 A. Around about 2:00.

17 Q. Okay. And what days of the week  
18 would you drive by?

19 A. Monday through Friday.

20 Q. What did you see when you passed  
21 the plant?

22 A. I would see loaders, trucks, Smyrna  
23 front dispensers parked there. A couple times,  
24 I seen the plant getting loaded, and I seen the  
25 container truck, which had -- carrying the

1 flash for cement, hooked up to the plant, just  
2 unloading the material into the silos.

3 Q. Did you ever record this in any  
4 way?

5 A. Yes, ma'am.

6 MS. MURAROVA: Okay. Your Honor,  
7 we have another exhibit. It's going -- I'm  
8 going to name it -- it's going to come in out  
9 of order, because I wasn't -- I didn't have  
10 this exhibit until this morning, and I've  
11 already premarked my other exhibits, so I'm  
12 going to call this General Counsel's Exhibit 8.

13 It is a video, and I'm going to  
14 e-mail it to all the parties right now. And I  
15 will just go ahead and share my screen with the  
16 witness to show him the video after I send it.

17 (Discussion held off record.)

18 MS. MURAROVA: Okay. I am sending  
19 the video.

20 (Discussion held off record.)

21 MS. MURAROVA: I just sent it, and  
22 I'm going to show a second video as well, so  
23 I'll just go ahead and send that as well to  
24 save some time. And I think I included I think  
25 got all the right people on the recipients'

1 list, but if anyone finds that they're not  
2 getting it, please let me know.

3 MR. WATRING: Your Honor, we  
4 already have the videos, so -- as far as you're  
5 concerned, if she just wants to play them,  
6 that's fine. We did get those before the  
7 hearing.

8 Q. Okay. So here, I'm going to share  
9 my screen. Mr. Copher, can you see my screen  
10 right now? Can you see this video?

11 A. Yes, ma'am.

12 Q. Okay. I'm going to play this  
13 video. It's very short and then ask you some  
14 questions about it. Okay?

15 A. Yes, ma'am.

16 (Video played.)

17 Q. All right. Mr. Copher, what did we  
18 just watch?

19 A. Just seen a truck under -- at the  
20 plant getting loaded. This other truck here,  
21 up towards the front, had been loaded. He was  
22 washing down his truck after he had been  
23 loaded.

24 Q. Was that the Winchester plant?

25 A. Yes, ma'am, it's the Winchester

1 plant.

2 Q. Who took that video?

3 A. I did, ma'am.

4 Q. When did you take that video?

5 A. That was in February.

6 Q. Okay. Do you remember what time of  
7 day that was?

8 A. That was around about 2:00, ma'am.

9 MS. MURAROVA: Your Honor, I move  
10 for the introduction of General Counsel's  
11 Exhibit 8.

12 ADMINISTRATIVE LAW JUDGE: Any  
13 objection?

14 MR. WATRING: No objection, Your  
15 Honor.

16 ADMINISTRATIVE LAW JUDGE: It's  
17 received.

18 - - - - -

19 (Thereupon, General Counsel's  
20 Exhibit 8 was received.)

21 - - - - -

22 - - - - -

23 (Thereupon, General Counsel's  
24 Exhibit 9 was marked for purposes of  
25 identification.)

1 - - - - -

2 Q. I'm now going to show you what I'm  
3 marking as General Counsel 9.

4 (Video played.)

5 Q. So, Mr. Copher, what did we just  
6 watch?

7 A. That was at the Winchester plant.  
8 That was February also. You see the tanker off  
9 to the side was unloading steaming or flash for  
10 the loads, and there was a front dispenser  
11 parked sideways.

12 Q. Okay. Now, the one with the stars  
13 on the -- the blue and red one, which -- which  
14 vehicle was that?

15 A. It's the front dispenser, ma'am.

16 Q. And did you take that video?

17 A. Yes, ma'am.

18 Q. Do you remember what time of day  
19 that was?

20 A. That was around about 2:00, ma'am.

21 MS. MURAROVA: I move for the  
22 introduction of General Counsel's Exhibit 9.

23 MR. WATRING: No objection.

24 ADMINISTRATIVE LAW JUDGE: I'm  
25 sorry; no objection from anybody?

1 MR. WATRING: No.

2 ADMINISTRATIVE LAW JUDGE: Okay.

3 It's received, GC9.

4 - - - - -

5 (Thereupon, General Counsel's 9 was  
6 received.)

7 - - - - -

8 Q. What city do you live in,  
9 Mr. Copher?

10 A. It is Salt Lick, Kentucky.

11 Q. Is that within what used to be the  
12 Winchester delivery zone?

13 A. Yes, ma'am.

14 Q. Okay. And have you ever seen any  
15 SRM trucks near your town since January, since  
16 the plant closed?

17 A. Yes; I have seen them in Mount  
18 Sterling, Kentucky and in Owensville, Kentucky.

19 Q. And is Mount Sterling within the  
20 Winchester, Kentucky, delivery area?

21 A. Yes, ma'am.

22 Q. And you said Owensville was the  
23 second one?

24 A. Yes, ma'am.

25 Q. Is that within the Winchester,

1 Kentucky, delivery area?

2 A. Yes, ma'am.

3 Q. Did you see who was doing that work  
4 at all?

5 A. Cantrell and Crow on two separate  
6 occasions.

7 Q. And what facility are they from?

8 A. They're from the Georgetown plant,  
9 ma'am.

10 MS. MURAROVA: I have no further  
11 questions for Mr. Copher.

12 ADMINISTRATIVE LAW JUDGE: Does the  
13 Union have any questions for him?

14 MS. NEWPORT: Yes, Your Honor, just  
15 a few.

16 DIRECT EXAMINATION OF SUNGA COPHER

17 BY MS. NEWPORT:

18 Q. Mr. Copher, I wanted to back up to  
19 a point in your testimony where you were being  
20 questioned by Ms. Murarova about the day that  
21 you were terminated, and you started to say  
22 what Aaron Highly had told you that Ben Brooks  
23 had said. And I'm sorry, not when you were  
24 terminated. You were being asked about whether  
25 you had raised your grievances with your

1 co-workers and to management. Do you remember  
2 that testimony?

3 A. Yes, ma'am.

4 Q. Okay. And you had started to say  
5 what Aaron Highly had told you Ben Brooks told  
6 him, and there was an objection. That  
7 objection was overruled, but I'm not sure that  
8 you got the answer to the question.

9 What was it that Aaron Highly  
10 relayed to you about what Ben Brooks told him  
11 about your concern?

12 A. That we would either go or we would  
13 be terminated.

14 Q. Okay. And when you say either go,  
15 what are you referring to?

16 A. We would either travel to Florence,  
17 go to the other facilities, or we would be  
18 terminated.

19 Q. Okay. And before you were  
20 terminated, had you ever been disciplined by  
21 anyone at the company?

22 A. No, ma'am.

23 Q. Did anyone ever tell you that you  
24 were underperforming?

25 A. No, ma'am.

1 Q. Did anyone tell you you had a bad  
2 attitude?

3 A. No, ma'am.

4 Q. And did you receive performance  
5 reviews that you're aware of?

6 A. We received yearly reviews for  
7 raises.

8 Q. Okay. And I believe you testified  
9 to this, but you said - did you get a raise  
10 every year?

11 A. Yes, ma'am.

12 Q. Okay. And what was that raise?

13 A. A dollar.

14 Q. And do you know if that was on the  
15 low end or top end of what you could receive?

16 A. It was the very top, excellent.

17 Q. Okay. What was your shift that you  
18 worked?

19 A. I worked -- we didn't really have  
20 specific assigned shifts. Our regular  
21 scheduled time would start at 7:00, and  
22 anywhere from 3:30 to 4:00 was our scheduled  
23 time to be off, but we never -- was in those  
24 timeframes. We was always working overtime due  
25 to customers' demands or coming in early.

1 Q. Okay. And would you come in early  
2 a lot?

3 A. During wintertimes, I would, but  
4 during the summer, due to customer -- it's  
5 sporadic. Due to customer demands, we would  
6 come in early if needed.

7 Q. Okay. Did you stay late at times  
8 as well?

9 A. Yes, almost every day.

10 Q. Okay. So did you have a lot of  
11 overtime?

12 A. Yes, ma'am.

13 Q. Okay. And when you would have to  
14 drive to Florence or to other facilities and  
15 then head back to Winchester, would you also  
16 still have duties at Winchester to finish up?

17 A. A lot of times, I would shut the  
18 plant down when I got there.

19 Q. Okay. And were those things that  
20 you -- are those tasks that you needed to do on  
21 your own voluntarily, or were you assigned  
22 those tasks? How did that work?

23 A. I voluntarily done it, just to help  
24 out.

25 Q. Okay. Let me double-check. I

1 think that's all I have.

2 ADMINISTRATIVE LAW JUDGE: Okay.

3 The ball is in the Respondent's court for  
4 cross.

5 MR. WATRING: Your Honor, just  
6 before the hearing began, Ms. Newport produced  
7 a recording that Mr. Copher apparently created,  
8 that we're told is responsive to the subpoena.  
9 I wonder if I could ask for a break to listen  
10 to that, and also if I could ask for any  
11 witness statement that the Board may have from  
12 Mr. Copher at this time as well.

13 MS. MURAROVA: Yes; we have two  
14 affidavits. They're both typed. One is four  
15 pages long, and the other one is eight pages  
16 long, with a signature page. Who should I be  
17 e-mailing this affidavit to or these  
18 affidavits?

19 MR. WATRING: You can send it to  
20 Mpirrtle@bassberry.com.

21 MS. MURAROVA: Okay. I'm about to  
22 send that e-mail.

23 MR. WATRING: And, Judge, we would  
24 like a break to have a chance to review that.

25 ADMINISTRATIVE LAW JUDGE: Yeah.

1 Does it make sense to break for you to review  
2 the affidavits, look at the video, and do lunch  
3 in one swoop?

4 MR. WATRING: I think so, Your  
5 Honor.

6 ADMINISTRATIVE LAW JUDGE: I'm open  
7 to suggestions, but it seems to me --

8 MR. WATRING: That would be our  
9 suggestion as well.

10 ADMINISTRATIVE LAW JUDGE: Yeah.  
11 Do you think 45 minutes would be enough?

12 MR. WATRING: Can we go to an hour?  
13 I mean, I don't even know how soon we'll get  
14 the e-mail.

15 ADMINISTRATIVE LAW JUDGE: Yeah.  
16 So that would be 1:20 Eastern time.

17 MS. MURAROVA: Okay. I just  
18 e-mailed the affidavit.

19 ADMINISTRATIVE LAW JUDGE: Okay. I  
20 had one question. I keep forgetting to ask it.  
21 Mr. Copher, you mentioned that Mr. Sizemore --  
22 and if you told him who Mr. Sizemore is, I  
23 missed it.

24 A. He was a fellow driver also.

25 ADMINISTRATIVE LAW JUDGE: Okay.

1 We'll go off the record and reconvene about  
2 1:20 Eastern. All right. Thank you.

3 (Recess is taken.)

4 MR. HORTON: Your Honor, we're  
5 ready.

6 ADMINISTRATIVE LAW JUDGE: Okay.  
7 Go ahead.

8 CROSS-EXAMINATION OF SUNGA COPHER

9 BY MR. HORTON:

10 Q. Mr. Copher, I know we haven't met.  
11 My name is Bob Horton. I represent Smyrna  
12 Ready Mix in this matter, and obviously I have  
13 a few questions for you.

14 So your position at Smyrna Ready  
15 Mix was as a mixer operator, correct?

16 A. Yes, sir.

17 Q. And you started at Smyrna Ready Mix  
18 in 2017?

19 A. I started at Central Ready Mix in  
20 2015 and was grandfathered in when Smyrna  
21 bought Central Ready Mix.

22 Q. And I believe you said there were  
23 eight to nine other driver operators in the  
24 fall of 2019 at the Winchester plant?

25 A. Yes.

1 Q. And Mr. Highly was your supervisor  
2 at the Winchester plant?

3 A. Yes.

4 Q. And Mr. Highly is your uncle,  
5 correct?

6 A. Yes.

7 Q. And that relationship was fairly  
8 well known at the plant?

9 A. Yes.

10 Q. You mentioned that your uncle  
11 performed or gave you reviews, I believe; is  
12 that correct?

13 A. He didn't give -- I didn't see the  
14 reviews he wrote -- I know he was responsible  
15 for the reviews.

16 Q. Okay. So there was no -- when you  
17 say you got a review and got a dollar raise,  
18 you did not do the written review; is that  
19 correct?

20 A. No. The review was he had -- had  
21 paper documentation that he filled out and  
22 submitted it to Ben Brooks.

23 Q. Okay. And I believe that you never  
24 saw Ben Brooks at the Winchester plant very  
25 much; is that correct?

1 A. No.

2 Q. I'm sorry; is that correct?

3 A. Yes. I'm sorry, no. I say no, I  
4 did not see Mr. Brooks that much at the plant.

5 Q. All right. So your -- your uncle,  
6 Mr. Highly, he did the evaluations. He didn't  
7 give you a written evaluation. He filled out a  
8 form, and you got a dollar raise; is that  
9 right?

10 A. I don't know how he filled out the  
11 form, sir, but I know I did get --

12 Q. Mr. Highly did not give you any  
13 written performance reviews, correct?

14 A. No. Yes.

15 Q. And everyone at the plant, all the  
16 truck driver operators also got a dollar raise,  
17 correct?

18 A. I'm not aware, sir.

19 MR. HORTON: At this time, I would  
20 like to show the witness Exhibit 13A.

21 ADMINISTRATIVE LAW JUDGE:  
22 Respondent Exhibit's 13A?

23 MR. HORTON: Yes. We'll e-mail  
24 that, and I believe the Court already has it,  
25 so they can display it. Mr. Eskenazi can.

1 MS. NEWPORT: Will you be e-mailing  
2 it to me as well?

3 MR. HORTON: Yes. Yes.

4 MR. ESKENAZI: I'll pull that up in  
5 one second.

6 MR. ESKENAZI: And we're e-mailing  
7 it to all the parties now.

8 Q. Just let me know when you have the  
9 exhibit. I'll proceed.

10 MS. MURAROVA: I'll just follow  
11 along on the shared screen.

12 MR. ESKENAZI: Mr. Horton, you just  
13 tell me how you want me to scroll and what you  
14 want me to show.

15 MR. HORTON: This first page is  
16 fine for the moment.

17 - - - - -

18 (Thereupon, Respondent's Exhibit 13A  
19 was marked for purposes of  
20 identification.)

21 - - - - -

22 Q. Mr. Copher, do you have what's  
23 marked as Exhibit 13A?

24 A. Yes.

25 Q. And is Exhibit 13A an accurate copy

1 of the application that you filled out for  
2 Smyrna Ready Mix?

3 MS. NEWPORT: I'm sorry, if I could  
4 just interject one second. I don't believe --  
5 Mr. Copher, do you prefer to have a hardcopy  
6 printed for you?

7 MR. COPHER: Yes, please.

8 MS. NEWPORT: Okay. Because he can  
9 only see it on his shared screen. Is that okay  
10 if I do that?

11 MR. HORTON: Yes, of course.

12 MS. NEWPORT: Okay. Hang on one  
13 second.

14 Q. Mr. Copher, if you would just take  
15 a moment and look at Exhibit 13A, and just  
16 confirm for me that looks to be an accurate  
17 copy of the application that you filled out for  
18 Smyrna Ready Mix.

19 A. Yes.

20 Q. Is that your signature there on  
21 Page -- what's marked as Page SRM 368, the last  
22 page of Exhibit 13A?

23 A. Yes.

24 Q. And what date did you sign the  
25 application?

1 A. 8-23-17.

2 MR. HORTON: Your Honor, I would  
3 ask that Exhibit 13A be admitted.

4 MS. MURAROVA: No objection.

5 ADMINISTRATIVE LAW JUDGE:  
6 Received.

7 MS. NEWPORT: No objection.

8 - - - - -

9 (Thereupon, Respondent's Exhibit 13A  
10 was received.)

11 - - - - -

12 - - - - -

13 (Thereupon, Respondent's Exhibits  
14 13D was marked for purposes of  
15 identification.)

16 - - - - -

17 Q. I would also like to show you now,  
18 Mr. Copher, Exhibit -- Respondent's Exhibit 13D  
19 and Respondent's Exhibit 13E. We'll see if we  
20 can do both of those at the same time. We'll  
21 start with 13D, as in dog.

22 If you'll go to 13D first. We're  
23 e-mailing those now. Just let me know when you  
24 get a printed copy.

25 A. I have it.

1 Q. Thank you. First, would you look  
2 at what is marked as Respondent's 13D? It says  
3 at the top, "Acknowledgment of receipt of  
4 employee handbook." Do you see that?

5 A. Yes.

6 Q. And is that your signature there at  
7 the bottom of Exhibit 13D?

8 A. Yes.

9 Q. And dated the same date, August  
10 23rd, '17, as your application?

11 A. Yes.

12 MR. HORTON: Your Honor, I would  
13 ask that Respondent's Exhibit 13D be admitted.

14 MS. MURAROVA: No objection.

15 ADMINISTRATIVE LAW JUDGE:

16 Received.

17 - - - - -

18 (Thereupon, Respondent's Exhibit 13D  
19 was received.)

20 - - - - -

21 Q. Mr. Copher, in Exhibit 13D, you've  
22 acknowledged that you had received of the  
23 Smyrna Ready Mix employee handbook and that you  
24 had read the policies and procedures contained  
25 in the handbook, as you understood them, and

1 you agreed to abide by them, correct?

2 A. No. When we received this  
3 paperwork and signed, the HR department came  
4 into the plant in Georgetown one day while we  
5 was operational, so working, and they gave us  
6 the paperwork, and had us sign it then and  
7 there. We didn't get the opportunity to read  
8 through anything before signing. We had to  
9 sign this paperwork and give to them there  
10 before they left the facility.

11 Q. Did you get a copy of the handbook?

12 A. Yes; I got a copy of the handbook,  
13 but when I signed it, I didn't get a chance to  
14 read through it.

15 Q. When did you get a copy of the  
16 handbook?

17 A. It was shortly after they had taken  
18 over. I think it was maybe -- it was on  
19 8-23-17 when I got -- the copy is when I dated  
20 it.

21 Q. Did you get a copy of the handbook  
22 near the time that you signed this receipt?

23 A. Yes.

24 Q. All right. And in this receipt, in  
25 the very first sentence, it says, "I, Sunga

1 Copher, acknowledge that I have received a copy  
2 of the handbook," which you got, correct?

3 A. Yes.

4 Q. And you say, "I've read the  
5 policies and procedures contained in the  
6 handbook. I understand them, and I agree to  
7 abide by them," correct?

8 A. Yes.

9 Q. So you understood you were agreeing  
10 to abide by the Smyrna Ready Mix employee  
11 handbook, correct?

12 A. Yes.

13 - - - - -

14 (Thereupon, Respondent's Exhibit 13E  
15 was marked for purposes of  
16 identification.)

17 - - - - -

18 Q. And look at Exhibit 13E, please,  
19 Mr. Copher. It should say 1.2 Employee  
20 Acknowledgment at the top?

21 A. Yes.

22 Q. Do you have that?

23 A. Yes, sir.

24 Q. And is that your signature on  
25 Exhibit 13E?

1 A. Yes.

2 Q. Dated that same day, August 23rd,  
3 2017?

4 A. Yes.

5 Q. And in the employee acknowledgement  
6 that you signed, you indicated that, again,  
7 that -- in that second sentence, "I will  
8 immediately familiarize myself with the  
9 information in the handbook, and I agree to  
10 follow and observe its policies." Did you  
11 agree to that?

12 A. Where are you at, again, sir? I  
13 apologize.

14 Q. Yeah. That's quite all right.  
15 It's the second sentence in the first  
16 paragraph, where it says, "I will immediately  
17 familiarize." Do you see that?

18 A. Yes.

19 Q. And then the next sentence says, "I  
20 understand that violating any of the company's  
21 policies may lead to disciplinary action up to  
22 and including immediate termination." Do you  
23 see that?

24 A. Yes.

25 Q. And, again, you signed Exhibit 13E

1 on August 23rd, 2017, correct?

2 A. Yes.

3 MR. HORTON: Your Honor, I would  
4 ask that Exhibit 13E be admitted.

5 MS. MURAROVA: No objection.

6 ADMINISTRATIVE LAW JUDGE:

7 Received.

8 - - - - -

9 (Thereupon, Respondent's Exhibit 13E  
10 was received.)

11 - - - - -

12 Q. Mr. Copher, at this time, I'm going  
13 to show you the first two pages of the  
14 handbook, which is exhibit -- Respondent's  
15 Exhibit 1. And, actually, I've noticed I've  
16 got several other exhibits.

17 MR. HORTON: If you'll give me just  
18 a minute, Your Honor, we'll make arrangements  
19 and send all of them to Union's counsel, and  
20 they can hold them until we're ready for them,  
21 so we can save time that away.

22 ADMINISTRATIVE LAW JUDGE: Okay.

23 MR. SUETHOLZ: The witness is  
24 looking at Exhibit 1, the SRM handbook, I  
25 guess.

1 Q. I'll give you a minute to organize  
2 those, if need be. I actually wanted to ask  
3 you a couple questions before we got to the  
4 documents.

5 Your job duties as a driver  
6 operator for Smyrna Ready Mix, I believe you  
7 said that primarily you were driving a mixer  
8 and delivering -- picking up and delivering  
9 loads; is that correct?

10 A. Yes. I would deliver custom  
11 orders.

12 Q. And then I believe you said you  
13 would also load the bin?

14 A. The bins in the back, yes, sir.

15 Q. And what is the bin that you're  
16 loading?

17 A. The bin are the -- that holds  
18 materials for the cement. It holds the -- we  
19 had No. 9 rock, 67 route, and sand. It held  
20 those volumes in the back and ran up onto the  
21 bins.

22 Q. So it sounds like you're loading  
23 sand and rock into the bin; is that right?

24 A. Yes.

25 Q. And, Mr. Copher, when you drove a

1 truck each day, did you drive the same truck  
2 every day? Were you assigned a particular  
3 truck?

4 A. Yes. We were assigned the same  
5 truck, unless something happened, like it went  
6 down or needed maintenance or it needed an oil  
7 change, or anything like that.

8 Q. So normally, you drove the same  
9 truck every day?

10 A. Yes.

11 Q. Do you happen to remember what  
12 truck number you drove?

13 A. No, sir; I sure don't.

14 Q. All right. Would you turn to  
15 what's marked as Exhibit 1. It's the handbook.

16 A. Yes, I have it.

17 Q. And so the very first page says,  
18 "SRM Concrete Employee Handbook," and then the  
19 next page says, "Welcome to Smyrna Ready Mix  
20 Concrete." Do you see that?

21 A. Yes.

22 MR. SUETHOLZ: Mr. Horton, I'm  
23 sorry to interrupt you. Do you need your  
24 entire safety handbook printed out?

25 MR. HORTON: No, I do not. In

1 terms of printing, just the first two page, and  
2 then Page 44.

3 MR. SUETHOLZ: Of the safety --  
4 this is the employee handbook, and then there's  
5 --

6 MR. HORTON: Oh, sorry. Hang on  
7 one second.

8 MR. SUETHOLZ: I'm sorry to  
9 interrupt you.

10 MR. HORTON: That's okay. Page 25  
11 of the safety handbook, and the first page, I  
12 guess.

13 Q. Mr. Copher, we're looking at the  
14 second page of the handbook. Again, it says,  
15 "Welcome to Smyrna Ready Mix Concrete, LLC."  
16 Do you see that?

17 A. Yes.

18 Q. And it outlines there the basic  
19 philosophies of the company. Do you see that?

20 A. Yes.

21 Q. And I notice the -- the one right  
22 in the middle, the third one says, "Timely  
23 delivery is one of the core philosophies."

24 Were you aware that the timely  
25 delivery was one of the core philosophies of

1 the company?

2 A. Yes.

3 Q. And what procedures did Mr. Highly,  
4 your supervisor, have in place to ensure that  
5 there would be timely deliveries at the  
6 Winchester plant?

7 A. Most times, if we wasn't on the job  
8 site by the time we was supposed to be, the  
9 customer called Mr. Highly. I apologize. I'm  
10 trying to think here, sir.

11 Yeah, most of the time, it was just  
12 that if we wasn't on the job site, that they  
13 would -- the customer would call Mr. Highly,  
14 and we also had a Jonel [sic] system -- I think  
15 it was Jonel system. It was like a GPS system  
16 that brought it up on Google Maps before we  
17 left where we were currently at.

18 Q. Would you describe for us the plant  
19 itself? If we walked into the plant, what  
20 would we see?

21 A. Which area of the plant are you  
22 talking about?

23 Q. Well, Mr. Copher, I have a  
24 confession to make. I haven't been to a plant,  
25 so I don't know what area to tell you. You got

1 the -- what you all call, I've heard, being  
2 under the plant or under the hole where the  
3 concrete comes out; is that right?

4 A. Yes.

5 Q. And then what other buildings are  
6 there on site?

7 A. You had the main office, where the  
8 dispatch -- where Mr. An -- Mr. Highly stayed  
9 at and loaded our trucks, and where the trucks  
10 -- the driver focused. You had a chemical  
11 room, where we kept all of our chemicals, and  
12 the air compressor also was in there. And then  
13 you had the maintenance shop, and right under  
14 -- and right in front of those trucks come is  
15 where the belts would run up.

16 We called it basically under the  
17 belt, where the area that was kept enclosed,  
18 basically trying to keep everybody from  
19 freezing up. It's where the bins would load on  
20 to the belts to be dumped into the trucks,  
21 where it could be mixed with cement and flash.

22 Q. So you would have the plant  
23 facility where the drivers would load. You've  
24 got, it sounds like a building that had  
25 Mr. Highly's office, as well as a driver

1 lounge. Did I hear that correctly?

2 A. Yes.

3 Q. And then you've got a series of  
4 belts running from the bin; is that right?

5 A. You've got one belt that runs that  
6 loads the bin, and then you've got one belt  
7 that material drops onto that loads it into the  
8 truck.

9 Q. And when I was asking about what  
10 policies or procedures Mr. Highly may have had  
11 in place to make sure that there were timely  
12 deliveries, did Mr. Highly communicate to you  
13 driver operators how he wanted you to go about  
14 making sure that deliveries went about on a  
15 timely basis?

16 A. What do you mean by your  
17 instructions -- your answer -- your question?  
18 I'm sorry. It was just --

19 Q. Well --

20 A. No, go ahead, sir.

21 Q. Well, for example, was it okay for  
22 all the drivers to sit in the driver lounge  
23 until an order came in, or was a driver always  
24 supposed to be under the plant waiting for a  
25 load?

1           A.     The majority of the time, we sit  
2     and wait on orders because -- it was a live --  
3     like a live order screen, was what we had. You  
4     may have orders that come up in front of  
5     another order that wasn't on the schedule, and  
6     we kept it clean until there was an order come  
7     up, and then he would assign the driver to that  
8     order. I mean, it was a live order screen.  
9     You never knew what was going to happen, and  
10    that's why we kept underneath there cleaning.

11                 And then when the order come up and  
12    it was in the timeframe that we needed to get  
13    loaded, a driver whose turn it was would go  
14    underneath the belt and be loaded.

15           Q.     And the live order screen, is that  
16    like a computer screen in Mr. Highly's office?

17           A.     Yes.

18           Q.     And you said you keep something --  
19    I'm sorry. I don't know the language. Keep  
20    some area clean?

21           A.     We would keep underneath where the  
22    driver -- where the truck would be, we would  
23    keep underneath where it would be loaded, any  
24    trucks underneath there to be loaded, in case  
25    another order popped up. We always knew what

1 driver was supposed to go, but if there was an  
2 order that popped up out of the blue, like a  
3 live order, a driver -- another driver would go  
4 and get underneath that plant that he would  
5 assign it to, and then take it to the order.  
6 There were different variables, what reasons  
7 why we kept it empty until it was time to be  
8 loaded.

9 Q. Okay. So the driver operators at  
10 the Winchester plant, they would wait in the  
11 driver lounge until a load came in?

12 A. No, not necessarily. We would  
13 always find something to do, whether it was  
14 cleaning or doing maintenance around the plant  
15 or helping out in the maintenance department,  
16 or if it was lunch time, we would eat our  
17 lunch.

18 Q. Oh, okay. So other than eating  
19 lunch, I mean y'all weren't in the driver's  
20 lounge; is that right?

21 A. We were in there, but not a whole  
22 lot, sir.

23 Q. So you spent the -- how much time  
24 would you say that the driver spent in the  
25 driver lounge during a typical day?

1           A.     On a typical day?  If we were -- on  
2     a typical day, we probably weren't in there  
3     very long, sir.

4           Q.     Less than an hour?

5           A.     Oh, yes, less than an hour.

6           Q.     Less than 30 minutes?

7           A.     There was sometimes you would spend  
8     30 minutes, depending on your order.  That was  
9     just something you couldn't weigh -- you know,  
10    if you would come in there and you spend your  
11    lunch, that was 30 minutes.

12          Q.     Okay.  So maybe 30 to 60 minutes,  
13    the drivers on average would be in the driver's  
14    lounge?

15          A.     Not 60 minutes.  We was never in  
16    there for over an hour, sir.

17          Q.     Oh, okay.  Never that long.  Okay.  
18    And, otherwise, y'all were either out driving  
19    and delivering a load, or did you say you were  
20    out at the plant cleaning up?

21          A.     Yes.  We would clean up around the  
22    plant.  We would clean under the plant.  That's  
23    the belt where the bins would load onto the  
24    belts.  Helping the maintenance.  We might be  
25    helping on the trucks with maintenance, or

1 doing something, or breaking down blocks and  
2 stuff.

3 But, you know, the only time we  
4 would come in and we would sit down for a  
5 minute is to eat lunch or cool off from the  
6 sun, having to cool off from our loads, and we  
7 would get back on the road.

8 Q. And while Mr. Highly was manager,  
9 did you observe any negative attitude among the  
10 drivers about being out there cleaning and  
11 keeping the plant clean, or was everybody happy  
12 to do that and knew that was part of their job?

13 A. It was part of the job. Everybody  
14 had to do it. When it was hot, people didn't  
15 like it, but it was -- when it was hot --  
16 everybody had to do it.

17 Q. Okay. You may not have liked it,  
18 but nobody balked at it, everybody was happy to  
19 do it, and it was part of the job?

20 A. No. We prided ourselves on keeping  
21 the plant clean.

22 Q. Okay. Great. Did Mr. Highly  
23 provide any direction in terms of the order in  
24 which the trucks would get under the plant to  
25 load the next order?

1           A.     Yes.  At the beginning of the day,  
2     it was ordered, and we had a rotation.

3           Q.     And how would that rotation be set?

4           A.     It just -- it would just depend on  
5     day to day, to be honest with you.  Like if I  
6     went first today, I would be last the next day.

7           Q.     And did Mr. Highly post some sort  
8     of order?  How he did communicate what the  
9     order would be?

10          A.     Verbally.

11          Q.     Okay.  And when would he  
12     communicate that?

13          A.     When the orders come up, and what  
14     we seen was live and ready for that day.

15          Q.     All right.  I also notice on that  
16     page we were looking at of the handbook, the  
17     second page that's got the five basic  
18     philosophies.  It looks like the last one  
19     there, it says, "A clean fleet of attractive  
20     trucks."

21                    Did Mr. Highly provide any  
22     direction to the driver operators in terms of  
23     keeping the trucks clean?

24          A.     Yes, sir.

25          Q.     What were the directions that

1 Mr. Highly gave in terms of keeping the trucks  
2 clean?

3 A. At the end of the shift, we would  
4 clean -- we cleaned our trucks from the day of  
5 use.

6 Q. Okay. And what happens if you  
7 don't keep the concrete truck clean?

8 A. You would be written up.

9 Q. Was anybody ever written up that  
10 you were aware of at the Winchester plant for  
11 not keeping their truck clean?

12 A. I'm not aware. If somebody was  
13 written up, that was something never divulged  
14 to other associates that I'm aware of.

15 Q. And what happens to the truck  
16 itself if you don't clean it?

17 A. It gets dirty.

18 Q. As I understand it, a concrete  
19 truck getting dirty is a little bit different  
20 than me getting my shoes dirty, right? I mean,  
21 if the --

22 A. Yes. The concrete will build up on  
23 it. That's we had the acid that we used to  
24 remove the concrete from the daily usage.

25 Q. And how often did y'all clean the

1 trucks?

2 A. Every day, at the end of the shift.

3 Q. And if you don't keep the trucks  
4 clean, the truck can become difficult to load,  
5 can't it?

6 A. That's on the inside. If you don't  
7 keep it washed out properly, it could. Inside  
8 --

9 Q. Sorry. Go ahead.

10 A. Inside the drum -- if you didn't  
11 keep the inside of your drum washed out, it  
12 could become hard to load.

13 Q. And what direction did Mr. Highly  
14 give about keeping the drum of the truck clean?

15 A. After every load that you unloaded,  
16 we washed out early, and at the end of every  
17 shift, we pulled underneath the plant and  
18 washed out with getting hundreds of gallons of  
19 water, make sure it's clean, and then we  
20 basically inspected it to make sure it's  
21 cleaned out.

22 Q. And all the drivers did that, from  
23 what you observed?

24 A. From what I know, yes.

25 - - - - -

1 (Thereupon, Respondent's Exhibit 13B  
2 was marked for purposes of  
3 identification.)

4 - - - - -

5 Q. I would like you to look, please,  
6 Mr. Copher, at what's marked as Exhibit 13B.  
7 At the top, it should say "Verification of  
8 Conditional Job Offer," and it should have 13B  
9 right on the top of it.

10 A. 13B, you said?

11 Q. B, as in boy.

12 A. Yes, I have it.

13 Q. And is that your name at the very  
14 top of Exhibit 13B, where it says, "Print  
15 name"?

16 A. Yes.

17 Q. And is that your signature there at  
18 the bottom of Exhibit 13B?

19 A. Yes.

20 Q. And did you write in the date of  
21 August 23rd of 2017?

22 A. Yes.

23 Q. And did you check all of the boxes  
24 there on Exhibit 13B, whether it says yes or  
25 no?

1 A. I don't remember. I'm assuming.

2 Q. You don't recall anybody else  
3 checking them for you, do you?

4 A. No, sir.

5 Q. I mean, tell you what, why don't  
6 you look at the boxes checked, and just let me  
7 know if you have any -- any concerns if  
8 somebody else answered for you.

9 A. Yes.

10 Q. Any concerns, or all of those look  
11 correct?

12 A. They look correct, sir.

13 MR. HORTON: Your Honor, I would  
14 ask that Respondent's Exhibit 14B be admitted.

15 MS. MURAROVA: No objection.

16 MS. NEWPORT: No objection.

17 ADMINISTRATIVE LAW JUDGE:

18 Received.

19 MR. HORTON: Your Honor, I'm sorry,  
20 I didn't hear. I assume it's admitted?

21 ADMINISTRATIVE LAW JUDGE: Yes. I  
22 said received, right.

23 - - - - -

24 (Thereupon, Respondent's Exhibit 13B  
25 was received.)

1 - - - - -

2 Q. Mr. Copher, one more question on  
3 that Exhibit 13B. On No. 8, there it says,  
4 "Can you interact in a cooperative manner with  
5 your co-workers, supervisors, and the outside  
6 public," and you checked yes, correct?

7 A. Yes.

8 Q. And so you knew when you started  
9 your employment at Smyrna Ready Mix that  
10 interacting in a cooperative manner with  
11 co-workers, supervisors, and the outside public  
12 was essential to the job, correct?

13 A. Yes.

14 Q. Mr. Copher, have you heard the term  
15 the five values of Smyrna Ready Mix?

16 A. I haven't heard the term.

17 Q. How about the term being a  
18 go-getter? Have you ever heard that term at  
19 Smyrna Ready Mix?

20 A. No, sir.

21 Q. Mr. Copher, you were telling us  
22 about loading the bin with sand and rock. Do  
23 you remember that?

24 A. Yes, sir.

25 Q. And I assume that you used some

1 sort of machine to do that loading; is that  
2 correct?

3 A. Yes, sir.

4 Q. And what sort of machine did you  
5 use to load the bin with sand and rock?

6 A. Loader.

7 Q. And at one point, while you were  
8 working for Smyrna Ready Mix, you had an  
9 accident with the loader where you caused a bit  
10 of damage to it, didn't you?

11 A. Yes.

12 Q. And did you report that accident?

13 A. Yes.

14 Q. And who did you report it to?

15 A. My supervisor.

16 Q. That was your uncle, Mr. Highly?

17 A. Yes.

18 Q. And did you and Mr. Highly talk  
19 about reporting that accident to anyone else?

20 A. No; he didn't talk to me about  
21 that. He -- I filled out an incident report  
22 and gave it to him.

23 Q. Okay. So you filled out an  
24 incident report about the accident that you had  
25 with the loader; is that right?

1 A. Yes.

2 Q. And what did you do with the  
3 incident report after you filled it out?

4 A. I gave it to Mr. Highly.

5 Q. And do you know what Mr. Highly did  
6 with it?

7 A. No, sir.

8 Q. And, Mr. Copher, you're aware that  
9 it is company policy that all accidents be  
10 immediately reported, correct? I'm sorry;  
11 Mr. Copher, I didn't hear you. We were having  
12 trouble hearing you there.

13 A. Yes.

14 Q. So you understood it was company  
15 policy that accidents be reported immediately,  
16 correct?

17 A. Yes.

18 Q. In fact, your counsel printed for  
19 you Exhibit -- or Page 44 of the handbook. If  
20 you look at that Exhibit 1, Page 44. Do you  
21 have that? It's marked SRM 44 at the bottom?  
22 Do you have that?

23 A. I'm looking for it, sir.

24 Q. Okay.

25 A. What did you say the number was,

1 sir?

2 Q. Down at the bottom right-hand  
3 corner, it says SRM 44.

4 A. I've got it.

5 Q. Okay. And on what's marked as SRM  
6 44, which is Section 3.1 of the handbook, at  
7 the top, it says, "3.1 Accidents," correct?

8 A. Yes.

9 Q. And then at the very bottom, the  
10 last sentence, before it says, "Please review  
11 your safety manual," it says there at the  
12 bottom, "Employees are required to immediately  
13 report any accident at work while on company  
14 time or involving any property, company,  
15 customer, fellow employee, et cetera," correct?

16 A. Yes.

17 Q. And you knew that was the policy,  
18 and you immediately reported the accident and  
19 even filled out an incident report, correct?

20 A. Yes.

21 Q. Mr. Copher, I want to change  
22 subjects on you just a bit and talk about  
23 safety meetings. I think you were asked a bit  
24 about that. Do I understand correctly that you  
25 never had a group meeting of driver operators

1 or other employees, whatever the position, that  
2 you had never participated in such a meeting  
3 with Mr. Brooks before?

4 A. No, I have not.

5 Q. Let's talk about driving to other  
6 locations, Mr. Copher. How many other plants  
7 are there in the Lexington market?

8 A. From my understanding, it was the  
9 Winchester, Georgetown, Nicholasville, and the  
10 Somerset.

11 Q. And how far is Georgetown from the  
12 Winchester plant?

13 A. Probably around about 20, 25  
14 minutes.

15 Q. And how about Nicholasville? How  
16 far is that from the Winchester plant?

17 A. About 30, 35 minutes.

18 Q. And, of course, there are other  
19 Smyrna Ready Mix plants throughout Central  
20 Kentucky, correct?

21 A. Yes.

22 Q. And, Mr. Copher, if you would, if  
23 you look back at Exhibit 13A, which is your  
24 application. Right when you're about to start  
25 employment with Smyrna Ready Mix, on your

1 application, you were -- you were asked there,  
2 on the first page of that exhibit -- I'm sorry,  
3 13A of your application. Do you have that?

4 A. Yes.

5 Q. Down towards the bottom, it says,  
6 "Are you willing to relocate if the job  
7 requires it?" And what did you check?

8 A. I marked yes.

9 Q. And it says, "Will you travel if  
10 the job requires it?" And what did you check?

11 A. Yes.

12 Q. And as I understand it, even though  
13 you agreed at the beginning of your employment  
14 to travel if the job required it, you decided  
15 that you didn't want to drive to other plants;  
16 is that right?

17 A. Not necessarily.

18 Q. Explain what you mean there.

19 A. It was the driving to the plant.  
20 It was the hours that we were working at the  
21 other plants.

22 Q. As I understood your testimony,  
23 what you particularly objected to was driving  
24 to Florence, right, because it was further  
25 away, and took you a couple hours to get there;

1 is that right?

2 A. Yes.

3 Q. And I understood your testimony to  
4 be that you drove to Florence one to two times  
5 a week; is that correct?

6 A. Yes.

7 Q. Okay. And for how long did you  
8 drive to Florence one to two times a week?

9 A. It varied. Sometimes if weather,  
10 and you had to take that into consideration.  
11 It may be inclement or bad weather. Let's say  
12 if the weather was perfect, sunny, a warm and  
13 sunny day all week, we was probably there one  
14 to two times a week, at least.

15 Q. And that was you, yourself,  
16 averaging one to two times to Florence a week;  
17 is that right?

18 A. That was all -- all of us at  
19 Winchester.

20 Q. Well, I want to make sure I  
21 understand correctly. You're saying that you,  
22 yourself, went to Florence one to two times a  
23 week, assuming the weather cooperated, as did  
24 all the other driver operators; is that right?

25 A. Yes; we had a rotation.

1 Q. And did you do that for the last  
2 six months of your employment?

3 A. Yes. It started in the summer and  
4 it went into the fall.

5 Q. Okay. So from the summer until you  
6 were discharged on November 8th, you were  
7 averaging one to two times a week to Florence?

8 A. Yes, if the weather permitted.

9 Q. Did you ever fail to go to another  
10 plant after you had been assigned to pick up a  
11 load at one of the other plants?

12 A. No.

13 Q. Did you ever fail to pick up a load  
14 at Taylorsville when you were directed to do  
15 so?

16 A. I was never directed to go to  
17 Taylorsville.

18 Q. You were not ever, during the  
19 course of your employment, directed to go to  
20 Taylorsville?

21 A. No, I was not -- I've never been to  
22 the plant in Taylorsville.

23 Q. And you were never told that you  
24 needed to go to Taylorsville?

25 A. No.

1 Q. Are you aware of the -- some of the  
2 company supervisors' understanding that you had  
3 been directed to go to Taylorsville?

4 A. Not that I'm aware of.

5 Q. So if someone reported to Ben  
6 Brooks that you had failed to show up at  
7 Taylorsville, that was just inaccurate?

8 A. Yes, sir.

9 Q. Are you aware of any other drivers  
10 that was assigned to go to Taylorsville who  
11 failed to make that run?

12 A. No, sir.

13 Q. Did you object to driving to any  
14 other plants, or was it just Florence that you  
15 objected to?

16 A. I didn't object to driving to any  
17 plants. It was hours that we were working.

18 Q. Well, Mr. Copher, I don't really  
19 want to quibble with you on whether it was  
20 hours or the plant. At the end of the day, you  
21 didn't want to go to Florence because it took  
22 too long, correct?

23 A. Yes, on top of the hours we were  
24 working, sir.

25 Q. Well -- so you objected to going to

1 Florence because it took too long to get over  
2 there, right?

3 A. No, not necessarily. We objected  
4 to having to go and work those long hours and  
5 drive the long drive back.

6 Q. Okay. So you objected going to  
7 Florence and spending all those hours on the  
8 road going to Florence?

9 A. We objected to the long hours being  
10 worked up there and the long drive back.

11 Q. Okay.

12 A. But we went anyway.

13 Q. Well, at some point, you at least  
14 tried not to go, correct?

15 A. No.

16 Q. I thought I understood that at some  
17 point, you determined with other drivers that  
18 you would not volunteer to go to a facility  
19 where you were requested to go? Is that not  
20 correct?

21 A. I was asked -- if I was told to go  
22 to a facility, I went to the facility.

23 Q. But you determined with other  
24 drivers that you would not volunteer to go; is  
25 that right?

1           A.       We had discussed about going to  
2 Florence, and we had decided that if we wasn't  
3 made to go, said we had to go, that we wasn't  
4 going to go. But I always -- if I was told to  
5 go, that I needed to go, I never disobeyed an  
6 order or directive. We went.

7           Q.       Mr. Copher, do you have a copy of  
8 the two -- what's called confidential witness  
9 statements that you gave to the Board? Do you  
10 have those with you?

11          A.       Are you talking about my  
12 deposition? I don't have it in front of me.

13           MR. HORTON: John, we can e-mail  
14 that to Mr. Copher, so he'll have it.

15           MR. SUETHOLZ: Okay.

16           MS. MURAROVA: Can we take a very  
17 quick bathroom break?

18           ADMINISTRATIVE LAW JUDGE: Yeah,  
19 let's go off the record for five minutes.

20                    (Recess is taken.)

21           ADMINISTRATIVE LAW JUDGE: I'm a  
22 little unclear -- as I understand your  
23 testimony, you had no issue with going to  
24 Florence. You had an issue with the hours.

25                    And was it possible to go to

1 Florence and not work long hours? Is it  
2 possible to drive up there, make a delivery or  
3 pickup something and turn around and come back,  
4 or were there other things that you were --  
5 other duties that you were given when you got  
6 to Florence that made the day longer?

7 THE WITNESS: They were keeping me  
8 into -- we had an hour and a half, two-hour  
9 drive to Florence. When we arrived to  
10 Florence, we was working late hours, anywhere  
11 from 12 to sometimes 14 hours a day. And then  
12 on top of that, we had an hour and a half to  
13 two-hour drive back.

14 Mainly, the plant managers there  
15 was keeping us there to haul loads, and most of  
16 the times, we was getting all the late loads  
17 there. And that's what we were upset about,  
18 was all the -- because we had the long drive  
19 back.

20 ADMINISTRATIVE LAW JUDGE: So you  
21 drove up to Florence, which as I recollect is  
22 up near Cincinnati, correct?

23 THE WITNESS: Yes, sir.

24 ADMINISTRATIVE LAW JUDGE: And the  
25 Winchester plant is down near Lexington, so

1 maybe around 75 miles away?

2 THE WITNESS: Yes, sir.

3 ADMINISTRATIVE LAW JUDGE: So you  
4 would drive up to Florence, and would you be  
5 taking a load there? Would you be driving an  
6 empty truck?

7 THE WITNESS: We would drive our  
8 truck or load -- or front -- unload it and sign  
9 -- front dispenser; I'm sorry. And we would  
10 drive to Florence, unload it, and they would  
11 load us there.

12 ADMINISTRATIVE LAW JUDGE: Okay.  
13 So then you would -- would you make a number of  
14 deliveries --

15 THE WITNESS: Yes.

16 ADMINISTRATIVE LAW JUDGE: -- from  
17 the Florence plant to some other sites?

18 THE WITNESS: To customers, sir,  
19 throughout their area.

20 ADMINISTRATIVE LAW JUDGE: Okay.  
21 So you dumped in Florence, and then you would  
22 make deliveries out of the Florence plant, and  
23 then when you were done, you would drive back  
24 home or go back to Winchester?

25 THE WITNESS: Wash out, fuel up,

1 and drive back to Winchester.

2 ADMINISTRATIVE LAW JUDGE: All  
3 right.

4 Mr. Horton, you can continue.

5 Q. Can you hear me?

6 A. Yes.

7 Q. I realize that sounded like a  
8 Verizon commercial.

9 Mr. Copher, I wanted to follow up  
10 on a couple of things that we talked about  
11 earlier, and then we'll come back to this  
12 Florence and issue of driving to other plants.

13 I believe you testified earlier  
14 that you did four to five loads a day; is that  
15 correct?

16 A. Average workday, yes, sir.

17 Q. And your work schedule, was it  
18 Monday through Saturday? Did you work six days  
19 a week?

20 A. Six days a week, sir.

21 Q. And how long did it take for you to  
22 clean the truck when you cleaned it?

23 A. Cleaning after the load or at the  
24 end of the day?

25 Q. Tell me both, please.

1           A.     After each load, it would take you  
2     average probably 15, 20 minutes to clean out  
3     the inside of your drum and your chutes and the  
4     front of your truck.  Sometimes it could take  
5     longer, depending on the type of material it  
6     was or how dry it was.  The inner --

7           Q.     Go ahead.  I'm sorry.

8           A.     And then at the end of the day, we  
9     would spend anywhere from 30 minutes, sometimes  
10    close to an hour, depending on how dirty our  
11    truck was, getting the cement and cement dust  
12    and everything off of our trucks, cleaning that  
13    up.

14          Q.     Okay.  And you mentioned on rare  
15    occasions, I think, that you might be assigned  
16    to different trucks because your normal truck  
17    needed repairs.  How frequently were you  
18    assigned a different truck?

19          A.     Not often, to be honest with you.  
20    Very few -- very few times.

21          Q.     Do you remember the -- having to  
22    remember the last time you were assigned a  
23    different truck?

24          A.     I think the last time I was  
25    assigned a different truck, I had a piece of --

1 that broke on the drum that had to be repaired,  
2 and that was during -- I think back in late  
3 spring, maybe early summer.

4 Q. So it was really a rare event for  
5 you to be assigned to a different truck, it  
6 sounds like?

7 A. Yeah, unless it broke down or it  
8 had to be serviced.

9 Q. Mr. Copher, you should now have in  
10 front of you two witness statements that you  
11 signed. We were talking about objections to  
12 driving to other plants, and I wanted you to  
13 look at the second statement that you signed on  
14 March 6th of 2020. It's four pages long. Do  
15 you have that?

16 A. Yes, sir.

17 Q. Look in the middle of the -- look  
18 in the middle of the first page. You said that  
19 you had provided an affidavit on November 20,  
20 and in that affidavit, you testified about  
21 drivers being unhappy, having to drive to other  
22 plants to deliver loads for those plants,  
23 specifically, Florence.

24 "The drivers were so disgruntled,  
25 the matter had come to a boiling point, and

1 over the course of a few days, at some point in  
2 the late summer of 2019, we drivers had  
3 multiple conversations among ourselves in which  
4 we agreed that we would not volunteer to go to  
5 a facility where we were requested." Is that  
6 accurate testimony there?

7 A. Yes. We -- if we were asked if we  
8 wanted to go to a plant, asked if we wanted, we  
9 said that we wouldn't volunteer, but if we were  
10 told that we had to go, we would go.

11 Q. For you to go to a plant, you would  
12 have to be bluntly told to go to a different  
13 plant, correct?

14 A. Yes. If they said, "Sunga, I need  
15 you can go to Florence," I would go to  
16 Florence.

17 Q. Well, that wasn't -- that wasn't  
18 limited to Florence, was it, in terms of your  
19 determination not to volunteer to go to a  
20 facility where you were requested?

21 A. No. We went -- we could go to  
22 Georgetown, Nicholasville, any other plant.

23 Q. Well, your statement here says that  
24 you all agreed that you would not volunteer to  
25 go to a facility where you were requested. So

1 are you now saying you would only not volunteer  
2 to go to Florence, or was it you wouldn't  
3 volunteer to go anywhere?

4 A. No. I'm not saying just Florence.  
5 It was anywhere. But if we were told to go, we  
6 would go, but we would --

7 Q. So you would --

8 A. Because we were being asked about  
9 Nicholasville. They had to get volunteers to  
10 go to plants, and we would always volunteer,  
11 but we got to the point where we said we wasn't  
12 going to volunteer anymore. But if we were  
13 told to go, we would go.

14 Q. So does that mean if Mr. Highly  
15 walked into the driver's lounge and said, "Hey,  
16 I need somebody to go to Nicholasville," it  
17 would just be crickets, and nobody would  
18 respond?

19 A. We wouldn't volunteer, but if he  
20 come up and say, "Sunga, go to Florence," or  
21 "Go to Nicholasville or Georgetown," I would  
22 have went.

23 Q. Okay. So this policy about not  
24 volunteering to go to a facility, that applied  
25 to all other facilities; is that right?

1 MS. NEWPORT: Objection to the  
2 phrase "policy."

3 MR. HORTON: Sorry.

4 Q. To your agreement with the other  
5 drivers?

6 A. It wasn't an actual agreement. We  
7 all -- we discussed it. Between the drivers,  
8 that we was no longer going to volunteer. We  
9 always volunteered to go to facilities, but we  
10 wouldn't volunteer anymore. But if we were  
11 told we needed to go, we had to go, we would  
12 go.

13 Q. Mr. Copher, I mean, I called it an  
14 agreement because you said, "We drivers had  
15 multiple conversation among ourselves in which  
16 we agreed."

17 A. Yes; we agreed amongst ourselves.

18 Q. Okay. And then you say, at the  
19 bottom of that statement, that "Highly came  
20 around to each one of us one day looking for a  
21 volunteer to work at Taylorsville, and you did  
22 not volunteer when asked." Is that right?

23 A. Yes and no. I told Mr. Highly -- I  
24 was wrong on the name. Mr. Highly was on  
25 vacation that week, and it was Chris Sizemore,

1 who was the acting plant manager.

2 He come around, and he asked me if  
3 I wanted to go to Taylorsville, and I said no.  
4 He said okay, and he moved on.

5 Q. So you seem to be remembering a  
6 specific occasion when you were asked to go to  
7 Taylorsville; is that right?

8 A. If I'm reading this, that's what I  
9 was talking about.

10 Q. And did that happen around October  
11 of 2019?

12 A. September.

13 Q. And how do you know it was  
14 September?

15 A. That's when Mr. Highly was on  
16 vacation.

17 Q. All right. So in your -- see, this  
18 is the second affidavit that you had given,  
19 correct?

20 A. Yes, sir.

21 Q. All right. And you had been  
22 talking to Union organizers and personnel for  
23 some time before you gave this affidavit on  
24 March 6th, correct?

25 A. I would talk to Samantha in early

1 October, and I talked to Mr. Palmer in August  
2 -- the first time I spoke with him was August  
3 25th.

4 Q. Well, you would have been talking  
5 to various individuals at the union about your  
6 unfair labor practice case before March 6th,  
7 hadn't you?

8 A. Not various, just the two, Mr.  
9 Palmer and Samantha.

10 Q. All right. Before you gave the  
11 second affidavit on March 6th, 2020, did you  
12 have any notice that you were going to be  
13 giving that affidavit?

14 A. They just said called and said -- I  
15 didn't know it was going to be an affidavit.  
16 They said they just wanted -- the investigators  
17 wanted to meet with me and go over a few  
18 questions.

19 Q. And who called and told you that?

20 A. Himself.

21 Q. I'm sorry; I missed. Who was it  
22 who called?

23 A. The investigator. I cannot  
24 remember his name.

25 Q. And what did you do to prepare to

1 give this affidavit?

2 A. Mr. Tom -- Joseph S. Calisno was  
3 the one who contacted me. Excuse me, what did  
4 you say, sir?

5 Q. What did you do to prepare to  
6 provide this affidavit that's the affidavit you  
7 gave on March 6th, 2020?

8 A. Nothing really. Just showed up to  
9 where he wanted to meet.

10 Q. Did you talk to anybody to prepare?

11 A. No; I didn't talk too much to  
12 prepare for this.

13 Q. Did you -- okay.

14 Have you seen any other mistakes  
15 besides saying it was Highly that asked you for  
16 a volunteer to go to Taylorsville, and you're  
17 now saying it was Sizemore. Have you noticed  
18 anymore inaccuracies in your affidavit?

19 A. Not in the statement, sir, but I  
20 think --

21 Q. I'm sorry; did you have something  
22 else to say, Mr. Copher?

23 A. I said not on the second one that I  
24 see, sir.

25 Q. Okay. And the driver operators at

1 Winchester have been complaining, actually, for  
2 quite a long time before you were discharged  
3 about working conditions and driving to  
4 Florence, correct?

5 A. Yes.

6 Q. In fact, y'all had been complaining  
7 for almost a year, correct, about your working  
8 conditions, and, particularly, about the  
9 driving to other plants like Florence?

10 A. Yes.

11 Q. And y'all complained to Mr. Highly,  
12 and he said he would relay your concerns to  
13 Mr. Brooks?

14 A. Yes.

15 - - - - -  
16 (Thereupon, Respondent's Exhibit 69,  
17 was marked for purposes of  
18 identification.)

19 - - - - -  
20 Q. Mr. Copher, would you look at --  
21 what's the number for ULP? Look at the exhibit  
22 that's marked as 69. It should be marked at  
23 the bottom with -- I think it says ULP.  
24 SRM-ULP, yeah.

25 A. Exhibit 69?

1 Q. It's Exhibit 69, that's right, and  
2 it says at the bottom, SRM\_ULP 001 on the first  
3 page. Just let me know when you have it.

4 MS. MURAROVA: I don't believe we  
5 have this exhibit.

6 MR. HORTON: Well, I think we just  
7 e-mailed it to everybody. We'll check.

8 MS. MURAROVA: There might be a  
9 delay.

10 MS. NEWPORT: Can you not find it?

11 MS. MURAROVA: It was sent at  
12 12:45.

13 ADMINISTRATIVE LAW JUDGE: I  
14 received it at 12:46.

15 MS. NEWPORT: 12:45? Oh, your  
16 time?

17 MS. MURAROVA: Oh, I see it now.  
18 Thank you. It was 1:45. The time difference  
19 here.

20 MS. NEWPORT: Sunga, did you find  
21 it yet, though? It's text messages.

22 A. I've got text messages here, but  
23 SRM\_ULP 001.

24 Q. That's it?

25 A. Is that the one you're wanting,

1 sir? I've got it, yes, sir.

2 Q. Okay. Great. So look at -- first  
3 of all, let me ask you about these text  
4 messages that are at the very beginning of Page  
5 1 and 2. These are text message between you  
6 and Mr. Palmer, John Palmer; is that right?

7 A. Yes, sir.

8 Q. And who is Mr. Palmer?

9 A. He's the vice president of  
10 Teamsters.

11 Q. And look at the second page of that  
12 Exhibit 69. It says, "SRM Concrete sign up."  
13 Do you see that?

14 A. Yes.

15 Q. And what are the names written  
16 there?

17 A. Sheldon Walters, Sunga Copher, and  
18 Charles Grimm.

19 Q. And it says, "SRM Concrete sign-up,  
20 November 7, 2019." Would you tell me what this  
21 list is?

22 A. This was the sign-in sheet that we  
23 had for the meeting that we had on the night of  
24 November 7th at Taste of China in Winchester,  
25 Kentucky.

1 Q. Okay. So is that everybody that  
2 attended the meeting?

3 A. Yes. Myself, Sheldon Walters, and  
4 Charles Grimm, and John Palmer was the union  
5 representative.

6 Q. And what time did you all meet?

7 A. I can't remember, sir. I know it  
8 was in the evening sometime.

9 Q. So it's your recollection that you  
10 met for, what where I'm from, we call it  
11 supper. Y'all met for supper instead of lunch?

12 A. Yes, it was supper.

13 Q. All right. But you don't quite  
14 remember what time?

15 A. I don't remember an exact time,  
16 sir.

17 Q. And how were you able to send  
18 Mr. Palmer a picture of the sign-up sheet on  
19 whenever this, in January, I think?

20 A. He sent that to me.

21 Q. Is the sign-up sheet something  
22 you're sending to him, or he's sending it to  
23 you?

24 A. He's sending it to me.

25 Q. Okay. And why did you need a copy

1 of the sign-in sheet from November 7th in early  
2 January?

3 A. Nicole Long asked for a copy of it.

4 Q. Okay. You testified earlier this  
5 morning, I think, that one driver failed to  
6 show up for the meeting. In fact, I think you  
7 said it was Nikki long that failed to show up;  
8 is that right?

9 A. She didn't fail to show up. She  
10 decided not to come. She had went home  
11 previous to that day. It was an inclement  
12 weather day. It was raining, cold that day.  
13 She went home earlier in the day while the rest  
14 of us at that plant worked in the maintenance  
15 shop. And when it come time for the meeting,  
16 she decided that she wasn't going to drive all  
17 the way back from her -- Back County, where she  
18 lives, to Clark County. She said that she  
19 would meet at another time.

20 Q. So she was originally going to  
21 attend, but ended up not attending?

22 A. Yes.

23 Q. Would you look at the longer  
24 witness statement, longer witness affidavit  
25 that you had with you. It goes for eight

1 pages, I think. Yeah, eight, plus the  
2 signature?

3 A. Yes.

4 Q. And you signed this statement on  
5 November 20 of 2019, correct?

6 A. Yes.

7 Q. And look at the bottom of Page 5,  
8 please, of the longer exhibit -- sorry, longer  
9 affidavit. Do you have that?

10 A. Yes.

11 Q. Down at the bottom of that Page 5  
12 of your longer affidavit, it says, "I talked to  
13 a couple of other drivers about meeting with  
14 Palmer. I set up a meeting with two other  
15 drivers on November 6th to discuss the union,  
16 and we met on November 7th. There was  
17 originally another driver who was going to  
18 attend, but he ended up not going. We met at  
19 Taste of China again."

20 And then if you go back -- if you  
21 go to the next page, Page 6, in the middle of  
22 the page, that first full paragraph. Do you  
23 have that?

24 A. Page 6?

25 Q. Yes, sir, Page 6, middle of the

1 page.

2 A. Yes.

3 Q. I says, "I came to work as usual on  
4 the morning of November 8th. The driver who  
5 did not come with us was driver Chris  
6 Sizemore." So you were saying it was Chris  
7 Sizemore that didn't come to the meeting the  
8 prior day, right?

9 A. No. He was originally involved in  
10 getting the union -- talking to the union reps  
11 and discussing it. He -- that's what I meant.  
12 Nicole Long, it was -- mainly, it was going to  
13 be Nicole Long, Sheldon Walters, Charles Grimm  
14 and myself.

15 Sizemore, from what I understood,  
16 because I never had -- because he kind of  
17 backed away from it. I didn't talk to him.  
18 Sizemore, from what I understood, was talking  
19 to other associates. I don't know -- it was  
20 secondhand information.

21 He said that he was going to come,  
22 and he did not go either. But on my end, the  
23 one I knew about was Nicole Long. She backed  
24 out, because she was sick. And I mentioned  
25 Chris Sizemore in that, as he was originally

1 involved in it also.

2 Q. So in your affidavit that you gave  
3 13 days after the meeting, you said there was  
4 originally another driver going to attend. He  
5 ended up not going, and that was Mr. Sizemore,  
6 but you didn't say anything about Ms. Long is  
7 supposed to go and her not coming, correct?

8 A. It's got in there. It says "he,"  
9 not "she."

10 Q. Okay. Had y'all been at work that  
11 day on November 7th, before you had your  
12 meeting that night?

13 A. Yes.

14 Q. And did you actually work that day?  
15 Did y'all run any loads that day?

16 A. Again, I cannot remember if we ran  
17 any loads that day. I do remember it was bad  
18 weather. It was cold and rainy, and I remember  
19 working in the maintenance shop, but --  
20 honestly, I cannot remember if we ran any loads  
21 that day or not. I know there were some folks  
22 that went home. Nicole Long was one of them.

23 Q. Did she go home early that day?

24 A. Yes.

25 Q. Do you remember what time she went

1 home?

2 A. No, sir.

3 Q. I want to talk about the following  
4 day, then, November 8th. As I understood your  
5 testimony earlier, you said that you and  
6 Mr. Highly talked during the day and that  
7 Mr. Highly told you that Ben Brooks had called  
8 over to the plant; is that right?

9 A. Yes. Well, he -- prior to that, he  
10 had arrived at the plant and talked to  
11 Mr. Highly.

12 Q. Okay. And then Mr. Highly told you  
13 that -- told you what?

14 A. He had explained to me, said me  
15 that Ben Brooks had got word that I was  
16 spearheading the union involvement and wanted  
17 to know if he could do anything about it and  
18 wanted to ask me about it.

19 And he asked -- first, he asked if  
20 I was there. He told him I was out on a load,  
21 and then he explained to him that he had  
22 information that I was spearheading union  
23 involvement, and that he wanted to know if he  
24 had any information or anything about it and to  
25 ask me about it.

1 Q. And did Mr. Highly ask you about  
2 it?

3 A. Yes.

4 Q. And what did you tell him?

5 A. I did not, because I was afraid of  
6 retaliation.

7 Q. Okay. So Mr. Highly tells you that  
8 Ben Brooks asked him about union activity and  
9 that Mr. Brooks asked Mr. Highly to ask you  
10 about it. Mr. Highly did ask you about it, and  
11 you denied it, essentially not being truthful.  
12 Is that accurate?

13 A. Yes, because I was afraid of  
14 retaliation. I was told to deny it because I  
15 would be retaliated against, and that's what I  
16 did, because I was afraid I would lose my job.

17 Q. I'm sorry. Did you say someone  
18 told you to deny being involved in union --

19 A. No. No. I said I was --  
20 Mr. Palmer told me if I was ever asked about  
21 it, to deny it because they would probably  
22 retaliate. More chances -- it was likely they  
23 would retaliate against me, and I denied it.

24 Q. Okay. So I did understand you  
25 correctly, then. Mr. Palmer had told you that

1 if you were asked -- ever asked about union  
2 activity, that you should deny it; is that  
3 right?

4 A. Yes. Yes.

5 Q. And was that the first day you had  
6 been asked about union activity by a  
7 supervisor?

8 A. Yes.

9 Q. Had you talked -- had you talked to  
10 your uncle, Mr. Highly, before that day,  
11 November 8th? Had you talked to him about the  
12 union at all?

13 A. I didn't really talk about the  
14 union. I know that he -- I think he used to  
15 work for them a while -- a long time ago,  
16 before he came to that plant, and I just  
17 briefly asked him about his experience with the  
18 union, and we left it at that.

19 Q. How long before November 8th of  
20 2019 did you ask Mr. Highly about his  
21 experience with the union?

22 A. That was before I contacted Susana  
23 at the Lexington chapter, so that was in early  
24 October, early in October.

25 Q. Okay. So you tell Mr. Highly you

1 don't know anything about union activity at the  
2 plant, and I assume you had not told him that  
3 -- before that day that you were involved in  
4 union activity at the plant; is that correct?

5 A. Yes.

6 Q. And then did I understand you to  
7 say that then Mr. Highly told you that  
8 Mr. Brooks had called over and wanted you to  
9 wait for him?

10 A. He asked if I was there. When he  
11 came to the plant, he asked if I was there, and  
12 he asked about that and told Mr. Highly to find  
13 out, see if he could find out anything.

14 And then I came back -- I don't  
15 know if it was a load or two after that. He  
16 actually called while I was there and asked if  
17 I was there. And Mr. Highly told him that I  
18 was, and he said to keep me there and keep me  
19 on the clock, that he was leaving -- he was  
20 coming from Nicholasville and he would be right  
21 there.

22 Q. Okay. And then you -- so  
23 Mr. Highly tells you that Mr. Brooks is called  
24 over. He's looking for wants you to wait on  
25 him; is that right?

1 A. Yes.

2 Q. And so you know you've got a  
3 meeting with Mr. Brooks coming up; is that  
4 right?

5 A. Yes.

6 Q. And so you decided you're going to  
7 record that meeting; is that correct?

8 A. I didn't tell Mr. Highly. I  
9 recorded it myself.

10 Q. Yeah, I didn't -- it didn't really  
11 occur to me that you told Mr. Highly you were  
12 going to record the meeting, but you did decide  
13 --

14 A. I --

15 Q. I'm sorry?

16 A. I thought you asked if I had told  
17 him that I was going to record it. I  
18 apologize. My bad. No; I recorded the meeting  
19 on my own.

20 Q. And when did you decide to do that?

21 A. Basically right there on the spot.

22 Q. All right. Had Mr. Palmer told you  
23 to record any meeting you had with Mr. Brooks?

24 A. No.

25 Q. I'm sorry; Mr. Copher, I didn't

1 hear you?

2 A. No.

3 Q. So you decided on your own that you  
4 were going to record the meeting. When you  
5 went into the meeting, did you tell Mr. Brooks  
6 you were recording the meeting?

7 A. No.

8 Q. And so you walk into the meeting,  
9 you're recording it, and the first thing that  
10 you say is that you had been asked about the  
11 union and you were -- didn't know anything  
12 about it; is that right?

13 A. Yes. Well, the first thing I did  
14 was introduce myself to him, because I never  
15 met him one-on-one.

16 Q. So you shook hands and said -- and  
17 you tell Mr. Brooks that Highly has talked to  
18 you. He asked you if you knew anything about a  
19 union, and you told him that you didn't know  
20 anything about it, correct?

21 A. Yes.

22 Q. And at that point, Mr. Brooks  
23 looked at you kind of funny and said, "Unions?  
24 I didn't ask you anything about a union,"  
25 right?

1           A.     He said, "Union," and he said -- I  
2     can't remember exactly how it was worded.  
3     "Union and other things."

4           Q.     Mr. Copher, look again at your  
5     longer affidavit, please, on Page 7.

6           A.     Yes.

7           Q.     And, again, you gave this on  
8     November 20 of 2019, correct?

9           A.     Yes.

10          Q.     And you said to the Board that you  
11     walked into the meeting. We know now that  
12     you're recording it. You walked in. You  
13     introduced yourself. You immediately told  
14     Mr. Brooks that Highly had asked you about  
15     unions. You said you didn't know anything  
16     about a union?

17          A.     Yes.

18          Q.     And then you said that he -- Brooks  
19     looked at you funny and said, "Unions? I  
20     didn't ask you anything about a union." Do you  
21     see where you said that in your affidavit?

22          A.     Yes. He did say that, and then I  
23     asked him about -- he walked in. I was already  
24     in the driver's lounge. He walked in. I  
25     introduced myself to him, and I told him that I

1 wished -- I said I wished we met under better  
2 circumstances or something, because Aaron said  
3 that you were asking about unions.

4 And he got kind of a funny look on  
5 his face, and then he said, "Unions?" I don't  
6 get why you're here -- something like that. I  
7 can't remember. And he said, "And other  
8 things." That was it.

9 Q. He actually said to you he was  
10 meeting with you because he had a couple of  
11 complaints on you, right?

12 A. Yes. That's when -- after he told  
13 me and other things, that's when he went into  
14 what he said the reason was that he was going  
15 to terminate me.

16 Q. All right. Mr. Copher, I want to  
17 ask you a little more about the assignment of  
18 loads. You mentioned, I think, that the loads  
19 would come into Mr. Highly, and then he would  
20 assign them; is that right?

21 A. Yes.

22 Q. And so the way you found out about  
23 the load being assigned to you was through  
24 Mr. Highly?

25 A. Yes.

1 Q. And then how were your loads  
2 recorded?

3 A. How were they recorded?

4 Q. At the time that you get a load  
5 assigned to you, at the time that you're away  
6 -- the time you are assigned a load, the time  
7 that it takes you to take the load and come  
8 back, all of that recorded in the computer  
9 program, correct?

10 A. No, sir.

11 Q. So is the -- is the time of the  
12 load being assigned to you input into the  
13 computer?

14 A. Sir, I don't know. All I know is  
15 that when we're assigned a load, it tells us  
16 we've got a load going to Owensville, Kentucky.  
17 The Florence plant, get loaded, get what we  
18 need, materials, and get our address, and  
19 that's it.

20 Q. So in terms of the computer program  
21 and the information that it's stored about each  
22 load that you took, it sounds like you're not  
23 familiar with that information; is that right?

24 A. Are you talking about the Jonel  
25 system or the computer system that he puts the

1 order into the system?

2 Q. I'm talking about the information  
3 that the company has regarding each load that  
4 you take.

5 A. Just the basics. I know about the  
6 orders that when he assigning the truck, that  
7 he would drag the truck down to that order.  
8 And then he would do that, it would assign that  
9 order to our truck.

10 Q. And then in terms of the other  
11 information that the computer program  
12 maintained about the assignment of the load and  
13 the delivery of the load and the amount of time  
14 that it took to take the load and how much was  
15 on the load, you're not really familiar with  
16 all that; is that correct?

17 A. I'm familiar with or -- I think  
18 it's Jonel GPS system in our truck. I'm  
19 familiar with that, if that's what you're  
20 referring to.

21 Q. No; I'm referring to the  
22 information that the company stores about every  
23 load that goes out. But, again, if what we  
24 know about is the GPS system in the truck, if  
25 that's all you know, that's fine.

1           A.       Yeah.  That's what I was asking  
2       about, because I was assuming that's where the  
3       information would come from, is from the GPS in  
4       our truck.

5           Q.       Okay.  I believe you said you  
6       worked Monday through Saturday, and you would  
7       take four to five loads a day, correct?

8           A.       Saturday was supposed to be half a  
9       day.  A lot of times, we would end up working  
10      past that.  So Saturdays -- Monday through  
11      Friday, I was there to at least 4:00 to 5:00.  
12      Saturday, I may take one load or I may two or  
13      three.

14          Q.       All right.  And then how was your  
15      time in terms of your paycheck and the hours  
16      you were getting paid for?  How was your time  
17      recorded?  Did y'all punch a clock?

18          A.       We had a time clock that used a  
19      fingerprint identification assigned to it.  We  
20      had a number that was assigned to us.

21          Q.       All right.  So you had to touch  
22      something when you got there, and touch it when  
23      you left?  Is that how it worked?

24          A.       Yes, and a fingerprint.

25          Q.       Okay.  How did it work if you got

1 back to the plant, say, at 1:00 in the  
2 afternoon and you didn't have any other loads?  
3 Did you -- were you supposed to go home at that  
4 point, or would you just sit around at the  
5 plant? How did that work?

6 A. If we did not have any more loads,  
7 that includes makeup loads, we would clean our  
8 trucks. Probably about an hour -- take about  
9 an hour on that, make sure it's good and clean.

10 Q. And then go home?

11 A. And then go home. And what we  
12 would also -- if it was in the spring or summer  
13 months, sometimes in the fall, we would go and  
14 ahead and reload the bins and have them ready  
15 for Monday, to go Monday.

16 Q. Okay. And how many people could  
17 reload the bin at one time?

18 A. At one time, just one.

19 Q. All right. So normally, if you --  
20 if you get your last load and you clean your  
21 truck, and the bin is taken care of, then you  
22 ought to take off and go home, correct?

23 A. Yes. They would shut the plant  
24 down.

25 Q. All right. So did Mr. Highly have

1 to send employees home after their last load,  
2 or did they just know to go home?

3 A. They didn't know. A lot of  
4 employees would ask if we had any other loads  
5 for the day, and they could see the screen. He  
6 would say no. Or if we had a makeup, he would  
7 ask who wants to take the makeup, and most of  
8 the time, that was me. I would volunteer for  
9 the makeup. And he would tell everyone to go  
10 home.

11 Q. And by makeup, what do you mean by  
12 that?

13 A. Like if we took, say, ten yards,  
14 but that ten yards wasn't enough to fill the  
15 order, then you get additional two or --  
16 however much to finish the order. We call that  
17 a makeup.

18 Q. All right. And did I understand  
19 your testimony to be that it was your practice  
20 to be the one to do that makeup run at the end  
21 of each day if one was needed?

22 A. Yes.

23 Q. So, typically, if anybody is taking  
24 a late load during the day, it would be you; is  
25 that fair?

1           A.       Yes, because the other associates  
2       did not like staying late or taking those late  
3       loads. They had families or other activities,  
4       involved in stuff with their kids. I had  
5       neither, and I always volunteered. They would  
6       always come to me and ask me if I would take  
7       that late load, and I never denied it.

8           Q.       You were mentioning that one of the  
9       duties that you all would do or one person  
10      would do after your last load was to reload the  
11      bin. How long does reloading the bin take?

12          A.       It depends on how empty it is.

13          Q.       Well, let's say it's all the way  
14      empty. How long would it take?

15          A.       If it's all the way empty, you're  
16      probably looking at probably about close to an  
17      hour.

18          Q.       I'm betting if it's halfway empty,  
19      it takes 30 minutes?

20          A.       30 to 40. It just depends on -- if  
21      there's truck coming through, where we was at  
22      was kind of a tight spot. Trucks was coming  
23      through to wash out. You have to wait on them  
24      to get through. Anywhere from -- like if it's  
25      half full, 30 to 40 minutes.

1 Q. And it was your practice if you had  
2 done the last load, there was no makeup load to  
3 take, and if the bin was taken care of, then  
4 you would take off and go home?

5 A. After I cleaned my truck.

6 Q. On those makeup loads, would there  
7 be a new load ticket for the makeup load?

8 A. Yes.

9 Q. Mr. Copher, we were talking about  
10 how your time was kept when you were at Smyrna  
11 Ready Mix, and you mentioned the fingerprint  
12 apparatus that you would use when you arrived  
13 and when you went home each day.

14 In terms of the accuracy of your  
15 paycheck, did you ever look at your paycheck  
16 and say, "Oh, my gosh. Smyrna Ready Mix has  
17 paid me for hours I didn't work. I certainly  
18 didn't work that many overtime hours."

19 Did you ever have that reaction  
20 whenever you saw your paycheck?

21 A. No.

22 Q. So is it your belief that the  
23 company properly paid you for all your hours  
24 that you worked?

25 A. There's times I did not look at my

1 check stubs, to be honest with you, but I kept  
2 track of my hours on a piece of paper, and I  
3 knew what my hours -- what I had, and I never  
4 had any issues.

5 Q. Okay. So you never reported to  
6 anyone that the amount of overtime that you had  
7 been paid for was inaccurate; is that correct?

8 A. I never had any issues. I know the  
9 hours -- the overtime hours that I got paid for  
10 was what I had worked.

11 Q. Okay. Great. So look at, please,  
12 what's marked as Exhibit 52. I think you  
13 should have it. You just let me know when you  
14 do.

15 - - - - -

16 (Thereupon, Respondent's Exhibit 52,  
17 was marked for purposes of  
18 identification.)

19 - - - - -

20 A. I have it.

21 Q. Mr. Copher, this reports indicates  
22 that in terms of overtime, for all of 2019, and  
23 we understand that you were discharged on  
24 November 8th, but that for all of 2019, you had  
25 798 hours of overtime, and the next closest

1 person was Sheldon Walters, who had 634 hours;  
2 is that right?

3 A. Yes.

4 Q. And Mr. Walters was not discharged  
5 until early January of 2020, correct?

6 A. Yes. I don't know the time he was  
7 discharged.

8 Q. Okay. He was certainly still  
9 working there when you were discharged,  
10 correct?

11 A. Yes.

12 Q. Does it surprise you that you have  
13 so much more overtime than other employees?

14 A. No.

15 Q. What's your sense as to how you got  
16 so much overtime than the other employees?

17 A. I would work late. The others  
18 would go home when there were other loads to  
19 deliver, them late loads. I was the only one  
20 that worked all the late loads, late orders.

21 Q. Okay. Did your uncle ever talk to  
22 you about the amount of overtime you were  
23 getting as compared to others?

24 A. No.

25 Q. Would you think that sitting around

1 at the plant on the clock while others were out  
2 delivering late loads, would that be something  
3 that would be worthy of termination?

4 MS. MURAROVA: Objection;  
5 relevance. I'm not sure how it matters what  
6 this employee thinks is worthy of termination  
7 or not.

8 Judge, I think you're muted.

9 ADMINISTRATIVE LAW JUDGE: The  
10 objection is sustained.

11 Q. Mr. Copher, you remember -- look at  
12 Exhibit 13B for me, please. Do you still have  
13 that? It's called, at the top, Verification of  
14 Conditional Job Offer. Do you have that?  
15 It's probably at the bottom of your stack.

16 A. Yes, I've got it.

17 Q. 13B, this says, "Verification of  
18 Conditional Job Offer and Essential Job  
19 Functions." Do you have that?

20 A. Yes. Yes.

21 Q. And, in fact, I think we talked  
22 about this at the very beginning when we  
23 started, where you understood that interacting  
24 in a cooperative manner with co-workers,  
25 supervisors, and outside public was an

1 essential function. Do you remember that?

2 A. Yes.

3 Q. Would you regard sitting around at  
4 the plant while others were delivering late  
5 loads, would you consider that to be working in  
6 a cooperative manner or interacting in a  
7 cooperative manner with co-workers?

8 MS. MURAROVA: Objection;  
9 relevance.

10 ADMINISTRATIVE LAW JUDGE:  
11 Sustained.

12 Q. Mr. Copher, if other employees  
13 reported that you were sitting on the clock  
14 while they delivered late loads, were they  
15 being truthful?

16 MS. MURAROVA: Objection. I'm not  
17 -- I'm not sure how this witness would have  
18 knowledge to that.

19 ADMINISTRATIVE LAW JUDGE: You  
20 could ask him, I mean, is it true that he was  
21 sitting around while others were delivering  
22 late loads.

23 Q. Mr. Copher, were you sitting around  
24 while others delivered late loads?

25 A. I think my time speaks for itself.

1 I was the one who was always taking the late  
2 loads.

3 MR. HORTON: Your Honor, I have no  
4 other questions. I would like to reserve the  
5 right to recall Mr. Copher.

6 ADMINISTRATIVE LAW JUDGE: You mean  
7 after redirect or --

8 MR. HORTON: As part of our case.

9 ADMINISTRATIVE LAW JUDGE: Yeah, I  
10 guess so.

11 Is there any redirect?

12 MS. MURAROVA: Yes, Your Honor.  
13 Just a few brief questions.

14 REDIRECT EXAMINATION OF SUNGA COPHER  
15 BY MS. MURAROVA:

16 Q. Mr. Copher, are you aware of any  
17 complaints made about you and the timeliness of  
18 your delivery?

19 A. No, ma'am.

20 Q. Did any supervisor or manager ever  
21 tell you a complaint had been made about the  
22 timeliness of your delivery?

23 A. No, ma'am.

24 Q. Are you aware --

25 ADMINISTRATIVE LAW JUDGE: Can I

1 interrupt for a second? Were you aware of any  
2 complaints made about you by other employees?

3 THE WITNESS: No, ma'am -- no, sir.

4 Q. Are you aware of any complaints  
5 that you were milking the clock or only sitting  
6 around?

7 A. No, ma'am.

8 Q. Had anyone in management ever  
9 accused you of such an allegation against you?

10 A. No, ma'am.

11 Q. You talked a little bit about an  
12 accident that you had at work. When did that  
13 occur?

14 A. That was maybe a month or two after  
15 Smyrna had taken over.

16 Q. Okay. So that would have been in  
17 2017?

18 A. Yes, ma'am.

19 Q. Was that ever raised with you any  
20 time after 2017?

21 A. No, ma'am.

22 Q. Okay. Did you ever refuse to go to  
23 Taylorsville?

24 A. No.

25 Q. Did you ever refuse to go to any

1 Smyrna facility that you were told to go to?

2 A. No, ma'am.

3 Q. You talked about clocking in using  
4 your thumbprint. Did you just do that at the  
5 beginning and end of every day, or as you would  
6 come back in --

7 A. Just at the beginning and after we  
8 had come back, when our day was over, yes,  
9 ma'am.

10 Q. So only twice a day, at the  
11 beginning and end of your day?

12 A. Yes, ma'am. Yes, ma'am.

13 Q. Okay. And did you volunteer for  
14 overtime?

15 A. Did I always volunteer for  
16 overtime? Yes, ma'am.

17 Q. Well, not -- okay. Would you say  
18 you volunteered -- based on your experience of  
19 your co-workers and what you saw every day,  
20 would you say you volunteered for overtime more  
21 or less often than your co-workers?

22 A. More.

23 MS. MURAROVA: I have no further  
24 questions.

25 ADMINISTRATIVE LAW JUDGE: Anything

1 from the Union?

2 MS. NEWPORT: Yes, Your Honor.

3 REDIRECT EXAMINATION OF SUNGA COPHER

4 BY MS. NEWPORT:

5 Q. Mr. Copher, did anyone from the  
6 company ever tell you that you had missed any  
7 meetings, that there were any meetings you were  
8 supposed to attend, but you were not there?

9 A. No.

10 Q. Did anybody from the company ever  
11 tell you that you were not working --

12 A. No.

13 ADMINISTRATIVE LAW JUDGE: I didn't  
14 understand the question.

15 Q. That you were not working enough  
16 hours?

17 A. No. No, ma'am.

18 Q. Did anyone from the company ever  
19 talk to you about wasting time?

20 A. No, ma'am.

21 Q. And when Ben Brooks terminated you,  
22 did he mention anything about your overtime as  
23 a reason for your termination?

24 A. No, ma'am.

25 Q. Did he mention -- did Ben Brooks

1 mention anything about you staying behind while  
2 other workers were handling late loads?

3 A. No, ma'am.

4 ADMINISTRATIVE LAW JUDGE: Well, in  
5 your affidavit, you said he mentioned about  
6 some complaints he had about you?

7 THE WITNESS: Yes.

8 ADMINISTRATIVE LAW JUDGE: Did he  
9 tell you what those complaints were?

10 THE WITNESS: No, sir.

11 Q. Did you ask?

12 A. Yes, but he said he couldn't tell  
13 me that.

14 Q. Okay. And the reason was just bad  
15 attitude and poor work performance; is that  
16 right?

17 A. Poor work ethic and negative  
18 attitude.

19 Q. Okay.

20 MS. NEWPORT: Nothing further.

21 ADMINISTRATIVE LAW JUDGE:  
22 Anything on re-cross?

23 MR. HORTON: Please, Your Honor,  
24 just a couple.

25 RE-CROSS EXAMINATION OF SUNGA COPHER

1 BY MR. HORTON:

2 Q. Mr. Copher, in terms of the  
3 accident with the loader, you were -- you can  
4 -- I just want to test your level of confidence  
5 about saying it happened in 2017. That was  
6 almost three years ago. You're sure it was in  
7 2017?

8 A. It was just right after Smyrna had  
9 bought the -- it was -- I'm pretty sure it was  
10 2017, because they had just brought in the new  
11 loader, because our old loader, it broke down,  
12 and then we had rented one, and they brought  
13 this loader in. I'm -- I think it was 2017.

14 Q. I'm sorry, Mr. Copher. Were you  
15 saying it was a rented loader that you damaged  
16 or --

17 A. Oh, no. No. They had rented  
18 loader previously to that. I was trying to  
19 think of the time in my head. Our loader that  
20 we had broke down, and then we had a rental  
21 there, and then they got rid of the rental and  
22 brought in the new one. And it was shortly  
23 after they had taken over, so I'm guessing -- I  
24 think it was in 2017.

25 Q. All right. Sounds like you don't

1 know for sure?

2 A. I'm confident, but I'm really not  
3 for certain. I'm just guessing it was probably  
4 about 2017.

5 Q. And it was a new loader that you  
6 damaged?

7 A. It was -- yes, it was a new loader  
8 brought in. It bent the handle on the back of  
9 it.

10 Q. Okay. And then, Mr. Copher, when  
11 you met with Mr. Brooks and he discharged you  
12 during that meeting, he told you that he had  
13 gotten a couple of complaints, and you asked  
14 him who had filed them, right? And you didn't  
15 answer the question --

16 A. I asked him who they were, and he  
17 said he couldn't tell me that.

18 Q. All right. I don't see in your  
19 affidavit where you said that you asked him  
20 what they said; is that fair?

21 A. I just remember what Mr. Brooks --  
22 when I asked Mr. Brooks, I asked him who gave  
23 him complaints and what were the issues, and  
24 what's the problem. And he said he could not  
25 -- he couldn't tell me that.

1 Q. Okay.

2 MR. HORTON: Your Honor, that's all  
3 I have. Thank you.

4 ADMINISTRATIVE LAW JUDGE: Okay.  
5 Can he step down?

6 MS. NEWPORT: Yes. Let me go take  
7 care of that. Well, who is the -- actually,  
8 while we're doing that, who is the next  
9 witness?

10 MS. MURAROVA: Nicole Long.

11 MS. NEWPORT: Okay.

12 ADMINISTRATIVE LAW JUDGE: Okay.  
13 Just -- Mr. Horton, and other counsel for  
14 Respondents, you have to delete the affidavits  
15 from your computers now. If we were in a live  
16 hearing, you would have to hand them back.  
17 You're not allowed to keep them up.

18 Okay. Do we need to take any time  
19 off while you get the other witness, or are we  
20 ready to go?

21 MS. MURAROVA: Now might be a good  
22 time for a five-minute break. I would love to  
23 grab a coffee, Your Honor. Just five minutes.

24 ADMINISTRATIVE LAW JUDGE: Sure.  
25 Five -- see you in five.

1 (Recess is taken.)

2 MS. NEWPORT: Just so everyone  
3 knows, that Mr. Copher has now joined me in  
4 this room, and Mr. Highly is in another room  
5 with Mr. Suetholz listening into the  
6 proceedings.

7 ADMINISTRATIVE LAW JUDGE: All  
8 right.

9 MR. HORTON: Your Honor, I have a  
10 couple of housekeeping matters.

11 MR. HORTON: Your Honor, Exhibit 69  
12 and 52, I failed to ask that they be admitted,  
13 and I would do so now.

14 ADMINISTRATIVE LAW JUDGE: Okay.  
15 I'm sorry, say again. Which ones do you want  
16 to admit into the record?

17 MR. HORTON: Yes, sir. Exhibits 69  
18 and 52. 69 are the text messages. 52 are the  
19 hours -- overtime hours for the Winchester  
20 plant for 2019.

21 ADMINISTRATIVE LAW JUDGE: Is there  
22 any objection?

23 MS. MURAROVA: I don't have any  
24 objection to 69, but I do have an objection to  
25 52. I know that the witness was shown this

1 document, but he didn't testify about knowing  
2 it or understanding it or knowing it -- where  
3 it came from, authenticating it, nothing like  
4 that.

5 So I believe if Respondent wants to  
6 enter this exhibit into evidence, there would  
7 need to be some more testimony about where this  
8 document came from, who created it, and what it  
9 means.

10 ADMINISTRATIVE LAW JUDGE: I mean,  
11 is there any issue -- any question as to its  
12 authenticity?

13 MS. MURAROVA: Perhaps not  
14 authenticity, but certainly the contents of the  
15 of the hours -- of the hours summary report.  
16 There wasn't any testimony about the knowledge  
17 about this document at all.

18 They might as well have shown him  
19 some scribbles and asked him, "Hey, you know,  
20 is this a picture of what it is?"

21 There's some actual content in  
22 there that is hearsay.

23 MR. WATRING: Your Honor, that's  
24 fine. We'll proceed to authenticate all  
25 company exhibits as necessary.

1 ADMINISTRATIVE LAW JUDGE: Okay.  
2 Well, she didn't object to 69, so I'm going to  
3 receive 69.

4 MS. NEWPORT: I have an objection  
5 about 69. There's some documents in the back.  
6 Mr. Copher was not asked about them, but I  
7 would also submit that he had nothing to do  
8 with those documents, and so I just am not sure  
9 that there was any sort of foundation given for  
10 Mr. Copher's knowledge of all of these pages.

11 MR. HORTON: Your Honor, I asked  
12 him about Pages 1 and 2 of Exhibit 69, what's  
13 marked as SRM\_ULP 001 and SRM\_ULP 002, and we  
14 can limit that exhibit to those two pages.

15 MS. NEWPORT: That would be fine.

16 ADMINISTRATIVE LAW JUDGE: Okay.  
17 I'm going to receive Pages 1 and 2 of Exhibit  
18 -- Respondent's Exhibit 69.

19 - - - - -

20 (Thereupon, Respondent's Exhibit 69  
21 was received.)

22 - - - - -

23 MR. WATRING: While we're on 69,  
24 that is the document there was redactions, I  
25 believe, and I would just remind Your Honor --

1 ADMINISTRATIVE LAW JUDGE: Okay.

2 So the redactions on the third page, the  
3 sign-up sheet?

4 MR. WATRING: No. No. In the text  
5 messages, there were redactions.

6 MR. HORTON: Exhibit 69.

7 MS. NEWPORT: And I will get that  
8 unredacted version to you, Your Honor. They're  
9 talking about pages of the document that have  
10 not been admitted into evidence right now.

11 ADMINISTRATIVE LAW JUDGE: All  
12 right. So I'm going to look at them in camera  
13 at some point and decide whether they're  
14 entitled to see the redacted material, and then  
15 they can decide whether they want it in the  
16 record.

17 MR. WATRING: Just -- I don't think  
18 it's today, Judge, but at some point in time,  
19 we'll need to know whether we're going to have  
20 an unredacted version for cross-examination.

21 ADMINISTRATIVE LAW JUDGE: Okay. I  
22 receive 69, Pages 1 and 2, and there's some  
23 things about the exhibit that are still  
24 outstanding, right?

25 MR. WATRING: Yes.

1 MS. MURAROVA: And before I start  
2 my direct examination, I'm going to e-mail  
3 everyone a copy of one exhibit I'm going to be  
4 asking this witness about, just so everyone --  
5 so we don't have to interrupt the testimony as  
6 it's going around. So I'll just do that right  
7 now. Please bear with me for a moment.

8 ADMINISTRATIVE LAW JUDGE: Okay.

9 MS. MURAROVA: It's got a few  
10 pages, and it may be easier to look at on  
11 paper. I guess we can -- if you have time for  
12 someone to do that while we do this, that would  
13 be great, otherwise, he will be able to pull it  
14 up on her computer. I'm just trying to make  
15 this as easy as possible for the witness.

16 MR. SUETHOLZ: We'll get it printed  
17 as soon as we receive it.

18 MS. MURAROVA: Okay. Thank you.

19 MR. ESKENAZI: Do you want me to  
20 share a screen, like Mr. Horton asked me?

21 MS. MURAROVA: I think it's fine,  
22 as long as she -- it's only the one documents,  
23 and everyone has it. I just e-mailed it to  
24 everyone. There's no need to share the screen.

25 ADMINISTRATIVE LAW JUDGE: Ms.

1 Long, I'm going to swear you in.

2 (Witness sworn.)

3 ADMINISTRATIVE LAW JUDGE: Okay.

4 Have a seat.

5 NICOLE LONG, called for examination and  
6 said as follows:

7 DIRECT EXAMINATION OF NICOLE LONG

8 BY MS. MURAROVA:

9 Q. Hi. Ms. Long, my name is Zuzana  
10 Murarova. We've spoken before. I'm going to  
11 ask you a few questions.

12 First, what's your full name?

13 A. Nicole Long.

14 Q. And are you familiar with the  
15 company Smyrna Ready Mix?

16 A. Yes.

17 Q. How do you know that company?

18 A. I got hired in August 7th of 2018.

19 Q. And when was your last day working  
20 for the company?

21 A. Technically, my paperwork, January  
22 10, 2020.

23 Q. Okay. And we'll get into the  
24 details of your last day later, but I would  
25 like to talk to you a little bit about where

1 specifically did you work for Smyrna Ready Mix?

2 A. Plant 217, out of Winchester,  
3 Kentucky.

4 Q. What did you do for Smyrna?

5 A. I was mixture truck operator  
6 driver.

7 Q. What does that entail?

8 A. That entails loading trucks and  
9 driving in -- getting them to the job safely,  
10 making sure the concrete is correct, making  
11 sure you got directions before you leave the  
12 yard, and that's what that entails.

13 Q. Okay. About how many trips a day  
14 would you be making while working at the  
15 Winchester plant?

16 A. Anywhere -- we would usually  
17 average anywhere from four -- I would say on a  
18 real good day, ten. It depends on how close  
19 the job was. So anywhere from four to ten  
20 times a day.

21 Q. Did you work full time or part  
22 time?

23 A. Full time.

24 Q. And what hours did you work?

25 A. On the average, I would say

1 anywhere from about 55 hours a week, 50 to 55  
2 hours a week was my average work week.

3 Q. Was there a specific time that you  
4 typically came in?

5 A. I would say about 80 percent of the  
6 time, it was usually 7:00 a.m. in the morning.  
7 Sometimes the hours would vary to an earlier  
8 start time, depending on when the truck needed  
9 to be at the job.

10 Q. Okay. Now, before you worked at  
11 SRM, had you ever worked in any other concrete  
12 plants before?

13 A. Yes, from Northwest Indiana. I  
14 worked at a concrete plant called Ozinga Ready  
15 Mix. I worked there prior to that, and when I  
16 first moved here, for a short time, I worked  
17 for Triple Crown Ready Mix for three months.

18 Q. So about how many years of  
19 experience in concrete would you say you had  
20 before coming to SRM?

21 A. About six years, a little over six  
22 years.

23 Q. Okay. In your prior job, were  
24 there ever -- in the concrete industry, were  
25 there ever seasonal layoffs?

1           A.     Now during -- I'm from west  
2     Indiana, where there was a lot more snow, so we  
3     would make it a month off at that time. So  
4     once in a blue moon, we would get a layoff, but  
5     actually my times with Ozinga, I believe I only  
6     had like one period where we had a layoff.

7           Q.     Okay. Was there ever a layoff  
8     during your time working at SRM? A seasonal  
9     layoff, I mean?

10          A.     No.

11          Q.     Okay.

12          A.     40 hours on the date of my hire.

13          Q.     Who hired you at SRM?

14          A.     Ben Brooks.

15          Q.     What, if anything, did he tell you  
16     about potential layoffs when you were hired?

17          A.     Absolutely nothing.

18          Q.     Okay. What, if anything, did he  
19     tell you about guaranteed hours?

20          A.     Guaranteed 40. No matter what time  
21     of year it was, guaranteed 40 hours.

22          Q.     And you said that in northwest  
23     Indiana, there was -- the concrete industry was  
24     impacted by the weather?

25          A.     Yes, ma'am.

1 Q. And did you find when you moved to  
2 Kentucky, that weather was a -- was impactful  
3 on delivering concrete in Kentucky?

4 A. Nowhere near as bad as northwest  
5 Indiana.

6 Q. So you said that you were  
7 guaranteed 40 hours. Was there ever a time  
8 that you feel like you were less busy than  
9 other times?

10 A. Usually in the wintertime, it would  
11 slow down. And then other times, like if it  
12 were raining, you know, we would have a slower  
13 day, of course. But in the wintertime, of  
14 course, we slowed down.

15 Q. What would you do if it was  
16 slowing?

17 A. Washed trucks, shoveled underneath  
18 the plants. We would clean around the shop.  
19 We would sit inside the trailer. You know, a  
20 break trailer, like where all the office was.  
21 We would do stuff like that, and just try to  
22 keep ourselves busy normally, cleaning and  
23 doing other little things around our yard.

24 Q. Did you ever receive any discipline  
25 while working for Smyrna?

1 A. Never.

2 Q. Did you ever receive any raises?

3 A. Yes.

4 Q. When did you receive raises?

5 A. After my two months from the date I  
6 got hired, after two months, I was guaranteed  
7 an hour -- or one dollar raise, excuse me,  
8 after two months. And then in April of 2019, I  
9 received the other raise, which is also a  
10 dollar, so I got two raises.

11 Q. Do you know what the raise in April  
12 2019 was based on?

13 A. Yes. Like with any job, I would  
14 guess showing up every day, doing your job as  
15 expected, and just being a good employee.

16 Q. Did you receive any kind of  
17 evaluation?

18 A. Our boss did the evaluations. He  
19 wrote it like -- Aaron Highly wrote it down,  
20 like our evaluation on our performance and  
21 everything else like that. So I'm going to  
22 assume that he did, considering I got the  
23 raise.

24 Q. Okay. But you never saw something  
25 in paper?

1 A. No, ma'am, I didn't.

2 Q. Okay. Do you know how -- what the  
3 maximum raise you were entitled to was?

4 A. A dollar.

5 Q. And did you get the full dollar?

6 A. Yes, ma'am.

7 Q. At any time during your tenure with  
8 Smyrna, were you ever told you needed to step  
9 up your performance?

10 A. Never, no.

11 Q. At any time during your tenure with  
12 Smyrna, were you told that the plant was  
13 underperforming?

14 A. No. At one time, yes, and that was  
15 after they applied -- Aaron Highly, they did  
16 say that the plant was underperforming, so I  
17 take that back. Excuse me. While Aaron was  
18 there, no.

19 Q. Okay. So before Mr. Highly was  
20 fired, were you ever told the plant was  
21 underperforming?

22 A. No. If anything it was excelling.

23 Q. What makes you say it was  
24 excelling?

25 A. Because hearing the records before,

1 from 2018 to 2019, and knowing that we doubled  
2 in performance and everything, and plus as busy  
3 as we were, running it as we did, to stock up  
4 our loads, I knew it was excelling, just from  
5 being in the industry so long.

6 Q. When you say you doubled the  
7 performance, how do you measure that?

8 A. I guess by the loads, and then  
9 Brooks would come in and told us that we  
10 doubled in our loads, doubled in our sales,  
11 from 2018 to 2019, so it came out of his mouth  
12 that -- on one day, that the plant had doubled  
13 and did a great job in 2019.

14 Q. Okay. About when was it that Ben  
15 Brooks told you that the performance had  
16 doubled?

17 A. November.

18 Q. Okay.

19 A. '19.

20 Q. And we'll talk about that meeting  
21 more, but for now, I would like to back up a  
22 little bit and ask you about the fall of 2019.  
23 Were you ever sent to work at plants other than  
24 the Winchester plant in the fall of 2019?

25 A. In the fall? At that time, just

1 probably Georgetown or Nicholasville.

2 Q. And what about the summer of 2019?

3 A. The summer of 2019, we got sent  
4 everywhere.

5 Q. Okay. Can you give me some  
6 examples of places you were sent to?

7 A. Taylorsville, Shelbyville,  
8 Florence. I myself went to Louisville at a  
9 time.

10 Q. Uh-huh. Okay.

11 A. Yes.

12 Q. So I would like to talk to you  
13 about how far these places are from Winchester.  
14 About how far -- whether in miles or driving  
15 time, whatever is the easiest way for you to  
16 describe. How far is Taylorsville from  
17 Winchester?

18 A. I would say, in a truck, it's an  
19 hour and 45 minutes to two hours.

20 Q. What about Shelby -- is that each  
21 way?

22 A. One way, ma'am.

23 Q. Okay. What about Shelbyville, one  
24 way?

25 A. Shelbyville, I would say about an

1 hour and hour -- about an hour and a half, I'm  
2 guessing.

3 Q. What about Florence?

4 A. Florence was at least two hours.

5 Q. Louisville?

6 A. Honestly, I couldn't give you a  
7 correct answer from Winchester, because I got  
8 sent to Louisville from Shelbyville, so I can't  
9 give you a correct answer.

10 Q. Okay. In the summer of 2019, how  
11 often were you being sent to a plant other than  
12 the Winchester plant?

13 A. Two to three times a week.

14 Q. Do you know how it was decided who  
15 was being sent out?

16 A. We rotated drivers. Every day,  
17 Aaron would pick two different drivers or  
18 however many were needed, and that's how the  
19 decision was made.

20 Q. Where -- if you were traveling to  
21 work at other plants, where would you clock in?

22 A. Winchester.

23 Q. How would you get to the other  
24 plant?

25 A. My Ready Mix truck.

1 Q. And where would you get -- where  
2 would you fill up the concrete if you were  
3 going to a plant other than Winchester?

4 A. Upon the arrival at the other  
5 plant.

6 Q. Okay.

7 A. I would load up. Like if we got  
8 sent to Florence, we would load up our truck  
9 there.

10 Q. Okay. Is there a word that you  
11 guys use for when you go up to another plant  
12 empty?

13 A. Deadheading. We call it  
14 deadheading.

15 Q. If you were supposed to be  
16 reporting to a plant other than Winchester,  
17 what time were you expected to show up at  
18 Winchester?

19 A. I depends on what time we had to be  
20 at the other plant. If I had to be in Florence  
21 at 7:00, for example, I would usually show up  
22 at Winchester by 4:45 to inspect my truck, and  
23 at least give myself two hours to get up there.

24 Q. What, if anything, were you told  
25 about why you were being sent as far as

1 Florence?

2 A. Because they needed drivers up  
3 there. They didn't have enough help.

4 Q. How did you feel about having to go  
5 up there?

6 A. I didn't much care for it at all.  
7 I didn't like it at all. They weren't very  
8 polite to us when we got there. They weren't  
9 very helpful about anything, so I wasn't crazy  
10 about going.

11 Q. What, if any, impact did traveling  
12 to the other plants have on the Winchester  
13 plant?

14 A. We were short on trucks in our  
15 plant for a lot of the jobs that we had to do,  
16 and, therefore, the other co-workers would have  
17 to really hustle and not get lunch or be able  
18 to even take a break to hopefully try to keep  
19 up, because we were short trucks being sent up  
20 that way.

21 Q. Did you ever have to do work at  
22 Winchester after coming back from another  
23 facility?

24 A. No. Aaron didn't do that to us,  
25 no, unless we were extremely busy, but,

1 overall, in general, no.

2 Q. All right. Did you ever -- even  
3 when you guys were being sent to other  
4 facilities and it was busy and other people had  
5 to hustle, did you ever hear any complaints of  
6 customers not getting products on time?

7 A. Yes. Yes.

8 Q. Did you ever talk to your  
9 co-workers about your concerns about being sent  
10 to Florence and the other facilities?

11 A. Yes.

12 Q. What -- I guess who did you talk  
13 about first? Who did you talk to?

14 A. We would talk to each other and  
15 complain about having to go up there. But if  
16 we refused to go up there, we were -- my boss,  
17 Aaron Highly, was instructed by Ben Brooks to  
18 just fire us if we refused to go.

19 Q. Okay. So first -- when you say all  
20 of us, can you give me some names of some folks  
21 that talked about your --

22 A. James Bowling -- actually, I can't  
23 remember his name. Scott, Chris Sizemore, all  
24 my co-workers. We were not very happy with  
25 having -- oh, Jason. We were -- none of us

1 were happy about having to go up there. Sunga,  
2 of course. Sunga, and, Aaron, of course, he  
3 would -- we weren't happy about having to go.

4 Q. So it sounds like you talked to  
5 Aaron about your concerns?

6 A. Yes.

7 Q. And when did you first talk to  
8 Aaron about your concerns about going up there?

9 A. Probably after having to go up  
10 there two to three times a week. It was  
11 getting very tiring and aggravating, so we  
12 started directing our concerns after probably a  
13 couple weeks of them sending us up there  
14 constantly.

15 Q. Okay. Can you give me at least a  
16 season or a month when you think you first  
17 starting talking to him about it?

18 A. Probably spring, early summer, late  
19 spring, early summer.

20 Q. And what was his response to you  
21 when you shared these complaints?

22 A. He said, "If you guys don't go, I  
23 am instructed by Ben Brooks to fire you." And  
24 he wasn't happy about it either, because it  
25 shorted him trucks.

1 Q. Are you aware that at some point,  
2 there was some talk about potential  
3 unionization at SRM?

4 A. Yes, I was.

5 Q. When did you first learn about  
6 that?

7 A. I believe right around October of  
8 '19.

9 Q. Who did you learn about it from?

10 A. I learned about it from Sheldon  
11 Walters and Sunga.

12 Q. What did they tell you?

13 A. They were discussing that Sunga had  
14 mentioned to some of the co-workers that he was  
15 meeting with some union gentleman about looking  
16 into starting a union over there.

17 Q. And did he say why he was meeting  
18 with him?

19 A. Just to look into the union and  
20 basically about the aggravation of having to go  
21 to all these different plants and work all  
22 these extra hours.

23 Q. Okay. And do you know if he ever  
24 -- did he ever tell you if he did meet with  
25 that union rep?

1           A.     No one ever told me that they did.  
2     I knew that they did.  You know, just from  
3     people talking around the plant, I knew that  
4     they did go.

5           Q.     Okay.  Did they tell you the Union  
6     rep's name?

7           A.     John.

8           Q.     Did you ever meet with John from  
9     the Union?

10          A.     No.  I was in fear for my job.

11          Q.     Did Sunga invite you to meet with  
12     the gentleman from the union?

13          A.     Yes.  Yes.

14          Q.     Are you aware that -- why were you  
15     in fear for your job?  What was that based on?

16          A.     Because being up north and I was in  
17     a union for many years, I've seen a lot of --  
18     like I consider ours a smaller plant.  I've  
19     seen people that went to start a union in these  
20     smaller plants.  I've seen employees like the  
21     owners of the company.  I've seen them come in  
22     and fire everybody --

23                 MR. HORTON:  Your Honor, I'm sorry.  
24     I would object to the relevance of Ms. Long's  
25     experience at other plants.

1 ADMINISTRATIVE LAW JUDGE: I'll  
2 overrule the objection, but I don't know that  
3 it's relevant to -- well, she said she was  
4 concerned about her job, based on her knowledge  
5 and prior experience. Why don't we leave it at  
6 that?

7 MS. MURAROVA: Okay. I'll move on,  
8 Judge.

9 Q. Are you aware that Mr. Copher was  
10 fired from Smyrna?

11 A. Yes.

12 Q. How did you find out that he was  
13 fired?

14 A. Chris Sizemore came into the break  
15 room and told me.

16 Q. Okay. Who is Chris Sizemore?

17 A. He was a prior employee at SRM.

18 Q. About when did you find this out?

19 A. I believe in November, early  
20 November, first, second week in November.

21 Q. Okay. And what did Chris Sizemore  
22 tell you?

23 MR. HORTON: Objection; hearsay.

24 ADMINISTRATIVE LAW JUDGE: I'm  
25 going to allow it. The question is whether he

1 told her. Not whether it's true. We do know  
2 that Mr. -- well, I think so, that Mr. Copher  
3 was fired. Anyway, the objection is overruled.

4 Q. So, Ms. Long, if you could tell the  
5 judge what Mr. Sizemore told you about Sunga?

6 A. He came in, and he said, "Sunga has  
7 been fired," and I was in shock.

8 Q. Why were you in shock?

9 A. Because Sunga actually was a very  
10 good worker. He was -- always showed up on  
11 time, and in my personal opinion, went above  
12 and beyond. He was helpful to the other  
13 drivers, and we were all actually a very good  
14 team, not just Sunga, but everybody there was a  
15 good team. We all took care of each other and  
16 helped each other out on every occasion that we  
17 possibly could. We worked very well together  
18 as a team.

19 Q. Okay. Have you ever had any  
20 trouble with Sunga personally?

21 A. No.

22 Q. Did you ever make any complaints  
23 about Sunga?

24 A. No.

25 Q. Are you familiar with -- you said

1 you are familiar with Ben Brooks. He hired  
2 you?

3 A. Yes.

4 Q. How often would you see him at the  
5 Winchester facility?

6 A. Prior to Sunga's termination and  
7 Aaron's termination, I think I may have seen  
8 him maybe two or three times.

9 Q. And you said that changed when  
10 Sunga was terminated?

11 A. Yes.

12 Q. Okay. And after Sunga was  
13 terminated, how often would you see Ben at the  
14 facility?

15 A. Well, after Sunga was terminated, I  
16 think he was in there maybe two or three days  
17 prior to when he came in and terminated Aaron.  
18 And then after that, he would pop in probably  
19 two to three times a week, and then that kind  
20 of died down.

21 Q. Okay. So directing your attention  
22 to November 28, 2019 -- you mentioned earlier  
23 that in November 2019, there was a time when  
24 Ben Brooks told you that production doubled. I  
25 would like to go back to that. Was that a

1 one-on-one discussion or a meeting?

2 A. It was a meeting. It was amongst  
3 -- all of us were in the break room. It was a  
4 meeting.

5 Q. Okay. Was -- when you say all of  
6 us, is that just the drivers or other people --

7 A. Aaron was in the meeting. I  
8 believe Sunga had already been terminated. I  
9 believe it was a few days after Sunga had been  
10 terminated, and every driver, Sheldon, from  
11 Jason, to all of us that were employees at the  
12 time. He came in and thanked us for our hard  
13 work, told us sales had doubled since prior to  
14 '18, and he thanked us all for going up north,  
15 and then he handed us all a hundred dollar  
16 bill.

17 Q. Okay. He said, "Thank you for  
18 going up north." What do you mean by going up  
19 north?

20 A. Florence and Taylorsville and  
21 Shelbyville, and in my case, Louisville at one  
22 time. And he thanked us all for helping him  
23 out up there and going up there.

24 Q. Have you ever received cash from  
25 the company before?

1 A. Never, no.

2 Q. About how long did the meeting  
3 last?

4 A. I would say that meeting lasted  
5 maybe 15, 20 minutes, if even. I would say 15,  
6 20 minutes, somewhere around there.

7 Q. And was there any discussion about  
8 safety at the meeting?

9 A. Not one -- we had no incidents to  
10 report.

11 Q. What, if anything, was said about  
12 traveling to Florence in the future?

13 A. We didn't really bring it up around  
14 him, because if you did, he would just --  
15 you're fired. We were all scared to even  
16 mention it in front of them, because he would  
17 just tell us, if you don't like it, you're  
18 fired. That was his attitude.

19 Q. Okay. At this meeting, besides  
20 thanking you for going to Florence, did he say  
21 anything else about Florence?

22 A. No, ma'am.

23 Q. Did he say anything about hiring at  
24 Florence?

25 A. He had mentioned that he had hired

1 some more trucks up there, yes.

2 Q. Okay. And did he say anything  
3 about whether he would have to travel up there  
4 in the future?

5 A. He never spoke of that, no. He  
6 never mentioned anything like that at that  
7 meeting.

8 Q. Okay. Do you remember giving an  
9 affidavit in this case to an NLRB investigator?

10 A. I'm sorry; I don't understand the  
11 question.

12 Q. Do you remember talking to an NLRB  
13 investigator back in February and giving him a  
14 statement about what happened?

15 A. Would that be the labor -- yes,  
16 ma'am, I do, yes.

17 Q. Okay. Do you remember telling him  
18 that at the -- at the meeting in November,  
19 Mr. Brooks said that he had hired enough people  
20 up in Florence, and you shouldn't have to go up  
21 there anymore?

22 A. Yes, ma'am.

23 Q. Okay.

24 ADMINISTRATIVE LAW JUDGE: Well, I  
25 mean, you remember giving him the affidavit.

1 Did he, in fact, say that in the November  
2 meeting?

3 A. About Florence? He didn't say it  
4 particularly if we have to go back or not. I'm  
5 sorry; I misunderstood the question.

6 Q. Okay.

7 ADMINISTRATIVE LAW JUDGE: She  
8 asked you about the affidavit, and now I'm  
9 asking you what do you remember Mr. Brooks  
10 saying at the meeting?

11 THE WITNESS: That he had hired  
12 more drivers for Florence, that we shouldn't  
13 need to go up there no more, but he had hired  
14 more drivers for Florence. But shouldn't and  
15 saying not, you don't know with him, because  
16 you never knew what to expect from that  
17 gentleman.

18 Q. Okay. So he said that you -- you  
19 recall -- your recollection is that he did tell  
20 you that you shouldn't have go up there  
21 anymore?

22 A. Yes, but he had made many false  
23 promises in the past, too, so --

24 Q. Okay. Did you ever get any bonuses  
25 while working at SRM?

1 A. We did get a Christmas bonus every  
2 year.

3 Q. Okay. Did you get a Christmas  
4 bonus in 2019?

5 A. Yes.

6 Q. How much was the Christmas bonus?

7 A. It was a 40-hour check, so -- and  
8 then it was taxed, of course, so probably  
9 around \$600 something.

10 Q. And how did you receive that money?

11 A. Direct deposit from the company.

12 Q. Okay. So it sounds like you're  
13 aware that Mr. Highly was terminated; is that  
14 right?

15 A. Yes, ma'am.

16 Q. How did you find out that he was  
17 terminated?

18 A. Chris Sizemore again. Chris  
19 Sizemore came and told me.

20 Q. Okay. And what did Chris Sizemore  
21 tell you?

22 A. That they had just fired Aaron.

23 Q. Did he tell you why?

24 A. Nobody knew why, so he did not tell  
25 me why, no.

1 Q. Have you ever had issues with  
2 Mr. Highly as the plant manager?

3 A. No.

4 Q. Have you ever heard any other  
5 employees complain about Aaron Highly as a  
6 plant manager?

7 A. No. He was probably one of the  
8 best managers I've ever worked for, so no.

9 Q. Who took over when Mr. Highly was  
10 fired?

11 A. In my personal opinion, nobody. We  
12 had James Goss and Chris -- what's his last  
13 name? Chris Newell came in and -- if you want  
14 to haul that thing over, they came in and were  
15 loading trucks.

16 Q. Okay. Was there any impact on --  
17 did you see any impact on production after  
18 Mr. Highly was fired?

19 A. Yes. Yes.

20 Q. What was the impact?

21 A. They were turning call away from  
22 customers. Trucks were always late getting to  
23 jobs. There were never enough trucks  
24 scheduled. There were never enough trucks like  
25 scheduled. One truck would get sent out, and

1 there weren't enough trucks there. If it was  
2 30 yards, to get sent out after to make the  
3 concrete pour properly the way it should. So  
4 it was very poorly managed, and a lot of  
5 customers start complaining, a lot.

6 Q. Were there any other staffing  
7 changes that happened after Mr. Highly was let  
8 go?

9 A. When Mr. Highly got let go, one of  
10 our employees, Scott, he walked out. And I  
11 believe within the same week, Chris Sizemore  
12 walked out, too, because it was so poorly  
13 managed.

14 Q. Did you ever talk to Scott about  
15 why he walked out?

16 A. We tried stopping him, and he said  
17 he was not going to -- he just didn't really  
18 want to work under Chris Newell, or let alone,  
19 James Goss.

20 Q. Uh-huh. You said no one ever told  
21 you why Mr. Highly was fired. Did you have any  
22 suspicions for why he was fired?

23 A. Well --

24 MR. HORTON: Objection to  
25 relevance, Your Honor.

1 ADMINISTRATIVE LAW JUDGE:

2 Sustained.

3 MS. MURAROVA: Okay. I'll move on.

4 Q. After Mr. Highly was terminated,  
5 what, if any, conversation did you have about  
6 your job with anyone in management?

7 A. I asked Ben Brooks right to his  
8 face if I had to worry about losing my job.

9 Q. And why did you feel the need to  
10 ask him that question?

11 A. Because they had fired Aaron  
12 Highly. They had come in and they fired Sunga.  
13 Two employees had worked out. It was very  
14 chaotic at the plant at the time, so everybody  
15 was in very much fear for their job.

16 Q. Okay. And what did Ben Brooks tell  
17 you?

18 A. I asked him to his face, and he  
19 said, "No, the rest of you are safe."

20 Q. Did you -- how many times did you  
21 talk to Ben Brooks about this?

22 A. You know, I'm sure I probably asked  
23 him a couple times about that, and I also asked  
24 James Goss, because he was at the plant  
25 helping.

1 Q. What did James Goss say?

2 A. "Yeah, the rest of you are fine.  
3 You guys are good." Well, I won't talk like  
4 him, but, "The rest of you guys are good.  
5 You're safe." So that's what he told me.

6 Q. Before the plant shut down, did  
7 anyone ever warn you that the plant might be  
8 shutting down?

9 A. Never, no.

10 Q. Were you ever told that there might  
11 be layoffs because of weather?

12 A. No.

13 Q. Do you know if there was any hiring  
14 going on at that time?

15 A. I guess they were taking phone  
16 calls. They had brought -- one time I went in  
17 -- and I only seen the guy, so I can't recall  
18 his name, but they had brought him in, and they  
19 were talking about -- talking to him about  
20 taking over Aaron Highly's position, and I  
21 heard Goss -- James Goss on the phone on a few  
22 different occasions, "Yeah, we're hiring. Come  
23 on in."

24 And there was a couple people that  
25 came in and actually picked up the applications

1 while we were there.

2 Q. Okay. And this was all after  
3 Mr. Highly was terminated?

4 A. Yes, ma'am. Yes.

5 Q. And you're aware that plant is now  
6 closed?

7 A. Yes, if you want to call it that.  
8 They've been loading trucks out of there.

9 Q. Okay. When did you find out that  
10 you would be losing your job?

11 A. It was -- I can't give you the  
12 exact date. Well, let's see if you subtract  
13 seven from one -- around like probably the  
14 second of January, maybe. I believe Ben Brooks  
15 came in on a Monday or Tuesday. I can't  
16 remember the exact date, is when he told me  
17 that we were losing our jobs, yes.

18 Q. Did he talk to you in person, or  
19 was it a meeting with several people?

20 A. Oh, he talked to me face to face.

21 Q. Do you remember where you were when  
22 you spoke?

23 A. Actually, right by the front door  
24 in the break room.

25 Q. What did he tell you?

1           A.       He come up to me and said he needed  
2       to talk to me, and I'm like, "Yes?"

3                   And he was like, "Well, I just  
4       wanted to tell you that I'm laying you off, and  
5       I'm giving you two weeks severance pay."

6                   Well, I had questions. I said,  
7       "Well, if you're laying me off," I said, "What  
8       do I need severance pay for?"

9                   And he said, "Basically, what I'm  
10      telling you is you're fired," and he's like,  
11      "We're getting repairs on the plant." And he  
12      was like, "You could come in and fill out an  
13      application in March for rehire." And I  
14      basically didn't want to even speak to him. I  
15      just told him, I said, "You picked a hell of a  
16      time of year to do this." And I just -- oh,  
17      and he also told me, "Don't tell nobody else.  
18      I want to talk to each one of you  
19      individually," so I just walked out that front  
20      door.

21           Q.       Okay. So you said it was around  
22      January 2nd, a Monday or Tuesday. Did he say  
23      how soon after the conversation the plant would  
24      be closing?

25           A.       Pardon me?

1 Q. Did he say how soon the plant would  
2 be -- or how soon your employment would be  
3 ending?

4 A. He told me that the last working  
5 day was Friday, which was on January 7th.

6 Q. So I would like to direct your  
7 attention to your last day of work. And I  
8 believe that -- you actually say it was January  
9 7th. You had told me earlier -- when we were  
10 speaking earlier, you said you thought January  
11 10th was your last day.

12 A. Well, technically, January 7th, but  
13 Monday was the day he had us come in and sign  
14 them pieces of paper that he had us sign.

15 Q. Okay. So let's talk about the  
16 Friday, your actual last working day.

17 A. Okay.

18 Q. Can you walk me through what  
19 happened that day?

20 A. Yes, ma'am. We come in Friday, and  
21 I remember it was pouring down rain, and he sat  
22 us all down at the table, and he said, "Instead  
23 of two weeks, I'm giving you four weeks  
24 severance pay, but you have to sign a piece of  
25 paper in order to get the severance pay, let

1 alone the layoff."

2 Q. Did he give you an option of what  
3 would happen if you didn't sign the piece of  
4 paper?

5 A. If we didn't sign the piece of  
6 paper, we wouldn't get our severance pay.

7 Q. And you say he sat you all down.  
8 Who are you referring to when you say "all"?

9 A. All the employees, the current  
10 employees that were working there. Every  
11 single one of us was sitting down at that  
12 table.

13 Q. Does that include the mechanics?

14 A. No; the mechanics were not there.  
15 I'm sorry. I was speaking of the drivers. No,  
16 the mechanics were not in the room at the time.

17 Q. And was anyone else from management  
18 there besides Ben Brooks?

19 A. James Goss.

20 Q. Okay. And did he have the form  
21 ready for you sign on that day?

22 A. On Friday, no, ma'am. Nope.

23 Q. Were there any other questions or  
24 discussions on that Friday?

25 A. That Friday, not that -- I left,

1 and I -- if there was, I wasn't -- I really  
2 didn't discuss nothing with them. I believe it  
3 was that Friday or Monday that I asked about  
4 the eligibility for rehire, and he said that we  
5 had to come in and start completely over from  
6 scratch, and it wouldn't be until the end of  
7 March, if he even rehired us back.

8 Q. Okay. So let's talk about the  
9 Monday when you came in. What time did you  
10 come in on Monday?

11 A. I actually had a low tire on the  
12 truck, so I was a little bit late, but we were  
13 supposed to be there like at 8:30. I maybe got  
14 there at like quarter to 9:00.

15 Q. Okay. Where did you go when you  
16 arrived?

17 A. I went straight to the break room.

18 Q. Who all was there?

19 A. All the employees that were there,  
20 except for the mechanics. All the employees  
21 that had got terminated, I should say.

22 Q. Okay. Who was there representing  
23 management?

24 A. Just Ben Brooks.

25 Q. And so what happened when you got

1 there?

2 A. He handed us the piece of paper,  
3 and that's -- we had asked if we don't sign --  
4 I believe that's when I asked if we don't sign  
5 it, and he said, "Well, then, you don't get  
6 severance pay."

7 So during the time of year, we  
8 signed it, and he didn't even really stick  
9 around. He went into the office and started  
10 loading up boxes in his truck. Didn't really  
11 sit back there or really speak to us or  
12 nothing, so that was -- I got to make a copy of  
13 it, too.

14 Q. About how long did you have to  
15 review the document?

16 A. You know what, maybe 10, 15  
17 minutes. He was rushing.

18 Q. What, if anything, were you told  
19 about taking it home to review it?

20 A. No; we weren't allowed. We had  
21 turn it in right then and there, and we  
22 wouldn't get our severance pay if we didn't  
23 sign it right then and there.

24 Q. Were there any other questions  
25 asked?

1           A.     I didn't ask any, none that I can  
2 recall. I didn't ask any.

3                     - - - - -

4                     (Thereupon, General Counsel's  
5 Exhibit 3 was marked for purposes of  
6 identification.)

7                     - - - - -

8           Q.     I'm going to show you what's been  
9 marked as General Counsel's Exhibit 3.

10                    MS. MURAROVA: Do we have a  
11 hardcopy for Ms. Long to look at?

12                    MR. SUETHOLZ: She should have it  
13 there.

14           Q.     Okay. It says "Separation  
15 Agreement and General Release" at the top. Do  
16 you recognize this document?

17           A.     Yes.

18           Q.     Okay. What is it?

19           A.     It's -- I believe it's -- yeah,  
20 this is basically our fire and severance pay  
21 papers, isn't it? I believe so.

22           Q.     Was this the document you were  
23 talking about signing on that Monday?

24           A.     I need time to look at, because  
25 there's a part in here where it says we're not

1 eligible for rehire, and -- let me look. Here  
2 it is, in Section 14. Yeah, I read it. Yes,  
3 the document.

4 Q. This is the document that you were  
5 just telling us about?

6 A. Yes.

7 Q. And that's your name at the very  
8 top of the -- your signature at the top of the  
9 first page?

10 A. Yes, ma'am.

11 Q. And then on Page 6, is that your  
12 signature at the top of that page, above  
13 "Employee name"?

14 A. Yes.

15 Q. And there's a date of January 13th.  
16 Is it possible that the Monday was the 13th,  
17 then?

18 A. It may have been, yes. I have the  
19 10th -- I have 7th for Friday, and, yes, so it  
20 was the 13th. Sorry about that. Yes.

21 Q. Okay. So then the Friday would  
22 have been January 10th?

23 A. Yes.

24 Q. And you signed this on a Monday,  
25 the 13th?

1 A. Yes. Sorry about that.

2 Q. Okay. So you just pointed out at  
3 Section -- something about not being eligible  
4 for rehire. Why did you point that out? Was  
5 that something you were concerned about?

6 A. Yeah, because the day he fired me,  
7 he told me that everybody would be eligible for  
8 rehire at the end of March, and I seen that in  
9 there, and, obviously, he put in there that we  
10 were are not eligible for rehire by No. 14.

11 Q. Okay. I would like to direct your  
12 attention to Page 2, No. 6. Okay. Actually, I  
13 want you to look at the nondisparagement  
14 clause, which is -- let me just ask you this:  
15 Did you read through this whole -- did you have  
16 enough time to read through this whole thing?

17 A. No, not at the time I signed it,  
18 no.

19 Q. Were you told that you could talk  
20 to an attorney about this?

21 A. No. If we didn't sign it, we  
22 didn't get the severance pay. That's what I  
23 was told.

24 Q. And you said you -- scratch that.

25 Okay. So you signed this

1 agreement, and what did you do after the  
2 meeting?

3 A. I got in my vehicle and left.

4 Q. And what did you do after that?

5 A. Probably went home and cried. I  
6 was a little upset, to be honest with you.

7 Q. Okay. Did you ever talk to John  
8 Palmer about what happened?

9 A. I had called John Palmer that day  
10 or the day after, and I had set up a meeting.  
11 And I had not -- asked John Palmer to please  
12 not say nothing until after I got my severance  
13 pay, because I was afraid I wouldn't get it.  
14 And then right after that was -- a couple days  
15 after that, after I got my severance pay, I had  
16 talked to John Palmer, and him and I set up a  
17 meeting, and I explained to John Palmer  
18 everything that was -- happened to us over at  
19 the Winchester plant.

20 MS. MURAROVA: Okay. Those are all  
21 of my questions for Ms. Long.

22 ADMINISTRATIVE LAW JUDGE: Does the  
23 union have anything?

24 MS. NEWPORT: Just let me  
25 double-check one second, Your Honor.

1 DIRECT EXAMINATION OF NICOLE LONG

2 BY MS. NEWPORT:

3 Q. Ms. Long, when you started  
4 participating in the investigation for this  
5 trial, for the unfair labor practices, were you  
6 concerned at all about doing that?

7 A. No, not at all. Not concerned at  
8 all, no.

9 Q. The severance agreement that you  
10 signed, do you remember anything specific in it  
11 about not being able to talk to other people  
12 about what you had signed?

13 A. I wasn't really intimidated by what  
14 they had wrote in there. My -- the only fear I  
15 had was them finding out that I talked to John  
16 Palmer before I got my severance pay. That was  
17 the fear that I had, yes.

18 MS. NEWPORT: Okay. Nothing  
19 further.

20 ADMINISTRATIVE LAW JUDGE: Okay.  
21 Cross is next.

22 MR. HORTON: Your Honor, I would  
23 ask for the witness statement, and if I can get  
24 15 minutes to look through that?

25 ADMINISTRATIVE LAW JUDGE: Sure.

1 MS. MURAROVA: We do have one.  
2 It's six pages long, and I'm about to e-mail it  
3 to everyone -- well, I guess I'll start by  
4 e-mailing it to the same place as before,  
5 Ms. Pirtle.

6 ADMINISTRATIVE LAW JUDGE: Is that  
7 right?

8 MR. HORTON: Yes, Your Honor. That  
9 would be fine.

10 ADMINISTRATIVE LAW JUDGE: Okay.

11 MR. SUETHOLZ: Ms. Murarova, will  
12 you e-mail it to us, and we'll print it for  
13 witness as well?

14 MS. MURAROVA: Yes. So I will  
15 e-mail it to you, then.

16 MR. SUETHOLZ: That's fine. Thank  
17 you.

18 ADMINISTRATIVE LAW JUDGE: It looks  
19 like Mr. Horton stepped away, but we'll go off  
20 the -- so we'll go off the record for 15  
21 minutes and then come back after you've had a  
22 chance to look at the affidavit.

23 MR. HORTON: Thank you, Your Honor.

24 ADMINISTRATIVE LAW JUDGE: All  
25 right.

1 (Recess is taken.)

2 MS. MURAROVA: I move for the  
3 admission of General Counsel's Exhibit 3.

4 MR. HORTON: No objection, Your  
5 Honor.

6 ADMINISTRATIVE LAW JUDGE: Okay.  
7 It's received.

8 - - - - -

9 (Thereupon, General Counsel's  
10 Exhibit 3 was received.)

11 - - - - -

12 ADMINISTRATIVE LAW JUDGE: Okay.  
13 Mr. Horton, the ball is in your court.

14 MR. HORTON: Thank you, Your Honor.

15 CROSS-EXAMINATION OF NICOLE LONG

16 BY MR. HORTON:

17 Q. Ms. Long, my name is Bob Horton. I  
18 represent Smyrna Ready Mix in this case, and I  
19 have a few questions for you.

20 - - - - -

21 (Thereupon, Respondent's Exhibit  
22 38A, was marked for purposes of  
23 identification.)

24 - - - - -

25 Q. I would ask first if you would look

1 at Exhibit 5A. I guess I need to make sure  
2 that's been printed. All of those have been  
3 sent. They may not have been provided to you  
4 yet?

5 A. The only thing I have is No. 5. I  
6 don't have a 5A, so I may not have the sheet  
7 yet.

8 Q. At the very top -- I'm sorry. I'm  
9 sorry, Ms. Long, 38. 38A. Do you have that,  
10 Exhibit 38A?

11 A. No, I don't -- I don't have nothing  
12 along those -- nothing of those sorts. I think  
13 he accidentally gave me a double copy of the  
14 separation agreement and general release, so I  
15 actually have two copies of that, instead of  
16 the ones you're asking me for.

17 MS. NEWPORT: We only just now got  
18 the e-mail with the exhibits, so --

19 MR. HORTON: Okay. All right.

20 ADMINISTRATIVE LAW JUDGE: You may  
21 have sent them to me before, but I'm having  
22 trouble finding them. Okay. I got it.

23 Q. Ms. Long, just let me know when  
24 you've got them.

25 A. Okay. Right now, I'm just kind of

1 waiting, so I'm sure that they know that I  
2 don't have them.

3 MR. SUETHOLZ: She just got your  
4 e-mail at 5:04.

5 MR. HORTON: I'm not complaining.

6 MR. SUETHOLZ: Okay.

7 Q. Ms. Long, if you would look at  
8 what's marked as Exhibit 38A. Do you have  
9 that?

10 A. Yes, sir.

11 Q. And would you look through Exhibit  
12 38A and confirm for us that that's an accurate  
13 copy of your application to Smyrna Ready Mix,  
14 please?

15 A. What did you ask me, sir?

16 Q. Is Exhibit 38A an accurate copy of  
17 your application to Smyrna Ready Mix?

18 A. Yes; it looks like it.

19 Q. And it looks like you applied in  
20 July of 2018; is that correct?

21 A. Yes. Yes.

22 Q. And was this an electronic  
23 application that you filled out online?

24 A. Yes, it is.

25 MR. HORTON: Your Honor, I would

1 ask for the admission of Exhibit 38A.

2 MS. MURAROVA: No objection.

3 ADMINISTRATIVE LAW JUDGE:

4 Received.

5 - - - - -

6 (Thereupon, Respondent's Exhibit 38A

7 was received.)

8 - - - - -

9 Q. And, Ms. Long, on the third page of  
10 this application, what's marked at the bottom  
11 as SRM 911, you were asked if you would travel  
12 if the job requires it. Do you see that at the  
13 top of the page, the second question?

14 A. Third -- I've got to go back a  
15 page, it looks like.

16 Q. Bottom right-hand corner, it says  
17 SRM 0091 --

18 A. I was on the wrong -- 38A, yes.  
19 Okay. Go ahead.

20 Q. And you see the second question  
21 there? It says, "Will you travel if job  
22 requires it?"

23 A. Yes.

24 Q. And you answered yes?

25 A. Yes.

1 - - - - -

2 (Thereupon, Respondent's Exhibit 38B  
3 was marked for purposes of  
4 identification.)

5 - - - - -

6 Q. And, Ms. Long, look at Exhibit 38B,  
7 please. Do you have that?

8 A. You've got to let me get there.  
9 38B? There's a --

10 Q. B, as in boy. 38 --

11 A. There's a lot of As in here.  
12 38A --

13 MS. NEWPORT: If I could just -- it  
14 should be a separate --

15 A. I got it right here. Sorry about  
16 that. I thought it was in that little booklet.  
17 Yes.

18 Q. And Exhibit 38B says at the top,  
19 "Verification of conditional job offer and  
20 essential job functions form," and it's got  
21 your name printed at the top.

22 A. Yes.

23 Q. Is that your signature there at the  
24 bottom of Exhibit 38B?

25 A. Yes.

1 Q. And does Exhibit 38B appear to be  
2 an accurate copy of the form that you filled  
3 out on August 7, 2018?

4 A. Yes.

5 MR. HORTON: I would move for the  
6 admission of Exhibit 38B, please.

7 MS. NEWPORT: No objection.

8 ADMINISTRATIVE LAW JUDGE: It's  
9 received.

10 MS. MURAROVA: No objection from us  
11 either.

12 - - - - -

13 (Thereupon, Respondent's Exhibit 38B  
14 was received.)

15 - - - - -

16 - - - - -

17 (Thereupon, Respondent's Exhibit 38G  
18 was marked for purposes of  
19 identification.)

20 - - - - -

21 Q. Ms. Long, now turn to Exhibit 38G,  
22 please.

23 A. There it is right here. Got it.

24 Q. This document, 38G is titled  
25 "Orientation class checklist," and it looks

1 like your name has been both printed and signed  
2 at the bottom; is that right?

3 A. Yes.

4 Q. And is Exhibit 38G an accurate copy  
5 of a document that you initialed and signed?

6 A. Yes.

7 Q. So it looks like you went through  
8 an orientation class and then were given this  
9 document to initial each of these points in  
10 terms of what you will strive to be as an  
11 employee at Smyrna Ready Mix; is that accurate?

12 A. Yes.

13 Q. I notice towards the middle of the  
14 page, just below the middle of the page, it  
15 says, "I will be a go getter." Do you see  
16 that?

17 A. Yes, I do.

18 Q. And do you recall what you learned  
19 in orientation about being a go getter? Was  
20 there some discussion of that?

21 A. Actually, the whole time during  
22 orientation, because I was an experienced  
23 driver, the gentleman Jerry, with the  
24 three-legged dog, him and I did nothing but  
25 socialize and actually goof off, to be honest

1 with you.

2 So, technically, I can't recall  
3 ever discussing any of this, just actually  
4 having fun.

5 Q. When you initialed the form that  
6 says, "I will be a go getter," what did you  
7 understand that you were saying you would do?

8 A. Everything that I did. My job  
9 every day, and show up for work, keep my truck  
10 clean, and everything else.

11 Q. And was being a go getter one of  
12 the core values or tenets at Smyrna Ready Mix?  
13 Did you hear about the importance of being a go  
14 getter there?

15 A. Actually, no, because the way I am,  
16 I am a go getter. I'm a hard worker, so,  
17 technically, they never pounded that in my  
18 brain. I did that on my own, just being the  
19 person that I am, being a go getter.

20 Q. I guess they asked you to initial  
21 on your first day if you would be a go better,  
22 correct?

23 A. It looks like they did, yes, sir.

24 Q. And that wasn't a problem for you  
25 because you were a go better?

1 A. Yes, I am.

2 Q. I wanted to change subjects on you  
3 and ask you about the safety meeting that  
4 happened after Mr. Copher was discharged. Do  
5 you remember testifying about that?

6 A. Yes. Technically it was no safety  
7 meeting, but, yes, I do remember attending the  
8 meeting.

9 Q. Do you remember that Jerry  
10 Wisenhoff also attended the meeting with Ben  
11 Brooks?

12 A. Yes.

13 Q. And you're aware that Mr.  
14 Wisenhoff's title is director of safety?

15 A. Yes.

16 Q. I believe you mentioned that at  
17 that meeting, there were no incidents to report  
18 with respect to safety; is that right?

19 A. Yes; there were no incidents  
20 reported in that meeting.

21 Q. Was that the first meeting, whether  
22 we call it a safety meeting or a driver  
23 meeting, was that the first meeting that Ben  
24 Brooks ever attended at Winchester?

25 A. I believe so. Yes, in all my time

1 I was there, I believe so, yes.

2 Q. Okay. Ms. Long, you were aware of  
3 the importance of the company making timely  
4 deliveries, correct?

5 A. Yes, I was.

6 Q. What procedures did Mr. Highly have  
7 in place to ensure timely deliveries out of the  
8 Winchester plant?

9 A. Well, I know he would look at the  
10 time. Say, if it was a 15-minute drive, he  
11 would always give us an extra -- depending on  
12 the distance, he would always give us an extra  
13 ten minutes to 15 minutes, whatever the job  
14 required, because the trucks were only governed  
15 at 64 to 65 miles an hour. So he went upon the  
16 distance on that, and timed it and everything  
17 else, and that's the way that -- how he did --  
18 how he dispatched the trucks.

19 Q. What did Mr. Highly tell you and  
20 the other driver operators about what you  
21 should do as soon as you got to the plant, if  
22 anything?

23 A. I would turn on that crazy system  
24 we had in the truck and inspect our trucks,  
25 make sure they were in good running condition,

1 and do our pretrip. That's what it was, the  
2 Zonar.

3 Q. And did Mr. Highly direct that  
4 there should always be a truck under the plant,  
5 ready to load at all times?

6 A. Yes, unless we were working on the  
7 plant. But there's always a truck under the  
8 booth [sic], yes.

9 Q. So whenever an order would come in,  
10 there would always be a truck up under the  
11 plant ready to load; is that right?

12 A. 90 percent of the time. If there  
13 was one in the yard, yes. There was always --  
14 if there was a truck in the yard, we were under  
15 that group, yes.

16 Q. So you would not be waiting to find  
17 out if you had been assigned the load in the  
18 driver lounge, but rather, there would be a  
19 driver under the hole, under the plant, ready  
20 to go; is that right?

21 A. We always knew our game plan when  
22 we started the day. We always pretty knew what  
23 was going on, because Aaron Highly made sure to  
24 share it with us.

25 Q. I can't tell if that's a yes or no,

1 Ms. Long. If there was a yard -- if there was  
2 a truck in the yard, was that truck always  
3 under the plant, ready to be loaded as soon as  
4 a load came in?

5 A. Yes. We were always under the  
6 booth and ready to go.

7 ADMINISTRATIVE LAW JUDGE: I  
8 thought the question was whether there were  
9 times when the drivers would be sitting in the  
10 lounge.

11 A. We were always under -- there was  
12 always a truck under that group. When Aaron  
13 Highly was managing, there was always a truck  
14 under that group.

15 Q. Were there ever times when drivers  
16 were sitting in the lounge?

17 A. If we were taking our turns waiting  
18 to load, yes, we would sit and wait, yes, sir,  
19 there was. We would sit there.

20 Q. Ms. Long, how much time would you  
21 spend on an average day in the driver's lounge?

22 A. Very rarely any. Maybe to have  
23 lunch, take a quick break in between loads,  
24 waiting to load while other trucks -- like  
25 taking turns to get under the booth, you might

1 come in and grab a water and use the restroom,  
2 take a quick break.

3 Q. So what do you think, between 30  
4 and 45 minutes, is that how much you would  
5 spend each day in the driver's lounge?

6 A. Depending on the day, at the most,  
7 yeah. At the most, for lunch and breaks.

8 Q. And did Mr. Highly provide any  
9 order in terms of which operators would get  
10 under the plant first to get loaded and then in  
11 what order they would get loaded?

12 A. Yes. He always let us know. So if  
13 a truck was under the booth, he would have  
14 another driver waiting in their truck, so when  
15 that truck pulled out, that other truck could  
16 pull under right away and get ready to load.  
17 So, yes, he always did truck that.

18 Q. And you all understood -- I mean,  
19 that was the process for timely deliveries,  
20 that you would always have a truck waiting, a  
21 truck gets loaded, and immediately another  
22 truck pulls in and is ready to go; is that  
23 right?

24 A. Yes, it was right. Yes, that is  
25 absolutely correct.

1 Q. And what did Mr. Highly communicate  
2 in terms of your responsibilities to keep the  
3 trucks clean?

4 A. If it was a rainy day or something,  
5 he didn't really have to, because we were just  
6 good people and we went out and did it. We  
7 would go out and wash our trucks. Cleaning the  
8 restroom, different things like that. We were  
9 always actually pretty good about keeping our  
10 trucks clean.

11 If we had an hour, we were always  
12 out there cleaning our trucks or scrubbing or  
13 helping another co-worker clean, so we had a  
14 good clean -- he didn't really have to instruct  
15 us a lot on those kind of things.

16 Q. So there was no sort of standing  
17 order that you would clean your truck after  
18 every load, and at the end of every day,  
19 nothing organized like that, just that you all  
20 knew what to do --

21 A. Your job as a driver -- your job as  
22 a concrete driver is actually to clean your  
23 truck every load. After you get loaded, you  
24 wash your truck down, and you clean it. And  
25 then when you're done pouring the concrete,

1 your responsibility is to clean that truck and  
2 to clean your drums and to clean your fence.

3 So technically, that's in every  
4 driver's job description, so he shouldn't have  
5 to actually technically instruct us, because we  
6 already -- if you know your job, that's what  
7 you do.

8 Q. And was it your impression that the  
9 driver operators at the Winchester plant  
10 understood their job such that they would  
11 always keep their trucks and their drums clean?

12 A. Yes. I know mine was. I actually  
13 can't speak for everybody else, but I know I  
14 did my job, and mine was always very clean.

15 Q. Well, you mentioned what a great  
16 group of driver operators you had and everyone  
17 doing a great job. Did you observe if that  
18 included everyone keeping their truck clean?

19 A. Yes. Yes, it did.

20 Q. Okay.

21 A. With trucks with concrete buildup,  
22 so it was a little bit harder to get that  
23 buildup off. It takes a few coats of acid to  
24 do so, but, generally, all of us that have the  
25 newer trucks, they were always very clean.

1 Q. Ms. Long, I'm sorry, I missed that  
2 about -- were there some trucks that weren't  
3 kept clean?

4 A. No. All of our trucks that were  
5 there were kept clean, and as I explained,  
6 sometimes you would get an older truck in the  
7 yard that already had buildup, so you had to  
8 put elbow grease into it to try to get it  
9 clean.

10 Q. Understood. But you all, when  
11 necessary, applied the elbow grease, and got  
12 the trucks cleaned?

13 A. My truck was very clean.

14 Q. In terms of the importance of  
15 making timely deliveries, I mean it's also a  
16 big deal when customers complain about not  
17 getting their concrete on time, correct?

18 A. Yes; they can do that.

19 Q. And that's a significant event,  
20 right? I mean, the company wants to avoid that  
21 if at all possible, correct?

22 A. Yes. Yes, they do.

23 Q. Ms. Long, I wanted to ask you about  
24 your testimony earlier in terms of being  
25 required to go to other plants. Was there some

1 agreement among the drivers not to go to other  
2 plants?

3 A. We never actually technically  
4 agreed not to go to other plants, because if we  
5 refused to go, according to Ben Brooks, fire  
6 them, so we went anyway, even though we didn't  
7 like it.

8 Q. And how do you know that Ben Brooks  
9 said, "Fire the driver operators if they refuse  
10 to go to another plant"?

11 A. Because I've heard it out of his  
12 mouth probably a half a dozen times, and if we  
13 told Aaron we didn't want to go, then he said,  
14 "Well, Ben Brooks instructed me to fire you."

15 Q. Okay. So Ben Brooks told you that  
16 if you didn't go to other plants on a dozen --  
17 sorry, half a dozen occasions, he told you that  
18 if you didn't go to other plants, you would be  
19 fired?

20 A. Yes. He said that to Aaron Highly,  
21 my boss, and I've heard him speak in the break  
22 room, "If they don't want to go, fire them."

23 Q. Ms. Long, I just want to make sure  
24 I'm understanding your testimony. Did Ben  
25 Brooks say to you directly, "If you don't go to

1 another plant, I will fire you," or was that  
2 all reported to you by Mr. Highly?

3 A. He never said it directly to me,  
4 but I heard it -- I heard him say to  
5 Mr. Highly -- I've heard him say it directly to  
6 Mr. Highly, but never actually personally to  
7 me.

8 Q. Okay. So you overheard -- you  
9 observed the conversation between Mr. Brooks  
10 and Mr. Highly in which Mr. Brooks said, "If  
11 they don't go to the other plants, then fire  
12 them"?

13 A. Yes.

14 Q. Okay. And how many times did you  
15 hear that?

16 A. I actually heard that once out of  
17 his mouth. I'll never forget it.

18 Q. So it was a significant issue to  
19 the company for you all to be willing and ready  
20 to go to the other plants as needed, correct?

21 A. Yes.

22 Q. And you understood that, right?

23 A. Yes.

24 Q. Was there ever an agreement among  
25 the drivers not to volunteer for loads to other

1 plants?

2 A. Can you kind of explain that a  
3 little bit better, so I can answer that  
4 correctly?

5 Q. Sure. Were you aware of an  
6 agreement among the drivers not to volunteer to  
7 take loads to other plants?

8 A. None of us ever volunteered. We  
9 actually didn't take loads to other plants. We  
10 took them to job sites.

11 Q. I'm probably saying this wrong, and  
12 I apologize. Did you all agree that you would  
13 not volunteer to pick up loads at other plants?

14 A. No. We never agreed upon that. We  
15 were in fear for our jobs. We never did that.  
16 As much as we disliked going, we never refused  
17 to go. We always went.

18 Q. Okay.

19 ADMINISTRATIVE LAW JUDGE: He's  
20 drawing a distinction between refusing to go  
21 and not volunteering. Do you understand that?

22 THE WITNESS: Not -- we never  
23 volunteered. We went as directed.

24 ADMINISTRATIVE LAW JUDGE: Right.

25 THE WITNESS: They rotated us, and

1 we went as directed by Aaron Highly.

2 ADMINISTRATIVE LAW JUDGE: I was  
3 just making sure you understood. He was asking  
4 you whether there was ever an agreement amongst  
5 the drivers or some of the drivers that they  
6 would not volunteer to go to other plants.

7 THE WITNESS: None of us ever  
8 volunteered. We -- none of us volunteered. I  
9 hope I'm understanding or answering.

10 ADMINISTRATIVE LAW JUDGE: Well,  
11 no, but he's asking was there ever -- was there  
12 like a discussion amongst employees, and  
13 everybody agrees none of us are going to  
14 volunteer. If we're told to go, we'll go, but  
15 we're not going to volunteer.

16 THE WITNESS: Yeah, we did that.  
17 Yeah, we all agreed to that, yes.

18 Q. So there was an agreement not to  
19 volunteer to pick up loads at other plants? Is  
20 that right, Ms. Long?

21 A. Okay. It depends on what plants  
22 you're kind of talking about, because we worked  
23 many different plants. We had sister plants,  
24 as we called them, that we didn't mind going  
25 to, so those, we had no problem. But as far as

1 volunteering, nobody wants to volunteer to  
2 drive two hours away to haul a load or two and  
3 drive two hours back. If that's what you're  
4 asking, no, we never volunteered. We just went  
5 as directed.

6 Q. What sister plants did you not have  
7 any problem going to?

8 A. Georgetown and Nicholasville. We  
9 all kind of worked together as one, in a sense,  
10 like a big -- if they got busy, we would go  
11 help them out.

12 Q. Do you mean those plants,  
13 Winchester, Georgetown, and Nicholasville, all  
14 worked together as one?

15 A. In a sense. We all tried to help  
16 each other out, if needed to be.

17 Q. And I believe I understood your  
18 testimony to be that in the fall of 2019, you  
19 all only had to go to Georgetown and  
20 Nicholasville, but it was the summer when you  
21 were driving to Taylorsville and Shelby -- is  
22 Shelbyville and Florence and Louisville?

23 A. Yes; that was an issue.

24 Q. And did I understand your testimony  
25 to be that you were driving to one of those

1 locations outside of the Lexington market two  
2 to three times a week?

3 A. Yes. We -- yes, two to three times  
4 a week, we got rotated to go.

5 Q. And I want to make sure I  
6 understand. Were you having to go to one of  
7 those plants outside of the Lexington market  
8 two to three times a week during the summer of  
9 2019?

10 A. Are you referring to -- you have to  
11 let me know which ones you're referring to, if  
12 you don't mind. In Florence?

13 Q. Yeah. You know what, as I asked  
14 the question, I thought I probably should have  
15 done that, so thank you. The Lexington market,  
16 I'm calling Winchester, Nicholasville, and  
17 Georgetown, the three that you described as  
18 working together --

19 A. Yes.

20 Q. And so in the summer of --

21 A. Go ahead. Sorry.

22 Q. Okay. And in the summer of 2019,  
23 then, were you individually having to go  
24 outside the Lexington market two to three times  
25 a week?

1           A.       Like if we were in Lexington -- I'm  
2 going to answer this how I understand it, if  
3 you don't mind. If we were in Lexington,  
4 sometimes we would be 20 minutes from the  
5 Georgetown plant, so we would drive over there  
6 and help them. Same thing as the Nicholasville  
7 plant, we all kind of worked in that little  
8 center. But as far as Florence, Taylorsville,  
9 Shelbyville, and even Louisville, on one  
10 occasion for myself, we were usually just  
11 instructed to leave first thing in the morning  
12 to get to those plants, if that's what you're  
13 asking.

14                   ADMINISTRATIVE LAW JUDGE: He's  
15 asking you whether you personally had to go to  
16 one of those -- I'll call them out-of-market  
17 plants -- two or three times a week?

18                   THE WITNESS: On the average, a  
19 couple times a week, yes, sir. Yes.

20           Q.       And that was during the summer of  
21 2019?

22           A.       Yes. It started in the spring,  
23 summer, fall, yes. Into the fall.

24           Q.       Now, I believe you said there was a  
25 rotation in terms of who would be assigned to

1 go to those out-of-market plants; is that  
2 right?

3 A. Yes. Aaron was always fair with  
4 everybody. He never looked at anybody how long  
5 you were there, how short you were there. If  
6 he needed one drivers, two drivers, he rotated  
7 us, and that's when we would go up there. We  
8 rotated.

9 Q. And then, again, in the summer, as  
10 I understand your testimony, in the summer, you  
11 were having to go to those out-of-market  
12 plants, but in the fall of 2019, you were  
13 limited to the -- to the end market, Georgetown  
14 and Nicholasville plants; is that correct?

15 A. No. We went from the spring,  
16 summer, and fall. We were getting sent up  
17 there, so, no, we were not limited to just our  
18 market. We were up there all the time.

19 Q. Well, I may have misunderstood your  
20 earlier testimony. So you're saying that you  
21 went to those Taylorsville, Shelbyville,  
22 Florence, Louisville -- you went to those  
23 plants all the time, all seasons?

24 A. Yes, all the seasons, yes. As I  
25 said before, yes, about a couple times a week,

1 yes.

2 Q. So from January of 2019 through  
3 November of 2019, you were having to go to one  
4 of those out-of-market plants a couple of times  
5 a week?

6 A. January is in the wintertime, so,  
7 no, we didn't go in the wintertime. We started  
8 going there in the spring, probably around  
9 April, all the way up to about October, which  
10 is fall and all summer.

11 Q. And did Mr. Highly ever ask for  
12 volunteers to go to those plants that are  
13 outside the market?

14 A. Yes, but not one of us raised our  
15 hands, so he would pick two drivers or three  
16 drivers, whatever was needed.

17 Q. When did you all stop volunteering  
18 to go?

19 A. The first time he asked us.

20 Q. Okay. So no one ever volunteered  
21 to go if Mr. Highly asked if someone would go;  
22 is that --

23 A. Well, I can't speak for everybody,  
24 but I know I never volunteered. So, therefore,  
25 I can't speak for the rest of my co-workers, so

1 I could only answer for myself. I never  
2 volunteered.

3 Q. Understood. So from your  
4 observations, you never observed any driver  
5 operator say, I'll go to a plant if Mr. Highly  
6 asks for somebody to go to a plant outside of  
7 the Lexington market; is that right?

8 A. Not too many of us raised our  
9 hands, so -- as far as -- I never acknowledged  
10 another driver saying that. I can only speak  
11 for myself. I never acknowledged another  
12 driver saying that.

13 Q. When you say you never acknowledged  
14 it, you mean you never heard another driver  
15 operator say that he or she would go to another  
16 plant?

17 A. Exactly. Yeah, exactly; we didn't  
18 really raise our hands for that one.

19 Q. How long did Mr. Highly keep asking  
20 for volunteers?

21 A. Every day, he would ask, and none  
22 of us would volunteer, so then he would pick.

23 Q. So month after month, Mr. Highly  
24 kept asking for volunteers, and no one would  
25 ever volunteer?

1           A.       Exactly.  That's why he started the  
2       rotation, picking drivers at a time.  After two  
3       went one day, two would go another day, and two  
4       would go another day.  Whatever was needed.  So  
5       that's exactly what he did, as I said.

6           Q.       Ms. Long, how were the loads  
7       assigned to the drivers?  How did that work?

8           A.       By the tickets.  When you came out,  
9       when it was your turn to get under the booth,  
10      you got under the booth, and you load it.

11          Q.       How did -- how would you know if it  
12      was your turn?

13          A.       In order that you came into the  
14      yard.  Like, say there were two trucks in front  
15      of me, those two would load before me, and I  
16      would take the third one after that.  Like the  
17      third load that came up.  It always went in the  
18      order that you arrived in the yard.

19          Q.       And was that the order that was  
20      established by Mr. Highly in terms of how y'all  
21      would load?

22          A.       It's just driver's respect order,  
23      and in a sense, both, but it's just also  
24      driver's respect order.

25          Q.       I'm not quite understanding that.

1 When you say driver's respect order, what do  
2 you mean?

3 A. In other words, it's respect for  
4 your co-workers. If somebody got to the yard  
5 before you, obviously, they had had time to use  
6 the restroom, maybe get a drink, use the  
7 restroom, eat a sandwich. Then when you come  
8 in, that will give you the time while the other  
9 trucks go in front of you to do the same thing.  
10 So the order you arrived in the yard is the  
11 order you got loaded.

12 Q. Understood. So out of respect for  
13 each other, the driver operator would take the  
14 loads in the order that they arrived to the  
15 plant each day; is that correct?

16 A. Yes. That's what we did. Now, at  
17 the beginning of the day, it's different  
18 orders, depending on where he was going,  
19 ultimately, with the area. There was never  
20 seniority at our plant, but after the first --  
21 how you arrived in that yard is the order that  
22 you loaded.

23 Q. How were the first loads of the day  
24 assigned? How was that order established?

25 A. Some people might be more familiar

1 with a certain area, like in the morning time,  
2 like they would have -- like if it was farther  
3 out job that somebody that lived in that area,  
4 he would usually have like one of them guys go  
5 first, and that way, they can instruct the  
6 other drivers on how to get there or let him  
7 know about a route on how to get there. Or if  
8 there was road construction, et cetera, or  
9 something like that. So that's usually how it  
10 went, or if there was -- that's how it went,  
11 actually.

12 Q. So for the first orders of the day,  
13 Mr. Highly assigned them, or did he ask for  
14 volunteers? How did it work?

15 A. If it was a good customer, I would  
16 run out to my truck and get under that roof as  
17 quick as I could.

18 Q. How would you know -- I'm sorry?

19 A. Go ahead.

20 Q. How would you know to run out to  
21 your truck and get under the plant?

22 A. If it was Harold, you ran out,  
23 because he was excellent to pour for. He knew  
24 what he was doing. He got it off the truck,  
25 and you got back to the plant as quick as you

1 could to finish up with activity throughout the  
2 day.

3 Q. And how would you know that that  
4 individual or that company had placed an order?

5 A. Because it would be on the screen,  
6 and it would come up out of our ticket, and the  
7 timing would be there, and what time it was  
8 derived. So we knew -- we had screen that had  
9 all the orders on it. So that's how we knew.  
10 Usually the orders were placed the night  
11 before, even a few days before, on the yardage  
12 they wanted or location and everything.  
13 Everything was 90 percent of the time done the  
14 night before, so we knew exactly how to start  
15 our day and where we were going.

16 Q. If I understood you correctly -- if  
17 I understood you correctly, you said that if an  
18 order came in from a good customer, you would  
19 spring for the truck?

20 A. Oh, gosh, yes. Of course. Of  
21 course. It makes a huge difference to the  
22 driver and everything else to have a good,  
23 experienced guy that you work with. I mean, it  
24 doesn't matter. You go no matter where you go,  
25 but in the first thing in the morning, I like

1 to start my day off wonderfully, and that was  
2 one of the customers that was an excellent guy  
3 to pour for.

4 Q. Okay. And what days of the week  
5 did you normally work, Ms. Long?

6 A. What days of the week?

7 Q. Yes, ma'am.

8 A. Monday through Saturday.

9 Q. And your time was entered through a  
10 fingerprint device; is that right?

11 A. Yes.

12 Q. And you clocked in when you got  
13 there and then clocked out at the end of the  
14 day?

15 A. Yes.

16 Q. And how many loads did you  
17 typically deliver in a day? I think I wrote  
18 down four to ten?

19 A. Yeah. It varied. Anywhere from  
20 four to ten, it varied. On the average, more  
21 so, anywhere from four to six, but we had up to  
22 ten. It just all varies on how close the  
23 customer and how many yards they were pouring,  
24 the distance to the job. Every day was a  
25 variation from day to day.

1 Q. Ms. Long, how would it work if you  
2 got back to the plant and your last load -- you  
3 were done, say, on the clock in the afternoon,  
4 and there were no more orders waiting to be  
5 filled? What would you do? Would you clock  
6 out? Would you stay at the plant? What was  
7 the process there?

8 A. I can't really remember us ever  
9 being done at 1:00 in the afternoon, to be  
10 honest with you. And, so, therefore, I really  
11 can't answer your question honestly, because we  
12 just didn't do that.

13 Q. What were your normal work hours?

14 A. Oh, gosh. I would say the average,  
15 about ten-hour days. Maybe sometimes more.  
16 I've had up to 14-hour days, 15-hour days, but  
17 our average day was ten hours. Sometimes more.  
18 Maybe a half hour less.

19 Q. Do you typically show up at 7:00?

20 A. Yes.

21 Q. And then your experience was you  
22 would -- your last load would never end at  
23 1:00. Would you often have a load into, say,  
24 2:00?

25 A. A lot of times. It just all

1 depends on the scheduling and what customers  
2 would call in for the afternoon. In the  
3 concrete business, when Aaron was our manager,  
4 when you called and there was a truck  
5 available, you got it. And there were many  
6 times people would call at noon, 1:00. "Hey,  
7 Aaron, you got a truck? Yeah, man, I'll get  
8 you one." Excuse me; I'm just saying the way  
9 it was spoken. You would get the address, the  
10 yardage, and by God, we were there. We were  
11 there.

12 Q. So let's say your last load  
13 finished at 2:00, and there were no more orders  
14 waiting. What were -- what was the process  
15 then? What would you do?

16 A. That never happened, so I honestly  
17 can't tell you. We never finished at 2:00, so,  
18 therefore, I can't answer your question.

19 Q. I'm just going to keep going, just  
20 to make sure -- how about 3:00? What happened  
21 if you got back and your last trip was over  
22 3:00, what would you do?

23 A. If the last load was at 3:00, and  
24 we still had trucks out. Say there were four  
25 trucks out, and there were no more orders on

1 the screen, and you got four trucks out, you  
2 would sit there, and you would wait until those  
3 trucks got back for the sole fact that a lot of  
4 these contractors would short themselves a  
5 yard, two yards. So he always kept a truck on  
6 hand per load in case they were short, and they  
7 needed a makeup. That way, you had a truck  
8 available to take extra concrete out if needed.

9 Q. So when you got back from  
10 delivering your last assigned load, you would  
11 wait to see if you were needed again?

12 A. Oh, yes. It's happened several  
13 times. A lot of contractors, they order seven  
14 yards, and they would short themselves a yard  
15 and a half, two yards, so that we would have to  
16 load up another truck and run that to the job  
17 for their makeup.

18 Q. So let's say your last load, you  
19 finished at 3:00. Would you sit in the  
20 employee lounge from 3:00 to 5:00 and wait to  
21 see if a load came in?

22 A. No. I would usually go scrub my  
23 truck, unless it was raining or something like  
24 that. If it was raining, yeah, I would take a  
25 little break. But, you know, if it was nice

1 out, I would go scrub on my truck. I was a  
2 real fanatic, constantly dusting the inside of  
3 it, and the whole nine yards. So it all  
4 depended on the weather and the situation, but,  
5 normally, we usually found something to do.

6 Q. Would Mr. Highly have you all do  
7 anything else besides clean your truck while  
8 you're waiting on a load?

9 A. Yeah. We would shovel under the  
10 belt. We would shovel, oh, gosh, all the way  
11 back to the belt. We would get under the belt.  
12 We would shovel out under the belt, shovel  
13 under the booth. I always got the job of  
14 cleaning the toilets. That wasn't my favorite.  
15 I volunteered for that. But we always found  
16 something to do, the cleanliness and everything  
17 else like that, tried our best. Never -- it  
18 was hard to keep clean, but we usually always  
19 found something to do.

20 Q. Okay. So other than a rain day  
21 when you might take a little break, when you  
22 got in from your last load and while you were  
23 waiting to see if there was another load, I  
24 mean, you would be out there shoveling,  
25 scrubbing toilets, I mean, doing something?

1 There was no --

2 A. I wasn't scrubbing toilets. I was  
3 usually outside scrubbing on my truck. On rain  
4 days -- no, the toilet was inside. I kept that  
5 one clean, but I would be outside scrubbing my  
6 truck, you know, getting a couple of things,  
7 doing the windshield, windows, whatever was  
8 necessary.

9 Q. Shoveling under the belt?

10 A. Little things like that. Yeah, we  
11 did all that. We had to keep it clean, or it  
12 wouldn't load correctly.

13 Q. And you all understood that was a  
14 process. I mean, if there are no loads there,  
15 then all the other drivers are out there  
16 cleaning their trucks, shoveling under the  
17 belt, keeping the place clean; is that right?

18 A. That's usually what we did. Our  
19 trucks -- we kept our trucks clean.

20 Q. And shoveled under the belt and  
21 kept the yard clean?

22 A. Yes, we had to. Yes, that was our  
23 job.

24 Q. Okay. And you mentioned that  
25 Mr. Highly -- I think you called him the best

1 manager?

2 A. Yes, probably the best I ever  
3 worked for, yes.

4 Q. And how do you -- when you say he  
5 was the best manager, what do you mean by that?

6 A. Organizational, the way he  
7 organized the trucks. The customers were  
8 beyond pleased with him, which made our jobs a  
9 lot easier. They weren't angry by the time the  
10 concrete got there, because it was always on  
11 time.

12 Always organized. Always timed the  
13 trucks just right, knew exactly what kind of  
14 concrete. There's different kinds of mixes  
15 that you could use for different jobs and what  
16 customers would ask, if they're doing stairs, a  
17 porch, something like -- wanted a 3,500 mix to  
18 a driveway, a 4,000 mix. Lots of different  
19 types of mixes that you could use for different  
20 jobs. And he always directed the customer  
21 which mix he used, what truck to bring it on.  
22 Different things like that, which was very  
23 helpful.

24 All the customers appreciated him,  
25 and they appreciated the drivers and the

1 trucks, because they were always on time.

2 Q. And, Ms. Long, do I understand  
3 correctly that there were eight to nine drivers  
4 working in Winchester, say, in October of 2019?

5 A. I think so. About that many, yeah,  
6 eight to nine. I believe so. Something like  
7 that.

8 Q. And Mr. Highly would let all of the  
9 drivers wait after their last load until 5:00  
10 to see if another load came in; is that right?

11 A. No. As I explained to you earlier,  
12 as I explained to you, if there were three  
13 trucks out, he would keep three trucks in case  
14 one of those jobs needed a makeup. If there  
15 were five trucks in the yard, us working  
16 together as such great co-workers that we  
17 actually honestly were, he would ask, "Who  
18 wants to go," and we would look at -- you know,  
19 "I went home early yesterday. I went home at  
20 4:00. You go ahead and go home now, James  
21 Bowling, which we called Bad Eye. You go ahead  
22 and go, Bad Eye."

23 So we were very considerate to each  
24 other, because one may -- you know, he kept the  
25 trucks that may need a makeup, and he would let

1 the other two go. "Oh, go ahead," and we would  
2 always work that out amongst ourselves. He  
3 never pointed fingers, "You go. You go. You  
4 go."

5 We worked that out as drivers  
6 ourselves and were always considerate to the  
7 other person.

8 Q. So for -- if I understand  
9 correctly, for every driver that was out,  
10 Mr. Highly would keep a truck in in case they  
11 were needed, but then, otherwise, he would let  
12 the other drivers go? Is that --

13 A. If it was the end of the day, 4:00  
14 or 5:00, yes, he would, and that's what you  
15 have to do in the concrete business, is you  
16 have to keep the truck per driver out.

17 And a lot of times, the contractor  
18 would call and be like, "Okay, I don't need no  
19 more," so he would let another one go. That's  
20 the way you do it in the concrete business.  
21 Not too many -- you know, whatever the word is.  
22 Sorry.

23 Q. I believe I understood your  
24 testimony to be that after Mr. Highly was  
25 discharged, you asked Ben Brooks what your job

1 prospects were, did you need to be worried  
2 about your job, and he told you you don't need  
3 to be worried; is that right?

4 A. That was his exact words, "You  
5 don't have to worry about your job. The rest  
6 of you are safe."

7 Q. And Mr. Goss told you the same  
8 thing?

9 A. Mr. Goss said a lot of things, but,  
10 yeah, he said the same thing.

11 Q. And you said they were -- at the  
12 Winchester plant, they were hiring, or at least  
13 taking applications for new drivers?

14 A. Yeah. I heard them talking on the  
15 phone, starting at a lower pay rate than what  
16 we were making, and that they were taking  
17 drivers.

18 They even brought a guy in. I  
19 don't know his name, because I just seen him,  
20 and they were talking to him about taking Aaron  
21 Highly's position.

22 Q. And who was that -- I'm sorry.

23 A. That was after Aaron was fired,  
24 yes.

25 Q. Now, Mr. Goss became the plant

1 manager after Mr. Highly was fired; is that  
2 right?

3 A. We had no management after Aaron  
4 Highly was fired.

5 Q. Was Mr. Goss at the plant each week  
6 after Mr. Highly was fired?

7 A. Him and a guy name Chris Newell, so  
8 they took turns.

9 Q. And you found Goss to be rude,  
10 bossy, annoying, and interruptive, correct?

11 A. He was very rude, yes, he was.

12 Q. You found him to be not only rude,  
13 but bossy, annoying, and interruptive, correct?

14 A. That's exactly what he was, yes.  
15 Just ask Ben Brooks. He'll tell you.

16 Q. And was there any difference in  
17 expectations that Mr. Goss had for the drivers,  
18 as opposed to Mr. Highly that you observed?

19 A. We didn't quite understand. I  
20 would ask -- "Well, this is the way we do it."  
21 "Well, Aaron is not here no more, so you're  
22 doing it this way." I didn't quite understand  
23 what the gentleman said, what the man said.

24 Q. You just couldn't understand the  
25 direction Mr. Goss was giving?

1           A.     No, because he had everything in  
2     such disarray there, it was unreal. The loads  
3     were not correct. He was turning down loads.  
4     The place was just a mess, so I did my best to  
5     avoid him. I did my best to avoid him, to stay  
6     out of his way.

7           Q.     Ms. Long, I forgot to ask you this:  
8     Did you drive the same truck each day while you  
9     were at Smyrna Ready Mix?

10          A.     Yes, I did.

11          Q.     Do you happen to remember your  
12     truck number?

13          A.     3058.

14          Q.     Did Mr. Goss ever indicate to you  
15     that you might be transferred to other  
16     locations at any point?

17          A.     Never. Never.

18          Q.     And how long was your commute from  
19     home to the Winchester plant, Ms. Long?

20          A.     A half hour. The first, oh, about  
21     half the time there, the first almost a year,  
22     it was five minutes, and then I bought a house  
23     about a half hour away, so then it became a  
24     half hour away.

25          Q.     And when did you buy the house that

1 was half hour away?

2 A. In May of 2019.

3 Q. Ms. Long, would you look at what is  
4 marked as General Counsel's Exhibit 3. It  
5 should be the separation agreement that you  
6 signed.

7 ADMINISTRATIVE LAW JUDGE: Before  
8 you do that, I don't know that you ever moved  
9 for admission of 38G.

10 MR. HORTON: Your Honor, we would  
11 move that it be admitted, then. Thank you.

12 MS. MURAROVA: No objection.

13 ADMINISTRATIVE LAW JUDGE:  
14 Received.

15 - - - - -

16 (Thereupon, Respondent's Exhibit 38G  
17 was received.)

18 - - - - -

19 A. I'm sorry; can you repeat the  
20 question?

21 Q. Yes, ma'am. General Counsel  
22 Exhibit 3 should be your separation agreement.

23 A. My separation agreement, Exhibit 3.  
24 Gotcha.

25 Q. Ms. Long, you signed this, it looks

1 like, on January 13th, I believe. Yeah, if you  
2 look at the last page.

3 A. Uh-huh.

4 Q. Is that correct?

5 A. Yes, I did.

6 Q. And then when I look at a calendar,  
7 that looks like that was a Monday; is that  
8 right?

9 A. Yes.

10 Q. And I believe you testified that  
11 Mr. Brooks told you on January 2nd, January  
12 3rd, that you were going to be discharged. Do  
13 I have that right?

14 A. Yeah. Like on a Monday or Tuesday,  
15 at the beginning of that week, yes.

16 Q. All right. So maybe about a week  
17 before January 13th, is that when you were told  
18 like Monday the 6th, when you were told you  
19 were going to be discharged?

20 A. I would have to look on my  
21 calendar. It was, yeah, probably around -- it  
22 was that week, yes.

23 Q. And you were told you would be  
24 given four weeks of pay if you signed the  
25 release, correct?

1 A. At first two weeks.

2 Q. You were first told that -- I'm  
3 sorry, what about two weeks?

4 A. Oh, when he first came in and fired  
5 us, he gave us -- he said two-weeks severance  
6 pay, is what he had said.

7 Q. And then he increased that to four  
8 weeks?

9 A. Yeah. When he came in on that  
10 Friday to let us know to be there on Monday to  
11 get this paperwork, he said he was going to  
12 give us four weeks.

13 Q. And did I understand correctly that  
14 that Friday, January 10th, that was your last  
15 day of work?

16 A. Yes. Actually, I would consider  
17 Thursday our last day of work, because we got  
18 there Friday, and he sent us all immediately  
19 home, so -- but we were there on Friday, but he  
20 sent every single one of us home. It happened  
21 to be pouring down rain, so we didn't even get  
22 our hours for that day.

23 Q. So on Thursday, January 9th, you  
24 came to work, and was that a normal workday, or  
25 was that the rain day?

1           A.       It was a day -- it was a normal  
2       workday. He told us that Friday when we came  
3       in that he was going to give us four weeks  
4       instead of two weeks.

5           Q.       And was that the rain day, January  
6       10th, that Friday?

7           A.       Yes.

8           Q.       And did he tell you that that day,  
9       that Friday would be your last -- last working  
10      day?

11          A.       No, he didn't tell us that Friday.  
12      He told us the day he fired us, which was I  
13      believe on a Monday or Tuesday. That's --  
14      that's when he told us that Friday would be our  
15      last working day.

16          Q.       So earlier in the week, when he  
17      told you that you were being discharged, he  
18      told you that that Friday, the 10th, would be  
19      your last day?

20          A.       Yes.

21          Q.       So on January 10th, that Friday,  
22      when you got to work, you knew that was going  
23      to be your last day, or you had been told it  
24      was going to be your last day, and it was a  
25      rain day, and you were sent home early?

1 A. Yes.

2 Q. After being told you would -- okay.

3 And on that day, you were told you  
4 would get four weeks instead of two weeks  
5 severance; is that right?

6 A. Yes.

7 Q. Did Mr. Books tell you that you all  
8 would be required to sign a severance agreement  
9 to get the four weeks?

10 A. Yes. Yes, he did. Yes, he did.  
11 I've got to plug the computer in. Sorry about  
12 that. It was getting weird.

13 Q. That's okay.

14 And so on Monday, January 13th,  
15 then, you came to the plant, and you were given  
16 the separation agreement. Do I understand that  
17 correctly?

18 A. Yes, that's correct.

19 Q. And didn't Mr. Brooks actually tell  
20 you that the quicker you sign it, the quicker  
21 you can get paid, but it was no you have to  
22 sign it today?

23 A. No; he didn't say anything along  
24 those lines. I actually was a little late that  
25 day, because I had low air in my tire, and I

1 showed up about 15 minutes late, and he just  
2 handed me the piece of paper, and I asked him  
3 what happens if we don't sign it, and he said  
4 you don't get your severance pay, and that was  
5 pretty much the end of that conversation. He  
6 went in the office and started loaded up boxes  
7 in his truck.

8 Q. So he gave you the separation  
9 agreement. You asked him what happens if you  
10 don't sign it. He says you don't get the pay,  
11 and he went and started loading up trucks?

12 A. Not loading up trucks. Loading up  
13 paperwork in his truck.

14 Q. Right, loading his truck?

15 A. Yes.

16 Q. That was essentially all he said to  
17 you?

18 A. Yes, that was essentially all he  
19 said. And I can recall, yes, that's -- I know  
20 he didn't have a lot to say. I was pretty  
21 upset.

22 Q. Did you read through the agreement?

23 A. We didn't really have time to read  
24 through the agreement. He was kind of rushing  
25 us. We asked for a copy of the agreement. I

1 do remember that, that me and the guys all  
2 asked for a copy, and we didn't really have  
3 time. And even if we did, he wouldn't have  
4 answered our questions. He was never really  
5 one to answer questions when you confronted him  
6 on a question.

7 MR. HORTON: Well, I object to the  
8 speculation there.

9 Q. Did you understand that when you  
10 got the separation agreement, did you  
11 understand that you were promising not to  
12 reapply for work?

13 A. Yes. He told us when he fired us  
14 to our face that day, that we were eligible to  
15 reapply at the end of March, around spring, and  
16 he would be reopening the plant, and that we  
17 would be eligible for rehire then. So then he  
18 goes and throws that clause in there, so --

19 Q. Sorry, Ms. Long, I may have  
20 misunderstood. I thought you said that when  
21 you looked at the separation agreement, you saw  
22 that it included that covenant not to reapply?

23 A. No. I just kind of went through it  
24 real quick, because in order to get the  
25 four-week severance pay, you had to sign it, so

1 I just -- I really wanted out of there.

2 Q. So you could have taken longer to  
3 read through it before you signed it if you  
4 wanted to?

5 A. He wouldn't have answered any  
6 questions. He was loading up his truck, and he  
7 wanted us out of there.

8 Q. My understanding from your earlier  
9 testimony is that you came to the plant a  
10 little late. Mr. Brooks gave you the  
11 separation agreement. You asked him what  
12 happened if you don't sign?

13 A. Uh-huh.

14 Q. He told you you would not get the  
15 severance pay if you don't sign, and then he  
16 went to the office and started loading boxes  
17 into his truck?

18 A. Yes, exactly. Paperwork into his  
19 truck, exactly.

20 Q. Okay. And so no one was standing  
21 over you waiting for you to read this  
22 agreement, correct?

23 A. Nobody was standing over us, no.

24 Q. And so you could have taken longer  
25 to read the agreement if you wanted to?

1           A.     No; it wouldn't have mattered. It  
2 wouldn't have mattered because --

3           Q.     I'm not trying to argue with you  
4 whether it would have mattered or not.

5           A.     Okay.

6           Q.     But if you had wanted to take  
7 longer to read it, you could have, whether it  
8 would have mattered or not, correct?

9           A.     And I'm not trying to argue either.  
10 If we wanted to read it, it was January 4th,  
11 after Christmas. I'm a single woman. I needed  
12 that money, so that's why I signed. There was  
13 no point in reading it, and that's why I  
14 contacted the labor board.

15          Q.     Did you say that you took a copy  
16 with you, that you had a copy made?

17          A.     Yes. I had him run a copy off.  
18 All of us did.

19          Q.     All right. So Mr. Brooks made you  
20 a copy?

21          A.     Yes, he did.

22          Q.     And you took the copy home with  
23 you?

24          A.     Yes. I gave it to John from the  
25 labor board. Yes, he did.

1 Q. So you took the copy home, and you  
2 sent it to someone at the labor board; is that  
3 right?

4 A. I didn't send it. I met him and  
5 gave it to him, yes. Went over all of it and  
6 realized it was very much a false document.

7 Q. And so when you read through the  
8 document, you saw in Section 13C, if you want  
9 to look at that, Page 4. You saw on 13C that  
10 you were being advised to talk to an attorney,  
11 correct?

12 A. Now I see it, yeah.

13 Q. You see that on 13C where employee  
14 is --

15 A. Yeah; I just read it.

16 Q. All right. And you would have also  
17 seen when you read it in 13I -- sorry 13K, that  
18 you had seven days to revoke the agreement  
19 after you signed it?

20 A. And as you notice, I went to the  
21 labor board and spoke to them. And I got --

22 Q. Of --

23 A. So what I did, I went to the labor  
24 board and spoke with them, but it was deposited  
25 into my account before the seven days was even

1 up. It was deposited into my account by that  
2 Friday.

3 Q. But you understood that you could  
4 revoke the agreement over the course of a week  
5 if you wanted to, correct?

6 A. Well, I needed the money. I had to  
7 keep a roof over my head and pay bills.

8 Q. Understood. So you chose to keep  
9 the money and not revoke the agreement,  
10 correct?

11 A. I never even actually read it. I  
12 just contacted the labor board immediately.

13 Q. Well, in fact, you sent a copy of  
14 the agreement that very day, on January 13th,  
15 to the labor board, didn't you?

16 A. No, I didn't, as matter of fact.  
17 No, I didn't. I met with him that weekend and  
18 gave him all my copies. So, no, I didn't. I  
19 met with a man and met him and gave him all the  
20 copies of it.

21 Q. Did you meet with John Palmer? Is  
22 that who you were referring to?

23 A. Yes, I did.

24 Q. And isn't it true that you sent a  
25 copy of the separation agreement to John Palmer

1 on January 13th?

2 A. I gave him a copy. I didn't send  
3 it to him. I gave him a copy.

4 Q. So on that day that you signed the  
5 separation agreement that's General Counsel 3,  
6 on that very day, you gave a copy of the  
7 agreement to John Palmer?

8 A. Not on that very day, no. I met  
9 with John. He was -- I'm not sure what area he  
10 was in, but I believe I met with him the  
11 following Saturday and gave him the copy.

12 MR. HORTON: Your Honor, we would  
13 like to use what I believe is marked as  
14 Respondent's Exhibit 69. It was a collective  
15 exhibit, but we would like to use pages 11  
16 through 14 of the exhibit. Perhaps we could  
17 mark it as a new exhibit.

18 ADMINISTRATIVE LAW JUDGE: Is it  
19 already in the record?

20 MR. HONOR: Your Honor, this is the  
21 longer -- about 20 pages of text messages, and  
22 what we did was admit the first few pages. We  
23 provided the entire portion of it to you all on  
24 Friday, I think, or this morning. We can  
25 prepare here a separate exhibit.

1 ADMINISTRATIVE LAW JUDGE: Okay.  
2 So the material that you're proposing to get  
3 into the record now is not already in the  
4 record?

5 MR. HORTON: Correct, Your Honor.

6 ADMINISTRATIVE LAW JUDGE: Okay.

7 MS. NEWPORT: She doesn't have  
8 that, so what pages are you trying to get to  
9 her?

10 MR. HORTON: 11 through 14. I  
11 believe we've already sent this to everyone.

12 MS. NEWPORT: Not 15? Just 11  
13 through 14.

14 MR. SUETHOLZ: Are you talking  
15 about the covenant to not reapply?

16 - - - - -

17 (Thereupon, Respondent's Exhibit 69A  
18 was marked for purposes of  
19 identification.)

20 - - - - -

21 Q. Ms. Long, those text messages down  
22 at the bottom, you'll see it says SRM\_ULP, and  
23 it should be pages 11 through 14.

24 A. Yes. Yes. Yes. It's a page of  
25 text messages and then a separation agreement,

1 is what it looks like. Is that what you're  
2 talking about?

3 Q. I'm talking about those four pages  
4 of the text messages and the copy of your  
5 separation agreement, Pages SRM\_ULP 11 through  
6 14. Do you have it?

7 A. Yes; I got that.

8 Q. Ms. Long, it's been represented to  
9 us that these pages, ULP -- sorry, SRM\_ULP 11  
10 through 14 represent text messages between you  
11 and John Palmer; is that correct?

12 A. Honestly, I really can't answer  
13 that, if that's correct or not, considering I  
14 have no name on here, so I can't answer that  
15 truthfully, to be honest with you, because  
16 there's actually no name on this paper. If you  
17 want to see it anybody, I'm sure you guys got  
18 it. I can't actually answer that correctly.  
19 There's not a name on there. That could have  
20 been --

21 ADMINISTRATIVE LAW JUDGE: And  
22 that's -- hold on a second. That's an issue.  
23 I mean, for Union counsel and General Counsel,  
24 I mean, is the name redacted? Is that  
25 Mr. Palmer?

1 MS. NEWPORT: The redaction is Ms.  
2 Long's phone number. She's correct that there  
3 is no identification of who the other person is  
4 on this text chain. The union has this in its  
5 possession, but I also -- if she --

6 ADMINISTRATIVE LAW JUDGE: I just  
7 -- I don't want to spend a lot of time trying  
8 something that's not really an issue. I mean  
9 what Mr. Horton is obviously trying to do is  
10 establish that Ms. Long sent the severance  
11 agreement to the Union on January 13th. Is  
12 that an --

13 MR. HORTON: Your Honor, on Friday,  
14 Ms. Newport sent a cover letter that says  
15 SRM\_ULP 11 through 15 are texts between John  
16 Palmer and Nicole Long, and so that's why I'm  
17 asking about it, based on the assumption that  
18 it's a text between Ms. Long and Mr. Palmer.

19 MS. NEWPORT: And that is what was  
20 represented to me, but I also cannot say  
21 that Ms. Long recognizes them or knows what  
22 they are. The subpoena was for documents in  
23 the union's possession, and so that's what we  
24 turned over. But she either knows what it is  
25 or doesn't. She either knows that she gave it

1 to you on January --

2 ADMINISTRATIVE LAW JUDGE: Well,  
3 does anybody else know? I mean, we spent a lot  
4 of time trying to nail this down. I mean, if  
5 it's a fact that she sent this -- these -- I  
6 can't remember. It's three or four pages -- to  
7 the Union on January 13th, I would like you to  
8 stipulate to that.

9 MR. SUETHOLZ: I mean, if this  
10 refreshes her recollection, maybe she can  
11 answer the question again, "Did you send John  
12 Palmer a text that you received."

13 MR. HORTON: I think Mr. Palmer is  
14 on the phone, isn't he?

15 MR. SUETHOLZ: No. He's  
16 sequestered, and certainly he'll be able to --  
17 these are his text messages, so --

18 A. Right. Okay. Like I said, I  
19 couldn't recall. I couldn't remember. I do  
20 remember giving him my copies when we met, but  
21 I honestly can't remember sending them to him,  
22 so I can't remember. But I do remember meeting  
23 with him at Applebees in Winchester and giving  
24 him all my copies. This was so long ago, and  
25 that day was very upsetting, so I can't

1 remember.

2 ADMINISTRATIVE LAW JUDGE: Well,  
3 instead of continuing down this line, I mean,  
4 the union talk to Mr. Palmer tonight, and if  
5 that's a fact, I mean, that you stipulate that  
6 she sent these to him on January 13th, if he  
7 knows that to be the case.

8 MR. SUETHOLZ: Certainly. As a  
9 matter of fact, Your Honor, would you care if I  
10 texted him that question, and we could resolve  
11 it while she's on the stand?

12 ADMINISTRATIVE LAW JUDGE: Yeah. I  
13 mean, Mr. Horton, do you have any problem with  
14 that?

15 MR. HORTON: No, Your Honor, I  
16 don't.

17 ADMINISTRATIVE LAW JUDGE: Okay.  
18 Why don't we see if we just can't nail it down  
19 and --

20 A. I can't remember. I'm not going to  
21 lie. I can't remember if I sent them to him or  
22 not --

23 ADMINISTRATIVE LAW JUDGE: Okay.  
24 Well, he's going to ask Mr. Palmer.

25 MS. MURAROVA: While we're waiting

1 for an answer, can we have a quick bathroom  
2 break?

3 ADMINISTRATIVE LAW JUDGE: Yes. We  
4 can take a five-minute break.

5 (Recess is taken.)

6 ADMINISTRATIVE LAW JUDGE: Back on  
7 the record. Did you get an answer, Mr.  
8 Suetholz?

9 MR. SUETHOLZ: We did, Your Honor.  
10 The Union will stipulate that those are John  
11 Palmer's texts, and he did receive that text on  
12 the day that I think -- Ms. Long received her  
13 agreement.

14 ADMINISTRATIVE LAW JUDGE: January  
15 13th, 2020.

16 MS. NEWPORT: Yes.

17 ADMINISTRATIVE LAW JUDGE: Is that  
18 good enough, Mr. Horton?

19 MR. HORTON: Yes, sir.

20 ADMINISTRATIVE LAW JUDGE: Okay.

21 MR. HORTON: And, Your Honor, I  
22 don't have any other questions.

23 ADMINISTRATIVE LAW JUDGE: Okay.

24 Anything on redirect?

25 MS. MURAROVA: Not from us, Your

1 Honor.

2 MS. NEWPORT: No, Your Honor.

3 ADMINISTRATIVE LAW JUDGE: Okay.

4 So I think we're done for the day, and we'll  
5 start up again at 10:00 Eastern time tomorrow.

6 All right. So we'll go off the  
7 record and --

8 MR. HORTON: I'm sorry, Your Honor,  
9 I've being told that the separation agreement  
10 hasn't been entered. I thought for some reason  
11 it had been, so I guess it's General Counsel's  
12 Exhibit 3.

13 ADMINISTRATIVE LAW JUDGE: I  
14 thought --

15 MR. HORTON: Oh, I'm sorry. I have  
16 text messages. Yes, 11 through 14, we do need  
17 admitted. What number should we use? 69A,  
18 Your Honor.

19 ADMINISTRATIVE LAW JUDGE: That's  
20 fine. Any objection?

21 MS. MURAROVA: Yes. I believe that  
22 -- again, this witness didn't -- we said -- I  
23 think there was a stipulation that Mr. Palmer  
24 received these text messages, but this witness  
25 didn't recognize these messages, so if they

1 want to enter these exhibits, I think they  
2 should enter them through a witness that  
3 recognizes them and can testify about them.

4 ADMINISTRATIVE LAW JUDGE: Well, I  
5 don't know. He said he got the -- he received  
6 them. I think it's pretty -- Mr. Palmer will  
7 be testifying tomorrow.

8 ADMINISTRATIVE LAW JUDGE: Okay.  
9 I'm going to receive the Exhibit 69A, and if  
10 there's any good reason for me to change it, I  
11 guess I will, but for now, it's in the record.

12 - - - - -

13 (Thereupon, Respondent's Exhibit 69A  
14 was received.)

15 - - - - -

16 ADMINISTRATIVE LAW JUDGE: Okay.  
17 So we're done for the night. I'm going to let  
18 Mark close out the meeting, because I'm afraid  
19 I'll do something that will make it difficult  
20 to get in tomorrow. It should be the same,  
21 which is why I'm letting him close things out.  
22 My understanding is if you hit leave, and he's  
23 now the host, we'll all be able to just come  
24 back in tomorrow.

25 But if you put end meeting, then

1 you have to go through the process from the get  
2 go, and I'm more confident in his abilities not  
3 to screw it up than my.

4 MR. WATRING: Judge, can I raise a  
5 couple housekeeping issues very quickly?

6 ADMINISTRATIVE LAW JUDGE: Sure.

7 MR. WATRING: First of all, would  
8 it be permissible if I absent myself for part  
9 of the hearing tomorrow and probably Mr.  
10 Brooks, the company representative as well? We  
11 would not be intending to switch out company  
12 representatives. We just want permission to  
13 not be present at the entire hearing.

14 ADMINISTRATIVE LAW JUDGE: That's  
15 fine.

16 MR. WATRING: Second, if I could  
17 ask Ms. Murarova her intention as far as when  
18 she needs the company witnesses, because she  
19 was thinking afternoon Wednesday. I don't know  
20 if that's still the plan.

21 MS. MURAROVA: Based on how far we  
22 got today, I can't imagine getting to any of  
23 your witnesses tomorrow, with the possible  
24 exception of perhaps Mr. Brooks at the very end  
25 of the day.

1 MR. WATRING: Very good. Thank you  
2 so much.

3 MS. NEWPORT: One other thing,  
4 Judge, the unredacted documents that we talked  
5 about before, I have those available that I can  
6 send you. How do you want me to proceed on  
7 that?

8 ADMINISTRATIVE LAW JUDGE: I think  
9 you can e-mail them to me.

10 MS. NEWPORT: Okay.

11 MR. ESKENAZI: You may just want to  
12 copy me, so I can help the judge if there's a  
13 problem.

14 MS. NEWPORT: I can do that.

15 MR. WATRING: Judge, as you're  
16 reviewing those, I think it's very unlikely  
17 that the company would not already have phone  
18 numbers of their former employees, so I'm not  
19 sure why that would be redacted --

20 MS. NEWPORT: I couldn't hear you;  
21 I'm sorry.

22 ADMINISTRATIVE LAW JUDGE: He just  
23 said that if all you redacted is the phone  
24 number of the former employees, it's very  
25 unlikely that company wouldn't already have it.

1 He doesn't understanding why you're redacting  
2 it, but you did redact them, so I'll see what  
3 it is.

4 I mean, I think if it's just the --  
5 whether the company already has that  
6 information or not, if it's the phone number,  
7 then you still want it redacted, I probably  
8 won't make you divulge them.

9 MS. NEWPORT: I mean, there's more  
10 redactions than that, but we were just trying  
11 to keep out personally identifying information  
12 that didn't seem necessary, but I'll send you  
13 all the unredacted, and you can review it.

14 ADMINISTRATIVE LAW JUDGE: All  
15 right. You're going to let me know what I'm  
16 comparing it to also, right?

17 MS. NEWPORT: Yes.

18 ADMINISTRATIVE LAW JUDGE: Okay.  
19 All right. Is it safe for Mr. Eskenazi to  
20 leave the meeting -- end the session for the  
21 night? Off the record.

22 (Whereupon, at 6:25 p.m., the  
23 hearing in the above-entitled matter was  
24 continued, to resume June 30, 2020, at 9:00  
25 a.m.)

CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 9, in the matter of In the Matter of Smyrna Ready Mix Concrete, LLC, and General Drivers, Warehousemen and Helpers, Local Union No. 89, Affiliated with the International Brotherhood of Teamsters, Case Nos. 09-CA-251578, 09-CA-252487, 09-CA-255573, and 09-CA-258273, via Zoom, on June 29, 2020, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, at the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected exhibit files were missing.



Rebecca Williams, RPR, Notary

Public within and for the State of Ohio.

My commission expires June 7, 2022.