

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 20-2482

JENNFIER A. HADSALL, Director of Region 18
of the National Labor Relations Board, for and on behalf
of the NATIONAL LABOR RELATIONS BOARD,

Petitioner-Appellee,

v.

SUNBELT RENTALS, INC.,

Respondent-Appellant.

ON APPEAL FROM AN ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

SUPPLEMENTAL APPENDIX FOR PETITIONER-APPELLEE
NATIONAL LABOR RELATIONS BOARD

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I N D E X

VOIR

WITNESS

DX CX RDX RCX DIRE

Michael Ervin 22 153 -- -- 29

(resumed) 30 160 47

(resumed) 49 221 56

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E X H I B I T S

EXHIBIT FOR IDENTIFICATION IN EVIDENCE

GENERAL COUNSEL

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9	GCX 5E	55	58
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EXHIBIT FOR IDENTIFICATION IN EVIDENCE

GENERAL COUNSEL

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23	R-1	187	220
24	JOINT		
25	J-1	7	9

I N D E X

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WITNESS DX CX RDX RCX DIRE

Michael Ervin -- 255 280 282 --

Gregory West 285 338 469 478

471

Daniel Marsolek 507 547 514

(resumed) 520

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EXHIBIT FOR IDENTIFICATION IN EVIDENCE

GENERAL COUNSEL

5	GCX 5A	288	292
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8	GCX 5D	293	296
9	GCX 5F-O	293	296
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3	WITNESS	DX	CX	RDX	RCX	DIRE
4	Daniel Marsolek	--	573	612	--	--
5	Jason Mayfield	624	692	695		
6			695			
7	Robert Bogardus, III	698	727	731		
8			729			
9	Rebel Strohmeier	733	753			
10	Jamie Smith	756	764			
11	Ramon Gutierrez	769	781		794	
12			792			
13	Katherine Torgerson	797	809	814	817	
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15	Kyle McKellips	819	838	850		
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E X H I B I T S

EXHIBIT FOR IDENTIFICATION IN EVIDENCE

GENERAL COUNSEL

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9	GCX 30	668	668
10	GCX 31	635	635
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12	GCX 33	742	745
13	GCX 40	722	723
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17	GCX 55	686	687
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1 I N D E X

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3	GENERAL COUNSEL WITNESSES:	DX	CX	RDX	RCX	VOIR DIRE
4						
5	ROBERT BOGARDUS, III	--	--	866	897	--
6	JASON MAYFIELD	--	--	898	--	--
7	BRYAN S. ANDERSON	905	909	--	--	--

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10 RESPONDENT
WITNESSES:

11

12	ROBERT BOGARDUS, III	914	925	931	933	--
13	JASON MAYFIELD	935	1017 1022	1024	--	--
14	BRYAN S. ANDERSON	1028	1080 1084	1086	--	1070 1071

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E X H I B I T S

EXHIBIT FOR IDENTIFICATION IN EVIDENCE

GENERAL COUNSEL

5	* GCX 5L	293	296
	GCX 47	862	866
6	GCX 60	910	--
	GCX 61	862	866
7	GCX 62	862	866
	GCX 63	862	866
8	GCX 64	862	866
	GCX 65	862	866
9	GCX 66	862	866
	GCX 67	862	866
10	GCX 68	862	866
	GCX 69	862	866
11	GCX 70	862	866
	GCX 71	862	866
12	GCX 72	862	866
	GCX 73	862	866
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1 (Exhibits continued.)

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3 EXHIBIT FOR IDENTIFICATION IN EVIDENCE

4 RESPONDENT

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6	R 7	916	918
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I N D E X

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3	RESPONDENT	DX	CX	RDX	RCX	VOIR
4	WITNESSES:					DIRE
5	ROBERT RIVERA	1093	1121	1131	1133	--
6			1129			
7	REBEL STROHMEYER	1134	1149	--	--	--
8			1150			
9	CHRISTOPHER PENDER	1152	1161	--	--	--
10	MARIANO RIVERA	1171	1189	--	--	--
11			1194			
12	STEVEN BUFFALO	1199	--	--	--	--
13	DANIEL MARSOLEK	1270	--	--	--	--

E X H I B I T S

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16	EXHIBIT	FOR IDENTIFICATION			IN EVIDENCE	
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18	GENERAL COUNSEL					
19	1(LL)		1281		1281	
20						
21	RESPONDENT					
22	R 11		1139		1148	
23	R 40		1199		1202	
24						
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1 at the outset of the May 22nd negotiations?

2 A. Yes. We were asking for the following
3 weeks to bargain and Pat Hill had stated that
4 they were too busy to -- Sunbelt to was too busy
5 to bargain until June 26, 2018.

6 Q. Did the union accept that date?

7 A. Yes.

8 Q. Why?

9 A. Because we figured if we didn't accept
10 that date it would only be further than that,
11 later than that.

12 Q. Did either party declare any caucuses
13 during those negotiations on May 22nd?

14 A. Yes.

15 Q. Who?

16 A. Sunbelt.

17 Q. Do you recall approximately how long
18 that caucus lasted?

19 A. Maybe an hour.

20 Q. Okay. And what happened after the
21 employer came back to the table from its caucus?

22 A. Pat Hill had stated that they needed
23 more time to go through our proposal so we ended
24 the session.

25 Q. And approximately how long were the

1 A. We provided our proposal on wages.

2 Q. I am going to show you what's been
3 marked as General Counsel Exhibit 6F. Do you
4 recognize this document?

5 A. Yes.

6 Q. And what is it?

7 A. It's the proposal that I gave to
8 Sunbelt at the start of that meeting on
9 February 8, 2019 for our wages.

10 Q. Was this the union's first wage
11 proposal?

12 A. Yes.

13 Q. What, if any, response do you recall
14 the employer having when you presented this wage
15 proposal to them?

16 A. That they weren't going to get into any
17 economic discussions.

18 Q. Who stated this for the employer?

19 A. Pat Hill.

20 MR. WIESE: I'll offer General Counsel
21 Exhibit 6F.

22 MS. HILL: No objection.

23 JUDGE ROSAS: General Counsel 6F is
24 received in evidence.

25 (GCX 6F received.)

1 BY MR. WIESE:

2 Q. After the employer came to the table
3 that day, did the parties discuss any other
4 economic items?

5 A. Yes.

6 Q. Okay. And what did they discuss?

7 A. We repropoed our health, our pension
8 and our dues checkoff.

9 Q. What response did the employer have to
10 these proposals?

11 A. They declined with no counteroffer.

12 Q. And then after the employer declined
13 these proposals, what do you recall happening
14 next?

15 A. I believe Sunbelt took a caucus.

16 Q. Do you recall how long the parties were
17 at the table before Sunbelt took a caucus?

18 A. 10, 15 minutes.

19 Q. How long did this caucus last?

20 A. Hour and a half plus.

21 Q. And during this caucus, did anyone from
22 the union go to check on the employer?

23 A. Yes.

24 Q. Who?

25 A. Me.

1 MS. HILL: Objection.

2 JUDGE ROSAS: Sustained.

3 BY MR. WIESE:

4 Q. Were there -- While Mr. Bogardus was at
5 his computer were there other Sunbelt employees
6 around?

7 A. Yes.

8 Q. Were those other Sunbelt employees
9 members of the employer's negotiating team?

10 A. No.

11 Q. How long did the employer's caucus
12 last?

13 A. Over an hour.

14 Q. Did the employer come back to the table
15 after that caucus?

16 A. Yes.

17 Q. Did the employer come back with any new
18 proposals after that caucus?

19 A. I don't believe so.

20 Q. And after that caucus, what, if any,
21 discussions do you recall around economic items?

22 A. Greg West had stated that he would like
23 to see a counterproposal to our economics.

24 Q. And what response did the employer have
25 to that?

1 A. Pat Hill declined because she said we
2 were not at that stage in the negotiations yet
3 even though everything was on the table.

4 Q. Did someone from the union state that
5 everything was on the table?

6 A. Yes.

7 Q. Who stated that?

8 A. I did.

9 Q. And after you stated that, what do you
10 recall happening next?

11 A. Dan Marsolek got a little frustrated
12 because of the fact that they weren't counter
13 proposing anything, they were just declining
14 everything and because of that Greg West had
15 figured that we should just end the session for
16 the day due to the frustration on the union's
17 part or on the union because of the lack of
18 counterproposals.

19 Q. Was it agreed by the parties to end
20 negotiations at that time?

21 A. I believe so.

22 Q. Okay. Why was the union so frustrated
23 at that point in negotiation?

24 A. We believed that we were doing our
25 homework in between sessions to try to prepare

1 MS. HILL: No objection.

2 JUDGE ROSAS: General Counsel 7H is
3 received.

4 (GCX 7H received.)

5 BY MR. WIESE:

6 Q. After the employer presented this
7 proposal at negotiations, and I'm talking about
8 specifically on Page 1 of this document, what
9 discussions do you recall having around that
10 item?

11 A. Terry McGowan had mentioned that they
12 do have the dues checkoff, Sunbelt does, and
13 other locals where they are assigned to and why
14 we couldn't have it here.

15 Q. What response, if any, did the employer
16 have to Mr. McGowan's remarks?

17 A. They just weren't going to do it. They
18 declined.

19 Q. Did the employer provide any reason as
20 to why they were declining dues checkoff?

21 A. No.

22 Q. And after the discussions around dues
23 checkoff, what happened next?

24 A. I believe Sunbelt took a caucus.

25 Q. Are you certain that it was Sunbelt?

1 offers on any of the other items that the union
2 proposed at the beginning of that session?

3 A. No.

4 Q. And what do you recall the parties
5 discussing after that?

6 A. I remember Terry McGowan stating that
7 he felt that Sunbelt wasn't bargaining in good
8 faith with everything going on and Pat Hill had
9 stated that they believed they were bargaining
10 in good faith.

11 Q. Was there any discussion around the
12 topic of dues checkoff at that time?

13 A. Yes.

14 Q. And what do you recall from the
15 discussions around that item?

16 A. Terry McGowan had stated he wasn't
17 understanding why they would not enter into an
18 agreement when they have it in other locals that
19 they are assigned to nearby.

20 Q. And what response did the employer
21 have?

22 A. That they just weren't going to enter
23 into admin dues checkoff.

24 Q. Did the employer provide any further
25 explanation?

1 A. Just that they weren't going to do it.

2 Q. What happened after this discussion
3 over dues checkoff?

4 A. I believe at that point we took a
5 caucus.

6 Q. And how long did the union's caucus
7 last?

8 A. 20 minutes.

9 Q. Did the union come back to the
10 bargaining table with any new proposals after
11 that caucus?

12 A. Yes.

13 Q. And what was the union's new proposal?

14 A. We proposed a reduced pension, reduced
15 wages. I think that was it at that point.

16 Q. What response did the employer have to
17 the union's proposal?

18 A. I believe then they took a caucus.

19 Q. How long did the employer's caucus
20 take?

21 A. About an hour.

22 Q. Did the employer have a new proposal
23 when they came back to the bargaining table?

24 A. Yes. I believe at that point they
25 changed their 1.35 premium pay to 1.4.

1 (Whereupon, a discussion was had
2 off the record.)

3 MS. HILL: Are we okay? All right.

4 JUDGE ROSAS: Back on the record.

5 BY MS. HILL:

6 Q. Going my last question to him was that
7 it has contracts where Sunbelt does not deduct
8 the dues from the employee's paychecks?

9 A. I don't recall that.

10 Q. You don't recall Sunbelt referencing
11 you to its contract -- one of its contracts in
12 St. Louis?

13 A. I'm sorry. I don't recall.

14 Q. And you don't recall Sunbelt also
15 referring you to a contract it has with
16 teamsters out on the east coast in which it does
17 not have dues deductions?

18 A. I don't recall.

19 Q. Now for purposes of this agreement, you
20 didn't even go to the Operating Engineers 513
21 out of St. Louis, correct?

22 A. You are correct.

23 Q. And why not?

24 A. Again, I went from with the closest
25 facilities to us.

1 Q. Did you even contact them?

2 A. I know they signed with you guys. I
3 didn't contact them about any agreements because
4 they are a little farther away than the two that
5 we referenced.

6 Q. Just because they are farther away but
7 you are not driving to them. You are just
8 picking up a phone or sending an E-mail, right?

9 A. At one point you guys -- guys
10 referenced in the negotiations that it's all
11 based on the areas so I utilized that to take
12 that into consideration.

13 Q. Well, in answer to my question, you
14 could have just picked up the phone or sent an
15 E-mail to any of the organizers or the president
16 or vice president of any of those unions, too,
17 correct?

18 A. Sure.

19 Q. And you failed to do so, correct?

20 A. Yeah.

21 Q. You have mentioned several times in
22 response to questions from the general counsel's
23 attorney about safety moments.

24 A. Uh-huh. Yes. Sorry.

25 Q. Okay. Did the union have an objection

1 asked if you could have some of your handbook
2 that is in our contract that is not typical to
3 what we do but we decided to talk to legal about
4 that.

5 Q. Prior to negotiations, did Sunbelt give
6 you a copy of the handbook?

7 A. Yes.

8 Q. Did Sunbelt even before the first
9 negotiation session give you copies of its 401K
10 plan?

11 A. Yes.

12 Q. Did Sunbelt give you a copy of its
13 health plan and the summary plan description?

14 A. Yes.

15 MR. WIESE: Objection, your Honor
16 relevance. There aren't any information request
17 allegations in the complaint.

18 JUDGE ROSAS: Hold on. Do you want him
19 to step outside or do you just want to
20 articulate in general the relevance?

21 MS. HILL: Okay. The relevance of this
22 is that the union and the Board have indicated
23 that we did not give any proposals to the union.
24 Part of what we gave them at the very beginning
25 included all the benefits. The handbook, as

1 things came up, for example, the union asked for
2 premiums. In fact, in the July letter that was
3 referenced a few minutes ago for supplemental
4 information from Mr. Ervin, he specifically
5 asked for the newer premium payments. That was
6 submitted in response to Mr. Ervin.

7 MR. WIESE: But there is a difference
8 between proposals being in writing and responses
9 to information requests. They are two
10 completely different items.

11 MS. HILL: But the handbook all the
12 planned descriptions, summary plan, full plan
13 documents were not requested. They were
14 provided to the union because, as Sunbelt
15 indicated, and he can testify, Sunbelt and some
16 of his notes even indicate, Sunbelt wanted to
17 use their own plans for health insurance, 401K.

18 JUDGE ROSAS: Well, I am going to
19 overrule the objection. Oftentimes, and I am
20 not exactly sure how it's all going to factor in
21 here, but oftentimes we have alleged requests
22 for -- failures to provide information requested
23 during bargaining which is pertinent. Here
24 counsel is arguing that there is some points to
25 be made by virtue of the fact that the

1 respondent voluntarily without being requested
2 provided information that was pertinent, it
3 should have been considered in the generation of
4 the collective bargaining agreements so see how
5 it all filters out. Next question.

6 BY MS. HILL:

7 Q. All right. Next question, sir, would
8 you agree that Sunbelt and the union did
9 negotiate whether the bargaining unit employees
10 would be on Sunbelt's 401K or the union's
11 retirement pension plan?

12 A. You guys just declined our proposal
13 every time with no counter.

14 Q. Did we give you the planned document
15 for the 401K?

16 A. Yes.

17 Q. All right. Now I think what you said
18 for Page 9 of 12, this is not your handwriting.
19 Do you recognize it?

20 A. I don't know if it's Greg's but I
21 apologize. It's not mine.

22 Q. Okay. And I apologize. I thought you
23 said early on that all the handwriting on this
24 entire exhibit was yours. All right. So this
25 one I save for Mr. West?

1 proposed one and a half times the regular wage
2 rate and the company's counterproposal was 1.25.

3 Q. Was this discussed or referred to by
4 the parties as premium pay?

5 MS. HILL: Objection. Leading.

6 MR. WIESE: I am just trying to --

7 JUDGE ROSAS: I'll allow that.

8 THE WITNESS: Yes.

9 BY MR. WIESE:

10 Q. Okay. So turning away from the
11 discussions around premium pay, what other
12 discussions do you recall returning after that
13 caucus?

14 A. Asked for a counterproposal to our wage
15 proposal.

16 Q. What did the -- what response did the
17 company have to that?

18 A. After discussing the premium pay, we
19 were told we weren't going to discuss economics.

20 Q. Who stated this from the company?

21 A. Pat Hill.

22 Q. After this exchange, what do you recall
23 happening next at negotiations?

24 A. As I recall, the union took a caucus
25 ourselves.

1 taken of that facility?

2 A. Quite a few. An exact number, probably
3 over a thousand.

4 Q. And are the pictures in General Counsel
5 Exhibit 25 are they representative of the
6 thousand plus pictures that you have taken at
7 the Sunbelt facility?

8 A. Yes, sir.

9 Q. Over what period of time would you have
10 taken those pictures?

11 A. It would have started shortly after mid
12 August I would say until I could have been out
13 there yesterday taking pictures because it's
14 still going on. When I drove to my -- I had an
15 appointment in town, I drove past the facility.
16 One of the third-party trucks that was in this
17 picture -- in these pictures was on site getting
18 loaded up.

19 Q. And when did you do that?

20 A. This was yesterday. It was -- what was
21 the date? Whatever the date was yesterday.
22 We'll say around 3:00 o'clock.

23 JUDGE ROSAS: Are you testifying to
24 something you saw that we don't have a picture
25 for?

1 Q. Okay. In what capacity?

2 A. As a regional vice president.

3 Q. As a regional vice president in the
4 Franksville negotiations, what have you been
5 doing?

6 A. Negotiating through a CBA, potential
7 CBA.

8 Q. And what is your role specifically in
9 the negotiations at the CBA or for the CBA at
10 the Franksville facility?

11 A. Well, one of the decision makers and
12 the ultimate decider.

13 Q. So you are the one with the authority
14 to sign off on tentative agreements?

15 A. Correct.

16 Q. Okay. Do you have disciplinary
17 authority as the regional vice president?

18 A. I do.

19 Q. Who do you have discipline authority
20 over?

21 A. The district managers.

22 Q. As the regional vice president, do you
23 have authority to lay off employees?

24 A. A district manager.

25 Q. A district manager has that authority?

1 A. Well, the district manager would be
2 directly responsible for the profit centers,
3 PCs. The PCs would have direct authority over
4 those employees that work within the PC.

5 Q. And so if there were a layoff at a
6 profit center, that would be decided at the
7 district manager level?

8 A. The profit center would be the primary
9 and then obviously an influencer would be the
10 district manager, the DM.

11 JUDGE ROSAS: You know, Counsel, this
12 is a 611(c) witness, is it not?

13 MR. WIESE: That's correct.

14 JUDGE ROSAS: So you are entitled to
15 lead.

16 MR. WIESE: Okay. I was establishing
17 the authority for 611(c), but I'll request -- I
18 request to examine this witness under 611(c).

19 JUDGE ROSAS: It's granted.

20 BY MR. WIESE:

21 Q. Okay. So with respect to a layoff at a
22 profit center, what authority does district
23 manager have in that process?

24 A. The district manager would be brought
25 in to table the discussion on a potential

1 termination and/or layoff.

2 Q. And then with respect to your role in
3 that process, do you have any role?

4 A. No. They could -- If they decided to
5 do a layoff determination, they could make that
6 determination on their own.

7 Q. So is your testimony that you have
8 never been involved in a layoff or termination
9 decision at a profit center?

10 A. That would usually be left to a
11 district manager or a PCM and a district
12 manager.

13 Q. Okay. That's the usual case but have
14 you ever been involved in those decisions?

15 A. I have been notified of a decision
16 being made.

17 Q. Have you made that decision to lay off?

18 A. I haven't made that decision.

19 Q. I am going to show you a copy of your
20 affidavit which was given to the NLRB on
21 October 30th of 2019. I am just going to have
22 you read along silently while I read out loud
23 and confirm if I have read this statement
24 correctly: So starting on Page 1 lines 9
25 through 10, do you see where I am at?

1 that's marked General Counsel Exhibit 31.

2 A. Yep.

3 Q. Do you recognize this document?

4 A. Yes.

5 Q. And what is it?

6 A. This is the framework for generating a
7 layoff letter.

8 Q. Was this -- were you involved in
9 requesting these layoff letters?

10 A. I was.

11 Q. Okay. And do you recall when you made
12 that request?

13 A. That would have been on the 7th.

14 Q. Okay. But the E-mail --

15 A. Sorry. Sorry. August 5th.

16 Q. No. That's okay.

17 MR. WIESE: I'll offer General Counsel
18 Exhibit 31.

19 MS. HILL: No objection.

20 JUDGE ROSAS: General Counsel's 31 is
21 received.

22 (GCX 31 received.)

23 BY MR. WIESE:

24 Q. And, Mr. Mayfield, with respect to the
25 upper left-hand corner of that exhibit, it looks

1 before August 8th of 2019?

2 A. Correct.

3 Q. Mr. Mayfield, in your position as
4 regional vice president, have you laid off
5 employees in the past prior to the Franksville
6 layoffs?

7 A. Over my career or with Sunbelt?

8 Q. With Sunbelt. Thank you.

9 A. No.

10 Q. And when you explained the layoff
11 decision to the union at the bargaining on
12 August 8th, you referred to the reorganization
13 as changing the Franksville facility to a
14 will-call facility; is that accurate?

15 A. A small equipment facility, so
16 will-call and small tool.

17 Q. How many other will-call or small tool
18 facilities are there in your region?

19 A. Well, we have smaller locations so
20 there is a handful of smaller locations.

21 Q. But are those smaller locations are
22 those considered will-call/small tool locations?

23 A. I wouldn't necessarily define them as
24 will call and small tool locations.

25 Q. So the Franksville facility is the only

1 BY MR. WIESE:

2 Q. So this is the -- this is a document
3 that you did rely on in making the decision to
4 transition Franksville to a will-call facility,
5 small equipment facility?

6 A. This specific document, no.

7 Q. Okay. Did you rely on any consolidated
8 income statement to making that decision?

9 A. Yes.

10 Q. Okay. So, and I understand that this
11 goes past the date of August of 2019, but did
12 you rely on a document similar to this through
13 August of 2019 in making that decision?

14 A. Yes.

15 Q. All right. So I want to go through the
16 items on the left-hand side of the document
17 below revenue, okay? Okay.

18 A. Okay.

19 Q. So rental revenue, what does that
20 display?

21 A. What the customer was invoiced for.

22 Q. And then rerental income, what does
23 that represent?

24 A. That's if we have to source a piece of
25 equipment from a third party.

1 Q. And what about E&D labor?

2 A. Erection and dismantling.

3 Q. So how does that work out in practice?

4 A. It doesn't for these locations. That's
5 for scaffolding.

6 Q. Okay. Thank you. And then below that,
7 the total rental number so that is the sum of
8 all of those items that we just discussed,
9 correct?

10 A. Correct.

11 Q. Okay. And if we go down to the second
12 -- and so the numbers in the first row of this
13 chart below May 2018, it says actual; June 2018
14 actual, do you see all of that?

15 A. Yes.

16 Q. So those represent that's the actual
17 revenue coming into the Franksville facility?

18 A. Yes.

19 Q. And then the column, or excuse me, the
20 row below that has a budget, do you see that?

21 A. Yes.

22 Q. Okay. And so the budget that's
23 indicated there, that's the -- is that the
24 projected numbers then for the facility in a
25 given month?

1 A. Not projected, budgeted.

2 Q. Okay. And are you the one who creates
3 those budgets?

4 A. No.

5 Q. Who does create those budgets?

6 A. The profit center manager. The PCM.

7 Q. Do you provide direction to PCMs on how
8 to create those budgets?

9 A. That direction would come from the
10 district managers.

11 Q. And do you provide direction to
12 district managers on how to direct their PCMs on
13 how to create budgets?

14 A. Not to direct their PCMs. For their
15 districts, for their district roll out. They
16 have multiple profit centers in the district.

17 Q. And so your role in this budgeting
18 process would be to monitor the budgets of the
19 district managers as opposed to the budgets of
20 the specific profit centers?

21 A. Correct.

22 Q. What is Sunbelt's fiscal year?

23 A. May 1st through the end of April.

24 Q. When are these budgets finalized? So
25 for the fiscal year 2020, would that be from

1 2020 were created for Profit Center 776 in
2 Franksville?

3 A. Yeah. Budgets would be derived by
4 taking the amount of cap ex that was expected as
5 well as the market influence of growth and then
6 coming up with an expected rental achievement.

7 Q. What is cap ex? I am not familiar with
8 that term?

9 A. Capital expenditures.

10 Q. Yeah. Okay. Thank you. So the
11 bargaining unit employees as we were discussed
12 were laid off in August of 2019; is that
13 correct?

14 A. Yes.

15 Q. And I want to look at -- I want to
16 compare the actual numbers at the top of the
17 column here. So if you look at the total rental
18 for June of 2018, that's \$565,000 approximately,
19 correct?

20 A. Yes.

21 Q. Okay. And then if you compare that to
22 June of 2019, the actual revenue was \$586,684;
23 is that correct?

24 A. Yes.

25 Q. And you'd agree with me that the

1 June 2019 number is greater than the June
2 of 2018 number, correct?

3 A. Yes.

4 Q. And the same is true if you compare the
5 July 2018 number to the July 2019 number; isn't
6 this accurate?

7 A. Yes.

8 Q. Those are the months leading up to the
9 time when you made the decision to terminate the
10 two bargaining unit employees, correct?

11 A. Yes.

12 Q. And at the time in June of 2019, there
13 were actually less bargaining unit employees
14 employed at the Franksville facility than there
15 were in June of 2018; is that correct?

16 A. Yes.

17 Q. And this chart doesn't show labor costs
18 in any way for Sunbelt, does it?

19 A. No.

20 Q. So the Franksville -- You can set that
21 chart aside, Mr. Mayfield. So the Franksville
22 facility, do you recall when that was opened?

23 A. March 2014.

24 Q. Do you know why the Franksville
25 facility was opened?

1 BY MR. WIESE:

2 Q. Approximately how many total employees
3 are there in Wisconsin from Sunbelt?

4 JUDGE ROSAS: Counsel?

5 MS. HILL: Objection. Form of the
6 question.

7 JUDGE ROSAS: How many employees?

8 MS. HILL: Correct, because time frame.
9 You know, he is bouncing around on time and
10 everything else.

11 JUDGE ROSAS: Okay. At what time?

12 BY MR. WIESE:

13 Q. In August of 2019, approximately how
14 many Sunbelt employees were there in Wisconsin?

15 A. 70.

16 Q. And out of the Franksville facilities
17 at that time, again August of 2019, the
18 Franksville facility was the only facility with
19 union employees in Wisconsin; is that correct?

20 A. Yes.

21 Q. Do you know what Local 139's
22 jurisdiction is, the union's jurisdiction?

23 A. I do not.

24 Q. Okay. And the layoffs that took place
25 in August of 2019, those were limited to the

1 Franksville facility, correct?

2 A. Yes.

3 Q. And at the Franksville facility those
4 two layoffs were limited to the two bargaining
5 unit employees; is that correct?

6 A. Yes.

7 Q. At that time -- Strike that.

8 Did you discuss the union's bannering
9 activity with the union?

10 A. Yes.

11 Q. Did the union ever tell you during any
12 of those conversations that terminating their
13 bargaining unit would cause the bannering to
14 stop?

15 A. No.

16 Q. Does that make sense to you that
17 terminating the two union represented employees
18 would alleviate the bannering?

19 A. No.

20 Q. Doesn't it seem like that would cause
21 the union to be even more upset at Sunbelt?

22 A. I don't know.

23 Q. You don't know whether terminating
24 their only two represented employees would upset
25 the union?

1 General Counsel Exhibit 30 now. So this has
2 previously been identified as the consolidated
3 income statement for the Franksville Center?

4 A. Yes, sir.

5 Q. Okay. And you recognize it as such?

6 A. Yes, sir.

7 Q. I'd like to focus on the middle row of
8 this document. The budget items, do you see
9 where I am pointing to there?

10 A. You are talking about the revenue
11 stream for the budgeted revenue stream for the
12 Sun Prairie?

13 Q. Right. Exactly.

14 A. Okay.

15 Q. Are you involved in calculating the
16 budgeted revenue streams for profit centers?

17 A. Yes. Yes, sir. I work with the
18 individual PCM.

19 Q. And what's the process for doing that?

20 A. Well, we look at what the general
21 economy is going to do. What we think we are
22 going to see and put it together in that
23 regards. Wisconsin is I think is common
24 knowledge has been pretty active in growing and
25 we try to put a budget together the best

1 aren't sure then what type of a review he
2 conducts of the budgets?

3 A. You'd honestly have to ask Jason how he
4 looks at it. We went back and forth a bit, but,
5 you know, we didn't talk a whole lot about the
6 logic. We just talked about the numbers needed
7 to look like.

8 Q. Did Mr. Mayfield consult with you at
9 all regarding the decision to terminate or lay
10 off the union represented employees at the
11 Franksville facility?

12 A. Yes.

13 Q. When did he do that?

14 A. I am trying to think of the best way to
15 answer that because at the very beginning of
16 this when the folks from 139 showed up, I was
17 ready to close the store so we had a
18 conversation about closing the store at that
19 point.

20 Q. And you were ready to close the store
21 because the union was coming in?

22 A. Given what we were seeing, yes.

23 Q. Who did you have that conversation
24 with?

25 A. Jason and I had that conversation a

1 week or so after the election.

2 MR. WIESE: Your Honor, I do have a
3 couple of documents that I want to introduce
4 through this witness. So I will try to hand
5 them out as quickly as I can.

6 BY MR. WIESE:

7 Q. Mr. Bogardus, I'd like to start with
8 the document that's marked in the lower
9 right-hand corner General Counsel Exhibit 26.

10 A. Yes, sir.

11 Q. Do you recognize this document?

12 A. Yes, sir.

13 Q. This is an E-mail chain that you
14 started on July 25, 2018; is that correct?

15 A. Yes, sir.

16 Q. And it's with regard to the scheduled
17 collective bargaining negotiations with
18 Local 139; is that correct?

19 A. Yes, sir.

20 Q. And this E-mail chain led to those
21 July 30th negotiations being cancelled to your
22 knowledge; is that correct?

23 A. Yes, sir.

24 MR. WIESE: I'll offer General Counsel
25 Exhibit 26.

1 A. Pendel, Pendle, something like that.

2 Chris Pendle.

3 Q. Where was Mr. Pender when he made this
4 remark?

5 A. He would have been probably right where
6 his office was in the shop, I believe.

7 Q. And were you in the office when Mr.
8 Pender made this remark?

9 A. Not in his office. His office is
10 actually like part of the shop and there is
11 doors that go into the main lobby entrance from
12 the shop and I was coming out them doors.

13 Q. Okay. How far away from his office
14 were you when you made this remark?

15 A. His office door, maybe ten feet.

16 Q. Was anybody else present in the office
17 with Mr. Ryan presented Pender?

18 A. There was a couple of shop guys.
19 Exactly who now, I don't remember. It's been so
20 long.

21 Q. And could you clearly hear Mr. Pender
22 make this remark?

23 A. Yes.

24 Q. Did you recognize his voice?

25 A. Sure. Yeah.

1 Q. And what did you hear overhear Mr.
2 Pender say?

3 A. Well, he said that the union was never
4 going to get in and it was never going to happen
5 but the thing was is the union was already voted
6 in for over a year and the contract was being
7 worked on.

8 Q. Did you overhear Mr. Pender say
9 anything else?

10 A. No. I believe that was it. I had to
11 keep going. I was a driver it was kind of go,
12 go, go. I was never really too much at the
13 shop.

14 Q. How long did you listen to Mr. Pender
15 speak to the employees?

16 A. That was maybe 5, 10 seconds. It
17 wasn't long.

18 Q. Did this conversation stand out to
19 you --

20 A. Yes.

21 Q. -- when you heard it? Why is that?

22 A. Because like I stated the union was
23 already voted in. Why would it not get in now.

24 Q. I am going to direct your attention to
25 in the exhibit binder in front of you there

1 were always trying to single us out, see how
2 wanted to be union and who didn't, so...

3 THE REPORTER: I'm sorry, your Honor.

4 JUDGE ROSAS: Repeat that, sir.

5 THE WITNESS: I thought he was singling
6 me out. They always try to find out who was for
7 union and who wasn't and we all had to act
8 neutral for our own benefits.

9 BY MR. WIESE:

10 Q. Mr. Gutierrez, were you working at
11 Sunbelt at the time of the -- when the union was
12 voted in to represent employees?

13 A. I was working in the store since the
14 day they opened the doors.

15 Q. Do you recall approximately when that
16 vote occurred, the first vote?

17 A. I know it was in February of 2018.
18 Exact date, I can't give you.

19 Q. Do you recall any managers or
20 supervisors holding any meetings about the union
21 around that time with employees?

22 A. A couple of days before the vote, they
23 bought us breakfast and they wanted us all in
24 the break room to talk about the union.

25 Q. And who spoke at that meeting?

1 A. Bo Bogardus.

2 Q. What do you recall from that meeting
3 Mr. Bogardus?

4 A. Well, he told us that he has handled
5 other unions before and he is going to protect
6 us from the union because they just want to take
7 our dues and he also said at the end that if the
8 union does win, that he is just going to close
9 down the store and let everybody go.

10 Q. How long do you recall that meeting
11 lasting?

12 A. 15 minutes.

13 Q. After the union election, did you have
14 any conversations with Mr. Bogardus regarding
15 discipline?

16 A. He called me into the office to lay me
17 off. He did that to a couple other guys. He
18 showed he a paper and a box. He never let me
19 touch it. He said this is your writeup, and he
20 pulled it back and then he just showed me some
21 pictures of some machines I said I checked in,
22 that they are not going to write me up this
23 time. This is my freebee and then we talked
24 about why do I want to be from the union. I
25 told him I wanted a pension.

1 A. Yes.

2 Q. How frequently?

3 A. I would say daily.

4 Q. And during the conversations that you
5 had with Mr. Bogardus, what do you recall
6 talking about?

7 A. Employee I guess morale is one. Was
8 there any behavior issues. Were people coming
9 in and doing their jobs. Was there any
10 congregating. Things of that nature. Was it
11 business as usual or was there a disruption.

12 Q. And after your initial conversation
13 about the union organizing, did Mr. Bogardus
14 visit the Franksville facility?

15 A. Yes.

16 Q. When did he start doing that?

17 A. I would say within the week of being
18 notified.

19 Q. How frequently did he visit the
20 facility between when you first talked to him
21 about the union and the union vote?

22 A. I don't recall exactly. But there was
23 a long stretch of time or a week or longer weeks
24 where he would come in and sit in the conference
25 room every day.

1 Q. Was this more frequently than
2 Mr. Bogardus had visited the facility in the
3 past?

4 A. Yes.

5 Q. How frequently had he visited the
6 facility prior to your bringing up the union
7 with him?

8 A. Not very often.

9 Q. Can you quantify that at all?

10 A. Weeks would go by without seeing him.

11 Q. Do you recall having any conversations
12 with Mr. Bogardus about what would happen if the
13 union won the election at the Franksville
14 facility?

15 A. There was comments that were made that
16 were would just kind of come out that he
17 indicated at one point that we'd close -- we'd
18 close the store.

19 Q. Did Mr. Bogardus say that to you one
20 time or more than one time?

21 A. There was multiple occurrences.

22 Q. Do you recall how many times
23 approximately he said that?

24 A. I don't, no.

25 Q. Was it more or less than five?

1 A. More than five.

2 Q. Are there any specific instances that
3 you can recall when he brought this up?

4 A. Not specific to a date or anything, no.

5 Q. What about more generally, any
6 circumstances conversations?

7 A. Yeah. When we'd talked in the
8 conference room and whatnot and I know there was
9 commentary made in front of other employees as
10 well as in some management meetings in front of
11 other managers.

12 Q. When Mr. Bogardus would talk to you
13 about the union, how would he act?

14 A. I would say he is a very passionate
15 man, very boisterous and loud so I would say in
16 that matter, very, very loud and boisterous
17 about it.

18 Q. Did he appear upset about the union?

19 A. Angry might be -- I guess that could be
20 upset, but not happy about it.

21 Q. Over what period of time was Mr.
22 Bogardus make these remarks about the union?

23 A. From the time that we were notified of
24 the signatures until the time he made his
25 decision.

1 Q. Did you have any conversations with
2 Mr. Ryan Bogardus regarding how the union might
3 affect your employment at Sunbelt?

4 A. Yes.

5 Q. And when was the first conversation you
6 had about that?

7 A. A couple weeks after he had come in so
8 within I'd say two to three weeks when he was at
9 the location, I had asked him if I was going to
10 lose -- or if I was going to be fired.

11 Q. Okay. And where were you when this
12 conversation took place?

13 A. We were in the Franksville facility and
14 it would have been it was right near my office.

15 Q. Was anybody else present for that
16 conversation?

17 A. No.

18 Q. And what do you recall being said?

19 A. He had indicated that the union wasn't
20 helping my cause.

21 Q. Was this before or after the union
22 election?

23 A. Before.

24 Q. What about after the union election?
25 Did you have any conversations with Mr. Bogardus

1 Q. Okay.

2 A. He came in and dismissed me.

3 Q. And who was present when you were
4 dismissed?

5 A. Bogardus and Rebel Strohmeier.

6 Q. Where did that meeting take place?

7 A. In the conference room at the
8 Franksville location.

9 Q. What do you recall from that meeting?

10 A. Just going into the conference room and
11 they said that this wasn't easy and
12 unfortunately they needed to let me go.

13 Q. Did Mr. Bogardus or Ms. Strohmeier
14 provide any reason for why you were terminated?

15 A. Wisconsin is an at-will obviously but
16 there was a comment made about how our inventory
17 shortage did not help as well as the union vote.

18 Q. Who stated?

19 A. Bo Bogardus.

20 MR. WIESE: Nothing further.

21 JUDGE ROSAS: Charging Party?

22 MR. RYAN: I don't have any questions.

23 Thank you.

24 JUDGE ROSAS: Cross, Ms. Hill?

25 MS. HILL: Yes, sir.

1 your recollection now refreshed as to the
2 remainder of that conversation with Mr. Pender?

3 A. Uh-huh.

4 Q. And so what else do you recall from
5 that conversation?

6 A. Well, actually, there wasn't much more
7 in that conversation but I have called him and
8 talked to him over the phone a few times --

9 Q. Okay.

10 A. -- since that. I know I did talk to
11 him once about, you know, he told me that he was
12 no longer going to be working for the
13 Franksville store and the reason for that is
14 they -- I don't know who it was that said he
15 wasn't being effective enough but he was not
16 getting enough work done is what his
17 understanding was and what he told me, not
18 enough equipment was getting repaired, he wasn't
19 working enough hours. He was salaried, so he
20 was trying to keep it 8- to 10-hour days so that
21 he had time with his family.

22 So the resolution was that he was going
23 to stop being the manager. He was going to go
24 up to the Waukesha store and become a mechanic
25 again, and that they were going to bring

1 somebody else down and what we discussed was
2 potentially two people down to continue working
3 at that shop.

4 Q. When did that telephone conversation
5 occur?

6 A. That was -- that was a few months ago
7 now. I honestly couldn't give auto specific
8 time to that.

9 Q. Okay. I'd like to direct your
10 attention there is a binder of exhibits in front
11 of you there, and I'd like to direct your
12 attention to General Counsel Exhibit 25. Are
13 you on it? I'd like to turn to Page 2, 3 and 4
14 of that document.

15 A. Yes.

16 Q. What's happening in these pictures?

17 A. That's Chris Pender holding a grease
18 gun on Page 2 and he is greasing this skid-steer
19 on Page 3 and it looks like he is just looking
20 over the equipment on Page 4.

21 Q. All right. The grease gun that he is
22 holding, did you use grease guns when you worked
23 for Sunbelt?

24 A. Yes.

25 Q. How often?

1 A I don't recall.

2 Q Did you ever arrive late for any of the
3 negotiations?

4 A Yes.

5 Q And do you recall when that happened?

6 A Yeah, one of them was -- I was 11 minutes late.

7 Q And why were you 11 minutes late, sir?

8 A Traffic, road construction.

9 Q Did the union say anything about your lateness?

10 A Yes.

11 Q And what was said and by whom?

12 A By Dan. Dan had made the statement that I need
13 to leave earlier, and I asked Dan, I said well, how
14 early is early, is it four hours, five hours, and Dan
15 just said that you need to leave earlier.

16 Q Did the negotiations continue after that?

17 A Yes, ma'am.

18 Q Did you apologize for being 11 minutes late?

19 A I did.

20 Q And what did the union propose during this
21 February negotiation session?

22 A I don't recall.

23 Q Were any economics discussed during the February
24 negotiation session?

25 A Yes.

1 or -- yeah, increase the amount of smaller-type
2 equipment that was going to generate more profit.

3 We actually began executing that strategy in May
4 of 2018, maybe early June of 2018. We actually moved
5 about I think between 2 and \$3,000,000 worth of
6 equipment, we started executing it, and then we got
7 instructions from Mr. Mayfield to basically halt on
8 that.

9 Q Did he give you a reason for halting on it?

10 A No, he did not.

11 Q When you say you moved it, where did it get moved
12 to?

13 A It got moved to -- well, some of it -- most of it
14 was moved to the Waukesha location, but it was moved to
15 other locations within the state.

16 Q Did you participate in the negotiations with the
17 139?

18 A I did, yes.

19 Q Now, there are two binders, one that's blue, one
20 that's black.

21 A Yep.

22 Q The blue one, I'll refer to exhibits in there as
23 the General Counsel exhibits. The black ones are going
24 to be Sunbelt's exhibits.

25 A Okay.

1 A That wouldn't go to Pirtek.

2 Q And your current position as a mechanic III at
3 Waukesha, is that an hourly position?

4 A Yes.

5 Q Your service manager position at Franksville,
6 that was a salary position?

7 A Yes.

8 Q It was your decision to transfer from the
9 Franksville store to the Waukesha store, is that
10 correct?

11 A Yes.

12 Q Your decision, was that based on, in any way, the
13 number of hours you were working at the Franksville
14 store?

15 A Between my commute and my young family at home,
16 it made more sense to take a position back in Waukesha.

17 Q After the mechanics were laid off at the
18 Franksville store, were you working more hours as a
19 service manager?

20 A Yes, a little bit.

21 Q Did your job duties change after the mechanics
22 were laid off?

23 A Yes.

24 Q Were you doing more maintenance work than you
25 were prior to when the mechanics were laid off?

1 A Yes.

2 MS. HILL: Objection.

3 JUDGE ROSAS: Overruled.

4 You can answer.

5 THE WITNESS: Yes.

6 BY MR. WIESE:

7 Q How much more?

8 A Not a ton more, but there was an extra bit of
9 work. I lost four mechanics.

10 Q And you were doing the maintenance work that had
11 previously been done by those four mechanics?

12 A Yes.

13 MR. WIESE: Nothing further.

14 JUDGE ROSAS: Charging Party?

15 MR. RYAN: I don't think I have anything. Thank
16 you.

17 JUDGE ROSAS: Okay. Any redirect?

18 MS. HILL: Just a moment, your Honor.

19 No further questions.

20 JUDGE ROSAS: Okay. Thank you. Sir, you're
21 excused. Please do not discuss your testimony with
22 anyone until you're advised by counsel that the case is
23 over. All right?

24 THE WITNESS: Certainly.

25 JUDGE ROSAS: Have a good day.

1 A Yes, ma'am. That's the date.

2 Q And then looking up near the top in Section 3a,
3 "Bryan Anderson PCM 776," is that your handwriting, sir?

4 A No.

5 Q Do you recognize that handwriting?

6 A Yeah. That's Bryan's handwriting.

7 Q Okay. And the e-mail address there, do you
8 recognize that handwriting?

9 A Yes.

10 Q And do you recognize -- I'm sorry. You seem to
11 be studying it some more.

12 A Yes. I'm sorry.

13 Q And do you recognize that handwriting, sir?

14 A Yes.

15 Q Okay. Is it your handwriting?

16 A No.

17 Q The pages that are in this Exhibit 10, did you
18 receive these, sir?

19 A I believe this is the one -- yeah, this is I
20 believe what they sent me in the mail.

21 Q Okay. Well, looking back at the page with your
22 handwriting on it, sir --

23 A Yes.

24 Q -- did you put your handwriting on there while
25 you were in the NLRB office?

1 Q Do you remember if he -- when he filled that in?

2 A It says on the corner the "Date Filed," the 22nd.
3 I honestly don't know. Oh, it had to have been in front
4 of me because I signed it and I dated it myself.

5 Q So he filled that in before you filed the
6 petition?

7 A Not before I filed the petition. This is after
8 the petition was filed. Because I filed the petition,
9 and then I brang it back to the PC and told him what I
10 got.

11 Q Okay. So his name was blank when you --

12 A Yeah.

13 Q And then about two-thirds of the way down where
14 it talks about election details in that Section 11 --

15 A Line "6:00 AM"?

16 Q Yes.

17 A Yes, sir.

18 Q You put in that information?

19 A That's me, yes. That's the time that we set up
20 for that.

21 Q When you say "we set up," who?

22 A I talked to them and asked what would be a
23 convenient time, because I had to ask that it went into
24 what's the procedure of our workload, because you can't
25 have an election when there's work going on and bring

1 people in. The last time when the union -- can I
2 mention the union? Is that okay?

3 Q Uh-huh.

4 A When we had the election, it was organized so it
5 was at a morning where it's not inconveniencing the
6 daily work schedule, and it was early morning as well,
7 so I didn't want to interrupt normal business hours and
8 have somebody miss the election to be fair to everyone
9 that wasn't involved in the signatures. That's what I
10 was thinking of when I tried to make this.

11 Q When you say "we," we came up with this time,
12 who else?

13 A Well, I talked to Bryan, because Bryan was our
14 store manager, and I had to -- I had to get permission
15 to get a decent time where it's not going to affect the
16 business, and he would be the only one who would know
17 what time frame, because we start at staggered hours,
18 and it wouldn't have been fair to have an election
19 without all the employees being able to make it.

20 Q Okay. But that information was in there before
21 you signed the bottom of it?

22 A Yes.

23 MR. RYAN: Thank you very much. I don't have
24 anything further.

25 THE WITNESS: Thank you.

County of Milwaukee

Case 18-CA-247528

State of Wisconsin

Confidential Witness Affidavit

I, Michael Ervin being first duly sworn upon my oath, hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

My work address is PO Box 130, Pewaukee, WI 53072

My work telephone number is (262) 896-0739

My work e-mail address is mervin@iuoe139.org

I am employed by International Union of Operating Engineers, Local 139, AFL-CIO ("Union")

located at N27W23233 Roundy Drive, Pewaukee, WI

- 1 1. I have worked for the Union for about six years. I have worked as an Organizer for
- 2 that entire time. My job duties as an Organizer include recruiting new members,
- 3 attempting to organize workplaces, negotiating collective bargaining agreements,
- 4 representing employees, and other related duties.
- 5 2. I have previously provided a number of affidavits to the NLRB in connection with the
- 6 Union's charges against Sunbelt Rentals, Inc. ("Employer").
- 7 3. As discussed in detail in some of my prior affidavits, the Union represents the
- 8 mechanics and driver's at the Employer's Franksville, Wisconsin facility, although all of
- 9 those unit employees have since been laid off. The NLRB election at Franksville was
- 10 conducted on March 6, 2018, and the Union was certified on March 13, 2018.
- 11 4. The Union has had a couple of organizing drives with other Sunbelt stores and
- 12 employees in addition to our efforts with the Franksville facility. Most specifically, the
- 13 Union had organizing drives taking place at the Employer's Climate Control shop in
- 14 Waukesha and the General Tool rental shop in Sun Prairie. The Sun Prairie location
- 15 is also referred to as the Madison location.

re

Privacy Act Statement

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further an unfair labor practice or representation case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

- 1 5. The Union had some difficulty getting Sunbelt employees interested in the Union
2 because very shortly after the Union won the election in Franksville, the Employer
3 gave substantial raises to all employees across the State. I heard that the raises were
4 in the \$3 to \$5 per hour range and the raises took effect around a week or so after the
5 Union won the Franksville location. I have a copy of one paystub from an employee
6 that established when the raise took effect and how much the raise was. That
7 employee was Mark Seelman, who worked at the Madison tool rental shop and was
8 the Union's main employee contact during that organizing drive. Seelman got a raise
9 of \$4.93 that was effective on March 15, 2018. That raise went into effect in the
10 middle of the pay period, as the pay period ran from March 12 to March 25, 2018.
11 Seelman told me that he was not expecting that raise and did not know about it
12 beforehand, and that previously raise amounts were generally around 30 to 50 cents
13 an hour. Seelman told me that everyone else in the Madison store also got raises,
14 and that the newer employees got closer to \$3 per hour and the employees who had
15 been there longer got closer to \$5 per hour.
- 16 6. I also heard from some of the Franksville employees about the raises. The Employer
17 did not give any of the Franksville employees raises, and so they had questions about
18 why all the other employees across the State had gotten raises when they had not
19 gotten anything.
- 20 7. The Union had two meetings with the Madison employees in 2018, one in the March
21 2018 and another in October 2018. The organizing drive went stagnant for a while
22 after the March meeting, I think because the employees all received their raises not
23 long after the first Union meeting in March. The Union had another meeting in October
24 2018 and we got a few more cards signed by the time that meeting took place. I
25 discussed that organizing drive in more detail in an affidavit I provided in connection
26 with case 18-CA-238977, which was a charge filed regarding Mark Seelman's
27 termination. Seelman was terminated in April 2019. After Seelman was terminated,
28 the organizing drive at the Madison store died out as he was our main contact and
29 none of the other employees wanted to talk to the Union after Seelman was fired.
- 30 8. With regard to the Waukesha organizing drive, the Union filed a petition for the
31 Waukesha Climate Control employees in Case 18-RC-230127. That election took
32 place on November 20, 2018. There were two employees in the bargaining unit that
33 we were aware of when we filed the petition. After the petition was filed, we learned

1 that there was a third employee who was out of work on workers compensation. I
2 spoke to that individual before the election and he said he was not interested in the
3 Union. That individual did not show up to vote in the election. We had support from
4 both of the active employees when we filed the petition, but one of them stopped
5 talking to me sometime after we filed the petition and before the election took place. I
6 heard from the employee that was still communicating with us that he thought the
7 Employer may have offered the other guy a job at a different store, which he viewed as
8 a promotion, if he opposed the Union. We ended up losing that election as the results
9 were one for and one against the Union.

10 9. In January 2019, I received a voice mail message from the employee who ended up
11 not voting for us apologizing and saying the Employer lied to him and that he made a
12 mistake in not voting for us.

13 10. Both of the employees in the Waukesha store were aware that the Union had won the
14 election at Franksville and that we were in the process of bargaining a contract.
15 Neither of those employees asked any detailed questions about why the Union did not
16 have a signed contract for the Franksville employees as of that time, as I had
17 discussed the negotiation process in general with them and explained to them that it
18 often takes up to a year for a collective bargaining agreement to be agreed upon.

19 11. In September and October 2019, the Union made a push to talk to Sunbelt drivers and
20 mechanics across the State. We did this by trailing the drivers after they left Sunbelt
21 facilities and attempting to talk to them at some point while they were out on the road.
22 These organizing efforts took place not long after the Employer laid off the Franksville
23 unit employees in August 2019. There were five primary people from the Union that
24 assisted in the efforts of talking to the drivers and mechanics on the road. Those
25 people were Business Agent Dan Marsolek, and Organizers Kevin Doucette, Rich
26 Lego, Mike Cox, and me. Out of the five of us, we spoke to around 12-plus employees
27 or thereabouts. Most of the employees that we tried to talk to gave us the cold
28 shoulder and did not want anything to do with us. That was my experience with the
29 employees I tried to talk to and the other Union agents who engaged in these
30 organizing efforts gave me similar reports about what happened when they
31 approached the Sunbelt employees after trailing them from the store or from a jobsite.
32 Most of the employees would not even give us their names or engage in any extended
33 conversations with us. Sometimes it was clear that the drivers were aware that we

1 were trying to follow them and they would make a lot turns or other driving actions that
2 made it clear they did not want us to follow them and try to talk to them about the
3 Union.

4 12. I did not hear very many statements directly from employees that indicated that those
5 employees had been threatened by the Employer about the Union, because those
6 employees did not want to speak to me or other Union agents at all. The Union did
7 hear a number of comments from Franksville employees stating that other employees
8 were telling them that they were getting threats about the Union.

9 13. I did make some attempts to talk to employees at the Employer tool rental shop in
10 Waukesha, which is one of the bigger stores in Wisconsin. I did not make a lot of
11 headway with those employees and they did not seem interested in the Union. I recall
12 specifically talking to one employee in or around the Spring of 2018 who specifically
13 said he was not interested in the Union and asked not to be contacted by us.

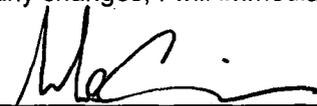
14 14. Troy Schuls was a bargaining unit employee at the Franksville, Wisconsin facility.
15 Troy was the Union's observer during the NLRB election. Troy was fired in September
16 2018, supposedly for failing to report to the Employer a moving violation that was on
17 his driving record. Troy asserted that he had reported it to the prior Branch Manager
18 Katie Torgerson, but the Employer claimed it had no record of that and so fired him
19 anyway. Prior to his termination, Troy was talking to a couple of drivers who worked
20 out of the Waukesha general rental store. Troy said that these two drivers from the
21 Waukesha shop said they were interested in the Union. I never spoke to those two
22 drivers directly. After Troy was fired, he continued to talk to those drivers about the
23 Union and Troy was trying to set up a meeting with those drivers to meet with me and
24 the Union. However, after Troy was fired, those two drivers evidently told Troy that
25 they were no longer interested in the Union and Troy told me that he thinks one of

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Page 4

1 them eventually blocked his phone number as his calls always went straight to voice
2 mail.

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read Confidential Witness Affidavit consisting of 5 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.



Michael Ervin

Subscribed and Sworn to Before me at Milwaukee, Wisconsin, this 14th day of January, 2020.



Eric Boerschinger, Board Agent
National Labor Relations Board

ME

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50 North Laura Street, Suite 2600
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SMITH, GAMBRELL & RUSSELL, LLP
Attorneys at Law

Patricia J. Hill
Direct Tel: (904) 598-6140
Direct Fax: (904) 598-6240
pjhill@sgrlaw.com

April 3, 2018

VIA E-MAIL

Mr. Michael Ervin
Organizer
International Union of Operating Engineers, Local 139
N27 W23233 Roundy Drive
P.O. Box 130
Pewaukee, Wisconsin 53072

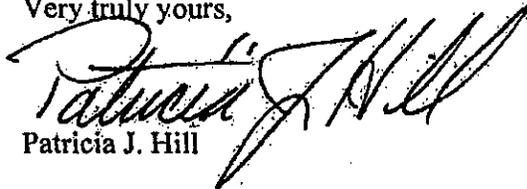
Re: Negotiations with Sunbelt Rentals, Inc. in Franksville

Dear Mr. Ervin:

Please be advised that I am responding on behalf of Sunbelt Rentals, Inc. ("Sunbelt") to your March 29, 2018 letter to Mr. Bogardus that requested a date for the initial negotiations session. Unfortunately, Sunbelt is busy with the end of the fiscal year's activities and is not available on the dates that you proposed. However, Sunbelt is available on May 22, 2018.

Please let me know at your earliest convenience if May 22, 2018 works with your calendar.

Very truly yours,



Patricia J. Hill

PJH/ph

cc: Sunbelt Rentals, Inc.



From: "Hill, Patricia J." <PJHill@sgrlaw.com>
Date: January 16, 2019 at 4:04:02 PM CST
To: Mike Ervin <mervin@iuoe139.org>
Subject: RE: Sunbelt's summary of negotiations

Mr. Ervin,

Attached is the draft CBA for your review. I did not have the Table of Contents prepared because that should be done at the very end of the negotiations. As you can see, I highlighted a few sections within the body of the CBA (Article 13 primarily) and indicated that they were open. I believe that the list at the end of the CBA contains what is still open.

Best regards,

Patricia J. Hill
Florida Board Certified in Labor and Employment

p | 904-598-6140 - Phone
f | 904-598-6240 - Fax
p | 404-815-3500 - Atlanta Phone
e | pjhill@sgrlaw.com

50 N. Laura Street | Suite 2600 | Jacksonville, FL 32202
Promenade Suite 3100 | 1230 Peachtree St. N.E. | Atlanta, GA 30309
www.sgrlaw.com

-----Original Message-----

From: Mike Ervin <mervin@iuoe139.org>
Sent: Monday, January 07, 2019 2:49 PM
To: Hill, Patricia J. <PJHill@sgrlaw.com>
Subject: Sunbelt's summary of negotiations

CAUTION: This email is from an external source. Do not click links or attachments unless it's from a verified sender.

Pat,

In our last bargaining session I asked if you could get me Sunbelt's version of the agreement in its entirety to the present time. I think we are far enough along to work off of some comprehensive documents. We are requesting the summary by January 21st so that we have time to review it prior to our January 28th negotiations meeting.

Thank you
Mike Ervin
Organizer
IUOE Local 139
262-896-0139

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AGREEMENT

Between

SUNBELT RENTALS, INC.

PROFIT CENTER 776

3485 South 27th Street

Franksville, Wisconsin 53126

And

INTERNATIONAL UNION OF OPERATING ENGINEERS,

LOCAL 139

Table of Contents

ARTICLE 1 – RECOGNITION

Section 1.1: Sunbelt Rentals, Inc. (“Employer”) hereby recognizes International Union of Operating Engineers, Local 139 (“Union”) as the sole and exclusive bargaining agent for all employees in the bargaining unit. For the purpose of this Agreement, the bargaining unit shall consist of full-time and regular part-time mechanics, drivers, and foremen employed by the Employer at Profit Center 776 in Franksville, Wisconsin, excluding all other employees, clerical staff, salespeople, managers, guards, and supervisors, as defined in the Act.

Section 1.2: The purpose of this Agreement is to determine the hours, wages and other conditions of employment and to adopt measures for the settlement of differences and maintaining a cooperative relationship so that the Employer may secure sufficient, capable workers and the workers may have as much continuous employment as possible, without interruption by strikes or lockouts, except as otherwise provided by this Agreement.

ARTICLE 2 – UNION SECURITY

Section 2.1: The enforceability of Section 2.2 is contingent on its legal validity under the laws of the State of Wisconsin. This Article shall be enforced only if the state right to work law is repealed, replaced or otherwise no longer precludes enforcement of Section 2.2.

Section 2.2: All present Employees of the bargaining unit of the Employer covered by this Agreement who are members of the Union as of the date of execution of this Agreement shall, as a condition of continued employment with Employer, maintain membership during the life of this Agreement to the extent of tendering the periodic dues and initiation fees uniformly required by the Union as a condition of acquiring or maintaining membership. All present Employees of the bargaining unit of the Employer covered by this Agreement shall become members of the Union within thirty-one (31) calendar days following the date of this Agreement, or within thirty-one (31) calendar days following commencement of such employment, whichever is later, and shall, as a condition of continued employment with said Employer, maintain membership during the life of this Agreement to the extent of tendering the periodic dues and initiation fees uniformly required by the Union as a condition of acquiring or maintaining membership; provided, however, that such membership in the Union is available to such workers on the same terms and conditions generally applicable to other members and that such membership is not denied or terminated for reasons other than a failure by the affected workers to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or maintaining membership.

ARTICLE 3 – EMPLOYEES

Section 3.1: An Employee will remain a “probationary” Employee for the first ninety (90) calendar days from the date of hire. The Employer may, within said ninety (90) calendar days, discharge such a probationary Employee for any reason whatever, except his membership in, or activity on behalf of the Union subject to any applicable State and Federal laws prohibiting discrimination. Probationary Employees shall have no recourse to the grievance procedure in this Agreement. At the mutual agreement of the Employer and the Union, the probationary

period may be extended by thirty (30) calendar days, not to exceed a total of one hundred and twenty (120) calendar days.

Section 3.2: Whenever an opening within any bargaining unit classification is to be filled, it shall be the Employer's decision to make. The Employer, in making the decision to fill a bargaining unit position, will consider each candidate's qualifications including skill, training, ability, and work record.

ARTICLE 4 – NO DISCRIMINATION

Section 4.1: Discrimination provision: There shall be no discrimination against any present or future employee by reason of race, color, age, military or veteran status, disability, national origin, sex, union membership, or any other characteristic protected by law, including, but not limited to, claims made pursuant to Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Wisconsin Human Rights law or any other similar laws, rules, or regulations. All such claims shall be subject to the grievance and arbitration procedures (**cite to article**) as the sole and exclusive remedy for violations. Arbitrators shall apply appropriate law in rendering decisions based upon claims of discrimination.

ARTICLE 5 – GRIEVANCE PROCEDURE

Section 5.1: A grievance is defined to be any controversy, complaint or dispute arising as to the interpretation or application of or the compliance with any provisions of this Agreement. The parties agree to mutually work to the resolution of any grievances through prompt and good faith use of the following procedures:

- (a) **Step One** – Any Employee believing he has a grievance must discuss it with his immediate supervisor within seven (7) business days of the occurrence of the event which gave rise to the grievance. The immediate supervisor will give a verbal reply within seven (7) business days of the discussion.
- (b) **Step Two** – If the grievance is not resolved in Step One above, the grievance will be reduced to writing by the Employee and Union, and then presented to the Profit Center Manager within seven (7) business days of the Step One reply. A meeting will be held with the Profit Center Manager, immediate supervisor, Employee and Union Steward and/or Business Agent in an effort to resolve the grievance. The Profit Center Manager will issue a written answer to the grievance to the Union Steward within five (5) business days of the meeting.
- (c) **Step Three** – Any grievance not resolved at Step 2 may be advanced to arbitration by the Union or Employer. Either the Union or Employer may request a panel of seven (7) arbitrators from the FMCS. A copy of the request shall be served on the other party. Upon receipt of the panel of arbitrators, the Union and Employer may each strike up to three (3) names so that only one name remains on the list. The arbitrator thus selected, shall be qualified to impartially decide on the issue which is the subject of said grievance. In the

event either party feels the arbitrator selected is not qualified to hear the case, it will immediately notify the other party in writing. Upon receipt of this notification, the party rejecting the selected arbitrator will request the FMCS to submit another panel of seven (7) arbitrators from which the arbitrator will be selected pursuant to the provisions of this section. This right of rejection may only be exercised one time by each party on any given grievance which has proceeded to arbitration. The parties shall then jointly notify the FMCS Service that the remaining name on the list is their selection. It is distinctly understood that any such arbitrator so selected shall be limited to interpretation and application of this Agreement and any decision rendered within the scope of such limitations shall be final and binding on the parties to this Agreement. The fees and expenses incurred by the arbitrator including the hearing room, if any, shall be borne equally between the parties. The parties shall assume all expenses associated with the preparation and presentation of their respective case including, but not limited to, attorney's fees, witnesses, and representative and stenographic service.

ARTICLE 6 – PAID TIME OFF

Employees will use Employer's Paid Time Off policy that states:

The purpose of Employer's PTO Policy is to provide employees with flexible paid-time-off from work that can be used for such needs as vacation, personal or family illness, doctor appointments, school and other activities of the employee's choice. The company's goal is to reduce unscheduled absences and the need for supervisory oversight while providing an enhanced work/life balance that promotes wellness. The PTO days will accrue beginning on the employee's anniversary date. Time that is not covered by the PTO policy, and for which separate guidelines and policies exist, include company paid holidays, volunteerism time, bereavement time, required jury duty, and military service leave. PTO is not accrued in pay periods during which unpaid leave, short or long term disability leave or workers' compensation leave are taken.

Guidelines for PTO Use: Each full time Employee will accrue PTO ratably in hourly increments based on length of service as defined below. Temporary employees, part-time employees and contract employees are not eligible to accrue PTO unless required by state or local law.

In all instances, PTO must be approved by the Employee's supervisor in advance. One of the main goals of this PTO Policy is to minimize unscheduled absences. As such, Employees must provide at least a two-week notice to their Profit Center Manager of their need to use PTO whenever possible. While we understand there will always be occasions when PTO will need to be used for legitimate, unexpected illness or emergencies, instances exceeding five "last-minute notice" uses per rolling 12-month period will be considered grounds for progressive discipline due to excessive absenteeism. Further, the call-in procedures outlined in Employer's Attendance and Reporting Absences Policy must still be followed.

Certain exceptions apply to the use of PTO and are as follows:

- Employees who miss more than three consecutive unscheduled days, may be required to present a doctor's note.
- Under the Employer's leave policies, accrued PTO time must be taken in lieu of unpaid leave time.
- Any Employee who misses two consecutive days of work without notice to his or her supervisor may be considered to have voluntarily abandoned their job.

PTO accrues ratably over the year, beginning with the employee's date of hire. PTO will be accrued according to the following schedule:

Length of Service	Eligible PTO	Rate of Accrual
Day 1 to end of Year 1	112 hours (14 8-hour	2.15 hours per week
Beginning Year 2 -3	128 hours (16 8-hour	2.46 hours per week
Beginning Year 4-5	136 hours (17 8-hour	2.62 hours per week
Beginning Year 6-10	176 hours (22 8-hour	3.38 hours per week
Beginning Year 11-15	192 hours (24 8-hour	3.69 hours per week
Beginning Year 16-19	200 hours (25 8-hour	3.85 hours per week
Beginning Year 20 and	240 hours (30 8-hour	4.62 hours per week

Because time is accrued ratably, Employees need to use PTO as they earn it so that by the end of their anniversary year, they have taken all PTO accrued during that period. For example, an Employee will earn a total of 112 hours (i.e. 14 eight-hour days) if they continue employment through their first anniversary. During that same period, the Employee will need to take 112 hours of PTO or the time will be reset on the employee's anniversary date. Please note that excluded from this payout is any time allowed under any other Employer benefit, including, but not limited to, the Volunteerism Policy, Bereavement Policy, Jury Duty Policy, etc. Any additional time beyond this will be lost, unless otherwise specified by state law.

An Employee is not eligible to take PTO beyond what he or she has already accrued until he or she has completed six months of service. At no time should an Employee exceed their annual accrual into their next anniversary year.

Employees are responsible for monitoring and taking their PTO over the course of a year so that they do not lose time accrued when their anniversary year ends or exceed their annual allotment. PTO is subject to supervisory approval and Employer reserves the right to deny a PTO request based on business necessity. Carryover of PTO is not permitted without approval of the Senior Vice President of Human Resources

PTO will not be paid in advance, but only on the regular payday for the payroll period in which the PTO was taken. No Employee will receive pay in lieu of PTO except as described above or unless approved by the Senior Vice President of Human Resources.

As it pertains to Employees who leave the company, unless full distribution of PTO upon separation is required by state law, the following standards apply:

- An Employee who fails to provide two (2) weeks of notice prior to terminating employment will forfeit payment of his or her PTO;
- Employees who are discharged for instances of theft of any kind (e.g., theft of money, property, fuel, time, etc.) will forfeit the payment of PTO; and
- Overused PTO will be deducted from an Employee's final check to the extent possible on his or her regularly scheduled pay period.

Beyond as stated above, payment of PTO upon separation is ultimately a matter of management discretion and (state-law permitting) may be denied for any separation with cause, if approved by the Employee's management team and the Senior Vice President of Human Resources.

Employees may access detailed PTO information, including accruals, usage and balances, on-line at Workday.

Employees will use Employer's Volunteerism, Funeral Leave, Jury Duty, Victims of Domestic Violence, and Time Off for Voting policies.

ARTICLE 7 – INSURANCE CONTRIBUTIONS

Section 7.1:

ARTICLE 8 – RETIREMENT PLAN

Section 8.1:

ARTICLE 9 – PAYDAY

Section 9.1: Employees covered by this Agreement shall be paid bi-weekly. Employees will have the choice to have their paychecks via direct deposit or a check.

Section 9.2: The Employer shall show on each Employee's paycheck stub at a minimum: the number of regular hours worked, overtime hours worked and authorized deductions and withholding taxes required to be deducted by Federal, State or Local governments.

Section 9.3: Employees covered by this Agreement will be paid by Employer not later than 3 pm on the Thursday of the respective bi-weekly pay period. If the regular payday falls on a holiday, Employees will be paid on the last regular business day before the holiday.

ARTICLE 10 – UNION BULLETIN BOARD

Section 10.1: The Employer agrees to permit the Union to post and maintain a union bulletin board no larger than 24” by 36” in a suitable place approved by the Profit Center Manager, within the Profit Center, provided such bulletin board is used for information purposes and/or union business and provided that information posted thereon shall be true, not misleading, not illegal, not a violation of Employer’s policies, non-controversial, and presented in good taste.

Section 10.2: The Profit Center Manager selects the location for the union’s bulletin board. Before posting, the Profit Center Manager must approve any or all postings. In the Profit Center Manager’s absence, the Profit Center Manager’s designee may address any or all postings, until the Profit Center Manager’s return to the Profit Center.

ARTICLE 11 – TOOLS

Section 11.1: All mechanics shall furnish their own tools which in the opinion of the Employer and the union are adequate for the performance of the job.

Section 11.2: Upon the date of this Agreement and annually as of January 1st, all employees must provide an inventory list of all tools that they have in the Employer’s shop or truck. When additional tools are purchased by the Employee, the Employee must provide the Employer with a photograph of the tool and the receipt for the tool to update his/her inventory list. The Employer will replace all personal tools stolen from trucks and/or shop when a police report is made, if the Employee has made a reasonable effort to protect same. Vandalism and Fire Damage to tools covered the same as if stolen. Every Employee shall keep his/her tool inventory at a standard required by the job and/or the classification and shall maintain that inventory in a good working condition. The Employer agrees to repair or replace with like tool, an Employee’s tools that may be broken in the performance of their job provided they were used in the proper application. An Employee abusing this coverage shall be deprived of such coverage. Bargaining Unit Members will furnish basic hand tools up to 2” and ½” drive sockets and impacts.

ARTICLE 12 – MANAGEMENT RIGHTS

Section 12.1: The Employer retains the exclusive right to manage the business; to direct, control and schedule its operations and workforce and to make any and all decisions affecting the business, whether or not specifically mentioned herein and whether or not heretofore exercised. Such prerogatives shall include, but not be limited to, the sole and exclusive rights to: hire, promote, demote, layoff, assign, transfer, suspend, discharge and discipline employees for just cause; select and determine the number of its employees, including the number assigned to any particular work or classification, increase or decrease the number of employees; direct and schedule the workforce and all operations; determine the scope of work of the operation; determine and schedule hours of operation; determine the job classifications and assign work in accordance with management’s needs; determine and schedule when overtime shall be worked; install or remove equipment; determine the methods, procedures, materials and operations to be utilized or to discontinue their performance by employees; determine the work duties of

employees; promulgate, post and enforce reasonable rules and regulations governing the conduct of acts of employees during working hours; require duties other than those normally assigned to be performed; select supervisory employees; train and cross-train employees; discontinue or reorganize or combine any department or operation with any consequent reduction or other change in the workforce; determine reasonable work pace, work performance levels and standards of performance and production of the employees and in all respects carry out the ordinary and customary functions of management, all without hindrance or interference by the Union except as specifically altered or modified by the express terms of this Agreement.

Section 12.2: The foregoing statement of the rights of management and of the Employer functions and responsibilities is not exclusive, but indicates the types of matters or rights which belong to and are inherent in management and shall not be construed in any way to exclude other rights, responsibilities and functions of the Employer, not specifically enumerated.

Section 12.3: Failure to exercise any of the functions and responsibilities outlined herein, whether or not expressly stated, shall not constitute a waiver thereof.

ARTICLE 13 – DISCHARGE, DISCIPLINE AND LAYOFFS

Section 13.1: The Company shall not discharge any non-probationary employee without just cause. The existence of just cause shall be established where the Company demonstrates by a preponderance of the evidence that any non-probationary employee committed one of the following enumerated offenses:

- Willfully engaging in a conflict of interest as defined by the Company's policies;
- Divulgence of confidential information or failure to maintain the security of confidential documents, records or business strategies;
- Falsification of records (i.e., work, personnel or any other type of Company records, including but not limited to time cards, driver log books, forms, documented statements, etc.);
- Theft, including, but not limited to money, property, fuel, propane, scrap, time, etc., or being in possession of stolen property;
- Attempt or assist in the commission or concealment of theft as defined above;
- Gross negligence (including, but not limited to, accidents where the cause is determined to be the employee's fault);
- Using another employee's clock number or other secure login or password information to access any of the Company's computer systems;

- Two (2) consecutive work absences without prior approval from direct Supervisor or without calling in to direct Supervisor (including but not limited to absences as a result of arrest) and/or job abandonment;
- Possessing, transferring, purchasing, selling or using or being under the influence of non-prescription drugs, alcohol or other medication violating the terms of the Company's Substance Abuse Policies and Procedures;
- Using or being under the influence of prescription drugs either prescribed to the employee or any other individual that inhibit or impair the employee's ability to perform the essential functions of his/her job;
- Purchasing, selling or attempting to purchase or sell prescription or non-prescription drugs to or from customers, coworkers, vendors, etc.;
- Possessing firearms or other dangerous weapons (including but not limited to all firearms (regardless of permit), air guns, air rifles, BB guns, paint guns, tasers, non-utility knives and switchblades) on Company property or in the course of job duties unless there is a specific state law allowing the employee to bring the gun to work beyond simple licensure of a permit;
- Using physical force against another individual, or making threats of violence or coercion to or directed toward managers, coworkers, customers and/or vendors;
- **Failing to report first-hand knowledge of a criminal act committed by another employee within a reasonable time (usually three to five days); OPEN**
- **Engaging in criminal behavior or failing to report an employee's own conviction of felony charges; OPEN**
- **Two preventable accidents within a rolling one-year period; OPEN**
- Failure to properly report an accident immediately as outlined in the Company's Safety Manual (available on Employer's Intranet); and/or
- Attempt to conceal an accident or violation of Company policy, or circumvent an investigation of any kind.

Discharge must be by proper written notice to the employee, and any employee may file a grievance as to his or her discharge. Should it be agreed by the parties or decided by an arbitrator that the Company lacked just cause for the termination, the employee shall be reinstated and compensated as provided in Article 5.

ARTICLE 14 – STRIKES AND LOCKOUTS

Section 14.1: The Union, its officers, agents and representatives and all employees shall, not in any way, directly or indirectly, instigate, lead, engage in, authorize, cause, assist, encourage, ratify or condone any strike, including a sympathy strike, slowdown or work stoppage, boycott or any interference with or interruption of work with the Employer's business during the term of this Agreement.

Section 14.2: The Employer shall not lockout Employees during the term of this Agreement.

Section 14.1: It shall not be a violation of the Agreement and it shall not be cause for discharge or disciplinary action in the event of an Employee refusing to enter upon any property involved in a lawful picket line, including the lawful picket line of the Union party to this Agreement and including lawful picket lines at the Employer's places of business and at job sites where it is engaged in its normal operations. If an Employee refuses to cross a picket line as outlined above, the Employer may use another Employee or hire an outside company to handle the refused work.

ARTICLE 15 - SENIORITY

Section 15.1: In all cases of layoff, recall from layoff, and shift assignment, seniority shall be the determining factor, provided the senior employees are the most qualified to perform the available work.

Section 15.2:

Section 15.3:

Section 15.5:

Section 15.5: Seniority shall be lost and terminated by:

- (e) Absent for any reason for twelve (12) consecutive months or for a period equal to his/her total length of service, whichever is shorter.

Section 15.6:

ARTICLE 16 – GENERAL

Section 16.1: Nothing in this Agreement will prohibit non-bargaining personnel from performance, demonstrations, training, educational repair training, or delivery and picking up of equipment weighing 10,000 lbs. or less.

Section 16.2: The Employer shall furnish each Employee at least eleven (11) clean uniforms. The Employee must return at least five (5) soiled uniforms by Friday of each week. Winter jackets and rain gear will be purchased by the Employer for the Employees.

Section 16.3: In the event an Employee is required to travel to a work assignment for the Employer and the Employee has to stay overnight, the Employer will supply transportation, loading and reimburse the Employee for food at the IRS per diem rate. Travel time and Employer required training time will be paid pursuant to the Fair Labor Standards Act. The Employer will not pay for alcohol, souvenirs, or videos/pay-for-view movies.

Section 16.4: Employees are required to participate in monthly safety-related meetings, assessments, quizzes, etc. during work hours. Employees must be paid for such time unless excused by the Profit Center Manager or his/her designee. Repeated failing scores on such quiz(es) may be grounds for disciplinary action up to and including termination.

Section 16.5: Employees may not have personal deliveries sent to any property belonging to the Employer.

Section 16.6: The Employer may tell union members during an investigation into discrimination or harassment that the allegations are to be kept confidential. Such investigations will be kept confidential, except that the union member may discuss the allegations with the union steward or union business agent or officers (the union member will inform the profit center manager or district manager if such a discussion occurred) or with legal counsel or with an appropriate governmental agency.

Section 16.7: The Employer shall not require employees to drive on the streets or highways in any D.O.T. vehicle that does not have a fire extinguisher, flares, flags, reflectors, safety cones, wheel chocks and first aid kit and is not in a safe operating condition or equipped with any safety appliances that may be prescribed by law. The employee is responsible to inventory the assigned vehicle and notify their direct supervisor if any of these items are missing prior to driving the vehicle. It shall not be a violation of this Agreement if an Employee refuses to operate an unsafe vehicle unless such refusal is unjustified.

Section 16.8: All Employees are required to wear safety glasses when in the service shop area and in the PC location storage yard. Additionally, when loading or unloading equipment anywhere, Employees shall wear a hard hat. When working on field service jobs, in the yard or parking lot, or any hazardous locations, Employees shall be required to wear safety glasses, reflective vest (or other approved reflective PPE), or hard hats as required by Employer policy (all supplied by Employer). All Employees must complete a pre-task assessment before

starting any non-routine task, unloading third party haulers, performing field service work and doing any type of facility or property maintenance.

Section 16.9: An Employee shall notify both the Employer and Union in writing (not electronically) within five (5) business days of any change of address.

Section 16.10: The Employer shall not require as a condition of continued employment than an Employee purchase a truck and/or any other vehicular equipment, or that any Employee purchase or assume any proprietary interest in or other obligation of the Employer. An Employee shall not be obligated to use his own vehicle, and if an Employee uses same, **except for commuting**, he/she shall be compensated at the IRS mileage rate.

Section 16.11: Employees must sign new employee handbooks and safety rules.

Section 16.12: All of Employer's vehicles may have G.P.S. installed on them and may use reports from the G.P.S. to discipline employees up to and including termination. Employees are prohibited from using jamming devices to block G.P.S. Employees who use a jamming device will be disciplined up to and including termination.

ARTICLE 17 – DUES, FEES, AND ASSESSMENTS

Section 17.1: Members will pay dues, fees and assessments to the Union. The Duly authorized representative of the Union shall be allowed access to the Profit Center for adjusting disputes between members and the Employer, after getting permission from the Profit Center Manager. The union representative must resolve issues with unit members relating to dues deductions away from the Profit Center.

ARTICLE 18 – HOLIDAYS AND HOLIDAY PAY

Section 18.1: OPEN

Section 18.2: Holidays observed are: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, ½ day Christmas Eve (1 pm to 5 pm), Christmas Day, and ½ day New Year's Eve (1 pm to 5 pm). For some of the holidays listed above, Employer may be open for business to meet the needs of its customers. The Union recognizes that a skeleton crew may be needed to provide required customer service. Reasonable notice will be provided for coverage and holiday pay will apply for hours worked, excluding the holiday.

ARTICLE 19 – HOURS OF WORK

Section 19.1: Open

Section 19.2: Open

Section 19.3: Open

Section 19.4: Open

Section 19.5: Open

Section 19.6: Open

Section 19.7: Open

ARTICLE 20 – STEWARDS

Section 20.1: The Employer recognizes the right of the Union to designate a union Steward to handle such union business as may from time-to-time be delegated to him by the Union. Members of the Union who are on layoff status are not eligible to be elected/appointed as stewards.

Section 20.2: The Union Steward shall be permitted, within the working day enough time to investigate grievances that cannot wait until after working hours. In those cases where investigations cannot wait, the union steward must immediately notify the Profit Center Manager to make him aware of the situation.

Section 20.3: The Union will inform the Profit Center Manager in writing, by hand delivery, as to any change of Union Steward five (5) business days prior to the change. If the Profit Center Manager is not available, then the District Manager must be notified.

Section 20.4: If a Union member is going to attend a Union convention, conference or other Union-sponsored activity, the Union member may use his/her Paid Time Off.

ARTICLE 21 – CLASSIFICATIONS AND WAGES

ARTICLE 22 – DRUG AND ALCOHOL

Section 22.1: The Employer's drug and alcohol testing program, as it is may be amended from time to time at the sole discretion of the Employer, shall be a part of this Agreement.

Section 22.2: The Employer shall not discharge nor suspend any regular employee without cause, but in respect to discharge or suspension shall give at least one (1) warning notice of the complaint against such employee to the employee in writing, and a copy of same to the Union Steward, except that no warning notice need be given to an employee before he is discharged or suspended if the cause of such discharge or suspension is dishonesty; possession or

use of alcohol and/or drugs while on duty or on Employer's property; willful disregard of Employer safety policies);

Section 22.3: Employees may be asked to comply (sign all necessary documents and permit all required testing) with customers' demands for drug and alcohol testing, background checks, special clothing, and work rules. Refusal to comply shall result in a meeting between the Union business agent and the Profit Center Manager or their respective designees.

ARTICLE 23 – TERM OF AGREEMENT

Except as herein provided, this Agreement shall be effective on _____ and shall continue in force and effect until midnight, _____ and from year to year thereafter, unless either in force and effect until midnight, and from year to year thereafter, unless either party shall, not less than sixty (60) calendar days prior to the date of its termination, give notice to the other of its intention to modify or terminate this Agreement. After receipt of such notice, the parties shall arrange a conference for discussions at a convenient time. This Agreement shall remain in effect pending the conclusion of negotiations for a new or amended contract or until irreconcilable impasse in negotiations; notwithstanding the foregoing, after the expiration date of the Agreement, or any rollover thereof, either party may terminate this Agreement upon ten (10) days written notice; provided further that nothing herein shall waive either party's rights and/or obligations pursuant to the National Labor Relations Act.

**SUNBELT RENTALS, INC.
PROFIT CENTER 776**

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 139**

By: _____

By: _____
Business Manager

Its: _____

By: _____
President

Date: _____

By: _____
Recording – Corresponding Secretary

Date: _____

OPEN ARTICLES

Article 1: Recognition

Article 2: Union Security

Article 3: Employees

Article 6: Paid Time Off

Article 7: Health Insurance

Article 8: Retirement Plan

Article 17.1, 17.4; 17.5 (except for e), 17.6: (Seniority)

Article 18: 18.2, 18.4 through 18.10 (General)

Article 19: Dues

Article 20: Holidays and Holiday Pay (except for 20.2)

Article 21: Hours of Work

Article 23: Classifications and Wages

Article 25: Term of the Agreement



August 7, 2019

Mr. Steve Buffalo
IUOE, Local 139
N27 W23233 Roundy Drive
Post Office Box 130
Pewaukee Wisconsin 53072

Dear Mr. Buffalo:

Please be advised that Sunbelt Rentals, Inc. will be using the scheduled negotiation session on August 8, 2019 for bargaining the impact for a reorganization at Profit Center 776.

Sincerely,

A handwritten signature in cursive script that reads "Jason Mayfield".

Jason Mayfield
Region Vice President
Sunbelt Rentals, Inc

0776 - RACINE WI PC776																						
Consolidated Income Statement Trend																						
	May 18	Jun 18	Jul 18	Aug 18	Sep 18	Oct 18	Nov 18	Dec 18	Jan 19	Feb 19	Mar 19	Apr 19	May 19	Jun 19	Jul 19	Aug 19	Sep 19	FY2019	FY2020	YTD	YTD	
	Actual	Actual	YoY	% Chg																		
Revenue:																						
Rental	(480,057)	(483,733)	(501,795)	(545,214)	(577,930)	(654,949)	(565,722)	(489,490)	(427,919)	(334,993)	(347,900)	(384,969)	(401,539)	(498,654)	(550,333)	(503,040)	(386,102)	(5,794,671)	(2,339,668)	249,061	-9.6%	
Rental Income	(2,125)	(400)	(8,598)	(7,265)	(12,020)	(14,585)	(23,540)	(6,660)	(3,000)	(525)	(525)	(525)	(525)	(525)	(1,625)	(2,755)	(1,625)	(79,768)	(7,055)	23,353	-76.8%	
Transportation	(55,637)	(45,376)	(54,641)	(63,952)	(63,896)	(65,815)	(56,718)	(48,875)	(36,965)	(37,805)	(40,190)	(39,279)	(54,201)	(52,985)	(62,383)	(46,702)	(25,687)	(609,147)	(241,958)	41,542	-14.7%	
Transportation Surcharge	(5,847)	(4,785)	(8,531)	(8,360)	(8,497)	(8,945)	(7,383)	(7,067)	(4,483)	(4,571)	(5,170)	(4,841)	(7,150)	(6,805)	(8,433)	(5,857)	(3,341)	(78,481)	(31,586)	4,434	-12.3%	
Environmental	(6,535)	(6,225)	(6,522)	(7,077)	(7,788)	(8,567)	(7,701)	(6,535)	(5,974)	(4,745)	(4,897)	(4,238)	(5,384)	(6,238)	(6,865)	(6,243)	(4,424)	(76,803)	(29,153)	4,994	-14.6%	
Rental Protection Plan	(19,853)	(19,868)	(18,946)	(21,432)	(22,388)	(21,603)	(17,997)	(15,121)	(12,300)	(11,798)	(10,722)	(11,977)	(14,337)	(15,339)	(21,898)	(23,069)	(17,202)	(204,004)	(91,845)	10,642	-10.4%	
Fuel for equip.	(6,214)	(5,214)	(5,891)	(4,991)	(6,798)	(5,627)	(8,398)	(7,763)	(7,152)	(8,568)	(6,248)	(6,248)	(6,365)	(6,138)	(6,168)	(3,817)	(3,574)	(83,302)	(26,063)	3,044	-10.5%	
E & D Labor	0	0	0	0	0	0	(380)	0	0	0	0	0	0	0	0	0	0	(380)	0	0	0.0%	
Total Rental	(576,268)	(565,600)	(604,924)	(658,290)	(699,316)	(780,090)	(687,839)	(581,510)	(497,794)	(403,005)	(419,843)	(452,076)	(489,501)	(586,684)	(657,706)	(591,482)	(441,956)	(6,926,556)	(2,767,328)	337,070	-10.9%	
	May 18	Jun 18	Jul 18	Aug 18	Sep 18	Oct 18	Nov 18	Dec 18	Jan 19	Feb 19	Mar 19	Apr 19	May 19	Jun 19	Jul 19	Aug 19	Sep 19	FY2019	FY2020			
	Budget	GLBudget	GLBudget																			
Revenue:																						
Rental	(473,560)	(496,170)	(534,731)	(627,366)	(580,216)	(673,605)	(566,703)	(470,294)	(431,326)	(363,360)	(399,876)	(454,035)	(625,209)	(672,336)	(699,575)	(683,148)	(696,814)	(6,071,241)	(3,377,082)			
Rental Income	(1,894)	(1,985)	(2,139)	(2,509)	(2,321)	(2,694)	(2,267)	(1,881)	(1,725)	(1,453)	(1,600)	(1,816)	(8,753)	(9,413)	(9,794)	(9,564)	(9,755)	(24,285)	(47,279)			
Transportation	(51,448)	(53,904)	(58,093)	(68,157)	(63,035)	(73,181)	(61,567)	(51,093)	(46,859)	(39,476)	(43,443)	(49,327)	(68,085)	(73,217)	(76,184)	(74,395)	(75,883)	(659,582)	(367,764)			
Transportation Surcharge	(4,491)	(4,706)	(5,071)	(5,950)	(5,503)	(6,388)	(5,375)	(4,460)	(4,091)	(3,446)	(3,792)	(4,306)	(8,452)	(9,089)	(9,457)	(9,235)	(9,420)	(57,580)	(45,652)			
Environmental	(5,743)	(6,017)	(6,485)	(7,608)	(7,037)	(8,169)	(6,873)	(5,704)	(5,231)	(4,407)	(4,850)	(5,506)	(8,323)	(8,950)	(9,313)	(9,094)	(9,276)	(73,629)	(44,956)			
Rental Protection Plan	(17,877)	(18,730)	(20,186)	(23,683)	(21,903)	(25,429)	(21,393)	(17,754)	(16,283)	(13,717)	(15,095)	(17,140)	(22,664)	(24,372)	(25,360)	(24,764)	(25,260)	(229,189)	(122,419)			
Fuel for equip.	(7,273)	(7,620)	(8,213)	(9,635)	(8,911)	(10,345)	(8,704)	(7,223)	(6,624)	(5,581)	(6,141)	(6,973)	(9,378)	(10,085)	(10,494)	(10,247)	(10,452)	(93,244)	(50,656)			
E & D Labor	0	0	0	0	0	0	0	0	0	0	0	0	(50)	(54)	(56)	(55)	(56)	0	(271)			
Total Rental	(562,286)	(589,133)	(634,919)	(744,910)	(688,926)	(799,811)	(672,881)	(558,408)	(512,140)	(431,439)	(474,796)	(539,103)	(750,914)	(807,517)	(840,232)	(820,502)	(836,916)	(7,208,750)	(4,056,081)			
	May 18	Jun 18	Jul 18	Aug 18	Sep 18	Oct 18	Nov 18	Dec 18	Jan 19	Feb 19	Mar 19	Apr 19	May 19	Jun 19	Jul 19	Aug 19	Sep 19	FY2019	FY2020			
	Variance	Variance																				
Revenue:																						
Rental	(6,497)	12,437	32,936	82,152	2,286	18,656	981	(19,196)	3,407	28,367	51,975	69,066	223,670	173,682	149,242	180,107	310,712	276,571	1,037,414			
Rental Income	(231)	1,585	(6,459)	(4,756)	(9,699)	(11,891)	(21,273)	(4,779)	(1,275)	928	1,075	1,291	8,228	8,888	8,169	6,809	8,130	(55,483)	40,224			
Transportation	(4,189)	8,529	3,453	4,206	(861)	7,366	4,849	2,218	9,894	1,671	3,253	10,048	13,884	20,233	13,800	27,693	50,196	50,435	125,806			
Transportation Surcharge	(1,356)	(79)	(3,460)	(2,410)	(2,994)	(2,556)	(2,009)	(2,607)	(393)	(1,125)	(1,378)	(535)	1,302	2,284	1,024	3,378	6,079	(20,901)	14,067			
Environmental	(792)	(208)	(37)	531	(751)	(398)	(828)	(831)	(743)	(338)	(48)	1,268	2,939	2,713	2,448	2,851	4,852	(3,174)	15,803			
Rental Protection Plan	(1,976)	(1,137)	1,240	2,251	(485)	3,825	3,396	2,633	3,983	1,919	4,373	5,163	8,327	9,033	3,461	1,696	8,057	25,186	30,574			
Fuel for equip.	1,059	2,407	2,322	4,645	2,113	4,719	305	(540)	(528)	(2,988)	(4,298)	725	3,013	3,947	4,325	6,431	6,878	9,942	24,593			
E & D Labor	0	0	0	0	0	0	(380)	0	0	0	0	0	50	54	56	55	56	(380)	271			
Total Rental	(13,981)	23,532	29,995	86,619	(10,390)	19,721	(14,958)	(23,102)	14,346	28,434	54,953	87,027	261,413	220,833	182,527	229,020	394,961	282,195	1,288,753			

Lost Revenue					
PC	Lost due to Returned Equipment (Rental \$ Only)	Total Rental Revenue Lost due to Equipment returned by direct 139 Interference	Lost due to 139 Threats to Customers (Rental \$ Only)	Total Rental \$'s Lost after 139 threatened Pickets when Sunbelt Equipment is on site	Total \$ Lost
365	\$314,000	\$362,670	\$787,000	\$908,985	\$1,271,655
366	\$250,000	\$288,250	\$350,000	\$403,550	\$691,800
367		\$0	\$982,000	\$1,142,066	\$1,142,066
776	\$1,200,000	\$1,388,400	\$2,900,000	\$3,355,300	\$4,743,700
789		\$0		\$0	\$0
1006	\$22,300	\$25,980	\$209,000	\$243,485	\$269,465
		\$2,065,300	Total Lost Revenue	\$6,053,386	\$8,118,686

**EXHIBIT
R 9**

FORM NLRB-502 (RD)
(4-15)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RD PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 18-RD-238211	Date Filed March 22, 2019

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer Sunbelt Rentals, Inc.		2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 3485 S 27th St, Franksville, WI 53126-9220	
3a. Employer Representative - Name and Title X Bryan Anderson PCM 776		3b. Address (if same as 2b - state same) SAME AS ABOVE	
3c. Tel. No. (262)824-2001	3d. Cell No.	3e. Fax No. (262)824-2002	3f. E-Mail Address X PCM 776@SUNBELTRENTALS.COM
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Equipment rental		4b. Principal product or service Heavy equipment rental	5a. City and State where unit is located: Franksville, WI
5b. Description of Unit Involved Included: all full-time and regular part-time mechanics, drivers, and foremen employed by the Employer at profit center 776 in Franksville, Wisconsin Excluded: all other employees, clerical staff, salespeople, managers, guards, and supervisors, as defined in the Act.			6a. No. of Employees in Unit: 7 6b. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? Yes [X] No []

Check One: 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) (If no reply received, so state).
 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 139		8b. Address PO Box 130, N27W23233 Roundy Dr, Pewaukee, WI 53072-0130	
8c. Tel. No. 262-896-0139	8d. Cell No.	8e. Fax No. 262-896-0758	8f. E-Mail Address tmcgowan@iuoe139.org
8g. Affiliation, if any International Union of Operating Engineers, AFL-CIO		8h. Date of Recognition or Certification 3/13/18	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) n/a

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No Yes. If so, approximately how many employees are participating? _____
(Name of labor organization) _____ has picketed the Employer since (Month, Day, Year) _____

10. Organizations or individuals other than those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)

10a. Name none	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.
11a. Election Type: Manual Mail Mixed Manual/Mail
11b. Election Date(s): X 4-3-19
11c. Election Time(s): X 6:00 AM
11d. Election Location(s): X 3485 S 27th Franksville

12a. Full Name of Petitioner Mariano Rivera		12b. Address (street and number, city, state, and ZIP code) 1743 S. 25th St., Milwaukee, WI 53204	
12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state) NONE			

12d. Tel. No.	12e. Cell No. (414)526-5215	12f. Fax No.	12g. E-Mail Address
---------------	--------------------------------	--------------	---------------------

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
13a. Name and Title Mariano Rivera		13b. Address (street and number, city, state, and ZIP code) SAME AS ABOVE	
13c. Tel. No. SAME AS ABOVE	13d. Cell No. SAME AS ABOVE	13e. Fax No. SAME AS ABOVE	13f. E-Mail Address SAME AS ABOVE

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) Mariano Rivera	Signature X	Title MECHANIC	Date X 3-21-19
--------------------------------	----------------	-------------------	-------------------

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001).

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

1-2444794564

From: Bo Bogardus <bo.bogardus@sunbeltrentals.com>
Sent: Wednesday, March 27, 2019 3:22 PM
To: Hill, Patricia J.
Subject: Fwd: Election is blocked

CAUTION: This email is from an external source. Do not click links or attachments unless it's from a verified sender.

Pat,

If nothing changes between now and Monday when would you be available to discuss a planning session for approaches to shedding ourselves of this pariah called 139?

Bo

Sent from my iPad

Begin forwarded message:

From: PC0776 Manager Racine WI <pcm776@sunbeltrentals.com>
Date: March 27, 2019 at 3:01:55 PM EDT
To: "Hill, Patricia J." <PJHill@sgrlaw.com>, Jason Mayfield <jason.mayfield@sunbeltrentals.com>, Bo Bogardus <bo.bogardus@sunbeltrentals.com>, Cheryl Black <cblack@SUNBELTRENTALS.com>, Scott Causey <scausey@sunbeltrentals.com>
Subject: RE: Election is blocked

Unreal...

Bryan Anderson | Sunbelt Rentals, Inc. | Branch Manager
Making It Happen For Our Customers!
3485 S. 27th Street | Franksville, WI 53126
C- 920-530-9221 | T: 262-824-2001 | F: 262-824-2002
PCM776@Sunbeltrentals.com

-----Original Message-----

From: Hill, Patricia J. [<mailto:PJHill@sgrlaw.com>]
Sent: Wednesday, March 27, 2019 2:00 PM
To: PC0776 Manager Racine WI <pcm776@sunbeltrentals.com>; Jason Mayfield <jason.mayfield@sunbeltrentals.com>; Bo Bogardus <bo.bogardus@sunbeltrentals.com>; Cheryl Black <cblack@SUNBELTRENTALS.com>; Scott Causey <scausey@sunbeltrentals.com>
Subject: Election is blocked

This message was sent from a sender outside of Sunbelt Rentals.

EXHIBIT NO.: GC 78

RECEIVED: X

REJECTED:

CASE NO.: 18-CA-236643

CASE NAME: SUNBELT RENTALS

NO. OF PGS: 4

DATE: 2/18/20 - 2/19/20

REPORTER: KP

Based on the the ULP filed by the union more than a week ago, the Director is putting the election on hold until the investigator resolved that ULP.

Best regards,

Pat

Patricia J. Hill

Florida Board Certified in Labor and Employment

p | 904-598-6140 - Phone

f | 904-598-6240 - Fax

p | 404-815-3500 - Atlanta Phone

e | pjhill@sgrlaw.com

50 N. Laura Street | Suite 2600 | Jacksonville, FL 32202

Promenade Suite 3100 | 1230 Peachtree St. N.E. | Atlanta, GA 30309

https://urldefense.proofpoint.com/v2/url?u=http-3A_www.sgrlaw.com&d=DwIGaQ&c=Kq_xCQ0GVBWwmXrCS-puHiLsPuiNa6cpDKPok67uWng&r=dztiVrp6rtO2KiQyi_vqG-VKZiNiG5loXNVTIHKzcvY&m=CJ0iXplIXX-jV0OP8d1YQUbKiwkXOY9r8l-bqxTf8sl&s=ZON20MvX3roZ4xgq8lilOo_2acRcVGzVoR1SVuOwC0s&e=

Confidentiality Notice

This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is

proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

From: PC0776 Manager Racine WI <pcm776@sunbeltrentals.com>
Sent: Thursday, March 28, 2019 9:31 AM
To: Jason Mayfield
Cc: Hill, Patricia J.; Bo Bogardus
Subject: RE: Monday's Union Meeting

CAUTION: This email is from an external source. Do not click links or attachments unless it's from a verified sender.

It is my understanding that there was a lot of people there from the 139, as well their attorney, along with our bargaining members.

I am still fishing for more information. I found this out at 5:15 last night.

Bryan Anderson | Sunbelt Rentals, Inc. | Branch Manager Making It Happen For Our Customers!
 3485 S. 27th Street | Franksville, WI 53126
 C- 920-530-9221 | T: 262-824-2001 | F: 262-824-2002 PCM776@Sunbeltrentals.com

-----Original Message-----

From: Jason Mayfield
Sent: Thursday, March 28, 2019 8:16 AM
To: PC0776 Manager Racine WI <pcm776@sunbeltrentals.com>
Cc: Patricia J. Hill <PJHill@sgrlaw.com>; Bo Bogardus <bo.bogardus@sunbeltrentals.com>
Subject: Re: Monday's Union Meeting

Was this a Union only meeting, or were the bargaining members in attendance?

-Jason Mayfield

- > On Mar 28, 2019, at 8:03 AM, PC0776 Manager Racine WI <pcm776@sunbeltrentals.com> wrote:
- >
- > Still fishing for information but I'm being told their attorney was present.
- >
- > Bryan Anderson
- > Branch Manager - PC776
- > Sunbelt Rentals - Racine, WI
- > Cell - (920)530-9221
- >

EXHIBIT NO.: GC 79

RECEIVED: X

REJECTED:

CASE NO.: 18-CA-236643

CASE NAME: SUNBELT RENTALS

NO. OF PGS: 2

DATE: 2/18/20 - 2/19/20

REPORTER: KP

From: Bo Bogardus <bo.bogardus@sunbeltrentals.com>
Sent: Wednesday, April 3, 2019 10:55 AM
To: Jason Mayfield; Hill, Patricia J.
Subject: Lyons Electric

CAUTION: This email is from an external source. Do not click links or attachments unless it's from a verified sender.

Jason, Pat,

Another FYI:

Dan Marsolek, Local 139 goon, followed one of our outside haulers yesterday from the Racine store to the FedEx distribution facility near the airport. Marsolek followed the truck into the facility and informed the FedEx personnel that if they continued to use Sunbelt there would be a picket set up by Local 139. The FedEx personnel on site relayed the above information to Lyons Electric, one of FedEx's primary electric contractors, who shared this information with Tito this morning.

Respectfully,

What did you do today to help your team create a safety culture?

Bo Bogardus

Sunbelt Rentals, Inc. **"We make IT Happen for our Customers!"**

Upper Midwest District Manager

bo.bogardus@sunbeltrentals.com

Cell: 513.502.7367

Office: 920.952.7740

Fax: 920.952.7741

Address:

510 N. Rolling Meadow Drive

North Fond du Lac, WI 54937

www.sunbeltrentals.com

Click here to find the Sunbelt Mobile App: <https://www.sunbeltrentals.com/about/mobile-apps/>

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

DATED: October 28, 2020

By: _____s/ Chad A. Wallace_____
Attorney for the NLRB