

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 17, OVERLAND PARK OFFICE**

Conco Quarries, Inc.,)	
Employer,)	
and)	
)	Case No. 14-RC-267769
Heavy Construction Laborers')	
Local No. 663,)	
the Petitioner.)	

**APPENDIX TO PETITIONER'S
OPPOSITION TO EMPLOYER'S REQUEST FOR REVIEW**

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APPENDIX 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

Conco Quarries, Inc.

Employer

and

Heavy Construction Laborers' Local #663, affiliated
with Laborers' International Union of North America

Petitioner

Case 14-RC-267769

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of equipment movers and operators employed by the Employer at its eight rural quarries in Missouri.¹ The unit proposed by the Petitioner would include approximately six employees working among the active operational rural quarries as of the date the hearing.

The Employer agrees that the proposed unit is appropriate but asserts that the current complement of employees is neither substantial nor representative of the workforce that will eventually be employed in the bargaining unit and, further, that its rural quarry operations are seasonal in nature, therefore, conducting an election at this time would be inappropriate. In this regard, the Employer contends the petition should be dismissed, or in the alternative, that an election should not be held until May 2021. The Employer additionally asserts that proposed unit lead employee Camrin Shoemaker is a statutory supervisor within the meaning of Section 2(11) of the Act based on his authority to assign and responsibly direct the work other employees using independent judgment, and other secondary indicia. Petitioner contends that there is a substantial and representative complement of employees and that the rural quarry operations are not seasonal in nature, therefore, an immediate election is warranted. Petitioner also denies that lead employee Shoemaker possesses any indicia of supervisory authority. Finally, the Employer contends that a manual election is appropriate and that it is possible to conduct a manual election safely notwithstanding the issues related to the COVID-19 pandemic.

¹ In its petition, Petitioner originally sought to represent all employees engaged in hauling, crushing, processing, and loading of aggregate at the Employer's Marshfield and Fair Play rural quarries. At the hearing, the parties' stipulated that any unit found appropriate should include equipment mover and operator (haul truck, loader, mechanic, plant, quality control, rolling stock equipment (dozer, excavator, etc.), quarry maintenance, and water Truck) employees; and Petitioner continued to take the position that the unit should be limited to employees at the Marshfield and Fair Play quarries. In its brief, Petitioner stated it would adopt the position of the Employer that the stipulated unit include employees working among all eight of its rural quarries located in Marshfield, Fair Play, Fair Grove, Bolivar, Buffalo, Montevallo, Pittsburg and Stockton.

A hearing officer of the Board held a video hearing in this matter. Election arrangements, including the voting method, are not litigable matters at a pre-election hearing. Sec. 102.66(g)(1) of the Board's Rules and Regulations. See also, Representation-Case Procedures, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)). The parties were permitted to present their positions on the voting method and details of election at the hearing and by brief. I have carefully considered those positions and arguments. As explained below, based on the record² and relevant Board law, I conclude that the Employer currently employs a substantial and representative complement of employees in the petitioned-for unit and that its rural quarry operations are not seasonal in nature, therefore, it would not effectuate the purposes of the Act to deny or postpone an election among the employees in the existing operations. I further conclude that the Employer has not met its burden to show that lead employee Shoemaker is a statutory supervisor. Based on the record developed in this case, Shoemaker does not exercise authority in the interest of the Employer requiring the use of independent judgment to assign or responsibly direct other employees or possess any other indicia required for a finding of supervisory status. Accordingly, I shall direct an election in the petitioned-for unit, as stipulated. Finally, after carefully considering the arguments made by the parties on the issue of election arrangements in conjunction with the Board's recent guidelines set forth in *Aspirus Keweenaw*, 370 NLRB No. 45 (November 9, 2020) and the six factors therein the Board has ordered me to consider in determining whether or not to order a mail ballot election, I have determined that a mail ballot election is appropriate in view of the circumstances discussed below related to the current state of the COVID-19 pandemic.

I. FACTS

A. Employer's Quarry Operations and Collective Bargaining History

The Employer, a subsidiary of Conco Companies, has been in existence since about 1963 and in the business of producing construction aggregate. For many years, the Employer has operated two union-represented quarries located in Willard and southeast Springfield, Missouri. The Springfield location is known as the Galloway quarry. At the Willard quarry, the Employer has separate collective-bargaining agreements (CBAs) with the Operating Engineers, Teamsters and Laborers' Unions covering its production/maintenance employees.³ At the Galloway quarry, the Employer has a CBA with the Boilermakers Union covering its production/maintenance

² The parties filed briefs which I have duly considered.

³ The Operating Engineers Union represents large equipment loaders; the Teamsters Union represents truck drivers; and the Laborers' Union represents maintenance employees and drillers.

employees.⁴ The Employer also operates redi-mix concrete companies located in Springfield, Hollister, and Nixa, Missouri.⁵

Andrew Baird is the President of the Employer, Chris Upp is the Vice President/General Manager, and Jacci Gamble is the Assistant General Manager. The unit employees at the Willard quarry report directly to Pit Supervisor Jim Smith and Plant Supervisor Dave Stillings who report to Gamble. The unit employees at the Galloway quarry report directly to Site Supervisor⁶ Jason Page who reports to General Superintendent Stacey Tennis. Tennis was the Site Supervisor at Galloway until January when the Employer commenced operations of the rural quarries, as further described below, at which time she became the General Superintendent for Galloway and the rural quarries. The petitioned-for rural quarry employees report directly to Tennis.

The production process for quarry operations at the Willard and Galloway quarries initially begins in the mining area known as “the pit” with unit operators stripping the top of the rock in order to access the reserve rock for processing. Stripping operations involve using large equipment including trucks, loaders, dozers and excavators to strip off six to eight feet of dirt, clay and other material from the rock which is then piled up away from the pit. Then, unit drillers drill holes in the rock so that third-party explosive contractors can blast the rock out of the earth into a “shot rock pile.” Blasting operations occur on average about two to three times per week year-round (about three to four times a week in the spring/summer/fall months and once a week in the winter months). The rock is loaded by unit loaders from the shot rock pile onto front end wheel loader trucks for unit drivers to transport to the plant “dump hopper,” a large bin structure that feeds the rock into a crusher. Processing operations (crushing and sizing) are performed by unit maintenance employees in the stationary plant area of the quarry. Most of the rock is crushed to a one-inch size or smaller. The final product is then sold by non-unit sales employees working at the plant.

The Willard Quarry is the largest quarry operated by the Employer – the union-represented employees there perform all quarry operations there except for blasting, which is performed by a third-party contractor. The Galloway quarry is about one-third of the size of Willard – the union-represented employees there perform all quarry operations there except for drilling and blasting, which are performed by third-party contractors. The Willard quarry specializes in concrete quality stone which it supplies to concrete plants year-round on a regular basis. The Galloway quarry is more construction-driven and follows a general construction pattern which slows down during the winter months of December to April. At both quarries, unit employees have been laid off from time to time on a short-term basis of about one to three days

⁴ Specific classifications at the Galloway quarry include: pressure operator, pit loader, truck driver, water truck, quality control, dozer, excavator, utility, maintenance, and shop mechanic.

⁵ These companies’ names are Concrete Company of Springfield, Concrete Company of the Ozarks, and Christian County Concrete Company, respectively. The record indicates that the Concrete Company of Springfield and Christian County Concrete Company are Laborers’ Union-represented facilities.

⁶ The record indicates that the Site Supervisor position at Galloway is a bargaining unit position. It is unknown whether the Pit Supervisor or Plant Supervisor positions at Willard are likewise bargaining unit positions.

due to inclement weather. No unit employees have been laid off for extended periods. All quarry operations are regulated by the U.S. Department of Labor's Mine Safety and Health Administration (MSHA), a federal agency which develops and enforces safety and health rules for all U.S. mines.

In about July 2019, CRH, a global diversified construction building materials supplier based in Ireland, purchased the assets of the Employer. At this time, the Employer became a wholly owned subsidiary of CRH.

B. Employer's Rural Quarry Operations and the Universal Crew

In about late 2019, CRH advised the Employer that effective January 1, 2020,⁷ it would inherit operations for eight rural quarries all located in Missouri, in Marshfield, Fair Play, Fair Grove, Bolivar, Buffalo, Montevallo, Pittsburg and Stockton.⁸ At this time, Stacey Tennis, who was the Site Supervisor at Galloway, was promoted to General Superintendent. As General Superintendent, Tennis is in charge of the Galloway quarry and all of the rural quarries. As noted, the Galloway unit employees report directly to Site Supervisor Page who reports to Tennis, and the petitioned-for employees at the rural quarries report directly to Tennis.

Based on the rural nature and smaller size of the rural quarries, the Employer determined it would utilize a mobile crew with portable equipment that could work among all of the rural quarries. The Employer also determined that it would hire one "universal crew" that would be cross-trained to perform all quarry duties. In this regard, the "Portable Quarry Crew" job description for rural quarry workers states that "production/maintenance positions are interchangeable depending on production/maintenance needs" and that "primary positions" include loader operator, haul truck operator, water truck operator, quality control, plant operator, mechanic, and dozer/excavator/large equipment operator. These are largely the same quarry duties performed by the Willard and Galloway unit employees except that all stripping, drilling and blasting operations at the rural quarries are performed by third-party contractors.

Although the Employer was assigned the rural quarry operations in January, because of the large amount of inventory it inherited along with the operations, rural quarry sales loaders⁹ employed by the predecessor employer continued working at the Fair Play rural quarry selling existing inventory until about April to May when inventory became low and the Employer commenced hiring of its universal crew. The Employer originally planned to start up operations at all of the quarries at this time, however, due to the condition of the quarries and the need for more updating and maintenance than expected, as well as the COVID-19 pandemic contributing to difficulties in hiring qualified employees for its universal crew, startup operations were significantly delayed. As of the date of the hearing the Employer had hired the six petitioned-for employees who started working in about May at the Fair Play rural quarry for approximately

⁷ All dates hereafter are in 2020 unless otherwise stated.

⁸ Previously, the rural quarries were operated by Ashgrove Aggregates, another subsidiary of CRH.

⁹ The parties agree that sales loaders should be excluded from any unit found appropriate herein.

eight weeks and then moved to the Marshfield quarry to start up operations there.¹⁰ As Marshfield operations grew more rapidly than expected and the Employer continued to face challenges in hiring, there were not sufficient employees to cover operations at both Marshfield and Fair Play resulting in the Employer engaging a third-party contractor to perform work at Fair Play. During this time, from about April to June, and again more recently in November, the Employer also engaged a third-party contractor at the Fair Grove rural quarry to cover work demands there that could not be met by the universal crew. To date, only the Fair Play, Marshfield and Fair Grove rural quarries are active and operational. The Employer has no firm plans to activate operations at any of its five remaining rural quarries in the near future but has taken some steps to start up operations at its Buffalo and Stockton rural quarries. These steps include engagement of some vendors and procurement of some purchase orders. However, the Employer has not entered into any lease agreements or acquired necessary assets to start operations there anytime soon. The Employer hopes to start activating those quarries in about Summer 2021.

The Employer anticipates that two universal crews of about 10 employees each will be necessary to run all eight of its rural quarries, for a total of 20 rural quarry employees. Based on the progression of rural quarry operations to date, the Employer anticipates it will take at least one year to build up to its first universal crew of 10 employees.

General Manager Upp and General Superintendent Tennis have been in charge of all hiring for the rural quarries. The hiring process consists of Upp and Tennis advising Human Resources (HR) Generalist Robin Patnode¹¹ as to the number of job openings available which Patnode posts to the Employer's internal intranet as well as on various state and federal job boards including veterans and disabled employees organizations. Patnode conducts initial screening of applications, forwards viable candidates to Upp and Tennis for review, and sets up interviews of desired applicants. Upp and Tennis interview applicants and make hiring determinations and job offers and rejections are conveyed by Patnode.

The petitioned-for employees were all hired in as 30-day probationary employees at \$17.00 per hour plus benefits including paid time off (PTO), vacation, health insurance, life insurance, disability insurance, and 401(k) benefits. They work an average of 53.5 hours of work per week with 11-hour days Monday through Thursday and a 9.5 hour day on Fridays.¹²

Like the Galloway quarry, the rural quarries are construction-driven and follow a construction pattern which is weather-driven to an extent resulting in slowdowns during the winter months from about December to April. None of the petitioned-for employees on the

¹⁰ Two other employees were hired as rural quarry crew employees for a short time – one was a no-call-no-show and thereafter terminated and one was a voluntary quit/termination. One other employee, as further described below, transferred from the Willard quarry to the rural quarries as a lead for about one month then transferred back to Willard as a sales loader.

¹¹ Patnode reports to HR and IT Director Randy Harwood. The record does not indicate their work locations.

¹² Payroll records of hours worked by rural quarry employees since hire show that to at least November 7, all of the petitioned-for employees worked 50 plus hours per week.

universal crew have been laid off or notified of layoff, or otherwise displaced at any time since their hire. To the contrary, the Employer intends for the petitioned-for employees to work as much as possible at the rural quarries unless they cannot work due to weather. In the last three months, the Employer has interviewed candidates for hire to its universal crew and extended a job offer to one candidate.¹³ Additionally, hiring for the universal crew remains a priority for the Employer going into the winter months and will be a top priority as Spring nears in March to April 2021.

C. Lead Employee Camrin Shoemaker

When the universal crew commenced operations at the Fair Play rural quarry in May, General Superintendent Tennis spent all of her time at Fair Play supervising the new employees. Brandon Smith, an experienced unit production employee from the Willard quarry transferred to Fair Play as a lead to help train new employees. Smith performed the same production/maintenance work as the universal crew employees. Under the direction of Tennis, Smith advised employees of the work plan for the day and oversaw day-to-day operations with Tennis. Smith also did some ordering of parts. In about June, Smith transferred back to the Willard quarry as a sales loader and about 30 days thereafter, universal crew employee Camrin Shoemaker replaced Smith as lead.

Shoemaker was hired onto the universal crew at Fair Play in May at \$17.00 per hour and, as noted, replaced Smith as lead in about July. In about November, he received a \$1.00 per hour raise as a lead. There is no separate job description for lead employee. Shoemaker does not possess any authority to hire or fire other employees and he has not been involved in any employee discipline matters. As a lead, Shoemaker spends 80 percent of his time performing the same production/maintenance work he performed before becoming a lead and performed by the other petitioned-for employees. For the remaining 20 percent of his time, Shoemaker performs lead duties which include advising employees of the work plan for the day and overseeing day-to-day operations with Tennis. Most job assignments are performed routinely by the petitioned-for employees who have been cross-trained to perform all quarry duties and do not require a great degree of direction. To a large extent, employee assignments are based on prior experience by the employee in the various primary skills (e.g., loader operator, haul truck operator, water truck operator, quality control, plant operator, mechanic, or dozer/excavator/large equipment operator). As a lead, Shoemaker also decides which employees will cover for employees who are late or absent from work. Shoemaker also has some contact with customers and is currently being trained in parts ordering; he has done some limited ordering of parts such as screen cloths, conveyor belting, and idler rollers. He has also been trained to oversee periodic safety inspections by the MHSA and is responsible for ensuring that safety guidelines are being following by third-party contractors during blasting operations. In Tennis' absence, Shoemaker

¹³ The candidate did not respond to the offer and it was thereafter rescinded by the Employer due to lack of response.

is the highest-ranking employee on-site at the rural quarries. If any issues arise in Tennis' absence, Shoemaker contacts Tennis or upper management for further direction.

II. ANALYSIS

A. Board Law – Expanding Unit

Notwithstanding an employer's plan to expand its workforce, the Board will direct an immediate election when the current complement of employees is "substantial and representative" of the unit workforce to be employed in the near future. *Yellowstone International Mailing, Inc.*, 332 NLRB 386, 386 (2000); *Toto Industries (Atlanta), Inc.*, 323 NLRB 645, 645 (1997). In determining whether the employee complement is "representative and substantial" so as to warrant holding an immediate election, the Board in general finds that if approximately 30 percent of the eventual employee complement is employed and 50 percent of the eventual job classifications are filled, then the employee complement is substantial and representative and an election is appropriate. *Custom Deliveries, Inc.*, 315 NLRB 1018, 1019 fn. 8 (1994) (other citations omitted). In adopting these figures, the Board drew guidance from the standards enunciated for contract bar purposes in *General Extrusion Company, Inc.*, 121 NLRB 1165, 1167-1168 (1958). However, the Board has avoided the use of hard and fast rules in expanding unit determinations. *Clement-Blythe Companies*, 182 NLRB 502, 502-503 (1970). It considers the size of the employee complement at the time of the hearing, the nature of the industry, the time expected to elapse before a full, or substantially large, complement of employees is on hand, and other variables. *Id.* Thus, the Board will direct an election even when the *General Extrusion* formula has not been satisfied. See, e.g., *Endicott Johnson de Puerto Rico, Inc.*, 172 NLRB 1676, 1676-1677 (1968) (Board directed an election where employees were working in less than 50 percent of the planned job classifications).

The Board will only consider expansions that are to take place in the reasonably foreseeable future and not those that are indefinite, speculative or remote in time. In *Wittman Steel Mills, Inc.*, 253 NLRB 320, 320 (1980), the Board found that the only reasonable projected expansion of the employer's operations against which to measure the substantiality of the present workforce were those expected to take place in the next four to five months. Any expansion beyond that depended on the purchase of new equipment and the erection of a new building and because the employer had not yet purchased the equipment or begun construction of the new building, the proposed expansion was considered too indefinite and speculative to use as a standard by which to measure the present complement of employees. *Id.* Likewise, in *Bekaert Steel Wire Corp.*, 189 NLRB 561, 562 (1971), the Board determined that 37 employees in four job classifications were clearly representative of the contemplated work force of 49-55 in the employer's present operation. The date of further expansion plans was uncertain and it would not effectuate the purposes of the Act to delay an election among employees in the existing operation solely because of the employer's planned addition of another production facility in the future. See also, *Gerlach Meat Company, Inc.*, 192 NLRB 559, 559 (1971).

B. Application of Board Law to the Facts – Expanding Unit

In light of the record evidence and applicable Board law, I find that the Employer currently employs a substantial and representative complement of employees in the petitioned-for unit.

At the time of the hearing, the Employer employed six employees in the petitioned-for unit who have worked at three rural quarries (Fair Play, Marshfield and Fair Grove) since the Employer acquired its eight rural quarries in January. The record evidence demonstrates that the Employer has no firm plans to activate operations at the five remaining rural quarries in the near future and has only taken some limited steps to activate two of those quarries (Buffalo and Stockton) which vaguely include engaging some vendors and procuring some purchase orders. The Employer has not entered into any lease agreements nor has it acquired necessary assets to commence operations at other quarries anytime soon. The Employer's best prediction is that it is hopeful to start activating operations at the Buffalo and Stockton rural quarries in about Summer 2021. No new job classifications are expected. The Employer anticipates that it will be necessary to build up to two universal crews of 10 employees each to run all eight quarries and that based on the progression of rural quarry operations to date, it will take at least one year to reach its first universal crew of 10 employees.

Initially, I note that the record evidence is not sufficient to show that Employer's anticipated expansion of its five remaining rural quarries will take place in the reasonably foreseeable future. By the Employer's own projections, further expansion to two additional rural quarries in Buffalo and Stockton is not expected to begin until at least Summer 2021, over six months from now. The predicted date of these expansions and hiring plans for the next phase of startup operations at Buffalo and Stockton is largely uncertain and speculative and it would not effectuate the purposes of the Act to delay an election among employees in the existing operation solely based on the Employer's *hope* to expand two additional rural quarries in Summer 2021 at the earliest and any remaining rural quarries at some unknown future date thereafter.

Next, I note that at the present time the current workforce occupies 100 percent of the classifications and comprises 60 percent of the size of the unit projected to exist in Summer 2021 at the earliest, which is more than six months from now. Even assuming the Employer were to expand its operations and reach its ultimate complement of 20 employees in the near future, which it acknowledges is not likely, the present complement of six employees would constitute 30 percent of the eventual total employee complement which would warrant an immediate election.

Noranda Aluminum, Inc., 186 NLRB 217 (1970), cited by the Employer, is distinguishable from this case. In that case, the Board primarily considered a community of interest issue between cable employees and other plant employees and found that "the requested unit [did] not possess a degree of functional distinctness and autonomy which would warrant a finding that the cable plant employees have a separate community of interest apart from the other employees and [could] not be represented as a separate appropriate unit." *Id.* at 218. With regard

to the Board's secondary finding that a representative number of employees had not yet been employed to warrant an immediate election, the Board noted that, unlike here, a representative number of classifications had likewise not been filled. *Id.* Likewise, the facts in *Some Industries, Incorporated*, 204 NLRB 1142 (1973), cited by the Employer, are significantly distinguishable. In that case, the pre-election hearing was held on March 14, 1973 and the record evidence therein demonstrated that while "[a]t the time of the hearing, the plant was engaged only in the production of plastic pipe and had four extrusion machines in operation...[t]he [e]mployer stated that it was *in the process of* expanding its operations by adding more equipment as well as new lines of products, thus necessitating the hiring of more employees and the filling of new job classifications." *Id.* at 1142. Importantly, the employer had ordered additional machinery which was expected to be operational by the end of March 1973 (the same month as the pre-election hearing) and would result in the hiring of six more employees. *Id.* The Board ultimately found that the present complement was not representative of that which would be employed in the near future as 10 to 15 new classifications would be added within the seven months following the hearing date. *Id.* at 1143. Such timing is not present here.

Accordingly, I find that the Employer currently employs a substantial and representative complement of employees in the petitioned-for unit to warrant an immediate election in this matter.

C. Board Law – Seasonal Unit

In determining whether an operation is seasonal, the Board examines whether the number of employees in the year-round complement is relatively substantial. *See, Sitka Sounds Seafoods, Inc.*, 325 NLRB 685, 686 (1998) (non-seasonal operation where a significant group of employees – 50 to 60 employees out of the 92 eligible voters – performed work through the year); *Saltwater, Inc.*, 324 NLRB 343, 344 (1997) (non-seasonal operation where employer employed 26 employee minimum during down months versus 85 employee maximum during peak months); *Dick Kelchner Excavating Co.*, 236 NLRB 1414, 1414 (1978) (seasonal construction operation where employer employed 60 employees during peak season and 25 employees during slack season); *Industrial Forestry Association*, 222 NLRB 295, 295 (1976) (seasonal operation where employer employed 33 employees in peak season and reduced to six employees in low season); *Mark Farmer Company, Inc.*, 184 NLRB 785, 785 (1970) (substantial complement found where doll manufacturer employed eight permanent employees and where hire of additional employees in advance of holiday sales was speculative); *Bordo Products Company*, 117 NLRB 313, 317 (1957) (seasonal operation where plant closed after peak season, and where employer employed 1,200 employees in peak and reduced to 107 employees in off season).

If the employer is engaged in virtually year-round production operations, the employer's operation may be deemed "cyclical" and an immediate election directed. *See, Saltwater Inc.*, 324 NLRB at 344 (seven peak months non-seasonal); *The Baugh Chemical Company*, 150 NLRB 1034, 1034 (1965) (10-month operations non-seasonal). In examining seasonality and the timing

of elections, the Board considers continued ties to employment for low-season and laid off employees. *Aspen Skiing Corporation*, 143 NLRB 707, 711 (1963) (Board did not delay election to peak season where 14 of 50 employees employed during summer low season, all of whom had come from the winter, peak-season crew).

D. Application of Board Law to the Facts – Seasonal Unit

In light of the record evidence and applicable Board law, I find that the Employer's operation is not seasonal in nature.

Most importantly, the Employer has not established any fluctuation in the substantial complement of employees year-round. While I recognize that there is a peak season for the rural quarries from April through November¹⁴ which follows a construction pattern, this is a nine-month period which weighs in favor of concluding that the operations are cyclical, rather than seasonal, in nature. The same type of cyclical operations exist at the Galloway quarry. Moreover, although the petition herein has been filed during the Employer's slower season, none of the petitioned-for employees have been laid off or notified that they will be laid off, or otherwise displaced at any time since their hire. To the contrary, the Employer intends for the petitioned-for employees to work as much as possible at the rural quarries unless they cannot work due to weather. To this end, in the last three months, the Employer has interviewed candidates for hire for the universal crew and extended a job offer to one candidate. The Employer acknowledges that hiring for the universal crew remains a priority going into the winter months and will be a top priority as Spring nears in March to April 2021. This undercuts the Employer's argument that its rural quarry operations are seasonal.¹⁵

Accordingly, I find that the record evidence is not sufficient to show that the Employer does not employ a substantial complement of employees in the petitioned-for unit throughout the entire year to support the Employer's position that the rural quarry operations are seasonal in nature such that an election in this matter should be delayed.

E. Board Law – Supervisory Issue

Section 2(11) of the Act defines a supervisor as:

¹⁴ The Employer argues that the election should be delayed to May 2021 when a substantial complement of employees would be present in the proposed unit.

¹⁵ In contrast, as acknowledged by the Employer in its brief, in finding the employer's operations to be seasonal in *Dick Kelchner Excavating*, 236 NLRB at 1416, the Board determined that "[t]he exact date for the resumption of the [e]mployer's normal operations [could] not be determined on [the record therein]." Likewise, the Board found in *The Cleveland Cliffs Iron Company*, 117 NLRB 668,670 (1957), also cited by the Employer, that "the exact date for resumption of the normal operation" of the seasonal employer's vessels could not be determined. Such is not the case here.

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

Accordingly, under Section 2(11), individuals are deemed to be supervisors if they have authority to engage in any one of the above Section 2(11) indicia; their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and their authority is held in the interest of the employer. See, *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712–13 (2001) (citing *NLRB v Health Care & Retirement Corp. of America*, 511 U.S. 571, 573–74 (1994)).

Section 2(11)'s definition is read in the disjunctive, and thus, the Board considers possession of any one of its enumerated powers, if accompanied by independent judgment and exercised in the interest of the employer, sufficient to confer supervisory status. *Kentucky River*, 532 U.S. at 713. Supervisory status may likewise be established if the individual in question has the authority to effectively recommend one of the powers. See, *Children's Farm Home*, 324 NLRB 61, 65 (1997). The Board has held that an effective recommendation requires the absence of an independent investigation by superiors and not simply that the recommendation be followed. *Id.*

The burden of proving supervisory status rests on the party asserting that status. See, *Kentucky River*, 532 U.S. at 711; *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). Since supervisors are excluded from the Act's protection, the Board has been careful to avoid construing the statutory language too broadly. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1058 (2006) (citing *Oakwood Healthcare, Inc.*, 348 NLRB at 686). The Board requires supervisory status be established by a preponderance of the evidence. *Dean and DeLuca New York, Inc.*, 338 NLRB 1046, 1047 (2003). Lack of evidence is construed against the party asserting supervisory status. *Id.* at 1048.

To meet this standard, the party bearing the burden must establish that an individual "actually possesses" a supervisory power; mere inferences or conclusory statements of such power are insufficient. See, *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). Moreover, where evidence is in conflict or otherwise inconclusive for a particular Section 2(11) indicium, the Board will decline to find supervisory status for that indicium. See, *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 793 (2003). Accordingly, job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper, absent independent evidence of the possession of the described authority. *Golden Crest*, 348 NLRB at 731 (citing *Training School at Vineland*, 332 NLRB 1412, 1416 (2000)).

Indicia other than those enumerated in Section 2(11) of the Act are secondary indicia. Although secondary indicia may be considered in determining supervisory issues, they are not dispositive. In the absence of one of the enumerated primary indicia, secondary indicia, standing alone, are insufficient to establish supervisory status. *St. Francis Medical Center-West*, 323 NLRB 1046 (1997).

F. Application of Board to the Facts – Supervisory Issue

There is no claim or record evidence that the lead employee Shoemaker possesses authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, adjust grievances of, or discipline other employees. Rather, the Employer asserts that Shoemaker is a statutory supervisor based on his authority to assign work to and responsibly direct other employees, and other secondary indicia of supervisory status.

1. Assignment of Work

The Board in *Oakwood* defined assigning work as “the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” *Oakwood*, 348 NLRB at 689. Consistent with *Kentucky River*, the *Oakwood* Board adopted an interpretation of “independent judgment” that applies to any supervisory function at issue “without regard to whether the judgment is exercised using professional or technical expertise.” *Id.* at 692. The Board explained that “professional or technical judgments involving the use of independent judgment are supervisory if they involve one of the 12 supervisory functions of Section 2(11).” *Id.* The Board then set forth standards governing whether the exercise of the Section 2(11) acts are carried out with independent judgment: “actions form a spectrum between the extremes of completely free actions and completely controlled ones, and the degree of independence necessary to constitute a judgment as ‘independent’ under the Act lies somewhere in between these extremes.” *Id.* at 693. The Board found that the relevant test for supervisory status utilizing independent judgment is that “an individual must at minimum act, or effectively recommend action, *free of the control of others* and form an opinion or evaluation by discerning and comparing data.” *Id.* (emphasis added). Further, the judgment must involve a degree of discretion that rises above the “routine or clerical.” *Id.*

Regarding the element of place, there is no record evidence about Shoemaker assigning employees to specific areas. While there is some record evidence that assignments are based on prior experience such that an employee may be assigned to a particular place, the record does not show that Shoemaker makes such determinations. The record demonstrates that all of the petitioned-for employees have been cross-trained to equally perform all quarry duties and does not disclose assignments by the leads with respect to place which requires them to use judgment involving a degree of discretion that rises above the “routine or clerical” as contemplated in *Oakwood*. *Id.*

As to the element of time, the record is absent of any evidence regarding who is in charge of scheduling matters at the rural quarries. There is no record evidence or claim that Shoemaker is involved in or has any authority regarding the scheduling or schedule changes of any employees. The Employer has not established any exercise of supervisory authority regarding the scheduling of other employees. See, *Golden Crest*, 348 NLRB at 728-730 (2006). Thus, the record does not support that Shoemaker appoints employees to a time as contemplated in *Oakwood*.

With respect to the element of duties, the Employer argues that Shoemaker uses independent judgment in assigning and directing the duties and tasks of the petitioned-for employees. As noted, all of the petitioned-for employees have been cross-trained to equally perform all quarry duties. While there is some record evidence that assignments are based on prior experience by the employee in the various primary rural quarry skills (e.g., loader operator, haul truck operator, water truck operator, quality control, plant operator, mechanic, or dozer/excavator/large equipment operator), the record does not show that Shoemaker makes such determinations. Although Shoemaker may advise employees of the work plan for the day, there is no record evidence demonstrating that he performs any detailed analysis with a degree of independence necessary to constitute independent judgment of the employees' abilities in relation to production/maintenance needs.

The Employer also argues that Shoemaker "uses independent judgment to redirect employees to meet customer needs." In this regard, it points to Shoemaker's interfacing with customers regarding product inventory resulting in alterations and adjustments to the production schedule and the employees' assignments. I find such evidence is tenuous and conclusory and does not confer any supervisory authority. The record overall demonstrates that all of these employees' assignments are routine in nature and based on their title, rather than any particular expertise, and the evidence is insufficient to establish that the direction provided to them by Shoemaker requires the use of independent judgment or involves a "degree of discretion that rises above routine or clerical." *Oakwood*, 348 NLRB at 693.¹⁶

2. Responsible Direction

For direction to be responsible, the person directing must have oversight of another's work and be accountable for the other's performance. To establish accountability, it must be shown that the putative supervisor is empowered to take corrective action, *and* that there is a "prospect of adverse consequences" for others' deficiencies. *Community Education Centers, Inc.*, 360 NLRB 85-86 (2014); *Oakwood*, 348 NLRB at 691-692, 695.

The record evidence establishes that Shoemaker is in charge of day-to-day direction of the petitioned-for employees especially when General Superintendent Tennis is absent. In this

¹⁶ I further find that Shoemaker's limited authority to order parts does not appear to involve any significant exercise of independent judgment of the type involved in assessing supervisory status, and moreover, this function is not included in the enumerated list of supervisory indicia found in Section 2(11).

regard, Shoemaker ensures that quarry rules and standards are being followed. However, the record is absent of any evidence showing that Shoemaker provides feedback to Tennis or upper management regarding the deficient performance of other employees. The Employer has not established that Shoemaker is *accountable* for his actions in directing the petitioned-for employees. In this regard, the record is absent of any evidence showing that Shoemaker has suffered any adverse consequences such as discipline concerning the deficient performance of any employees. Additionally, there is no evidence that General Superintendent Tennis or anyone else in management has advised Shoemaker he will or even may be subject to consequences himself concerning deficiencies and errors of other employees.¹⁷ In sum, the overall record does not demonstrate that the Employer has *actually* held Shoemaker accountable or has imparted clear and formal notice to him that he will be held accountable for the job performance of any employees. See, *Golden Crest*, supra at 731. Thus, I find that the Employer has not met its burden to establish that Shoemaker responsibly directs employees as contemplated by *Oakwood*.¹⁸

3. *Other Secondary Indicia*

While the Board has held that secondary indicia can be a factor in establishing supervisory status, it is well established that where putative supervisors are not shown to possess any of the primary supervisory indicia, secondary indicia alone are insufficient to establish supervisory status. *Golden Crest*, 348 NLRB at 730, fn. 10; *Ken-Crest Services*, 335 NLRB 777, 779 (2001).

There is no record evidence that Shoemaker participates in any evaluation procedures for employees or that any feedback provided by him about employees is incorporated into any employee performance reviews. Shoemaker does not participate in any management meetings. The limited record evidence regarding Shoemaker's involvement in training employees in rural quarry operations does not support supervisory authority. The Board has frequently found that employees with training or instructional duties are not supervisors within the meaning of the Act. See, *The Washington Post Co.*, 242 NLRB 1079, 1083 fn. 15 (1979) (citing *House of Mosaics*, 215 NLRB 704, 712 (1974) ("having the responsibility of training new employees does not invest employees with supervisory authority within the meaning of the Act.")). I also note that

¹⁷ At the hearing, the Employer presented some evidence regarding an incident at the Fair Play quarry which took place in about June to July when the lead position was vacant, and Tennis was exclusively supervising employees at Fair Play. A production employee was refusing to perform digging work with other production employees and Tennis directed the employee to perform the work. The employee walked off job and did not return to the job site. Although no similar situation has occurred since Shoemaker has become the lead, the Employer argues this will be within Shoemaker's responsibilities and constitutes supervisory authority. Not only is such evidence speculative and conclusory (the record does not indicate that the employee who walked off the job was disciplined, suspended or terminated by anyone), it does not demonstrate that Shoemaker possesses any supervisory authority within the meaning of Section 2(11).

¹⁸ The Employer's argument that it anticipates that as it expands to opening the other rural quarries and the universal crew grows, it may be necessary to have a second lead and that within one to two years, Shoemaker may be performing supervisory duties exclusively, is speculative and conclusory.

although there are times when Shoemaker is the highest-ranking official on quarry premises, if any issues arise in Tennis' absence, Shoemaker contacts Tennis or upper management for further direction. At any rate, the Board has continually found that highest rank is a secondary indicium which does not confer 2(11) status where, as here, the putative supervisor is not shown to possess any of the primary indicia of supervisory status. *Golden Crest*, 348 NLRB at 730 fn. 10; *Training School at Vineland*, 332 NLRB at 1412.¹⁹

The Employer's reliance on *Alliance Sand Company*, 107 NLRB 1273 (1954) and *United States Gypsum Company*, 116 NLRB 638 (1956) is misplaced and the facts therein are distinguishable from this case. In *Alliance Sand*, the Board found that an assistant superintendent at a sand quarry was a statutory supervisor primarily based on that fact that he was above shift foremen who were determined to be statutory supervisors based on their authority to hire and discharge and/or effectively to recommend such action. *Id.* at 1275. Additionally, the assistant superintendent therein had involvement in effectively recommending hiring as well as the discipline of other employees. *Id.* In *United States Gypsum*, the Board found that head mechanics were statutory supervisors based on their authority to "recommend changes in the status of crew members." *Id.* at 642. Additionally, the head mechanics spent "approximately half their time in overseeing their crews' work," were "regarded as supervisors by the employees working under them," and did not report to the same management individual as the other employees. *Id.* In contrast, the record herein demonstrates that Shoemaker spends 80 percent of his time performing the same production/maintenance work he performed before becoming a lead and performed by the other petitioned-for employees and 20 percent of his time performing lead duties.²⁰

Accordingly, I find that the record evidence is insufficient to establish Shoemaker is a supervisor within the meaning of Section 2(11) of the Act and thus he is eligible to vote in the election.

III. CONDUCTING THE ELECTION MANUALLY OR BY MAIL BALLOT

A. The Parties' Positions

Petitioner asserts that a mail ballot election should be held given the current state of the COVID-19 pandemic in Missouri and particularly Polk County where the Employer proposes a

¹⁹ Most recently, in *Buchanan Marine, L.P.*, 363 NLRB No. 58, slip op. at 3 (2015), the Board reiterated that "nothing in the statutory definition of 'supervisor' implies that the service as the highest ranking employee on site requires finding that the employee must be a statutory supervisor." (other citations omitted).

²⁰ The Employer's argument in its brief that Shoemaker's ratio of production/maintenance time to lead/supervisory time "is projected to now 'flip'" is speculative and conclusory as exemplified by the Employer's own witness, General Superintendent Tennis, who testified: "Eventually it should flip...it is going to be a gradual flip, depending on how many people we get hired, and you know, the speed of it. So [Shoemaker] will slowly go to seventy, sixty [percent], you know, and in a year or two years, it could be all supervision."

manual election would be held.²¹ In this regard, Petitioner primarily contends that the second factor cited by the Board in *Aspirus*, related to the 14-day testing positivity rate in Polk county, as well as in other counties where the employees may regularly interact, is easily satisfied in this case. Petitioner references data at the time of its brief filing from the U.S. Centers for Disease Control and Prevention (CDC) showing a 6.14 percent positivity rate in Polk County.²² Petitioner additionally contends that a mail ballot election is appropriate in this case given Missouri Governor Mike Parson's non-mandatory health warnings related to group gatherings. Finally, Petitioner points to record testimony referencing that some petitioned-for employees recently tested positive for COVID-19.

Despite being advised at the hearing that election arrangements should be addressed via brief per the requirements of *Aspirus* and the data websites referenced therein, other than reiterating the Board's decision in *Aspirus*, the Employer does not make any specific arguments or provide any data in favor of holding a manual election in this case. The Employer merely asserts in a conclusory manner that I should "follow the Board's reaffirmed 'general rule' that elections 'be conducted manually.'" Without stating how it will do so (e.g., by providing a large sanitized and disinfected voting area capable of social distancing and separate entrance and exit; requiring mask-wearing by all election participants; providing hand sanitizer, masks, plexiglass shields, and other PPE to voters and election participants; limiting number of attendees at pre-election conference and ballot count as well as number of election observers; etc.), the Employer merely claims that the *Aspirus* guidelines "clearly can be met in this case." The Employer does not address any state or local health orders or affirm that any proposed manual election sites could be established in a way that avoids violating them relating to maximum gathering size. The only specific factor acknowledged by the Employer is that it agrees to abide by the GC Memo 20-10 protocols. While specifically acknowledging that the Board's guidelines in *Aspirus* require certification, by affidavit, of the current COVID-19 status at its relevant facilities, the Employer provides no such certification by affidavit. The Employer does not address whether there is a current COVID-19 outbreak at its facilities nor does it affirmatively declare an absence of individuals present in the facility within the preceding 14 days have tested positive for COVID-19 (or are awaiting test results, exhibiting characteristic symptoms, or have had contact with anyone who has tested positive in the previous 14 days). Moreover, the Employer does not acknowledge recent increases in the number of new COVID-19 positive tests in the nation, state and/or counties, or provide data either on the 14-day trend in the number of new confirmed cases of COVID-19 or the 14-day testing positivity rates in counties where facilities are located.

²¹ Petitioner notes that "it would be irrelevant and a waste of Board resources to conduct an analysis of the relative risk at all eight quarry locations because the Employer has not presented any evidence that any of the unit employees will be working at any of those other quarries immediately preceding an election and because the Employer's Statement of Position only identifies the Fair Play [quarry in Polk County]." As discussed above, three of eight rural quarries (Fair Play, Marshfield and Fair Grove) are currently active and operational.

²² Without providing data results, Petitioner also recommends accessing the Georgia Tech "COVID-19 Event Risk Assessment Planning Tool" (<https://covid19risk.biosci.gatech.edu/>) for additional data for Polk County or other counties in Missouri.

B. Applicable Framework When Considering a Mail Ballot Election

The Board has delegated its discretion in determining election arrangements to Regional Directors. *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998). In *Aspirus*, the Board reiterated its longstanding preference for manual elections under *San Diego Gas* while also providing more specific and defined parameters under which Regional Directors should exercise their discretion in determining election type against the backdrop of COVID-19. The Board set forth “six situations that suggest the propriety of mail ballots due to the COVID-19 pandemic,” noting that “[w]hen one or more of these situations is present, a Regional Director should consider directing a mail ballot election” under the extraordinary circumstances presented by the COVID-19 pandemic. *Aspirus*, 370 NLRB slip op. at 1. Those six situations are:

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status;
2. Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
4. The employer fails or refuses to commit to abide by the GC Memo 20-10²³ protocols;
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; and
6. Other similarly compelling considerations.

Accordingly, I analyze the instant petition using the prevailing circumstances in the state and county where the facilities are located and in light of the Board’s recent guidance in *Aspirus*.

C. A Mail Ballot Election Is Appropriate

In assessing the six situations, I find that the Employer has failed to provide appropriate assurances under the fifth situation and that moreover, the second situation—COVID testing rates in the immediate area—mandates that I order a mail ballot election. The first situation is not grounds for a mail ballot election as Region 14’s offices are not subject to mandatory telework status. The fourth situation is also not grounds for a mail ballot election as the Employer has affirmed its commitment to following GC Memo 20-10 protocols, albeit without any detail as

²³ See also, GC Memo 21-01 stating “[a]side from elements set forth in GC Memo 20-10, upon which the *Aspirus Keweenaw* Board relies in part, the instructions set forth in this memorandum supersede all other instructions on the subject.”

noted. Under the third situation, I find that the proposed manual election site could be established consistent with local guidelines. Below, I shall discuss my assessment of the third, fifth, and second situations in connection with the Fair Play, Marshfield and Fair Grove rural quarries located in Polk County, Webster County and Greene County²⁴, respectively.²⁵

With regard to the third situation, whether the proposed manual election site can be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size, on November 19, 2020, Governor Parson issued Executive Order 20-19 extending state's public health emergency to March 31, 2021."²⁶ On the same date, Governor Parson issued a statewide "Public Health Warning" advising that the state would take a "balanced approach" to Missouri's COVID-19 response and setting forth advisories for personal behavior, business, travel, and local government. These advisories make specific recommendations with regard to mask-wearing; social distancing; handwashing; limiting large gathering interactions and travel outside the state; staying home when sick; and modifying physical workspaces and developing disease response plans in workplaces. The state recommends that all residents wear a cloth face covering when in a public setting where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies), especially in areas of significant community-based transmission.²⁷ The COVID-response state policies give leeway to counties and cities to put in place stricter restrictions against the virus. The Polk County Health Center²⁸ recently issued a public advisory due to the current positivity rate and red zone²⁹ status in Polk County. The advisory states that Polk County residents are "expected to wear a mask and practice physical distancing when with those outside their household" and are "strongly encouraged to stay home and limit gatherings to close contacts only during the holiday season."³⁰ The Webster County Health Unit maintains an updated list of "community exposures" and advises county residents "to be mindful of keeping the social distance of at least 6 ft, wear a mask if you're going to be out in public, use good hand hygiene and hand sanitizer, and if you're sick, please stay home."³¹ Effective November 23, Marshfield Mayor Natalie McNish implemented Executive Order 2020-06 with a citywide requirement for

²⁴ At the hearing, the Employer erroneously referenced Fair Grove as being in Dallas County.

²⁵ While the Employer proposes the Fair Play rural quarry as the manual election site, as discussed above, the Marshfield and Fair Grove rural quarries are also active and operational and could be viable election sites as well. Therefore, my analysis will address these three communities.

²⁶ "Governor Parson Signs Executive Order 20-19 Extending State of Emergency in Missouri."
<https://governor.mo.gov/press-releases/archive/governor-parson-signs-executive-order-20-19-extending-state-emergency>. To view Executive Order 20-19, [click here](#). (accessed December 14).

²⁷ <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/statewide-orders.php> (accessed December 14)

²⁸ A governing body "to protect and promote the health and safety of the people in Polk County by responding appropriately to identified public health needs."

²⁹ The White House Coronavirus Task Force gives a red zone designation to states with positivity rates above 10 percent, or with more than 100 new weekly cases per every 100,000 people, as further discussed below.

³⁰ <https://polkcountyhealthcenter.org/> (accessed December 14).

³¹ <http://webstercohealth.com/COVID-19/> (accessed December 14).

face coverings in public places.³² Greene County's June 12 COVID-19 Resolution "strongly recommend[s] that all citizens follow and adhere to health guidelines published by the Center for Disease Control and Prevention pertaining to the novel coronavirus outbreak known as COVID-19 and take personal responsibility upon themselves for their own health, well-being and protection and for the same of those they may come into contact with" and "offer[s] a sampling of ... measures citizens are encouraged to take for their protection" including recommendations for handwashing and surface disinfecting measures; social distancing; avoiding large gatherings; and considering wearing a mask, or in the alternative, covering coughs and sneezes.³³ Although Greene County does not have any enforceable restrictions, the City of Springfield-Greene County Health Department has had a face covering ordinance that effective from July 16 through January 9, 2021. The ordinance requires face coverings in public places inside the Springfield city limits.³⁴

With regard to the fifth situation and the current COVID-19 status at the Employer's facility, in *Aspirus*, the Board stated:

...for the duration of the pandemic, we require that in all cases where a party requests a manual election, the employer shall certify, by affidavit, as part of its submission regarding election arrangements, how many individuals present in the facility within the preceding 14 days have tested positive for COVID-19 (or are awaiting test results, are exhibiting characteristic symptoms, or have had contact with anyone who has tested positive in the previous 14 days). The Employer must also supplement its initial submission and certify any changes to the facility's COVID-19 status after a manual election is directed, up to the day of the election itself. Based on these certifications, the determination that there is a COVID-19 outbreak at the employer's facility or the employer's failure or refusal to provide the required certifications will ordinarily indicate the propriety of a mail ballot election. 370 NLRB slip op. at 7

The Employer does not address whether there is a current COVID-19 outbreak at its facilities. The Employer does not affirmatively declare an absence of individuals present in the facility within the preceding 14 days have tested positive for COVID-19 (or are awaiting test results, exhibiting characteristic symptoms, or have had contact with anyone who has tested positive in the previous 14 days). While the Employer agrees that it would abide by GC 20-10 as noted, which includes certifying any changes to its facility's COVID-19 status after a manual election is directed, up to the day of the election itself, I note that it has not met the requirements of the fifth factor in *Aspirus*.

I am left to analyze the second situation described by the Board in *Aspirus*, that is, whether either the 14-day trend in the number of new confirmed cases of COVID-19 in Polk, Webster and

³² <http://www.marshfieldmo.gov/news-events/mayor-s-blog/item/207-executive-order-2020-06-face-coverings-in-public-places> (accessed December 14). See, [Executive Order 2020-06 - Signed 1.pdf](#).

³³ <https://www.greencountymo.gov/> (accessed December 14).

³⁴ <https://www.springfieldmo.gov/5244/Masking-Ordinance-and-Phase-3A-3B-FAQs> (accessed December 14).

Greene Counties where the facilities are located is increasing, or the 14-day testing positivity rate in counties is five percent or higher. In *Aspirus*, the Board indicated that county-level data for the potential manual polling place should be accessed through Johns Hopkins University. 370 NLRB slip op. at 5, fn. 22.

According to its “COVID-19 Status Report” for Polk County, Johns Hopkins data shows the 14-day trend in the number of new confirmed cases at 11 cases on December 1 and at 6 cases on December 14, with a daily high within that range of 37 on December 5.³⁵ Data contained in the Johns Hopkins COVID-19 Status Report for Webster County shows the 14-day trend in the number of new confirmed cases at 32 cases on December 1 and at 17 cases on December 14, with a daily high within that range of 57 on December 5.³⁶ Data contained in the Johns Hopkins COVID-19 Status Report for Greene County shows the 14-day trend in the number of new confirmed cases at 246 cases on December 1 and at 110 cases on December 14, with a daily high within that range of 454 on December 13.³⁷

Number of Cases in Last 14 Days–Polk County	
-14 (12/1/20)	11
-13	9
-12	18
-11	14
-10	37
-9	36
-8	11
-7	9
-6	23
-5	15
-4	26
-3	0
-2	25
-1 (12/14/20)	6

Number of Cases in Last 14 Days–Webster County	
-14 (12/1/20)	32
-13	-1
-12	-1
-11	5
-10	57
-9	22
-8	15
-7	19
-6	21
-5	18
-4	20
-3	0
-2	43
-1 (12/14/20)	17

Number of Cases in Last 14 Days–Greene County	
-14 (12/1/20)	246
-13	95
-12	151
-11	132
-10	179
-9	214
-8	203
-7	134
-6	188
-5	157
-4	123
-3	0
-2	454
-1 (12/14/20)	110

These numbers show a 14-day trend of new confirmed cases in Polk, Webster and Greene Counties remaining overall steady and in a significantly high range for those counties. This situation, standing alone, while not showing an outright upward trajectory, is concerning and supports the propriety of a mail ballot election.

³⁵ <https://bao.arcgis.com/covid-19/jhu/county/29167.html> (accessed December 14).

³⁶ <https://bao.arcgis.com/covid-19/jhu/county/29225.html> (accessed December 14).

³⁷ <https://bao.arcgis.com/covid-19/jhu/county/29077.html> (accessed December 14).

As further noted by the Board in *Aspirus* with regard to the second factor, the 14-day “percent positive” or “testing positivity rate” statistic is “based on the number of positive and total tests in the locality” and is “suggestive of transmission rates in the locality among people who have not been tested.” 370 NLRB slip op. at 5. Johns Hopkins University notes that “[b]ecause a high percentage of positive tests suggests high coronavirus infection rates (due to high transmission in the community), a high percent positive can indicate it may be a good time to add restrictions to slow the spread of disease.”³⁸

On May 12, 2020 the World Health Organization (WHO) advised governments that before reopening, testing positivity rates should remain at five percent or lower for at least 14 days,³⁹ and the Board has decided to use this five percent standard in analyzing the appropriateness of a mail ballot versus manual election. State-by-state statistics for 14-day testing positivity rates reported by Johns Hopkins (“Which U.S. States Meet WHO Recommended Testing Criteria?”) show that as of December 14, Missouri has a higher than recommended positivity rate of 16.54 percent.⁴⁰ While Johns Hopkins reports county-level statistics for 14-day trends in the number of new confirmed cases, as noted above, it does not report statistics for 14-day testing positivity rates on a county-by-county basis. However, the State of Missouri reports seven-day positivity rates county-by-county as calculated by the Whitehouse Coronavirus task force.⁴¹ These statistics show that for the reporting period of December 5 to December 11, the seven-day positivity rates for Polk County,⁴² Webster County,⁴³ and Greene County⁴⁴ were 10.1 percent, 18.9 percent and 19.9 percent, respectively.

The above statistics showing the 14-day trend in the number of new confirmed cases and the testing positivity rates above five percent are sufficient to meet the second situation enunciated by the Board in *Aspirus* and establish that there is current evidence of widespread COVID-19 infection in the communities surrounding the Employer’s facility with no expected improvement in COVID conditions, factors which lead me to conclude there is too much risk to holding a manual election at this time or in the near future.

Given the above conditions, I find the appropriate and most responsible measure to ensure a safe election is a mail ballot election. A mail ballot election will eliminate the risk of further infection and the risk of unnecessarily exposing employees, Board agents, party representatives,

³⁸ <https://www.jhsph.edu/covid-19/articles/covid-19-testing-understanding-the-percent-positive.html>.

³⁹ <https://coronavirus.jhu.edu/testing/testing-positivity> (accessed December 14).

⁴⁰ <https://coronavirus.jhu.edu/testing/testing-positivity> (accessed December 14).

⁴¹ The State of Missouri notes with that each county positivity rate “reflects the total number of positive PCR tests in the past 7 days, divided by the total number of PCR tests in the past 7 days” – this is the same method used by the CDC. A PCR test is a nasal swab molecular diagnostic test that detects the virus’s genetic material versus an antigen/rapid diagnostic tests that detects specific proteins from the virus – see, <https://www.fda.gov/consumers/consumer-updates/coronavirus-disease-2019-testing-basics> (accessed December 14).

⁴² <https://showmestrong.mo.gov/public-health-county/> (accessed December 14).

⁴³ <https://showmestrong.mo.gov/public-health-county/> (accessed December 14).

⁴⁴ <https://showmestrong.mo.gov/public-health-county/> (accessed December 14).

and their families to COVID-19, and it will ensure that the unit employees have the opportunity to vote promptly.

Based on the above, a mail ballot election is warranted at this time.

CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.⁴⁵
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit⁴⁶ appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

Included: All full-time and regular part-time, hourly-paid Equipment Mover and Operator (Haul Truck, Loader, Mechanic, Plant, Quality Control, Rolling Stock Equipment (Dozer, Excavator, etc.), Quarry Maintenance, and Water Truck) employees employed by the Employer at its rural quarries currently located in Bolivar, Buffalo, Fair Grove, Fair Play, Conway (Marshfield), Milo (Montevallo), Pittsburg, and Stockton, Missouri.

Excluded: All other employees, temporary employees, Inside Sales Support, Scale Clerk/Operators, Sales Loaders, other sales employees, dispatchers, office

⁴⁵ The parties stipulated that the Employer is a State of Missouri corporation engaged in the business of producing construction aggregate from its headquarters located at 431 South Jefferson, Suite 250, P.O. Box 50685, Springfield, Missouri, with quarry facilities located at various locations in Missouri. During the past year, a representative period, the Employer, in the course and conduct of its business operations, purchased and received goods and services valued in excess of \$50,000 directly from sources located outside the State of Missouri. During that same period, the Employer sold and shipped goods and services valued in excess of \$50,000 directly to customers located outside the State of Missouri. The Employer annually derives gross annual revenues in excess of \$500,000.

⁴⁶ The parties stipulated to the inclusions and exclusions to the unit during the hearing. The unit description below is in accord with the stipulation but the language was modified to more closely conform to language generally used to describe bargaining unit.

clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a mail ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Heavy Construction Laborers' Local #663, affiliated with Laborers' International Union of North America.**

A. ELECTION DETAILS

I have determined that the election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate voting group at 3:00 p.m. on **Monday, December 28, 2020**, by personnel of the National Labor Relations Board, Region 14, from the office of the National Labor Relations Board, Subregion 17 – 8600 Farley Street – Suite 100, Overland Park, Kansas 66212-4677. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Monday, January 4, 2021**, or otherwise requires a duplicate mail ballot kit, should communicate immediately with the National Labor Relations Board by calling the Subregion 17 Office at (913) 275-6525.

The ballots will be commingled and counted by the Subregion 17 office at 2:00 p.m. on **Tuesday, January 19, 2021**. In order to be valid and counted, the returned ballots must be received by the Subregion 17 office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which will be held by videoconference. A meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. VOTING ELIGIBILITY

Eligible to vote are those in the unit who were employed during the weekly payroll period ending December 19, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote by mail as directed above.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. VOTER LIST

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellphone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Thursday, December 17, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. POSTING OF NOTICES OF ELECTION

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Conco Quarries, Inc.
Case 14-RC-267769

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

DATED at St. Louis, Missouri, this 15th day of December 2020



William B. Cowen, Acting Regional Director
National Labor Relations Board, Region 14/Subregion 17
8600 Farley Street, Suite 100
Overland Park, Kansas 66212-4677

APPENDIX 2

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 17, OVERLAND PARK OFFICE**

Conco Quarries, Inc.,)	
Employer,)	
and)	
)	Case No. 14-RC-267769
Heavy Construction Laborers')	
Local No. 663,)	
the Petitioner.)	

PETITIONER'S POST-HEARING BRIEF

Submitted by:

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ATTORNEY FOR PETITIONER

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Introduction

Petitioner requests an immediate mail in ballot election for six employees. The Petitioner agrees with the Employer that the geographic scope of the unit should include eight quarries instead of the two quarries that the Petitioner originally requested in its Petition. Furthermore, the Petitioner supports an immediate election even if the Board or the Region finds in favor of an alternate unit. However, the Petitioner does not agree with the Employer's unsupported claims of seasonality, of an expanding unit, or of Pit Loader Camerin Shoemaker's alleged supervisory status. Finally, Petitioner requests a mail-in ballot due to the risks presented by COVID-19.

Background

The full name of the Petitioner is the Construction and General Laborers' Local Union No. 663 (better known as the Heavy Construction Laborers' Local Union No. 663), AFL-CIO, affiliated with the Laborers' International Union of North America, AFL-CIO ("Petitioner"). (Board Ex. 4). On October 15, 2020, the Petitioner filed its petition for an immediate election for six unit employees. (Board Ex. 1). The Petitioner currently or has previously represented trades allied to construction, other quarry workers, and quarry workers at the Employer's Willard Quarry. (Tr 107, LL 11-25; Tr. 110, LL. 23-25; and Tr. 111, LL. 1-4).

The Employer is Conco Quarries, Inc. ("Employer"), a subsidiary of CRH, which does business as Conco Companies. (Board Ex. 3; Employer Ex. 2; Tr. 29, LL. 21-25; Tr. 30, LL. 1-5; and Tr. 39, LL 20-22). The Employer operates multiple quarries in Southwest, Missouri, including eight quarries which are the subject of this pre-election hearing. (Board Ex. 3)

The parties participated in a video hearing on November 16, 2020, in which both parties had the opportunity to present witness testimony, exhibits, and cross-examine witnesses.

The Employer presented 16 exhibits and multiple witnesses, including Vice President and General Manager Chris Upp, General Superintendent Stacey Tennis, and HR Coordinator Robin Patnode.

The Union presented one witness, President and General Manager Jason Mendenhall.

The Board presented 5 exhibits representing the parties' filings, stipulations, and docket entries. The hearing concluded the same day, and the Board ordered the parties to submit post-hearing briefs to be due on November 24, 2020.

Legal Analysis

Issue 1: Whether the legal doctrine of a seasonal employer precludes an immediate election?

No. The Employer engages in production or maintenance work throughout the entire year and does not meet the criteria to be a seasonal employer.

i. Legal Authorities

If an employer, “despite hiring some employees seasonally, is engaged in virtually year-round production operations, and the number of employees in the year-round complement is relatively substantial, the employer’s operation may be deemed ‘cyclical’ and an immediate election directed.” National Labor Relations Board, *An Outline of Law and Procedure in Representation Cases*, Section 20-370, p. 285 (citations omitted). A good example of a seasonal employer would be an Employer who employs a unit of school bus drivers, such as in *Durham School Services, Inc. and Teamsters Local 301*, 13-RC-21934 (2010 BL 464432). In that case, most of the school bus drivers were laid off at the end of each school year and employees were re-hired when the school year started in August. The Teamsters Local 301 wanted an election in June, at a time when the employee complement would be low, and Durham School Services, Inc. (the employer in that case) wanted an election in October. The Regional Director issued a decision to

hold an election in late August so that almost all of the employee complement would be working. In reaching this conclusion, the Regional Director noted, “The rationale underlying the Board’s cases on both cyclical and seasonal operations is based on balancing the impact of the delay on the employees’ exercise of their right to select or reject a bargaining representative under Section 7 of the Act with facilitating that right to the greatest number of employees.”

ii. Analysis

None of the Employer’s witnesses were able to describe a single employee in the universal crew who has been told that they will be laid off during any “off-season.” None of the Employer’s witnesses described a single employee who has or will be laid off at any of its other quarries during any alleged off-season. None of the Employer’s witnesses testified about periodic seasonal layoffs, the timing of any off-season, and re-hiring that occurs at Galloway or within the universal crew at the start of the “season.”

The only evidence which might tend to show seasonality was Employer Exhibit 12 which shows sales in tonnage by month at one of its quarries, the Galloway quarry. Even using only the Galloway quarry as a proxy for the industry, Employer Exhibit 12 shows substantial sales in each month of the calendar year. The prejudicial inference the Employer wants the Region to draw from Exhibit 12 is that because some months have higher sales on average than other months do, then the Employer wants the Region to infer seasonality. But Exhibit 12 is devoid of critical facts for the Region to make a finding of seasonality. Exhibit 12 does not show whether there is a proportionate rise- or dip- in hours worked at Galloway that coincides with the peaks and valleys of the Employer’s sales. (Tr. 94, LL. 7-19). Employer Exhibit 12 does not show the number of employees at Galloway quarry or how the employee population changes on a month-to-month basis. *Id.* It also does not show other activities being performed at the quarry, such as tonnage of

rock being crushed and stockpiled. *Id.* It fails to show the hours of time employees devote to plant maintenance, which is routinely performed when there is a sales dip. (Tr. 123, LL. 13-15) (“the job title is Plant Maintenance and Production”); (Tr. 130, LL. 7-22) (confirming that maintenance work is performed in slower times). Without such vital information, the Board cannot reasonably determine the Employer’s operations to be seasonal or cyclical.

Furthermore, the Employer’s assertion that its operations are seasonal were rebutted by President Mendenhall’s testimony about his knowledge of the quarrying industry in Missouri and about the Employer’s Willard Quarry specifically. He testified that there had been only one layoff in the past thirteen years at Willard Quarry, and that layoff stemmed from the great recession. (Tr. 129, L. 23-25). He also testified, “with the quarries that we represent as 663, we don’t see an historical, you know, slowdown to the point that there is mass layoff, there is mass firings. We just -- we don’t see that.” (Tr. 127, L. 12-16). For all of the reasons above, the Employer has not met its burden to prove seasonality of the quarrying industry generally or seasonality with respect to these quarries specifically. Therefore, seasonality is not an impediment to holding an immediate election.

Issue 2: Whether the legal doctrine of the expanding unit precludes an immediate election?

No. The existing complement of employees is substantial and representative because 30-percent or more of the eventual complement is employed as members of the universal crew.

i. *Legal Authorities*

“In cases involving such ‘expanding unit’ arguments, the test is whether the present employee complement is substantial and representative of the unit workforce to be employed in the near future...If the Board finds the existing complement is substantial and representative, it will direct an immediate election. In general, the Board finds an existing complement of employees

substantial and representative when at least 30 percent of the eventual employee complement is employed in 50 percent of the anticipated job classifications.” National Labor Relations Board, *An Outline of Law and Procedure in Representation Cases*, Section 10-600, p. 122-123 (citations omitted).

In *Queens-Long Island Medical Group, P.C. and Local 153, Office and Professional Employees International Union, AFL-CIO*, Case No. 29-RC-11408, 2007 BL 333741 (March 16, 2007), the Regional Director of Region 29 reviewed various expanding and contracting unit representation cases, noting the importance of considering whether the expansion or contraction is “definite and imminent” in addition to considering whether the existing complement is “substantial and representative.”

With regard to imminence, the Regional Director found that the employer’s plans to contract the unit in November 2007 (8 months away from the date of the decision), even if assumed to be true, was not sufficiently imminent to deprive the current employees of an immediate election to choose or reject representation. In reaching this decision, the Regional Director cited to *Meramac Mining Co.*, 134 NLRB 1675 (1961) for the principle that an employer’s future plans to expand its operations were not only too “speculative,” but the current operations would continue in a stable phase for a substantial period of time and that it would be “unjust” to require current employees to wait more than a year for an election. In *Gibson Electric, Inc.*, 226 NLRB 1063 (1976), even though the Board found that a project would be finished in four months and there would be a unit contraction, the Board found that the contraction was not so imminent to be an impediment to ordering an immediate election. In *Witteman Steel Mills, Inc.*, 253 NLRB 320 (1980), the employer had plans to open two more departments in 4 or 5 months after the hearing, then to further expand in two years. The Board found that a two-year expansion was too indefinite

and speculative to consider. In *Witteman*, the Board found that the employer employed 54 employees in 15 job classifications at the time of the hearing, would employ 76 employees in 21 different job classifications at the time of a decision, and it planned to employ 149 employees in approximately 36 job classifications in 4 to 5 months. The Board ordered an immediate election finding that the present complement of 76 employees was representative and substantial for purposes of directing an immediate election.

With regard to the definiteness of an alleged expansion or contraction, the Regional Director in the *Queens-Long Island* case found that the record evidence was vague about exactly how definite the employer's "deadline" of November was to contact the unit. The deadline to contract the unit was not supported by contemporaneous documents to corroborate a claim of expansion, such as minutes of any Joint Operating Committee, any memoranda communicating the Committee's decision, or any other documents conclusively establishing the November "deadline."

ii. *Analysis*

The existing complement is substantial and representative. The record is undisputed that there are six employees in the "Universal Crew." See Employer's Ex. 5. The Employer has challenged the eligibility of one of the six employees of the Universal Crew to vote in this election because the Employer alleges that such employee is a supervisor. *See* Issue 3. Depending on how that legal issue is determined, there are at least five employees in the existing complement but possibly six employees. The Employer proposes no new job classifications in any future complement.

Comparing the number in the existing complement to the eventual complement on May 7 or May 14th of 2021 is an impossible task because the Employer's witnesses did not provide

substantial and competent evidence regarding how many employees would be hired on or before May 7th or May 14, 2021, which is the date the Employer has proposed holding an election based on its theory of an expanding unit. (Tr. 26, L. 18-22) (Employer's Attorney Paul King) ("on the first page of the Statement of Position, the Employer proposed an election date of May 3, 2021, which winds up being a Monday. I am not sure how that occurred, but it needs to be a Friday, which is the shorter work day of either May 7 or 14."). Although it is true that the Employer presented witnesses who expressed future plans to have two universal crews – each of a size between 10-12 employees, (Tr. 84, L. 13-19) the Employer does not expect that they will have hired those two crews by May 7 or May 14, 2021. In fact, the Employer could not provide any estimate about how many employees would be in the eventual complement as of May of 2021.

The primary reason why the Employer's eventual complement on May 7 and May 14th is unknown is because the Employer has struggled to obtain qualified applicants during the last year and expects that this problem will continue throughout 2021. Employer Witness Robin Patnode, an HR Coordinator, testified that the Employer posted job openings for the universal crew on (1) April 9, 2020 which stayed up for 43 days (Tr. 193, Ln. 8 and 11); (2) on June 2019 which stayed up for 90 days (Tr. 195, L. 24 and Tr. 196, LL. 1-3); and (3) 57 days prior to the hearing which remains open (Employer's Ex. 16 and Tr. 197, LL 13-24). There were 19 candidates who applied for the first posting, 27 candidates who applied for the second posting, and 10 candidates who applied for the third posting. (Employer's Exs. 14, 15, and 16). However, there are only six employees who are working in the Universal Crew in the current complement, and HR Coordinator Patnode candidly expressed their challenge, "Just the fact that there was multiple job duties in this position. I think it is really difficult to find somebody that is going to have all of those skillsets, so

he is looking for the candidate to have so much experience, but we also know that it is going to be very difficult to find somebody that can fill all of those roles.” (Tr. 199, LL. 13-19).

Vice President and General Manager Upp estimated that it could take as long as an entire year just to hire *the first crew*, “Based on the previous history of this year, I would say yes.” (Tr. 89, LL. 2-10). General Superintendent Stacey Tennis agreed that it is likely that it could take a year just to hire *the first crew*. (Tr. 183, LL. 1-3).

Multiple witnesses agreed that there are no outstanding offers of employment to any qualified applicants for positions in the universal crew (Tr. 104, LL. 11-13 and Tr. 197, LL. 16-24), that hiring would remain a priority during the Winter but that they may or may not keep job posting open because hiring usually slowed during the wintertime, (Tr. 199, LL. 24-25 and Tr. 104, L. 18-21) and that the Employer would pick back up their hiring efforts in late March or early April depending on how the spring rain comes. (Tr. 175, L. 22-23). But no witness testified about when they estimated a second crew might be hired or how many employees might be hired by May of 2021.

In addition to the challenges with obtaining qualified applicants, there are other factors which pose a risk to an imminent and definite expansion. The Employer’s need to hire employees is not dire because the Employer has engaged an independent contractor named Gillespie Excavating Company, L.L.C. to perform work at Fair Grove quarry to meet demand for sales. The Employer expects further contracting will “always be on the table, because as jobs come up in or around a particular location and we know what our current location is, or our portable crew we can’t get to it, and it is an opportunity for us to sell material, then if need be we would consider using a third-party contractor.” (Tr. 95, LL. 1-25). Although the Employer did not present testimony about how many employees it expected to hire by May 2021, the Employer was able to

explain that Gillespie is already contracted up until around March 2021. *Id.* With Gillespie as an option to help meet evolving demand, there is less of a sense of urgency to hire a future complement in the immediate future.

Another factor that could affect hiring is COVID-19. Vice President and General Manager Upp confirmed that the Employer self-identifies as an essential business, (Tr. 90, L. 8) but workers cannot work who are in quarantine and several employees (including one in the universal crew) have had to quarantine recently. (Tr. 92, LL. 2-21). He also testified that increased unemployment compensation could affect the quantity of applicants, but he admitted this was just his opinion. (Tr. 98, LL. 11-21).

Finally, the Employer's own internal job postings are in competition with the Employer's job postings for the universal crew. HR Coordinator Patnode testified that a plant and maintenance job opening was posted for Galloway quarry and ran concurrent with the job posting for the universal crew in 2020. (Tr. 205, LL. 3-14). Applicants who applied for the Galloway crew and universal crew were given the choice of where to go - and they picked Galloway. *Id.* She also testified that she thought the rate of pay was higher for Galloway quarry and Willard quarry than it was for the universal crew. (Tr. 203, LL. 3-7).

Even assuming, *arguendo*, that the Employer overcomes all of these obstacles and hires a full crew in the coming months, the current complement of five or six employees would be greater than 30% of the eventual complement of 10-12 employees in the first crew. For all of these reasons, the doctrine of the expanding unit is not relevant to this case and does not serve as an impediment to holding an immediate election.

Issue 3: Whether Camerin Shoemaker is a supervisor within the meaning of the NLRA?

No. The Employer failed to meet its burden to show supervisory status under Section 2(11) of the Act.

i. Legal Authorities

The Board, through Regional Director Hadsall of Region 18, recently decided a case involving similar facts as this one. *Wonderstate Milwaukee, LLC d/b/a Wonderstate Coffee and Teamsters L. 344, Sales and Serv. Industry.*, Case No. 18-RC-266794 (November 19, 2020). That case involved whether a Kitchen Lead or a Bar Lead should be considered a supervisor under Section 2(11) of the Act. Each of the lead employees received additional hourly compensation in recognition of their work as a lead employee, were authorized to use their Employer's credit account to order and purchase supplies, oversaw general operations and provided feedback on staff to management as requested, provided training to employees on various issues, developed new items on the menu, and performed over 85% of their time engaged in bargaining unit work and the remainder performing leadership tasks. The leads did not have a variety of powers, such as to hire, transfer, suspend, lay off, recall, promote, discharge, reward, or adjust grievances of other employees.

The Employer asserted that the leads are statutory supervisors based on their authority to "assign work to and responsibly direct other employees," to effectively recommend discipline, to recommend continued hiring or discharge by their involvement with new-hiring training, and as a result of other secondary indicia of supervisory status.

Before addressing these arguments, the Regional Director noted the standard of evidence in cases involving a supervisory status by stating, "The burden on proving supervisory status rests on the party asserting the status . . . by a preponderance of the evidence[,] ... [and a lack] of

evidence is construed against the party asserting supervisory status.” *Id.* (citations omitted). “Since supervisors are excluded from the Act’s protection, the Board has been careful to avoid construing the statutory language too broadly.” *Id.* (citations omitted). Job titles and descriptions are not given controlling weight and will be rejected absent independent evidence of the possession of the described authority.

Turning to the question of whether the lead employees assigned work, the Board has adopted an interpretation which requires a supervisor to either (1) designate an employee to a place (location, department, or wing), (2) to appoint an employee to a time (such as a shift or overtime period), or (3) give an employee significant overall duties, i.e., tasks to an employee. The Regional Director cited to *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006), which further notes that Section 2(11) refers to assignment of significant overall duties to an employee, not an ad hoc instruction that the employee perform a discrete task.

Furthermore, the supervisor must be able to act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data. Such judgment must involve a degree of discretion that rises above the routine or clerical. In that case, the Regional Director found that most of the direction provided did not involve a degree of discretion that rises above the routine or clerical and that there was no record evidence that the leads could change scheduling, location, or change significant overall duties.

Turning to the question of whether the leads responsibly direct employees, the Regional Director noted that a person directing must have oversight of another’s work *and* be accountable for the other’s performance. Not only must the putative supervisor be empowered to take corrective action, but there must also be the prospect of adverse consequences for the lead as a consequence of others’ deficiencies. Because there was no record evidence that the employer has held leads

accountable for the performance of unit employees, the Employer failed to meet the criteria of a supervisor for this reason.

ii. Analysis

No witness provided testimony that Mr. Shoemaker has previously exercised authority to hire, discipline, discharge issue, transfer, lay off, recall, promotion, or reward. In fact, Mr. Shoemaker has been excluded from all hiring entirely. (Tr. 92, L. 1). All that is left for consideration, then, is whether Mr. Shoemaker assigns work or responsibly directs work as the Board has interpreted these terms under Section 2(11) or whether there any other secondary indicia of supervisory status.

Mr. Shoemaker does not assign work in the manner of a supervisor under Section 2(11). First, there is no record evidence that Mr. Shoemaker can dictate the quarry location where any members of the universal crew work. Second, there is no record evidence that Mr. Shoemaker can require employees to work certain shifts or overtime periods. In fact, the record evidence shows that almost all employees work equally long hours. (See Employer Ex. 9) (comparing hours worked per week of all employees of the universal crew). It is true that there is some evidence that the lead man would help “start the crews, let them know what the plan was for the day, what maintenance we needed one [sic], and let them know the hours we working.” (Tr. 162, LL. 19-25). However, much of the scheduling is routine and requires little to no discretion. As stated by Vice President and General Manager Upp, all the members of the universal crew have a “normal work schedule” from Monday through Friday, typically working eleven hours, and working nine and a half hours on Friday. (Tr. 75, LL. 7-17). General Superintendent Tennis said “most days we go in and our plan is to run, but if something happens or say somebody is late...” or if something breaks, Mr. Shoemaker can make an ad hoc assignment for employees to perform discrete tasks, such as

of fixing a broken part. (Tr. 168, LL. 20-25). As noted in *Oakwood Healthcare*, however, assignments that are ad hoc assignment to perform discrete task are not the same as assigning significant overall work, which is what is required by Section 2(11) to be a supervisor.

With regard to the question as to whether Mr. Shoemaker responsibly directs work, the Employer fails to meet its burden to show supervisory status. No evidence was introduced that Mr. Shoemaker is *accountable* for the successes or failures of the other workers in the universal crew. The Employer never introduced documents showing how they reviewed Mr. Shoemaker's performance or how they reviewed the performance of other supervisory employees who perform work similar to the work he performs at any of the Employer's other quarries. The Employer never introduced any testimony about whether Mr. Shoemaker could be subject to discipline, terminated, promoted, etc based on the universal crew's performance. The Employer never discussed benchmarks that Mr. Shoemaker was instructed to achieve or even any goals (other than hoping that the employees don't "rebel" when General Superintendent Tennis is not there in person) (Tr. 164, L. 10).

The Employer presented a lot of evidence about how Mr. Shoemaker could order parts and had certain customer engagement that other unit employees did not have. These actions do not fall under Section 2(11) and are not dispositive, much in the same way that the ability of a kitchen lead and a bar lead to use their Employer's credit account to order and purchase supplies was not dispositive in the *Wonderstate Milwaukee* case (see footnote 26).

Not only is there a lack of evidence as explained above to establish supervisory status, but the Employer's own evidence contradicts their claim. The Employer's organizational chart only describes Mr. Shoemaker as a "Pit Loader" without further designation and in contradistinction to other employees of the Employer who are designated in a manner that denote one's managerial or

supervisory status. (Employer's Ex. 6). In addition, General Superintendent Tennis admitted that he performed substantially similar work as Mr. Shoemaker earlier in his career at the Galloway Quarry, and the Employer considered him as non-supervisory member of the bargaining unit. (Tr. 156, L. 15; and Tr. 180, LL. 21-25). This evidence, while not dispositive on its own, puts the Employer's assertions in context.

It may be that Mr. Shoemaker's leadership duties could expand over time, as General Superintendent Tennis testified he expects they will. (Tr. 185, LL. 10-14). But for now, Mr. Shoemaker devotes the majority of his time (80% by the guesses of management) to performing pit loader work and other bargaining unit work, and this record is simply insufficient to prove supervisory status under Section 2(11) of the Act.

Issue 4: Whether the geographic scope of the unit should include all 8 quarries, as proposed by the Employer, or only 2 quarries, as initially proposed by the Petitioner in its petition?

The Petitioner adopts the position of the Employer, that the unit is most appropriately described as a "universal crew" that roves between multiple quarries, including the eight quarries identified by the Employer in its Statement of Position, as modified by its comments at hearing. (Board Ex. 3) (Tr. 26, LL. 7-8) (noting the Pittsburg, Missouri quarry was mistakenly left out).

The Petitioner initially took the position that only two quarries should be included in the unit. This position was substantiated by the Employer's exhibits showing that over 98% of the interchange to date has been within those two quarries only. See Ex. 11.

However, after the Petitioner had the advantage of learning additional information at the evidentiary hearing, it believes the Employer's position to be the appropriate one. Specifically, the Petitioner learned facts that bargaining unit employees were told that they should expect to travel to multiple quarry locations when they were hired and were told that the Employer had been

directed to manage eight quarries. (Tr. 152, L. 4). The Petitioner also learned that the Employer has been charged with making each of these quarry locations profitable. (Tr. , 84, LL.. 22-24). Furthermore, the Employer plans to use a roving crew which consists of all members of the “universal crew” to staff each of these quarry locations. (Tr. 179, LL. 3-13). Furthermore, the geographic proximity of some of the eight quarries is closer than the geographic proximity between Marshfield quarry and Fairplay quarry. (Employer’s Ex. 4). The Employer also presented evidence that the universal crew would be given similar terms and conditions of employment (Ex. 8) and would be subject to the same management (Ex. 5). Based on Board precedent, such as *Audio Visual Services Group, LLC*, 370 NLRB No. 39, 2020 BL412713 (Oct. 26, 2020), and for the reasons described herein, the Petitioner adopts the Employer’s geographic scope of the unit.

Issue 5: Whether the election should be by mail or a manual election?

The Petitioner requests a mail election.

i. Legal Authorities

The Board decided *Aspirus Keweenaw*, 18-RC-263185, 370 NLRB No. 45 (Nov. 9, 2020), which set forth guidance on factors that should be considered when determining whether to hold a mail election or a manual election.

Those factors include as follows:

- (1) Whether the Agency office tasked with conducting the election is operating under “mandatory telework” status;
- (2) Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;

- (3) The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering;
- (4) The employer fails or refuses to commit to abide by GC Memo 20-10;
- (5) There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status;
- (6) Other compelling circumstances.

In addition, the Board confirmed that a mail election may be appropriate outside of the context of COVID-19 in the following scenarios:

- (1) where eligible voters are “scattered” because of their job duties over a wide geographic area;
- (2) where eligible voters are “scattered” in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and
- (3) where there is a strike, a lockout, or picketing in progress.

ii. Analysis

No party knows whether the Region or Subregion with authority over this election will be subject to mandatory telework requirements at the time of the election. Based on information from the CDC for Johnson County, Kansas where the offices of sub-region 17 are located, as of November 23, 2020, Johnson County had a 7-day total 4.63% reduction in cases, a 145.45% increase in deaths, and a 0.3% increase in the percent positivity to 16.91. The statistics are concerning to the Petitioner, even if the Board is not under an official “mandatory” telework requirement.

No party knows what the 14-day trend or 14-day positivity rate will be in Polk County, which is where Fair Play quarry is located and where the Employer would like to hold a manual

election per their Statement of Position. (NLRB Ex. 3). It would be irrelevant and a waste of Board resources to conduct an analysis of relative risk at all eight quarry locations because the Employer has not presented evidence that any of the unit employees will be working at any of those other quarries immediately preceding an election and because the Employer's Statement of Position only identifies the "Fair Play Quarry Shop." Polk County, Missouri data exists from the CDC, which currently shows a 6.14 % positivity ratio. (Available here: <https://covid.cdc.gov/covid-data-tracker/#county-view>). As an alternative resource to CDC and John Hopkins data, the Petitioner also recommends the Region consider Georgia Tech's COVID-19 Event Risk Assessment Planning Tool which measures the risk in a particular county that at least one COVID-19 positive individual will be present at an event in a county given the size of the event. This tool is available here: <https://covid19risk.biosci.gatech.edu/>. The Petitioner also defers to the Region's expertise and access to resources with regard to reviewing further data to determine whether a mail or manual election would be just and reasonable.

No party knows whether any mandatory state or local health orders relating to maximum gathering sizes would be violated at the time a decision is issued or at the time an election is held. At this time, Governor Parson has emphasized non-mandatory health warnings, such as the following warning from the Missouri Department of Health and Senior Services, which recommends limiting group sizes based on relative risk by county. Available here: <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/pdf/advisory-20201119.pdf>.

The Petitioner is unaware of whether the Employer has unqualifiedly committed to abide by GC Memo 20-10. If the Employer cannot fully abide by GC Memo 20-10, the Petitioner's position is that a mail-in ballot must be held. Even if the Employer commits to abide by GC Memo

20-10, the Region should review all other relevant factors to determine whether to hold a manual or mail-in election.

No party knows whether there will be a current COVID-19 outbreak at the facility at the time of a decision or at the time of an election. However, the Employer’s witnesses noted that at least one member of the Universal Crew had to quarantine because they tested positive for COVID-19 recently and other employees at other of its quarries had recently tested positive for COVID-19. (Tr. 92, LL 2-21). It will be important to continue to monitor the health of all employees and participants of the election so that everyone’s safety can be considered.

The Board may consider other compelling circumstances. One compelling circumstance is that members of the universal crew reside in multiple counties other than the one in which they work. These employees may have regular interaction with multiple counties, many of which have differing positivity rates. Although the employees are not “scattered” with regard to their work location, these employees are “scattered” in the sense of where they reside. The Board’s decision in *Aspirus Keweenaw* essentially uses employer location as a proxy for employee location to assess risk of contagion – but in this case, that is not the only reasonable assumption to consider because these employees live in multiple counties. Based on the above and depending on what the future holds, the Region will determine whether a mail-in election or manual election is most appropriate. Based on the evidence to date, the Petitioner recommends a mail-in election.

Issue 6: Whether the Petitioner want to proceed with an election if the Region orders a unit other than the unit proposed by the Petitioner?

During the pre-election hearing, Hearing Officer Nisly asked counsel for Petitioner if the Petitioner wants to hold an election if it does not get the exact unit that was petitioned for. (Tr. 209, LL. 3-5). The Petitioner asked to reserve its response in this post-hearing brief.

The Petitioner would like to proceed to an immediate election, even if the Petitioner does not get the exact unit that was petitioned for. This issue is partially mooted by Petitioner's willingness to relax the geographic scope of the unit, but the issue is still relevant to the question of whether the Petitioner is willing to go forward with an election if Mr. Shoemaker is found to be a supervisor. The answer in either case is 'yes,' the Petitioner would like to move forward with an immediate election even if the Petitioner does not get the exact unit that it petitioned for.

Conclusion

For the foregoing reasons, the Petitioner requests an immediate election by mail for six members of the universal crew.

Respectfully submitted,

ARNOLD, NEWBOLD, SOLLARS & HOLLINS, P.C.

By:  _____

Ryan D. Smith
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Facsimile: 816-471-5574
E-mail: rdsmith@an-law.com

ATTORNEY FOR PETITIONER

STATEMENT OF SERVICE

Pursuant to 102.66(h), I hereby certify that I served the parties to this case with true and correct copies of *Petitioner's Post-Hearing Brief* in the following manner:

(1) Conco Quarries, Inc.

November 24, 2020 by electronic mail to:

Paul King

pwking@pwkllc.com

Outside Counsel

(2) Subregion 17 of National Labor Relations Board

November 24, 2020 by electronic mail to:

(A) William B. Cowen

William.Cowen@nlrb.gov

Acting Regional Director

(B) Melissa Nisly

Melissa.nissly@nlrb.gov

Election Specialist

(b) Carla K. Coffman

Carla.Coffman@nlrb.gov

Field Examiner

 11/24/2020
Ryan D. Smith
Attorney for the Petitioner

APPENDIX 3

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case Nos. 14-RC-267769

CONCO QUARRIES, INC.,

Employer,

and

HEAVY CONSTRUCTION LABORERS' LOCAL #663, affiliated with
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA,

Petitioner.

Place: Zoom

Date: November 16, 2020

Pages: 1 through 222

Volume: 1 of 1

OFFICIAL REPORTERS

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

In the Matter of: CONCO QUARRIES, INC., Employer, and HEAVY CONSTRUCTION LABORERS' LOCAL NO. 663, Affiliated with LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, Petitioner.		Case No. 14-RC-267769
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The above-titled matter came on for hearing, via video conference, pursuant to Notice, before **MELISSA C. NISLY, Hearing Officer**, of the National Labor Relations Board, on Monday, November the 16th, 2020, at 9:57 a.m.

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A P P E A R A N C E S

On behalf of the Employer:

PAUL W. KING, ESQ.
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The Hammons Tower
901 Saint Louis Street, Suite 1501
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On behalf of the Petitioner:

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Phone: (816) 421-5788
E-mail: rdsmith@a-nlaw.com

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I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>COURT</u>
CHRIS UPP	34	86			
JASON MENDENHALL	105	117	131		
CHRIS UPP (Recalled)			135	150	
				151	
STACEY TENNIS	153	180	184		
ROBIN PATNODE	187	200	203		205

	<u>E X H I B I T S</u>		
	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1			
2			
3	BOARD		
4	1(a-f)	10	11
5	2	22	23
6	3	23	24
7	4	27	27
8	5	27	27
9	EMPLOYER		
10	1	35	36
11	2	39	39
12	3	40	42
13	4	43	44
14	5	45	46
15	6	53	54
16	7	59	60
17	8	68	69
18	9	69	72
19	10	72	74
20	11	75	76
21	12	78	79
22	13	189	192
23	14	189	196
24	15	189	196
25	16	189	198

P R O C E E D I N G S

[Start 9:57 a.m.]

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HEARING OFFICER NISLY: Okay, the hearing will be in order.

This is a Formal Hearing in the matter of Conco Companies, Case No. 14-RC-267769, before the National Labor Relations Board.

The Hearing Officer appearing for the National Labor Relations Board is Melissa Nisly.

The hearing is being conducted by video conference using the Zoom platform. Parties are advised that they must mute their microphones unless they intend to speak, so as to limit unnecessary background noise. The parties are encouraged to attend this hearing in a space that is free from distracting background noises.

Please be further advised that the court reporting service will be permitted to record the hearing for the purpose of producing an official record, but no other recordings will be allowed. I wish to stress that all matters spoken in the hearing are recorded by the Official Reporter while the hearing is in session. In the event that any parties wish to make an off-the-record remark, requests to make such remarks should be directed to the Hearing Officer and not to the Official Reporter.

Because we are proceeding through Zoom, if anyone is

1 dropped from the meeting, and is unable to immediately re-
2 enter the call for whatever reason, please, if possible,
3 send an e-mail to me advising me so that we can await your
4 return. We don't seem to have too many people appear at
5 the same time, so I should be able to tell if somebody
6 gets dropped, hopefully. I know you don't have e-mail, so
7 I will definitely be keeping an eye on you.

8 The parties are reminded that they need to speak
9 loudly and clearly and identify themselves prior to
10 speaking when it is unclear who might be speaking. The
11 parties are also reminded to spell place names or people
12 names upon first mention for the convenience of the Court
13 Reporter and the accuracy of the record.

14 The parties are reminded that there should be no
15 communication or approaching of witnesses while testimony
16 is ongoing, meaning through communications outside of the
17 Zoom hearing. Witnesses should not have any documents or
18 other notes present with them while testifying. This
19 includes accessing information on the computer that they
20 are using to access the document.

21 Parties should be prepared to state reasons in
22 support of any motion or objection in as concise a manner
23 as possible.

24 I want to remind the parties that this is a non-
25 adversarial hearing. The objective of this hearing is to

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1 ensure that the record contains a full statement of facts
2 as may be necessary for the determination of the issues.

3 Parties are encouraged to circulate exhibits by e-
4 mail in advance of the hearing. For additional exhibits,
5 please circulate them by e-mail. Ensure that you send
6 them to the Hearing Officer and the Court Reporter and all
7 other involved parties. The preference is for one exhibit
8 to be attached to an e-mail with the subject line of the
9 e-mail listing the exhibit number, and a brief description
10 of the exhibit for easy reference.

11 After the exhibit is circulated, all parties are
12 listed as e-mail recipients -- okay, recipients must
13 confirm that they have received the exhibit before the
14 hearing can continue. It may be necessary for me to ask
15 questions and explore avenues with respect to matters not
16 resolved or only partially raised by the parties.

17 All parties have been informed of the procedures at
18 Formal Hearings before the Board by service of a
19 Description of Procedures in Certification and
20 Decertification cases with the Notice of Hearing. I have
21 additional copies of this document for distribution if any
22 party wants more.

23 Will Counsel please state their appearances for the
24 record?

25 For the Petitioner?

1 MR. SMITH: Good morning.

2 Ryan Smith, for the Petitioner, with the law firm of
3 Arnold, Newbold, Sollars, and Hollins. My contact
4 information has been produced -- provided to the Court
5 Reporter.

6 We are ready to proceed.

7 HEARING OFFICER NISLY: For the Employer?

8 MR. KING: Paul W. King, law offices of Paul W. King.
9 The contact information has been previously supplied by
10 the attorney for the Employer.

11 HEARING OFFICER NISLY: Are there any other
12 appearances?

13 *[No response]*

14 HEARING OFFICER NISLY: Let the record show no
15 further response.

16 MR. KING: Appearances for lawyers, or appearances as
17 far as witnesses?

18 HEARING OFFICER NISLY: Lawyers, parties, as in the
19 -- for the Petitioner and -- basically Intervenors is what
20 it is asking for.

21 MR. KING: Again, attorneys or representatives of
22 the Employer that are employees of the Employer?

23 HEARING OFFICER NISLY: Yes.

24 MR. KING: Yes, then I do have several.

25 HEARING OFFICER NISLY: I apologize. Please go

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1 ahead.

2 MR. KING: Chris, C-h-r-i-s, Upp, U-p-p, Vice-
3 President and General Manager of Conco Quarries, Inc.

4 Stacey, S-t-a-c-e-y, Tennis, T-e-n-n-i-s, General
5 Superintendent, Conco Quarries, Inc.

6 Robin, R-o-b-i-n, Patnode, P-a-t-n-o-d-e, HR for
7 Human Resources - Generalist, for Conco Companies.

8 Randy Harwood, R-a-n-d-y, H-a-r-w-o-o-d,
9 Information Systems Director/Human Resources Director,
10 for Conco Companies.

11 And then, a paralegal from my office, Jeremy,
12 J-e-r-e-m-y, middle initial C., as in Charles, Welker,
13 W-e-l-k-e-r, Paralegal in my office who will be
14 assisting me and taking notes during the hearing.

15 Anticipated witnesses are only Mr. Upp, Mr. Tennis,
16 Ms. Patnode.

17 HEARING OFFICER NISLY: Thank you.

18 Okay, Mr. Smith, do you have anyone else there?

19 MR. SMITH: No, no one is with me in my office, but
20 the other two windows you see on your screen, one is
21 Jason Mendenhall, the President and General Manager of
22 Local 663, and that is Jason, J-a-s-o-n, Mendenhall,
23 M-e-n-d-e-n-h-a-l-l. And I believe, iPad 19294362866,
24 that screen should be Tim Price.

25 HEARING OFFICER NISLY: I was wondering who iPad

1 was.

2 MR. SMITH: Yeah, and he serves, I believe, as the
3 Secretary with the Local Union 663, and his name is
4 spelled T-i-m, Tim, Price, P-r-i-c-e, just like it
5 sounds.

6 HEARING OFFICER NISLY: Okay.

7 MR. SMITH: Okay, and those would be my only two
8 witnesses.

9 HEARING OFFICER NISLY: Okay, thank you.

10 So, that's it?

11 *[No response]*

12 HEARING OFFICER NISLY: Okay, now let the record
13 show that there will be no further response on that
14 particular thing.

15 I now propose to receive the Formal Papers. They
16 have been marked for identification as Board Exhibit
17 1(a) through 1(f), inclusive; Exhibit 1(f) being an
18 Index and Description of the entire exhibit.

19 **(Board's Exhibit No. 1(a) through 1(f), inclusive,
20 marked for identification.)**

21 HEARING OFFICER NISLY: The exhibit has already
22 been shown to all of the parties.

23 Are there any objections to the receipt of these
24 exhibits into the record?

25 MR. SMITH: No objection.

1 MR. KING: The only thing that I note on the way
2 that this was printed off, but in case it is the same
3 for others, Board Exhibit 1, the actual cover page,
4 Petition, is not marked. The Board Exhibit 1(a) on my
5 copy is only the attachment to that Petition. The rest
6 of them, (a) through (f), at least on my copy are, but I
7 certainly concur that it can include, if it is not
8 electronically included, the cover Petition, one-page
9 Petition itself, which was signed by Mr. Mendenhall on
10 October 15, 2020.

11 HEARING OFFICER NISLY: I was trying to figure out
12 how to mark those correctly, and for some reason, I
13 decided that it should be on the last page of each
14 document, and I put them in the order that they would go
15 in Formal Papers if they were actually physically in the
16 Formal Papers. I have since decided that that is
17 probably not the way to do it, but they are all there.
18 It is just the -- the letters are on the last page of
19 that particular document.

20 MR. KING: All right, and with that particular
21 understanding, I have no objection to their introduction
22 into evidence.

23 HEARING OFFICER NISLY: Okay. Hearing no
24 objections, the Formal Papers are received in evidence.
25 **(Board's Exhibit No. 1(a) through 1(f), inclusive,**

1 **received into evidence.)**

2 HEARING OFFICER NISLY: Are there any motions to
3 intervene in these proceedings to be submitted to the
4 Hearing Officer for ruling by the Regional Director at
5 this time?

6 *[No response]*

7 HEARING OFFICER NISLY: Are there any other
8 employers or labor organizations that have an interest
9 in this proceeding?

10 MR. KING: For the Employer, I am not aware of any.

11 HEARING OFFICER NISLY: Okay.

12 MR. SMITH: The Petitioner hasn't been contacted by
13 the labor organizations or any other employers that
14 would have an interest in attending this hearing.

15 HEARING OFFICER NISLY: Okay, thank you.

16 Are there any pre-hearing motions made by any party
17 that need to be addressed at this time?

18 MR. KING: If -- when you ask questions, why don't
19 I just let the Petitioner go first, and then I will go
20 second?

21 HEARING OFFICER NISLY: Okay.

22 MR. SMITH: This isn't exactly a motion, but more
23 of a matter for clarification.

24 So, as you are aware, we -- the Petitioner applied
25 for a subpoena duces tecum, and in the week leading up

1 to the hearing, the Petitioner has cooperatively worked
2 with opposing Counsel to -- to get a disclosure on -- to
3 substantially comply with that subpoena, and we have
4 pretty well narrowed down the issues where we feel the
5 subpoena is either substantially complied with, or close
6 to that, but one issue we wanted to raise on the record,
7 just because we are -- we are unaware of the Employer's
8 position on this, is whether the Employer considers that
9 they have fully responded to the subpoena from their
10 perspective, and if so, we would like to make a record
11 of that fact.

12 Obviously not every question he asks is going to
13 have responsive documents. Some of the questions we
14 asked didn't have responsive documents or weren't sent.
15 If that -- you know, if that is the case, we would just
16 like to make a record of that fact on the record.

17 HEARING OFFICER NISLY: Okay.

18 MR. KING: First of all, what he has subpoenaed, it
19 was never served. I never accepted service of that
20 document. So, essentially, it is an attorney to
21 attorney request for information.

22 Number two, I agree that there has been cooperation
23 between Mr. Smith and me, to get various documents.
24 There has also been cooperation by Mr. Smith to drop
25 various requests that were on the document that he calls

1 a subpoena, that was never served, and I have never
2 accepted service of the document.

3 So, this morning when I got the e-mail that was
4 sent to me last night, last night being Sunday, the same
5 kind of request was contained in that e-mail. In my
6 response, and I don't have it readily here, was to the
7 effect, a) "I just got this, and if you think there is
8 something, okay."

9 He sent at 11:01 p.m. last night, Sunday night,
10 this request, which I retrieved at 7:32 -- well about
11 7:30, I responded at 7:32 a.m. this morning, with
12 basically, question mark, I am just seeing this. Quote,
13 "You will have to address whatever you want to at the
14 hearing at this point. I was unaware that you were not
15 satisfied with what you have/what Employer exhibits have
16 been sent. Obviously, I cannot further address this at
17 this early time this morning in final hearing preps.
18 BK/PWK LLC."

19 So, our position is, those were requests, not a
20 server accepted subpoena, and we have provided
21 everything, and I know of no objections that the burden
22 I have put back on him, if he thinks he has not been
23 given something that he has requested and that I have
24 agreed to furnish, then the burden is on him to point
25 out specifically what that is, and why he figures that

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1 he does not have it.

2 MR. SMITH: If I might respond...

3 Several things here with regard -- to clarify with
4 regard to the timing that he has just provided.

5 First, I -- the document that is a subpoena, it was
6 issued as a subpoena, was provided to the Employer's
7 Counsel on Wednesday, by e-mail. They received it, and
8 unfortunately, they did not accept service. But on
9 Friday, we did successfully complete service. We do
10 have an e-mail from the Process Server, that Robin
11 Patnode was serviced on Friday with a copy of the
12 subpoena, and my goal has been to -- my -- I agreed to
13 try to cooperate on this, and Mr. King did ask
14 specifically what questions that I believed might not be
15 responded to.

16 And so, I identified Question 6 and Question 7,
17 which basically was business records related to
18 expansion of the unit, things like meeting minute,
19 things like a business flyer, like they had a plan to
20 expand, things like communications with our office about
21 plans to expand. Things like business memorandums on,
22 you know, the costs and benefits of hiring more
23 employees.

24 No such business records were provided and that is
25 -- we are okay if there are no business records of -- if

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1 -- if there are no business records that reflect items
2 like that, then that is okay. We would just like to
3 know about that so that the record can be clear, and if
4 there are such business records out there, that still
5 exist, and based on the timeframe parameters that Mr.
6 King has provided, I do agree that it is a tight
7 timeframe, but one of the options that the Hearing
8 Officer could consider, and instead of -- quite
9 regularly with our subpoenas in the hearing, is that the
10 record could be kept open for purposes only of
11 satisfying that aspect of the subpoena request.

12 So, I -- I am basically just trying to make sure
13 that we have a clean, clear record, and that what is in
14 the record is actually a full accounting of the facts,
15 which I think is the whole -- is part of the purpose
16 statement, I think, that the Hearing Officer read
17 earlier, that that is one of the things we want to do,
18 is make sure that we have a full statement of the facts
19 in this hearing.

20 So, I do think it is important that if there are
21 additional documents, they be provided, but if -- if
22 there aren't any additional documents, I would just want
23 a record to be made of that, and the if the Employer and
24 their Counsel need time to, you know, verify if there is
25 or is not more records, the Petitioner is agreeable to

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1 leave the record open for a few days to fill out and to
2 do that.

3 HEARING OFFICER NISLY: Can we go off the record
4 for just a minute? We will be right back.

5 *[Off the record]*

6 HEARING OFFICER NISLY: Okay, Mr. Smith?

7 MR. KING: I think it was my turn to respond.

8 HEARING OFFICER NISLY: We are just briefly going
9 to put both people's positions on the record right now
10 since we -- since we went off the record and talked
11 about it.

12 MR. KING: I want to respond first, since we are
13 picking up the record.

14 That response is, that if the subpoena was served
15 on Friday, then I have five days, the Employer has five
16 days within which to respond to that subpoena. That
17 being the case, unless the Petitioner withdraws that
18 subpoena, and the Employer has five days to respond to
19 that subpoena, under Board rule, then we want our five
20 days, and I would request, as a result in the end,
21 unless the subpoena is withdrawn, that we be allowed to
22 have our five days to respond to the subpoena on any
23 issues that the Petitioner now claims are issues, and in
24 conjunction with that, re quest that this hearing be
25 postponed, and then our normal response to the subpoena,

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1 within the five days, unless it is withdrawn.

2 HEARING OFFICER NISLY: Mr. Smith, the Petitioner's
3 position on this subpoena is to defer it until after
4 testimony; is that correct?

5 MR. SMITH: I'm sorry, are you asking me or are you
6 asking --

7 HEARING OFFICER NISLY: Yes, I am asking you.

8 MR. SMITH: Yes, so it would be -- the whole reason
9 this was originally brought up was to clarify that the
10 subpoena had been satisfied, so that enforcement would
11 not be necessary.

12 You know, at this time, the Petitioner will not
13 withdraw the subpoena, but it also does not seek
14 enforcement because we would like to hear what the
15 testimony of the Employer's witness is, you know, what
16 information they can provide that might shed additional
17 light --

18 *[Cell phone ringing]*

19 MR. SMITH: Sorry. I am not sure how to mute my...

20 So, you know, at this time we do not wish to
21 withdraw the subpoena, but we are also not seeking to
22 enforce it at this time. We don't believe that the
23 five-day response time to revoke a subpoena is the rule,
24 it authorizes the Board or the Employer to delay the
25 hearing, especially in light of these facts where we are

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1 really only talking about potentially a couple of
2 issues, especially when witnesses are here. They have,
3 you know, cleared their schedule, and those witnesses
4 may provide information which would sort of moot the
5 issues that may or may not come to light.

6 So, in short, the Petitioner is wanting to kind of
7 wait and see.

8 HEARING OFFICER NISLY: Okay.

9 MR. KING: Can I have his cake and eat it, too?

10 How can you enforce something when you don't even
11 know what the response is, and I have five days to give
12 a response. So all of that is just double shuffle
13 window dressing.

14 There is nothing to enforce. Unless he has
15 specifically stated we have not provided something
16 pursuant to the subpoena that is enforceable, and we
17 have five days to respond to to it. So, we have done
18 nothing wrong at this point. There is nothing for him
19 to enforce. Until we respond to it formally, since he
20 chose to supposedly formally serve it on the Employer,
21 but even under his facts, prior to last Friday, there
22 was nothing there but a Request for Information that had
23 the title "Subpoena" on it. But until it is served, it
24 is just that. It is a Request. We have already made
25 our record on cooperation, giving him all of the

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1 information he needs. Why the Petitioner sought fit to
2 go ahead and have it formally served, I have to assume
3 there was some reason for that.

4 So, we were discussing informally about what we
5 have or doesn't have or what he needs or what he really
6 doesn't need, and all of those were part of that
7 discussion on that subpoena. Him dropping things, us
8 clarifying things, all of that.

9 The subpoena does not accurately reflect what is
10 there, and if we have to formally respond to it in -- in
11 formal fashion, then absolutely, the Employer will have
12 objections to many provisions of that subpoena request,
13 not the least of which, for example, is the Request for
14 Information in 2019 when we didn't even operate the
15 facilities. We don't have records for that. Conco
16 Quarries, Inc. took over these facilities January 1,
17 2020, so there is another objection -- that is just an
18 example of -- of this.

19 So, if he wants to make this subpoena an issue in
20 this proceeding formally, then our due process rights
21 allow us -- require you to allow us to formally respond
22 to his formal subpoena request, and if you don't do so,
23 it is going to be a denial of the Employer's due
24 process. It is going to be a violation of your rules,
25 and if you look at that subpoena, I believe it was dated

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1 the -- October -- or November 11, maybe. I am not sure
2 what the date was. Certainly, well before five days,
3 you know, before the hearing. That is all on the
4 Petitioner. That is not on the Employer.

5 So, we have made our record. It is a denial of due
6 process if he is going to enforce that subpoena. He
7 can't just window dress and say, "Here is my subpoena,"
8 and infer that I or my office or this employer has not
9 been fully open and honest with him in going through the
10 potential issues on that. I find that offensive,
11 professionally and legally. We want our five days, and
12 if we can't -- if you refuse to give us that and
13 postpone this hearing to allow it, then I want a running
14 objection to this hearing, and I consider it a denial of
15 the Employer's due process.

16 HEARING OFFICER NISLY: Okay, so at this time, we
17 are going to go ahead and continue with the hearing and
18 defer the issue of the subpoena until later, after we
19 have heard testimony.

20 MR. KING: And then, may I have a running objection
21 to all further proceedings in this case?

22 HEARING OFFICER NISLY: So noted.

23 MR. KING: Thank you.

24 HEARING OFFICER NISLY: Okay, so we are up to Board
25 Exhibit 2.

1 (Board Exhibit No. 2, marked for identification.)

2 HEARING OFFICER NISLY: The parties to this
3 proceeding have executed a document which is marked as
4 Board Exhibit 2. That exhibit contains a series of
5 stipulations, including among other items, that the
6 Petitioner is a labor organization within the meaning of
7 the Act, there is no contract bar, and the Employer
8 meets the jurisdictional standards of the Board.

9 Are there any objections to the receipt of Board
10 Exhibit 2?

11 MR. SMITH: No objection.

12 HEARING OFFICER NISLY: Okay.

13 MR. KING: I have no objection to its introduction,
14 but I would want the record to very clearly note that in
15 my e-mail response to Ms. Nisly with my signed copy of
16 the stipulation, I wanted it clarified that while there
17 was no literal "contract" bar being asserted by the
18 Employer, as the Petitioner knows and the Region knows,
19 the Employer is asserting that the Petition should be
20 dismissed, based on an expanded unit in seasonal
21 employer principles. I just wanted that clarified to
22 make sure that somebody doesn't claim that we waive
23 either of those petitions by signing that stipulation.

24 HEARING OFFICER NISLY: I --

25 MR. KING: With that clarification, I have no

1 objection to the stipulation being entered into
2 evidence.

3 MR. SMITH: And could I further clarify that
4 interpretation of the stipulation -- so my understanding
5 of the Employer's statement of its position is that they
6 intended to delay the election but not dismiss the
7 Petition. Is the interpretation of that stipulation to
8 -- that it is the Employer's position to dismiss --
9 request the dismissal of the Petition?

10 HEARING OFFICER NISLY: Okay, the stipulation
11 doesn't cover that at all. It is in the Employer's
12 Position Statement, and we will get to that as Board
13 Exhibit 3 in just a moment, okay?

14 MR. KING: Okay.

15 HEARING OFFICER NISLY: Board Exhibit 2 is received
16 into evidence.

17 **(Board's Exhibit No. 2, received into evidence.)**

18 HEARING OFFICER NISLY: Okay, the Employer has
19 completed, and I have marked for identification as Board
20 Exhibit No. 3, a Statement of Position in this matter.

21 **(Board's Exhibit No. 3, marked for identification.)**

22 HEARING OFFICER NISLY: Are there any objections to
23 the receipt of this exhibit into the record?

24 MR. SMITH: No objection.

25 MR. KING: The Employer has no objection to the

1 introduction of this document into the record, but the
2 record should reflect, and I think it will come out here
3 later, that after the submission of Board Exhibit No. 3,
4 the Statement of Position by the Employer, certain
5 corrections and compromises were reached by the parties,
6 so that the current, today, position of the Employer has
7 been somewhat modified, not significantly in my opinion,
8 but I think that will come out later. So, as far as the
9 document itself, it is an accurate reflection of what
10 was submitted by the Employer on October 29, 2020, but
11 there have been some modifications to it which will come
12 out in the record, and with that I have no objection,
13 the Employer has no objection to its introduction as a
14 document.

15 **(Board Exhibit 3 is received into evidence.)**

16 HEARING OFFICER NISLY: Okay, Mr. Smith, what is
17 your position with respect to the expanding unit issue
18 that was raised by the Employer in its Statement of
19 Position?

20 MR. SMITH: The issue of whether the document in
21 the expanding unit prohibits an immediate election, and
22 the Petitioner's position is that, no, it does not.
23 Based on all of the information that the Petitioner has
24 reviewed to date, an immediate election should be held.

25 The Petitioner recognizes the Employer has made

1 periodic attempts to hire employees, but there have --
2 the Petitioner has not yet seen sufficient evidence or
3 information to establish that the Employer would hire so
4 many employees in the immediate future, that it would
5 cause, you know, or b) delay the election and/or to
6 dismiss the Petition.

7 HEARING OFFICER NISLY: Okay, and Mr. Smith, what
8 is your position with respect to the issue raised by the
9 Employer in its Statement of Position, with respect to
10 seasonal, it being a seasonal operation?

11 MR. SMITH: Again, the issue whether the doctrine
12 of a seasonal employer prohibits an immediate election,
13 the Petitioner's position is that, no, that doctrine
14 does not prohibit an immediate election. An immediate
15 election should be held. The quarry industry is not a
16 seasonal industry. The quarry industry isn't like a tax
17 service industry, or other service industry where there
18 is an off-season. There is demand for quarry work that
19 ebbs and flows, but there is not a off-season, and
20 business records of the Company will show that the
21 Company does not have sufficient records to support
22 their allegation that their quarries specifically are
23 seasonal.

24 HEARING OFFICER NISLY: Okay.

25 MR. KING: Do I get a shot?

1 HEARING OFFICER NISLY: Go for it.

2 MR. KING: Simply to clarify on the Statement of
3 Position, the reference in the jurisdictional statement
4 to Conway was agreed -- includes the Marshfield Quarry.
5 The address of Milo, M-i-l-o, Missouri, is the
6 Montevallo Quarry, M-o-n-t-e-v-a-l-l-o. One quarry
7 which we call the Pittsburg, Missouri Quarry, was
8 mistakenly left off. That was noted as needing to be
9 added.

10 The revised Union description in the Employer's
11 original statement of position had the Scale, S-c-a-l-e,
12 Operator in the included unit. It was clarified that
13 that is the same job as the excluded Scale Clerk, and
14 simply needed to be moved down to what I think is now
15 Scale Clerk/Operator, and then plus adding Pittsburg,
16 plus adding Marshfield after Conway, Montevallo after
17 Milo, and then subsequently, and I am not sure with the
18 Board, on the first page of the Statement of Position,
19 the Employer proposed an election date of May 3, 2021,
20 which winds up being a Monday. I am not sure how that
21 occurred, but it needs to be a Friday, which is the
22 shorter work day of either May 7 or 14.

23 HEARING OFFICER NISLY: Okay. All right, so the
24 Petitioner has completed and I have marked for
25 identification as Board Exhibit 4, a Responsive

1 Statement of Position in this matter.

2 **(Board's Exhibit No. 4, marked for identification.)**

3 HEARING OFFICER NISLY: Are there any objections to
4 the receipt of this exhibit into the record?

5 MR. SMITH: No objection.

6 MR. KING: The Employer has no objection to the
7 introduction of Board Exhibit 4. I don't there have
8 been any changes to that, so no objection.

9 HEARING OFFICER NISLY: Okay.

10 **(Board's Exhibit No. 4, received into evidence.)**

11 HEARING OFFICER NISLY: And then, there is a Board
12 Exhibit 5, I am told, that -- as soon as I find it.

13 **(Board's Exhibit No. 5, marked for identification.)**

14 HEARING OFFICER NISLY: Okay, there.

15 Okay, Board's Exhibit 5 is the description of Voter
16 List Requirement After Hearing in Certification and
17 Decertification Cases.

18 Does anybody have any objection to that being
19 entered?

20 MR. SMITH: No objection.

21 MR. KING: No objection from the Employer either.

22 HEARING OFFICER NISLY: Okay, then Board Exhibit 5
23 is received.

24 **(Board's Exhibit No. 5, received into evidence.)**

25 HEARING OFFICER NISLY: Oh, well -- it -- it is

1 introduced early. Sorry.

2 So the issues to be litigated today, from what I
3 understand, is the issue of whether or not the unit is
4 expanding, the issue of whether or not it is a seasonal
5 operation, and the issue of the scope of the unit. We
6 have the inclusion classifications, we have the exclusion
7 classifications that we have agreed to, but what we have
8 not agreed to is which locations of the Employer would be
9 -- and presumptively that would be what the Petitioner has
10 petitioned for, so please be aware.

11 Employer, please present your first witness.

12 MR. KING: Well, simply let me, and I agree that it
13 does not need to be litigated in this proceeding, but
14 there was specific discussion about it during the pre-
15 election conference call last Friday, and that is manual
16 versus mail --

17 HEARING OFFICER NISLY: Right, and at the end of the
18 hearing, we will get both of your -- a brief description
19 on both of your positions on that, and then you will have
20 the opportunity to present a brief on your position, if
21 you have more to say, if you need more time to tell us --
22 yes.

23 MR. KING: Okay.

24 HEARING OFFICER NISLY: That will be at the end.
25 That is all I am trying to say.

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1 MR. KING: I agree with that completely.

2 The other thing that I think it may be clear in the
3 record, but I would propose just a stipulation to this
4 fact so that we don't go running off into a tangent.

5 I would propose a stipulation that there is no
6 bargaining history between the Employer and the
7 Petitioner, or any union, at any of the Rural Quarries in
8 dispute here.

9 HEARING OFFICER NISLY: Petitioner?

10 MR. SMITH: I have no objection with respect to these
11 specific quarries.

12 MR. KING: And a second proposed stipulation, just to
13 button it up, we do have a bargaining history with the
14 Union and the Employer at what may be referenced at this
15 proceeding, although it is not involved, what I would call
16 the Employer's Willard, Missouri Quarry. So there is that
17 one bit of bargaining history between the two parties that
18 probably should be referenced in the record.

19 MR. SMITH: And I agree. I have no objection to that
20 stipulation.

21 MR. KING: And just the final one, there -- the
22 Employer has a quarry operation within the Conco Companies
23 umbrella of marketing brand. There are ready-mix
24 operations in the Conco Company of Springfield, and a
25 d/b/a Christian County Concrete in Nixa, Missouri, under

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1 those two entity names, but still within the Conco
2 Companies umbrella of companies. It does have bargaining
3 history with this Petitioner, the Laborers, at the Sherman
4 Street location for the Concrete Company of Springfield,
5 and the Christian County Concrete location in Nixa.

6 MR. SMITH: Again, I have no objection to that
7 stipulation.

8 MR. KING: That is all that I have.

9 MR. SMITH: Is -- sorry.

10 MR. KING: Go ahead.

11 MR. SMITH: Well, one other issue that I don't know
12 if needs to be litigated now, the Employer and the Union
13 have previously discussed a question of one employee who
14 may or may not be a quote/unquote, "supervisor," and so I
15 -- I don't know if that needs to be litigated in today's
16 hearing, but I have some material prepared in case --

17 MR. KING: That -- that is a very good point. I
18 missed that.

19 There is -- there is one -- there is one individual
20 who we are claiming is a supervisor, that the Petitioner
21 is saying is not, and I don't -- thank you for bringing
22 that up. I don't think that was mentioned before.

23 In some of the exhibits, we will clarify that without
24 waiving that position from the Employer's standpoint or in
25 testimony, we have got that person's name. I think it is

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1 Camrin Shoemaker, on some of the exhibits here, just so he
2 wouldn't get lost in the shuffle somewhere. But that is
3 the individual whom we claim is a statutory supervisor and
4 they claim is not. Good point.

5 HEARING OFFICER NISLY: Okay.

6 MR. SMITH: And one other issue, I made sure --
7 depending on how quick the hearing -- and this may not be
8 an issue, but one of the Union's witnesses, Mr.
9 Mendenhall, does have an obligation at 3:30, so depending
10 on where we are at, maybe around lunchtime or something
11 like that, we might assess where -- if there is any
12 possibility that we might be able to get him moved up or
13 sandwiched in between one of the Employer's last
14 witnesses. It might not be a problem, but I wanted you to
15 know about that in advance.

16 MR. KING: We will be happy to accommodate that, and
17 if we have to interrupt our testimony to take his, then we
18 can.

19 MR. SMITH: Okay, and I don't anticipate that his
20 testimony will be -- well, it depends on the cross
21 examination or Board's questions, but hopefully it will be
22 under thirty minutes, but we will see.

23 MR. KING: Whatever it takes. No objection from us
24 on that at all.

25 HEARING OFFICER NISLY: Okay.

1 MR. KING: My only point -- do you want -- I am ready
2 to call my first witness.

3 HEARING OFFICER NISLY: Okay.

4 MR. KING: The way that is going to happen here, is
5 this is the witness chair.

6 HEARING OFFICER NISLY: Right.

7 MR. KING: I am getting up so that it can be staged
8 consistent here, and I am ready to do that. The only
9 other thing that I will note for the record, is that the
10 Employer's name is Conco Quarries, Inc. We may refer to
11 that as "Conco Quarries," and we may refer to that as
12 "Employer," some of the documents even refer to it as
13 "Company."

14 And so, as our witnesses refer to Conco Quarries or
15 Employer or Company, it is the Employer in this case,
16 Conco Quarries, Inc., unless we so clarify otherwise.

17 The other thing, the Union, from our standpoint, they
18 may be referred to as "Petitioner" -- as "Petitioner" or
19 "Union." And if our witnesses or documents say "Union,"
20 we are referring to the Laborers, the Petitioner in this
21 case, unless we clarify otherwise.

22 My understanding, as far as Employer exhibits, they
23 have all been pre-marked, you are welcome, Court Reporter,
24 and they were electronically -- she is smiling -- last
25 Friday. I think there were 16 of them. I know of no

1 objection -- not to the introduction, but that they didn't
2 receive them or whatever, but there is 1 through 16, and
3 then the final thing and then I will shut up. The order
4 of the evidence, which you referenced that the Employer
5 probably needs to go first in this case, with the Union,
6 you know, after its cross examination, maybe giving some
7 evidence, and of course, the Hearing Officer or even Amy,
8 you know, interposing questions as we go along. If that
9 makes sense to everybody, then I will get off your screen,
10 which is a benefit to you, and get somebody younger in
11 here.

12 HEARING OFFICER NISLY: Okay, just be sure to stay
13 close enough to the mic so that we can hear you.

14 MR. KING: I am just going to be around an "L" in the
15 table, for social distancing. This microphone is between
16 me and the witness, but if there is a problem with
17 somebody hearing it, I will certainly speak up.

18 HEARING OFFICER NISLY: All right.

19 MR. KING: Thank you.

20 The Employer calls Chris Upp to the stand.

21 *[Long pause]*

22 MR. KING: *[Indiscernible - away from microphone]*

23 HEARING OFFICER NISLY: Right.

24 Okay, so, please stand and swear in each witness.

25 So, please raise your right hand.

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1 (Whereupon,

2

CHRIS UPP

3 having been sworn/affirmed, was called as a witness
4 herein, and was examined and testified via video-
5 conference, as follows:)

6 HEARING OFFICER NISLY: Thank you.

7

DIRECT EXAMINATION

8 Q BY MR. KING: Please tell us your full name, and
9 spell it for the record.

10 A Chris, C-h-r-i-s, Upp, U-p-p.

11 Q And what is your current position with the Company?

12 A Vice-President and General Manager.

13 HEARING OFFICER NISLY: Mr. King, I am having a
14 little trouble hearing you, so can you move closer --

15 MR. KING: I will just come right up here.

16 THE WITNESS: Okay.

17

[Long pause]

18 MR. KING: Okay, how is that?

19 HEARING OFFICER NISLY: That is much better. Thank
20 you.

21 Q BY MR. KING: I think we were asking the position,
22 what is the current position you held. I think you
23 answered that.

24 How long have you worked for the Company?

25 A 26 years.

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1 Q And just a little background of what you have done
2 before coming to this employer.

3 A I actually interned two summers while going to
4 college and started full-time as a Project Engineer at the
5 Willard Quarry. I started managing people in 2001 at our
6 Galloway Quarry -- at our predecessor, and then in my
7 current positions for the last thirteen years.

8 Q I am going to have you reference Employer's Exhibit
9 1.

10 **(Employer's Exhibit No. 1, marked for identification.)**

11 Q BY MR. KING: Please identify what that is printed
12 off?

13 A Yes, this is from the Secretary of State from
14 Missouri, Employer Registration for Conco Quarries,
15 Incorporated.

16 Q And that is the correct employer name, Conco
17 Quarries, Incorporated, spelled out?

18 A Yes, it is.

19 Q And it says that it has been in existence and was
20 registered in 1963?

21 A That is correct.

22 MR. KING: I would like to introduce Employer's
23 Exhibit 1 into the record.

24 MR. SMITH: No objection.

25 MR. KING: Objection or no objection? I didn't hear

1 that.

2 MR. SMITH: No objection.

3 MR. KING: I'm sorry.

4 **(Employer's Exhibit No. 1, received into evidence.)**

5 Q BY MR. KING: Can you give us an idea of the general
6 responsibilities of your current position?

7 A In my current position, I have profit and loss
8 responsibility for all operations and all sales status in
9 the entire Quarry Division, producing material and selling
10 material.

11 Q And going back to your job, and not to belabor it too
12 long, but just as an intern -- let's go to that first
13 position where you were not an intern, and then just walk
14 us up the ladder until we get to your current position of
15 what you did.

16 A So, in my couple of years, I was a Project Engineer,
17 so I managed various projects, whether they were
18 construction projects or production jobs that we had.

19 Q Can you give us an example or two of what a project
20 would be?

21 A My main project was updating a mine plan, so that
22 mine plan determines where we are going to mine, and like
23 -- the shots per year, distributing planning that had to
24 be done. So I used my engineering background for that,
25 and then there was construction projects where I would

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1 oversee projects basically from the design phase all the
2 way through to the implementation and evaluation.

3 MR. KING: And for the Court Reporter, that was m-i-
4 n-e or m-i-n-i-n-g, is what he was stating.

5 Q BY MR. KING: Your next job.

6 A From there I went to Production Management. So I
7 managed basically what products we were going to be
8 producing, sold through the Willard plant, and that
9 pertained to customer demand, managing the plant in terms
10 of how we would produce different products, and managing
11 large volume projects as they came along.

12 Q There has been a reference to Conco Companies, a
13 marketing name. Where does the Conco Quarries, Inc. fit
14 within that?

15 A Conco Quarries is a -- basically a subsidiary of
16 Conco Companies. So we act as our own budget entity, so
17 we have our own budget that we deal with. We are also one
18 of the larger Conco Companies, which is a series of
19 smaller companies.

20 MR. KING: And we will have testimony about these,
21 what we are going to call "Rural Quarry Groups" within
22 Conco Quarries, Inc.

23 Q BY MR. KING: Where do you have existing quarries?

24 A Existing quarries are in Willard -- Willard,
25 Missouri. We also have a quarry in southeast Springfield,

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1 which we refer to as our Galloway Quarry. And then we
2 have our new "Rural Quarries."

3 Q And just for reference purposes, the employees at
4 Galloway are represented by what Union?

5 A International Brotherhood of Boilermakers,
6 representing Galloway.

7 Q And at Willard, what unions represent component parts
8 (inaudible) and staff?

9 A We have three Collective Bargaining Agreements with
10 the Operators, the Teamsters, and the Laborers.

11 Q The same Laborers that are the Petitioner in this
12 case?

13 A Yes.

14 Q Within -- just so the record is clear, on the ready-
15 mix side of Conco Quarries -- I'm sorry, Conco Companies,
16 just identify what those are?

17 A Yeah. Okay, so the other companies would include the
18 Concrete Company of Springfield, located in Springfield,
19 Missouri, Concrete Company of the Ozarks which is located
20 in Hollister, and Christian County Concrete Company which
21 is located in Nixa.

22 Q And Hollister is sometimes called the Branson --

23 A Correct.

24 Q -- location.

25 A Yes.

1 Q Okay, what is, or who is CRH?

2 A CRH is a concrete trading company based out of
3 Ireland. They are the largest construction materials
4 supplier in the world. They have divisions in the U.S.,
5 in Canada, in Europe, and I believe in India.

6 Q Okay, thank you.

7 Now, please reference Employer's Exhibit No. 2.

8 **(Employer's Exhibit No. 2, marked for identification.)**

9 Q BY MR. KING: Can you just describe what that is?

10 A This is just a brief overview of CRH and its various
11 and -- and information about its global brand, where we do
12 business, and what type of business they do.

13 MR. KING: I would like to introduce Employer's
14 Exhibit 2, just as a descriptive exhibit.

15 MR. SMITH: No objection.

16 HEARING OFFICER NISLY: The exhibit is received.

17 **(Employer's Exhibit No. 2, received into evidence.)**

18 Q BY MR. KING: How does CRH relate to the Employer in
19 this case, and when did that come about?

20 A CRH purchased the remaining assets of Conco Quarries
21 in July of 2019. So, effective July of 2019, it became a
22 wholly-owned subsidiary of CRH.

23 Q And with respect to the quarries at issue in this
24 case, are -- how and when did they come under your
25 umbrella?

1 A In late 2019 that we were effectively becoming
2 operators of the Rural Quarry operations, effective
3 January 1st of 2020.

4 Q Who made that decision?

5 A Somebody higher up than me.

6 Q I mean, was it -- was it the Employer or CRH?

7 A It was CRH.

8 Q And who operated those quarries before?

9 A Previously they were operated by Ashgrove Aggregates,
10 which is a new subsidiary of CRH.

11 Q But not a subsidiary of Conco Companies.

12 A Correct.

13 Q So, these quarries were new to you?

14 A Yes.

15 Q You had not operated them before?

16 A No, we had not.

17 Q And CRH made that call?

18 A Correct.

19 Q You didn't make that decision?

20 A That's correct.

21 Q Please reference Employer's Exhibit 3, and it is
22 multi-page, so we are just going to flip through them.

23 **(Employer's Exhibit No. 3, marked for identification.)**

24 Q BY MR. KING: Let's take Employer's Exhibit 3. What
25 are these? What are we looking at, and then we will take

1 them by location, and for the record, they are in
2 alphabetical order by location, i.e., Bolivar being Page
3 1, and then -- getting back to you, just identify what we
4 have, and we will flip through them so that we can
5 identify them.

6 A So effective January 1st of this year, we took all --
7 all of these quarry operations under our control, from an
8 operations standpoint.

9 This first page is the quarry location at what we
10 call Bolivar, and these are all aerial views that the
11 Quarry Operations -- Page 2, No. 2, is the Buffalo Quarry,
12 and --

13 Q And Page 3?

14 A The Fair Grove Operations.

15 Q Page 4?

16 A Is the Fair Play Operations.

17 Q Page 5?

18 A Is the Marshfield, also known as Conway location.

19 Q Page 6?

20 A Is the Montevallo, also known as the 5.0 Operation.

21 Q Page 7?

22 A Is the Pittsburg location.

23 Q And Page 8?

24 A Is the Stockton location.

25 Q And as far as Employer's Exhibit 3, in the lower left

1 corner, it says "Google Earth." That is just a -- is
2 something you can access -- that is not part of your
3 Company operation, is it?

4 A That's correct.

5 Q So these are not pictures taken by the Company.

6 A No.

7 Q But they were accessed by whatever Google Earth is;
8 correct?

9 A Correct.

10 MR. KING: I would like to introduce Employer's
11 Exhibit 3 into the record.

12 MR. SMITH: No objection.

13 HEARING OFFICER NISLY: Exhibit is received.

14 **(Employer's Exhibit No. 3, received into evidence.)**

15 MR. KING: Just for purposes of the record, anybody
16 can look it up on a map, but Bolivar is in Polk, P-o-l-k,
17 County. Buffalo is in Dallas, D-a-l-l-a-s, County. Fair
18 Grove is also in Dallas County. Fair Play is in Polk,
19 P-o-l-k, County. Conway/Marshfield is in Webster,
20 W-e-b-s-t-e-r, County. Montevallo is in Vernon,
21 V-e-r-n-o-n, County. Pittsburg is in Hickory,
22 H-i-c-k-o-r-y County. And Stockton, is in Cedar,
23 C-e-d-a-r, County.

24 I only make reference to that because of manual
25 versus the mail balloting.

1 Q BY MR. KING: Now, what is Employer's Exhibit 4?
2 **(Employer's Exhibit No. 4, marked for identification.)**

3 Q BY MR. KING: What are we looking at there?

4 A So, Exhibit is basically an aerial overview of --
5 that is a broader look at the quarries in relation to each
6 other. You can see Springfield at the bottom, so it is by
7 itself, and then you will notice the rural -- what we call
8 the rural locations are scattered about north of
9 Springfield.

10 Q And again, this is not a picture that the Company
11 took, but is from Google Earth --

12 A Correct.

13 Q And if I am reading that correctly, in the lower
14 right corner, it looks like it has a legend or a 30-mile
15 length; is that how you read that?

16 A Yes.

17 Q So, if you were to take a ruler and put it around
18 there, you could determine how far these are from each
19 other.

20 A Correct.

21 Q Just for the record, you mentioned the Willard
22 Quarry. Looking at this, Employer's Exhibit 4, and
23 Springfield, where is the Willard -- where is Willard in
24 relation to Springfield?

25 A It is basically north and west of the Springfield

1 center point. Actually, if you look closely, you can see
2 a bright white area, that is actually the quarry. You can
3 see it from the aerial view.

4 Q That is the bright white dots that are about an inch
5 away?

6 A Yes, to the northwest.

7 MR. KING: I would like to introduce Employer's
8 Exhibit 4 into the record.

9 MR. SMITH: No objection.

10 HEARING OFFICER NISLY: The exhibit is received.

11 **(Employer's Exhibit No. 4, received into evidence.)**

12 MR. KING: As far as doing the math, just as an aid
13 to the Hearing Officer, so to speak, the distance is,
14 looking at Employer's Exhibit 4, from Marshfield, as far
15 as the other Rural Quarries, Bolivar is 35.45 miles,
16 Buffalo is 16.36 miles, Fair Grove is 15.0 miles, Fair
17 Play is 38.18 miles, Montevallo is 73.64 miles, Pittsburg
18 is 36.45 miles, Stockton is 56.59 miles; all of those from
19 the Marshfield petitioned-for quarry.

20 Again, as an aid to the record, Madam Hearing
21 Officer, the distance from the Fair Grove, also
22 petitioned-for quarry, are the following: Bolivar is
23 23.18, Buffalo is 16.36, Fair Play 24.55, Marshfield, of
24 course, 15.0, Montevallo is 16, Pittsburg is 29.32, and
25 Stockton, 43.64.

1 Q BY MR. KING: Please look at Employer's Exhibit No.
2 5.

3 **(Employer's Exhibit No. 5, marked for identification.)**

4 Q BY MR. KING: Referencing that, what is this?

5 A So this is an organizational chart of Conco Quarries
6 and all of its staff members, starting at the very top
7 with my Andrew Baird. And then, it is an organizational
8 chart and it has the -- who is in charge of who, top to
9 bottom.

10 You will see my name under Andrew, then Jacci Gamble
11 is the Assistant General Manager. And then we have the
12 organizational split between Operations and Sales.

13 Q Okay, and just to identify, to the right, what is
14 ALQS?

15 A ALQS stands for American Landscape and Quarry
16 Supplies; it is a retail sales yard for selling
17 landscaping products.

18 Q And where is it located?

19 A It is located in Springfield.

20 Q And Exhibit 5, Employer's Exhibit 5 is accurate as to
21 the organizational structure of the Employer?

22 A Yes, it is.

23 MR. KING: I would like to introduce Employer's
24 Exhibit 5 into the record.

25 MR. SMITH: No objection.

1 HEARING OFFICER NISLY: The exhibit is received.

2 **(Employer's Exhibit No. 5, received into evidence.)**

3 Q BY MR. KING: I'm sorry, referencing Employer's
4 Exhibit 5 and going toward the Willard side, let's explain
5 into the record a little bit -- what it takes to get
6 something blown off the side of the mountain, crushed,
7 blah, blah, blah, into it and just take baby steps with
8 us. I think the record needs to be clear as to what the
9 Company actually does, and what subcontractors do, and
10 let's just start with Willard, only because it is bigger,
11 and then we will work over to these Rural Quarries as to
12 how it works, but assume we don't know anything about a
13 quarry.

14 What gets gravel in my front yard?

15 A So, as much as we rock to be right at the surface, it
16 is not. So there is dirt on top of the rock. So the
17 process of removing dirt is known as stripping. Stripping
18 is basically the removal of the overburden material that
19 is on top of the rock, to be able to access the reserve of
20 rock that we are going to process.

21 Q Who does that work?

22 A At Willard, we do most of that work ourselves. We
23 use trucks and loaders and dozers and excavators, large
24 mobile equipment, basically scraping off about six to
25 eight feet of clay, dirt, stripping it off and putting it

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1 in a pile by itself away from the mining area. Once that
2 is moved out of the way, we (inaudible) drills a 4-1/2
3 inch hole in a -- in typically an 8 by 10 -- typically in
4 an 8 by 10 pattern, so typically 8 feet, every hole is
5 eight feet apart, and then the rows are ten feet apart;
6 drills holes. Typically we average about forty-feet in
7 depth, for each --

8 Q Who drills those holes?

9 A We -- we drill those holes ourselves with our
10 employees --

11 Q And we are just sticking with Willard at this point.
12 Go ahead.

13 A Once those holes are drilled, we have a contract with
14 an explosives company that brings in the explosives needed
15 to blast the rock out of the earth, and into a pile that
16 we call a shot rock pile. That is done two to three times
17 a week, depending on the time of the year. It is usually
18 summer, so they usually do it three to four times a week,
19 and in the wintertime, they only blast once a week.

20 Q And for the Court Reporter, that is shot, s-h-o-t,
21 rock, correct?

22 A Correct.

23 Q Go ahead.

24 A So once this rock has been blasted out of the earth,
25 then we use this mobile equipment to move the rock from

1 the shot rock pile. We load it into trucks with wheel
2 loaders. The trucks transport the materials to the dump
3 hopper, which is where the material dumps, and it starts
4 the processing part of the plant.

5 Q Okay, and hopper, is this like a conveyor-type belt
6 thing, or what?

7 A It is basically like a large bin structure, so a
8 hopper holds up to two and a half truckloads of material
9 that is then fed into our primary crusher.

10 Q Okay. Continue to take us through this.

11 A So, from that point on through the processing part,
12 we -- ninety percent of the material that we produce and
13 sell is 1-inch and smaller. So, obviously the shot rock
14 pile, the material is 40 inches -- 48-inches wide, so we
15 have to crush it so that it gets down to 1-inch and
16 smaller. The process itself is a stationary plant. We
17 have Maintenance people on the ground that work in and
18 around the plant all of the time, so they maintain the
19 plant and to fix the plant when it breaks.

20 Basically, the crushing and screening plant processes
21 the material from this larger rock down into the one-inch
22 and smaller --

23 Q Let's -- let's go back to the trucks.

24 Whose people are those?

25 The blasting company comes in and blasts it, right?

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1 A Right. So everybody else from this point forward, is
2 Conco employees.

3 Q Okay. Go ahead.

4 A So we have Conco employees loading and hauling the
5 material. Conco employees do maintenance on the plant.
6 Once the rocks are the size down to one-inch and smaller,
7 they go to their individual stockpiles for sale.

8 So, we have hauled them from the plant to their
9 specific stockpile, based on what size the product is,
10 what quality it is, and then it is available for sale to
11 the end user.

12 Q You mentioned the term "screening." Explain what
13 that is.

14 A So, screening is just a way of sizing the material,
15 from large to small. It goes over a vibrating screen,
16 which separates the material into larger and smaller, and
17 that is how we separate products, separate larger volume
18 products into separate products.

19 Q Okay, I want to get down to the -- you mentioned
20 there were three unions that -- that represent groups of
21 people. Can you just help us understand who does what?

22 A Yeah, the Operators' Union typically handles the --
23 the loader equipment and the dozer equipment, so basically
24 the more -- more detailed, the mobile equipment that has
25 to be used, it is the Operators that typically take care

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1 of that. The Teamsters basically take care of the truck
2 driving, so the Haul Truck Driver and Stockpile Truck
3 Driver, and then our Laborers are basically our
4 Maintenance people, and also our Drillers is a Laborer.

5 Q Thank you. Referencing Employer's Exhibit 5, I don't
6 think we need to go into any of these various
7 classification, and the document will speak for itself as
8 far as the Pit Supervisor, the Plant Supervisor, and the
9 other thing that is obvious, the "pit" is what I would
10 call, layman, a quarry, and the "plant" is what is doing
11 the crushing and stuff.

12 A That's correct.

13 Q Okay, let's move to the right, and -- okay, Galloway,
14 which is all represented by one union, the Boilermakers.

15 We don't have to go into super detail, but you have
16 Willard, which is big -- in relation to Willard, how big
17 is Galloway?

18 A Okay, Galloway is about a third of the size of
19 Willard.

20 Q Okay. Just walk us through. Same process, or --

21 A Same -- same process. The drilling is done by a
22 third-party contractor. The blasting is also done by a
23 third-party contractor. We do our own stripping, and then
24 everything else is virtually the same.

25 Q Okay. Referencing Employer's Exhibit 5, I am going

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1 to skip over Universal Crew, we will come to that, but we
2 are going to go to Sales and kind of eliminate that --
3 well, not eliminate.

4 I see only one Sales group. Do they handle all --
5 Willard, Galloway, and the Universal -- the Rural
6 Quarries? How does that operate in connection with
7 Production?

8 A Yeah, so at Willard, the sales orders are part of the
9 -- they are part of the plant, and the same at Galloway,
10 however, at our Rural Quarry operations, the Loaders are
11 part of the -- just the way the structure is set up, those
12 Loaders are part of the Sales Support Group, so that is
13 why they are listed under the Sales side. I mean, the
14 hierarchy, Keith Stevens, Aggregate Sales Manager, manages
15 those people and those positions.

16 There are certain times when a sales order -- someone
17 might be on a vacation, and he needs to shuffle people
18 between different locations to be able to accommodate
19 those vacations and so forth, so that -- that was an
20 assertion that we inherited on the sales order side. The
21 Scale Clerks are simply the clerks that process customer
22 trucks as they come across the scales.

23 Q And before we leave that, there is -- there are
24 various people listed. Can you just kind of go down under
25 Keith Stevens and just identify which of the people listed

1 there are working through these Rural Quarries that are at
2 issue in this case?

3 A Actually all of them with the exception of Kelli
4 Carcionne, Shannon Conrad, Marsha Glenn, and Maynell
5 Vinyard, those are all Willard and/or Galloway people.

6 Q So the lower four people, and for the Court Reporter,
7 you can get the spelling off of the document itself, the
8 lower four -- I'm sorry.

9 So, Malinda Todd is also --

10 A That is Galloway.

11 Q Okay, so the lower five are not involved in the Rural
12 Quarries. The upper six are?

13 A Correct.

14 Q Okay. Now, let's go back to the -- what is listed on
15 Employer's Exhibit 5 as the "Universal Crew" of six.

16 A Okay.

17 Q We have already identified that Camrin Shoemaker has
18 been listed here, but that is the one that is at issue
19 with respect to supervisory status.

20 Let's first of all, describe how it works at Willard;
21 who drills, who blasts, who does whatever? You can
22 explain what is done in Galloway a little bit different.
23 Now, let's get to the Universal Crew in these Rural
24 Quarries that you inherited in Wave 1. How is the
25 drilling, the blasting, or the excavating, or stripping,

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1 or whatever, how is that done there?

2 A So, because of the nature of the locations, we
3 typically contract out the stripping so that means we have
4 our dirt contractor do the stripping. Over at the
5 overburden, we have a contractor do the drilling, and an
6 outside contractor do the blasting.

7 So, basically, the Universal Crew is responsible for
8 taking the shot rock material and then processing it into
9 saleable material.

10 Q So they are all operated a little bit differently.

11 A They are all operated a little bit differently.
12 Typically, the smaller the crew, the more flexibility that
13 crew needs to have, because things may change on a day to
14 day basis, as we have to have people that are more cross-
15 trained and not do one particular job, but be cross-
16 trained to do multiple positions, because from day to day,
17 there may be -- they may drive a truck one day and they
18 may have to change a conveyor belt the next.

19 Q Okay, referencing Employer's Exhibit 6, please.

20 **(Employer's Exhibit No. 6, marked for identification.)**

21 Q BY MR. KING: What is this?

22 A This is the Job Description for the Portable Quarry
23 Crew. It lists what the basic primary positions is --
24 are, and also it includes additional duties and
25 responsibilities. It includes the qualification that we

1 are looking to hire people -- what they have to have in
2 order for us to consider them for employment. Also it
3 lists the qualifications and experience in other -- other
4 job descriptions -- information that we looking for
5 whenever we are looking to hire employees.

6 Q And for clarification, Employer's Exhibit 6
7 references "Portable Quarry Crew." Is that synonymous
8 with Employer's Exhibit 5, "Universal Crew?"

9 A Yes, it is.

10 MR. KING: I would like to introduce Employer's
11 Exhibit 6 into the record.

12 MR. SMITH: No objection.

13 *[Talking over each other]*

14 HEARING OFFICER NISLY: Exhibit is received.

15 **(Employer's Exhibit No. 6, received into evidence.)**

16 MR. KING: I'm sorry, that's on me. I apologize.

17 Q BY MR. KING: Employer's Exhibit 6, I see has an
18 effective date of March 2020 on the first page, but you
19 said you took over these things January 1. Why the gap?

20 A We were still finding out what was going on. The
21 effective date is just the last time it was updated. So,
22 we -- we may have had this description prior to March --
23 March -- that is the last time it was updated was March
24 2020. But a lot of this has to do with the -- we didn't
25 need Production. It was still wintertime, January,

1 February, March, it was still considered wintertime in our
2 business. We didn't have the need for the Quarry Crew
3 yet.

4 Q And let's back up a little bit. This -- let's take
5 some industry information.

6 You obviously have a very long history in the
7 industry, going back -- back to when the -- so to speak,
8 and maybe it is different for Willard and maybe it is
9 different for Galloway. In your experience, what is the
10 season, if there is one, what is the ebb and flow -- let's
11 just take Willard, for example?

12 A Sure. Willard -- Willard is a little unique in that
13 we supply concrete materials to concrete plants in and
14 around. It is a more specialized aggregate, whereas a lot
15 of the Rural Quarries, and the Galloway Quarry, to some
16 extent, is more construction driven, meaning that as
17 construction needs ramp up and ramp down, based on the
18 time of the year, that is how the production -- the
19 production in those operations goes.

20 If you look at overall construction, typically it
21 slows down in the winter months, typically in December
22 through April, so -- so those months, the demand is not
23 there, so to cost considerations, we don't run at the same
24 level in those four or five months, that we do the rest of
25 the year. It is just not cost-effective to build up a lot

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1 of inventory, and then you hold that inventory waiting for
2 the sales to occur. Basically, we run our people and our
3 production on the same cycle as you would expect our sales
4 to be.

5 Q And shifting to these Rural Quarries, realizing you
6 haven't had a long history here with them, and I am not
7 sure where -- where we start. Maybe we go back to March
8 20, which is the last reference date on Employer's Exhibit
9 6, and do see that Jacci, J-a-c-c-I, Gamble, G-a-m-b-l-e,
10 prepared it, updated by Robin Patnode, P-a-t-n-o-d-e, who
11 is here in the hearing room today, if there are any
12 questions on it.

13 Let's go back to your ramping up then. I don't know
14 if you can help us. So you are inheriting a bunch of
15 quarries you never had before. You don't have any history
16 with them. Who is involved in this process at CRH, that
17 you or somebody else was getting ready to do here?

18 A Well, I think it is important to note that we --
19 while we inherited the operations, we also inherited a lot
20 of inventory. So the inventory levels at the various
21 quarries, that had been selling out of, and that we
22 inherited and continued to sell out of, from January to
23 through March and April, the inventories were sufficient
24 that we didn't need to produce any additional material at
25 that time. So, our plan was that once -- once the demands

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1 started getting to where we would start running out of
2 products, then it was decided, "All right, we need to go
3 ahead and go through and figure out what the production
4 crew looks like and start the hiring process."

5 Q And who decided that?

6 A That was basically Stacey Tennis and myself, kind of
7 went through the positions we need to really get going and
8 ramp up and get going for the spring.

9 Q You have described Willard, and of course, it is not
10 going anyway. You have described Galloway, and it is not
11 going anywhere, the people aren't -- what did you
12 initially contemplate, you and Stacey, with respect to
13 these inherited eight quarries? What was the sort of
14 business plan, if that is the right term, realizing you
15 were kind of coming from a blank sheet of paper, but what
16 was your discussion with respect to "Where do we start?"
17 Where were the piles that you had to work through? Help
18 us understand.

19 A You know, initially we thought we would be able to
20 have one crew, a full crew, production crew, that could go
21 to multiple quarries. As we got into the year, we kind of
22 recognized that we were probably going to need more than
23 one crew to be able to satisfy the requirements that --
24 for these Rural Quarries, especially considering we wanted
25 to expand. Currently we just had Fair Grove, Fair Play,

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1 Marshfield that we are currently selling out of. You
2 know, that was just three of the eight quarries that we
3 inherited.

4 We planned to get into the Stockton quarry and also
5 get into the Buffalo quarry in the coming year, so with
6 that -- with that in mind, you know, it -- it has been an
7 evolving plan, but initially it was let's get one crew in
8 and get started. We know we have got crushed in
9 Marshfield, we have got crushed in Fair Grove, we have got
10 crushed in Fair Play. We just continued to inventory
11 demands that we have got. Clearly as we got into it and
12 we had to hire people, we had to use a third-party
13 contractor to help us out at Fair Grove. We have that
14 same contractor in Fair Play. It -- we just had to have
15 staffing to satisfy the need, but we are definitely on
16 that trajectory. We're -- we want to grow the business.
17 We are getting the quarries -- in January of this year,
18 although it wasn't the eight quarries, you know, you can
19 park five of them and not have to worry about them, but it
20 is, you know, we want you to grow the business, and that
21 has been our intent, of coming up with the plan.

22 Q So, CRH, the parent, gave you marching orders, "Here
23 are your eight. Get them up?"

24 A In -- in no uncertain terms. I mean, it wasn't -- it
25 wasn't a -- "Here is eight operations you can have," and

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1 you know, "You only have to run part of them." It was,
2 "We expect these to be functioning operational quarries
3 that are providing additional revenue, income for us for
4 the Company."

5 Q And you -- you follow that procedure today?

6 A We have. It has been a little difficult, like I say.
7 We inherited the operations without a lot of history. We
8 also inherited some plants that were a little tired, so we
9 had to spend some money to get them up and running.

10 The Universal Crew, when we first hired them,
11 actually started at Fair Play, and were charged with
12 getting that plant up and ready, which they did, but it
13 took longer than we had anticipated, but when you are
14 working on a plant, you can't crush there, so that kind of
15 backed everything up, and didn't get that --

16 Q Just from your vantage point in the industry, it was
17 a challenging year just from that perspective?

18 A Very challenging for a lot of reasons.

19 Q Let me reference you to Employer's Exhibit 7.

20 **(Employer's Exhibit No. 7, marked for identification.)**

21 Q BY MR. KING: First of all, just -- it is a listing
22 of some names and some hire dates. What are those dates
23 and -- well, are those employees that are associated with
24 the Rural Quarries?

25 A Yes. This would be our production crew, the

1 Universal Crew, and then also the three sales order
2 employees.

3 Q So, we have the last names, first names, and hire
4 date --

5 A Correct.

6 Q -- in the Company records.

7 A Right, and some of the hire dates were employees that
8 we inherited, and some were -- the ones that we hired this
9 year.

10 MR. KING: I would like to introduce Employer's
11 Exhibit 7 into the record.

12 MR. SMITH: No objection.

13 HEARING OFFICER NISLY: The exhibit is received.

14 **(Employer's Exhibit No. 7, received into evidence.)**

15 Q BY MR. KING: And when this was pulled together,
16 let's identify who is not in -- involved in the petition
17 filed by the Petitioner.

18 Let's go to hire dates first. I notice this John
19 Christy, and Court Reporter, all of these names can be
20 spelled from the document. I note the hire date is
21 07/15/19, obviously before you even had them. Why?

22 A He is the Sales Loader we have had at Fair Play.

23 Q And why does he have a hire date before January 1,
24 2020?

25 A We inherited him. He was an existing employee within

1 the Ashton records.

2 Q A holdover, is that the right term?

3 A Yes.

4 Q Okay, so he is a holdover, but he is a Loader Sales
5 Operator, which the parties have, I think, agreed, which
6 is an excluded position.

7 Let me go down to the bottom two. It is the same
8 category; Brian Johnson, again, 09/11/2017; same
9 situation?

10 A Yes, holdover.

11 Q And what is his position?

12 A He is a Sales Loader.

13 Q Again, an excluded position?

14 A Uh-huh.

15 Q Steven Wierman, W-i-e-r-m-a-n, 07/19/19. What is his
16 story?

17 A He is a transfer from our Galloway Quarry. He -- so
18 he was employed at Galloway and then transferred to
19 Marshfield as a Sales Loader earlier this year.

20 Q Voluntary, not that it makes a difference?

21 A Yes, voluntary.

22 Q And again, a Sales Loader and excluded.

23 Camrin Shoemaker, we have already had discussions on
24 him, but at least he is listed.

25 So, we have Dill, Helmick, Stokesberry, Yount III,

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1 Yount II. Are those the five that are still employed with
2 you today?

3 A Yes.

4 Q And Shoemaker is the one that is in further history.

5 Well, before we leave that, had -- had other
6 employees in what the Petitioner is saying what the
7 bargaining unit should be, hired and since left?

8 A Yes. We have had three.

9 Q Three?

10 A Yeah.

11 Q We don't have a list of them. Do you happen to
12 recall their names?

13 A I can't --

14 *[Talking over each other]*

15 Q But --

16 A Yeah, we had three. One of them was -- left after a
17 few weeks. He was a No-Call/No-Show, and our policy is
18 that after three days, you are considered terminated.

19 We had another employee that -- that was given --
20 given duties and responsibilities, and didn't want to
21 comply with those duties and responsibilities, and
22 voluntarily terminated his employee.

23 And then, the third was an employee that had
24 transferred from one of our other operations into this
25 operation, and then also transferred out.

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1 Those were the three.

2 Q Let's take the last one, the third one. What is his
3 name?

4 A Brandon Smith.

5 Q B-r-a-n-d-o-n?

6 A Yes.

7 Q Smith?

8 A Uh-huh.

9 Q He transferred in from where?

10 A He transferred in from Galloway.

11 Q To be a what?

12 A He transferred in to be a supervisor.

13 Q And when and why did he transfer out?

14 A He transferred in and we brought him down as a
15 supervisor. We just felt like he had a lot of experience.
16 He was interested in getting into that role. He -- he
17 exhibited characteristics that led us to believe that he
18 would be a good supervisor.

19 As I mentioned, the plant operations in Fair Play, it
20 needed a lot of maintenance, a lot of TLC to get it up and
21 running. Over the course of about five or six weeks, of
22 course, Stacey Tennis was there, as well, but -- but
23 Brandon was kind of left in the role of directing -- of
24 directing work as a supervisor, and he -- he just couldn't
25 handle the pressure involved with getting everything up

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1 and running, and -- and managing people and directing
2 people, and directing work, and he just decided that it
3 wasn't for him.

4 Q And where did he go?

5 A He actually transferred to our Willard operation. We
6 had an opening there.

7 Q Doing what?

8 A As a Sales Loader.

9 Q No supervisory functions there?

10 A No.

11 Q And that is why he left?

12 A Right.

13 Q And who took his place?

14 A One -- one of the guys that we hired.

15 Q Who?

16 A Well, Camrin Shoemaker.

17 Q Okay.

18 A He took over that position.

19 Q Okay, before I leave Google map and the Rural
20 Quarries, are -- were any of those in your initial game
21 plan, were any of those going to be considered year-round
22 operations?

23 A No. No. The volumes in these Rural Quarries are
24 such that with the size of plants that we have, there --
25 there are no operations that would justify having a

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1 production crew being there for the entire year. There --
2 that is just not how Rural Quarries are operated, in
3 general, unless there is a large sales volume. Typically
4 your Rural Quarries, they are -- they are just very rural,
5 they don't have a lot of production. Their sales demand
6 was -- so you know, that wasn't the plan. The plan was
7 that we would have a crew that would mobilize and move the
8 mobile equipment to various quarry locations to produce
9 whatever is needed for that -- for an entire year.

10 So, you know, initially we thought the Marshfield
11 quarry would require about four to five months of
12 production, enough for the whole year, and it has turned
13 out to be a little --

14 Q Before we leave the job description, Employer's
15 Exhibit 6, while it lists Primary Positions, let's
16 explain, and maybe you touched on it, but explain this
17 cross-training and inter-relationship to those of us that
18 aren't in the industry, what the law may require as far as
19 training and cross-training. Help us to better understand
20 that.

21 A So, we -- we are governed -- all of our operations
22 are governed under the Mine Safety and Health
23 Administration, which is very similar to OSHA, but it has
24 got a lot more in terms of documentation in it, especially
25 on procedures. Any employee can do any task, whether it

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1 is running a piece of equipment or doing a maintenance
2 project. They then have tasks as required by --

3 Q TASK, t-a-s-k?

4 A T-A-S-K, right.

5 Q Training?

6 A So that is -- that is a very specific, basically in
7 -- in order to handle the safety risks associated with a
8 particular job, they show a knowledge of understanding,
9 and a lot of times they have to demonstrate they know how
10 to operate a piece of equipment if it is in operation.

11 Q And going back to Employer's Exhibit 7, at least the
12 hiring, how are you or others -- how have you or others in
13 the Company, been involved in the hiring process for the
14 Rural Quarries this year? How does that work, or how has
15 it worked?

16 A We are looking for experience because these are such
17 small crews, we really can't take -- take on people that
18 don't have any experience. So we have to have some people
19 that have some experience, at least in some areas. So, if
20 it is somebody that knows how to run a piece of equipment,
21 that would be something that we would be interested in.
22 If there is somebody that has welding experience, if we
23 could have somebody that has experience in mechanics,
24 mechanical skills. We are looking for something that is
25 going to qualify them to be able to be trained in certain

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1 areas.

2 Q And again, there is only one job description.

3 A Right.

4 Q Has that been the game plan from the beginning, a
5 universal job description, and not separate job
6 descriptions, although they might primarily do one thing
7 or the other?

8 A That's correct. Yeah, and that is the flexibility of
9 the crews. Smaller crews, you just need more flexibility,
10 because if you are not crushing and producing product
11 because the plant is broken down, or you have got a
12 specific quarry that is broken down, so nothing else
13 happens and those people have to be cross-trained in how
14 to fix things, how to repair things, and then we just want
15 a fluid crew, so they -- so they understand everybody
16 else's job, and it makes for a better work environment.

17 Q And how is Robin involved in the hiring, or has she
18 been involved in the hiring process?

19 A So Robin -- Robin is our Hiring Coordinator, and
20 basically, we will let her know how many positions we
21 need, at what location we are hiring into. She does all
22 of the posting of the positions. She actually does the
23 first review of the applications as they come in. She
24 forwards qualified candidates to Stacey and I and then
25 between Stacey and I, we determine which candidates we

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1 want to interview. Robin coordinates the interviews with
2 us, and then we complete the interviews. And then, if
3 there is a candidate that we want hire -- that we want to
4 place an offer to, she will be the one to coordinate the
5 offer.

6 Q Okay. Now, if you will get Employer's Exhibit 8,
7 please.

8 **(Employer's Exhibit No. 8, marked for identification.)**

9 Q BY MR. KING: What -- what is that?

10 A So, this is our Explanation of Benefits for what our
11 Rural Quarry Operations. This lets the employee know,
12 whenever we do the interview, we -- we bring this to them
13 so that they can see what benefits are related to the
14 position.

15 So there is the wage rates, how we address overtime,
16 the benefits related, as far as paid time off, holiday
17 pay, what kind of insurance we offer, what the cost of the
18 insurance is, and then additional retirement that they
19 would be eligible for.

20 Q And does that sheet apply to all of the people that
21 are at issue in this case?

22 A Yes.

23 MR. KING: I would like to introduce Employer's
24 Exhibit 8 into the record.

25 MR. SMITH: No objection.

1 HEARING OFFICER NISLY: The exhibit is received.

2 **(Employer's Exhibit No. 8, received into evidence.)**

3 Q BY MR. KING: Okay, please reference Employer's
4 Exhibit 9.

5 **(Employer's Exhibit No. 9, marked for identification.)**

6 Q BY MR. KING: In response to a Union Request for
7 Information, I think Randy Harwood may have prepared this,
8 but this is, I believe, individual sheets by employee.

9 A Employees that was hired into the Universal Crew,
10 with the weekly hours that they received from January 1st
11 through I believe last week. So you can see each employee
12 and when they were hired, the hours they received, and
13 those are all by week, I believe -- each day should be a
14 Monday.

15 Q I don't think these pages are numbered. Let me see
16 if they are; they are not.

17 Let's go to the third sheet for Dayton Looney.

18 A Yeah.

19 Q And I believe what we did here was put them in by
20 last name, in alphabetical order, so that is why not the
21 page numbers.

22 He didn't last long. Where was he among one of the
23 three?

24 A He was the No-Call/No-Show.

25 Q Okay.

1 A So he just disappeared, and he was never heard from
2 again.

3 Q Kristopher, K-r-i-s-t-o-p-h-e-r, Willoughby,
4 W-i-l-l-o-u-g-h-b-y, again, it doesn't look like he lasted
5 either.

6 A Yeah, he was the one that had -- took issue with the
7 job responsibilities that he was given.

8 Q Didn't want to follow directions?

9 A Correct.

10 Q And you say he quit?

11 A Yes.

12 Q Unfortunately, I do not see Brandon Smith in this,
13 and I can't tell you why. But, about when did he start
14 with you at the Rural Quarries, and about when did he
15 leave?

16 A He started in the middle of May, like you will see a
17 lot of these employees. He actually started around the
18 first of May. He did inventory, and then he was probably
19 about six or seven weeks Laborer, so the middle to late
20 June is when he decided that he had had enough and wanted
21 to transfer out.

22 Q And again, he was transferred over there to
23 specifically take on supervisory duties --

24 A Correct.

25 Q -- under Tennis.

1 A Correct.

2 Q Okay, we have had testimony on that.

3 I apologize for not having his sheet in here. If we
4 missed it -- but you mentioned him also starting in May?

5 A Yes.

6 Q Okay, so in 2020, just to clarify, you inherit these
7 on January 1 of 2020, but you had piles of stuff in place.
8 When did you start selling through the piles of stuff at
9 the Rural Quarries?

10 A It was -- it was about the first of April when we
11 decided that we had to get production going because we
12 were going to start running out of materials.

13 Q And that was just by the Sales Loader people putting
14 it on somebody's pickup truck or whatever --

15 A It was a Sales function.

16 Q So you didn't need Operators this year, because of
17 the piles --

18 A Correct.

19 Q -- until May.

20 A Correct.

21 Q And there will be testimony about when you started
22 that process. But looking ahead to 2021 and the way that
23 you -- when do you anticipate needing operations again, or
24 do you have so many piles that it will again be April or
25 May?

1 A Well, the busiest part -- well, we will start
2 producing it in March and early April to stock up
3 inventory for sales. That is when Sales starts taking off
4 is in April.

5 Q So you won't have a whole bunch of piles sitting
6 around here like you inherited last year.

7 A Correct.

8 Q It is going to be a more measured thing.

9 A Correct.

10 Q So, and I am not trying to direct -- I am just trying
11 to clarify, your anticipation is that this year, the
12 manager of these quarries, in light of where you are
13 today, is that operations you think will be picking up
14 earlier than this year, because you don't have the excess
15 piles in place.

16 A Correct.

17 MR. KING: Did I -- did we introduce Employer's
18 Exhibit 9 into the record?

19 If not, I offer it into the record at this time.

20 HEARING OFFICER NISLY: I believe we did.

21 MR. KING: Okay, sorry.

22 **(Employer's Exhibit No. 9, received into evidence.)**

23 Q BY MR. KING: Okay, please go to Employer's Exhibit
24 10.

25 **(Employer's Exhibit No. 10, marked for identification.)**

1 Q BY MR. KING: What is this, first of all?

2 A This is a copy of an invoice from a third-party
3 contractor that we use to process in April, May, and June
4 at the Fair Grove location.

5 Q So, is that the only subcontractor that you have
6 doing what we will call "operators work" at the Rural
7 Quarries?

8 A Yes.

9 Q Other than the blasting, I guess, or the other things
10 that you described. I mean, as far as doing the
11 operations work of the employees that are at issue here,
12 this is the subcontractor that did that; correct?

13 A Yes.

14 Q And that is Gillespie, G-i-l-l-e-s-p-i-e, Excavating
15 Company, spelled out, L. L. C.

16 A Yes.

17 Q Do you have a history with this subcontractor?

18 A Yes.

19 Q Where?

20 A They had processed recycled concrete for us in the
21 past.

22 Q In reference...

23 MR. KING: Well, I would like to introduce Employer's
24 Exhibit 10 into the record, with this clarification; the
25 rate and the amount figure on that document was redacted.

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1 Everything else is as it appears in the business record.
2 I discussed that with Ryan Smith, Attorney for the
3 Petitioner.

4 I would like to introduce Employer's Exhibit 10 into
5 the record with that clarification.

6 MR. SMITH: I have no objection, subject to those
7 redactions.

8 HEARING OFFICER NISLY: The exhibit is received.
9 **(Employer's Exhibit No. 10, received into evidence.)**

10 Q BY MR. KING: Referencing Employer's Exhibit 10, I
11 note that under description a period of time, April 27
12 through June 11, 2020. Was that the period of time that
13 they were engaged?

14 A Yes.

15 Q Have they subsequently been re-engaged?

16 A They have.

17 Q And how recent was that?

18 A They started in at the Fair Play location about two
19 weeks ago.

20 Q Why?

21 A We -- we haven't had the people and we have had the
22 demand at Fair Play, and we just couldn't get enough
23 people hired to -- to both finish at Marshfield, but then,
24 you know, meet the demands of the other locations.

25 Q And going back to Employer's Exhibit 9, I haven't

1 done the math, but just these positions in general, coming
2 into them, are they usually forty hour per week positions?

3 A We would -- we initially wanted to have forty hour
4 per week positions, yes. But due to the demands that we
5 have got, they are working twelve to fifteen hours a week
6 overtime.

7 Q Well, let's go to their normal work schedule, Monday
8 through Friday?

9 A Yes.

10 Q Do they have particular hours?

11 A They typically work eleven hours, Monday through
12 Friday, and work nine and a half hours on Friday.

13 Q You mean eleven hours on Monday through Thursday, and
14 then --

15 A Yeah.

16 Q And did you say nine and a half?

17 A Nine and a half on Friday.

18 Q Okay, so instead of forty, if my math is correct,
19 they typically work 53 and a half hours per week; correct?

20 A Correct.

21 Q If you have -- okay, go to Employer's Exhibit 11.

22 **(Employer's Exhibit No. 11, marked for identification.)**

23 Q BY MR. KING: What is that?

24 A This is the total hours for each employee that is
25 currently on the Universal Crew, by location, what hours

1 they worked.

2 Q This is information also requested by the Petitioner
3 that was furnished in advance. It speaks for itself.
4 But, it shows the...

5 MR. KING: I would like to introduce Employer's
6 Exhibit 11 into the record.

7 MR. SMITH: No objection.

8 HEARING OFFICER NISLY: The exhibit is received.

9 **(Employer's Exhibit No. 11, received into evidence.)**

10 Q BY MR. KING: Referencing Employer's Exhibit 11, and
11 just from an hours standpoint, so far the Marshfield
12 Quarry has been the mothership, so to speak. Is there any
13 particular reason for that --

14 A We have a specific customer at the Marshfield Quarry
15 that has had large production, and that was not
16 anticipated early. So, they actually increased their
17 sales volume by a considerable amount. So we had to
18 actually move the crew from Fair Play to Marshfield, to
19 take care of that customer.

20 Q That is a single big customer?

21 A Yes.

22 Q Is that unusual to this year, or do you anticipate
23 that continuing, or --

24 A We anticipate it continuing, yes.

25 Q So, in -- did this roving crew start at some place

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1 other than Marshfield, and then --

2 A Yes, they started at Fair Play, and then in -- I
3 don't know, after six to eight weeks, they moved -- moved
4 to Marshfield, because the inventory at Marshfield was
5 getting low, low enough that we had to make a move and
6 start crushing at Marshfield.

7 Q And I do notice on Employer's Exhibit 11, some of
8 these people that subsequently left -- I still don't see
9 Brandon Smith on there. I apologize, I don't know why.
10 But Looney left, Willoughby left --

11 A Yes.

12 Q Helmick -- is he still there?

13 A He is there.

14 Q Okay, so you anticipate Marshfield maintaining the
15 high volume because of that one customer next year. How
16 are you going -- well, to make that up, then who is going
17 to do Fair Play or --

18 A That is the reason that the third party contractor
19 was -- is in Fair Play currently. He is trying to produce
20 enough material that we will get that quarry through the
21 winter and spring.

22 Q Was the original business plan, and your future
23 business plan, to not have a subcontractor?

24 A That is correct.

25 Q Okay, let's go to Employer's Exhibit 12.

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1 **(Employer's Exhibit No. 12, marked for identification.)**

2 Q BY MR. KING: What is this?

3 A So, this is a sales average showing sales by month
4 for the Galloway location. We -- we don't have enough
5 exploratory information to be able to show, you know, what
6 the sales average is in Rural Quarry locations, but this
7 gives you an idea. You can kind of see the arc there.

8 The months of June, July, August, September, and the
9 lower months are December, January, and February. So that
10 is -- this just indicates that our business is seasonal
11 when it comes to -- as -- and as I mentioned before, we
12 don't want to produce a lot of extra material that just
13 sits in inventory, where our business is somewhat of a --
14 try to produce it and then sell it, you know, as soon as
15 you can. We do have some inventory that we try to hold
16 up, but we do try to keep our sales and production
17 somewhat in check.

18 Q You are not a warehouse of rock.

19 A Correct.

20 Q You want to produce it and sell it.

21 A Correct.

22 Q Or sell it and then produce it for that sale.

23 A *[No audible response]*

24 Q You have to audibly answer.

25 A Yes.

1 Q Even though this is Galloway, I would like to
2 introduce Employer's Exhibit 12, not as anything specific
3 to this case, but just sort of like an industry
4 descriptor, because you already kept this ten-year average
5 for Galloway in your business records.

6 A Correct.

7 Q For other reasons, but not this case.

8 A Correct.

9 Q You just pushed the button.

10 A Correct.

11 MR. KING: With that explanation, I will introduce
12 Employer's Exhibit -- offer to introduce Employer's
13 Exhibit 12.

14 MR. SMITH: No objection.

15 HEARING OFFICER NISLY: The exhibit is received.

16 **(Employer's Exhibit No. 12, received into evidence.)**

17 Q BY MR. KING: Trying to go back to these Rural
18 Quarries, again, the Galloway tail doesn't wag the Rural
19 Quarries' dog, but you have already described the sales
20 side and the cycle there. Do you anticipate even more of
21 a shutdown, even -- through the winter months, of your
22 Rural Quarries?

23 A So, I think it -- it is important to note, that based
24 on the volume, it happens in the Rural Quarries, it is --
25 based on my knowledge of the industry, I think Rural

1 Quarry markets are more cyclical in nature in terms of
2 being seasonal than say the larger metropolitan areas,
3 like Willard and Galloway. So I would expect to see even
4 a bigger bell curve with the Rural Quarry operations.
5 They are much more rural when it comes to construction and
6 you see a lot less construction going on in the wintertime
7 in these rural operations, so I -- I think, you know, if
8 -- ten years from now, we are living in a sales curve, or
9 -- I think you will see a bigger downturn in the winter
10 months than what the Galloway operation did.

11 *[Long pause]*

12 Q Just before we leave the benefit listing, what --
13 what is the normal pay period and pay day for the
14 employees in this unit --

15 A Our pay periods are Sunday through Saturday, and pay
16 day is on the following Friday, weekly.

17 Q Thank you.

18 If I understand your testimony, the -- you do -- you
19 personally were not down in the weeds, and we just refer
20 to Robin's testimony about hiring, posting, all of that
21 other stuff.

22 A Right. That is not part of my responsibility.

23 Q And while I referenced it in relation to
24 subcontracting, I want to make sure it is clear that with
25 respect to the operations people at issue in this case,

1 the original intent was for forty hours of work per week,
2 not continual overtime, correct?

3 A [No audible response]

4 Q Again, if you do the math of Employer's Exhibit 9
5 referencing the weekly work hours, where you take the
6 average work schedule of 53 1/2 hours --

7 MR. SMITH: I am going to object. Unless there is a
8 question coming --

9 MR. KING: I am trying to direct where the question
10 is going. I haven't asked a question yet.

11 MR. SMITH: Yeah, that is my point.

12 MR. KING: Okay.

13 MR. SMITH: I will withdraw it subject to a question
14 being asked. I just don't want the attorney to testify,
15 is all.

16 MR. KING: Just trying to -- his testimony is that
17 the work schedule is 53 1/2 hours a week.

18 Q BY MR. KING: My question is, considering you have to
19 do that because you couldn't hire bodies enough.

20 A Yeah. We need -- we need more people to be able to
21 produce more material.

22 Q Right.

23 A Yeah, production is related to how many people we
24 have, so the more people you have, the higher tonnage rate
25 you can put in the plant, because you have got additional

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1 people to move material.

2 Q I want to go back and -- this year has been a crazy
3 year for all of us with COVID-19. I don't want you to
4 identify any people that may have tested positive. I
5 don't want to have any names associated with people who
6 have quarantined. I don't want any of that identified.

7 How has your operation this year from your
8 perspective, impacted hiring otherwise by the pandemic?

9 A I would say that our biggest impact has been, maybe
10 not on the employee side, from current employees, although
11 we have had a few employees that have had to quarantine,
12 but it has been really more about the applicants. I think
13 when -- when you look at the applications that we received
14 in April and May, they were very few and far between. My
15 personal opinion is that it was easier for people to sit
16 home and collect unemployment than it was to -- to go out
17 and try to find a job. Our ability to get in a qualified
18 pool of candidates shrunk, and those employees that had
19 experience in our industry, and had experience in
20 equipment operation, either are fully employed or were not
21 interested in employment. So it definitely shrunk the
22 pool of qualified candidates.

23 Q Are you talking about the extra \$600 that Congress
24 put on top of unemployment?

25 A That's correct.

1 Q Do you think you find that impacted your other
2 locations as well?

3 A To a certain extent. We don't have a lot of turnover
4 in our other operations, but the -- the qualified
5 candidate pool was definitely smaller.

6 Q And I think you mentioned -- and again, I want no
7 names -- that we had been impacted in this bargaining unit
8 with quarantine?

9 A We did have one -- one employee that had exposure,
10 and we requested him to quarantine.

11 Q All right. Obviously, we all hope that goes away
12 next year. As far as the unemployment -- and you have
13 already testified on that.

14 *[Long pause]*

15 Q The final area before taking a break before cross
16 examination, when do you anticipate -- I know you touched
17 on it, but not -- when do you anticipate recalling your
18 people covered by this petition, the operating people,
19 coming out of the winter, you know, shutdown or slowdown,
20 or whatever?

21 A Our plan is that we are going to work as much as we
22 can unless weather-related. So, depending on the weather,
23 it really dictates what we are going to do. We have got
24 enough work going on, but at the same time, we don't want
25 to add people into the -- into the mix without knowing for

1 sure what is going to happen. You know, Mother Nature is
2 Mother Nature, so we are just adding and building up,
3 trying to get things going, so it is probably the March-
4 April timeframe.

5 Q And if I am doing the math correct, crew size, you
6 haven't referenced that. You have five right now, six
7 including Mr. Shoemaker, who does do some production work,
8 correct?

9 A Correct.

10 Q Equivalent of forty hours, would be like eight, but
11 what -- what was your anticipated crew size -- sizes of
12 what you call the crew, before we end this?

13 A If we are just looking at one crew, one crew would
14 probably be in the neighborhood ten to twelve, and it
15 would take that crew in between operations, based on our
16 plans, to expand into the other quarry operations that we
17 haven't even got to yet. We would be looking at more like
18 two crews, so that would put us closer to twenty
19 employees.

20 Q And that is your marching orders from CRH, if I am
21 understanding it?

22 A That is the -- that is our marching orders in terms
23 of making these quarries profitable and worth having,
24 yeah.

25

[Long pause]

1 MR. KING: I am going to defer the hiring to Robin.
2 I have no further questions of this witness at this
3 time.

4 HEARING OFFICER NISLY: Well, I think this is a good
5 time for a small break. When we get to the cross
6 examination, I think everybody needs a small pit stop
7 break.

8 So, can we be back here in ten minutes? Will that
9 work?

10 MR. KING: It can from -- yes, ma'am.

11 HEARING OFFICER NISLY: Okay. Everybody is good with
12 that?

13 Okay, so let's say, 25 till 1:00, we will start it
14 back up again.

15 MR. KING: Okay.

16 HEARING OFFICER NISLY: All right, see you then.

17 *[Off the record]*

18 THE COURT REPORTER: We are on.

19 HEARING OFFICER NISLY: What -- what is the phrase,
20 Jen?

21 MR. KING: "Back on the record."

22 HEARING OFFICER NISLY: Yeah, back --

23 THE COURT REPORTER: Back on the record.

24 HEARING OFFICER NISLY: Okay. Mr. Smith, did you
25 want to cross?

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1 MR. SMITH: Yes, please.

2 CROSS EXAMINATION

3 Q BY MR. SMITH: So, what I am going to do is just kind
4 of go through your direct testimony in reverse order, and
5 just sort of ask you some questions to clarify things.

6 So, starting in reverse order, one of the last things
7 that you talked about was the ideal size of one or
8 possibly two crews. Do you recall that?

9 A Yes.

10 Q And you also recall being asked a question about CRH
11 giving you, quote, "marching orders," end quote. Do you
12 recall that?

13 A Yes.

14 Q Isn't it true those marching orders didn't require
15 you to immediately hire ten to twelve new workers?

16 A It didn't require me to -- they didn't give me a
17 number. They gave me the responsibility to sell into that
18 market, so in order to sell into that market, we have to
19 produce into that market. So, through my experience --
20 both at Willard and Galloway, I have an idea of what the
21 process is, what the capacity is --

22 Q Right, and I am just asking you, whether or not you
23 were --

24 MR. KING: I object. He is cutting off the witness
25 before the witness is answering. I object. Let him

1 finish his answer.

2 MR. SMITH: I have a very specific question that is
3 not --

4 MR. KING: Let him finish his answer. That is my
5 objection. You can't cut off a witness mid-answer because
6 he doesn't like what he hears.

7 MR. SMITH: Well, I -- the way I interpret it is he
8 was answering questions that went beyond the scope of the
9 question that I asked.

10 MR. KING: Then raise that after he quits.

11 MR. SMITH: Well, by then, it is too late because it
12 is in the record.

13 MR. KING: My objection is to the Hearing Officer.
14 She can rule any way she wishes.

15 I just think he ought to be able to answer the
16 question first. That is my objection.

17 HEARING OFFICER NISLY: Sorry, I have got to unmute.
18 Go ahead. Let him finish.

19 MR. KING: I am not sure where you were.

20 THE WITNESS: I am not sure where I was either.
21 Sorry.

22 Q BY MR. SMITH: Yeah, I had asked if CRH required you
23 to immediately hire ten to twelve new employees.

24 A No.

25 Q In fact, when -- when specifically did they ask you

1 to take over the operations?

2 A Well, we knew it was coming in December of 2019.

3 Q Okay.

4 A We took over in January of 2020.

5 Q And isn't it true the Conco Quarries, Inc. has gone
6 through three different hiring waves?

7 MR. KING: I didn't understand the question. Three
8 different what?

9 MR. SMITH: Hiring waves.

10 MR. KING: Thank you.

11 THE WITNESS: In terms of this particular unit we are
12 discussing?

13 Q BY MR. SMITH: Correct.

14 A Yes.

15 Q And the result of those three hiring waves is that
16 you currently have five, possibly six, employees of Conco
17 Quarries, Inc. performing Universal Crew work, is that
18 correct?

19 A Correct.

20 Q So, the goal of hiring ten to twelve employees, or
21 possibly as many as twenty, is a longer term objective;
22 isn't that true? Would that be fair?

23 A Well, it depends on what you call longer term. I
24 mean, if you are talking five years, that's long term. If
25 you are talking next year, I don't consider that long

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1 term.

2 Q Okay, would it be fair to say that the goal of
3 attaining ten to twelve employees might take as long as a
4 year, based on your experience with hiring qualified
5 applicants?

6 A Based on the previous history of this year, I would
7 say yes.

8 Q Okay, and that is just for ten to twelve, possibly,
9 correct?

10 A Correct.

11 Q And you also talked about COVID-19. Do you recall
12 that?

13 A Yes.

14 Q And would you agree that that would interject a lot
15 of uncertainty into the future about whether or not you
16 will be expanding, hiring within a year, within two years,
17 or --

18 A No.

19 Q You don't think that COVID-19 presents any sort of
20 risk with regard to the quality or quantity of applicants
21 that you received?

22 A Yes, it -- it would impact the quality and the
23 quantity for sure, but in terms of the business, how the
24 business is impacted by COVID, that is not going to
25 change.

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1 Q And is that -- do you consider yourself an essential
2 employer?

3 A We are, yes.

4 Q And that is based on prior Greene County or -- well,
5 I won't go through all of the counties, but --
6 *[Talking over each other]*

7 Q I'm sorry.

8 A We are an essential contractor, an essential
9 employer.

10 Q And that means that you continue to operate, is that
11 correct?

12 A That's correct.

13 Q So you would -- if there is another stay-at-home
14 order, we don't know what that will say, but if it is the
15 same as prior stay-at-home orders, it is likely that you
16 will continue to operate; correct?

17 MR. KING: Objection, speculation. Calls for
18 speculation.

19 MR. SMITH: I will withdraw.

20 Q BY MR. SMITH: All right, do you recall -- you were
21 asked some questions about Camrin Shoemaker.

22 A Yes.

23 Q And would you agree that he spends a substantial
24 amount of time doing work that would normally be
25 considered bargaining unit work?

1 MR. KING: I object to the term "bargaining unit
2 work." Production work is the term we have been using. I
3 just want to make sure there is no confusion in the record
4 of what he is asking.

5 MR. SMITH: Let me rephrase.

6 Q BY MR. SMITH: Would you agree that Camrin Shoemaker
7 spends a substantial amount of time performing production
8 work?

9 A I would say it is in the neighborhood of eighty
10 percent of his time.

11 Q Okay, and the remaining twenty percent, you estimate
12 might be kind of a leadership role?

13 A Supervisory, yes.

14 Q And when you say "supervisory," when you were going
15 through that process on hiring applicants, do you recall
16 that?

17 A Yes.

18 Q And no where in that process did you describe a role
19 where Camrin would interview potential applicants; isn't
20 that true?

21 A That is true, yes.

22 Q And does Camrin receive applications for new job
23 applicants?

24 A No.

25 Q Is Camrin involved in hiring at all?

1 A No.

2 Q You mentioned there was a situation with respect to
3 this Universal Crew. Without going into whether it is
4 someone who is currently there or not there, do you recall
5 that you said that there was an employee in the unit who
6 was either exposed to or tested positive for COVID-19?

7 A Yes.

8 Q Around when did that happen?

9 A It has been about three or four weeks ago.

10 Q Okay. Have you had any -- without identifying the
11 names of the employees, have you had any other employees
12 at other quarry locations test positive or have to self-
13 quarantine?

14 A Yes.

15 Q And roughly how many?

16 A Two.

17 Q Do you recall where those were, or when they were?

18 A Yes. We had one at Willard, and he is returning to
19 work this week after two weeks being positive, and we have
20 another that is currently off at our Galloway operation in
21 quarantine.

22 Q Okay, with maybe the exception of sickness and things
23 like that, you would agree that generally at the other
24 quarry locations, there is not a lot of turnover; is that
25 true?

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1 A Yes.

2 Q In fact, many of the employees create long-term
3 careers with the Company at the other quarry locations;
4 isn't that true?

5 A Yes.

6 Q And you would agree that there are times when it
7 might rain or snow, where an employee performing
8 production work might not be able to work for a one, two,
9 or three-day period, correct?

10 A Correct.

11 Q But you would agree that it is not common to lay off
12 workers with respect to your other quarrying locations for
13 weeks or months at a time; is that true?

14 A It is true, but it depends on economic conditions.
15 Looking back, we have had multiple month layoffs at all of
16 our operations in the past. It is difficult to predict
17 the future in terms of economic conditions.

18 Q Okay. And so, economic conditions aren't necessarily
19 the same as seasonality; isn't that true?

20 A Yes.

21 Q Do you recall Mr. King, your attorney, referencing
22 Exhibit 12 as an industry descriptor? That is that ten-
23 year average at Galloway.

24 A Yes.

25 Q You would agree that that is only one location,

1 correct?

2 A That is correct.

3 Q And the Employer hasn't made the Willard location
4 available, as a document, in its case-in-chief thus far.
5 True?

6 A True.

7 Q Now, Exhibit 12 talks about sales, correct?

8 A Yes.

9 Q You would agree that sales are not the same thing as
10 number of employees working at the quarry, correct?

11 A Correct.

12 Q And you would agree that sales are not the same thing
13 as number of hours worked by any one or more employees at
14 the quarry, correct?

15 A Correct.

16 Q And you would agree that sales are not the same thing
17 as the amount of rock that was crushed or warehoused;
18 correct?

19 A Correct.

20 Q I wanted to clarify something about subcontracting.
21 Do you recall you were asked questions about
22 subcontracting?

23 A Yes.

24 Q Do you claim to foreclose the possibility of
25 subcontracting at any of these Rural Quarries?

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1 A It will always be on the table, because as jobs come
2 up in or around a particular location and we know what our
3 current location is, or our portable crew we can't get to
4 it, and it is an opportunity for us to sell material, then
5 if need be we would consider using a third-party
6 contractor.

7 Q You would agree that in the past, because you haven't
8 had a sufficient number of employees, you've subcontracted
9 work at other quarries to essentially meet sales demands;
10 correct?

11 A Yes.

12 Q And isn't it true that there is a potential that you
13 would continue to do that for 2021?

14 A Yes.

15 Q In fact, wasn't it your testimony that one
16 subcontractor is actually engaged through winter and into
17 the spring?

18 A He is engaged for a certain amount of tonnage, yes.
19 He is currently active.

20 Q And when you said winter into the spring, based on
21 your experience about the number of tonnage for which he
22 is engaged, how long do you think that might last? How --
23 how far into the spring are we talking?

24 A Probably just the initial part of spring. So,
25 probably March.

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1 Q Do you recall talking about Marshfield and the fact
2 that it had unanticipated demand?

3 A Yes.

4 Q And so, you would agree that unanticipated demand,
5 there may be outliers with respect to the graph you showed
6 in Exhibit 12 of the Galloway Quarry, true?

7 A True.

8 Q And in fact, based on the limited sample size of just
9 this year, it is actually not an outlier, but the rule at
10 Marshfield, that there is more demand just by happenstance
11 in October and November and so forth, correct?

12 A Well, at -- at Marshfield, we had a high rate
13 contract job this year that required that additional
14 tonnage that we -- that the contractor received an award
15 later in the year, so we had to ramp up to finish that
16 production.

17 Q Okay.

18 A It was a one-time job that we knew about.

19 Q Okay. I believe your testimony earlier though was
20 that you anticipated future projects with this client;
21 isn't that true?

22 A Yes.

23 MR. SMITH: Sorry, just a second. I am reviewing my
24 notes.

25 Let's see here.

1 [Long pause]

2 Q BY MR. SMITH: There was some questions that you
3 answered about overtime work. Do you recall those?

4 A Yes.

5 Q And you recalled that the twelve to fifteen hours of
6 overtime that is typically, and correct me, isn't ideal
7 over a longer period of time, correct?

8 A Right.

9 Q But to date, there is -- there hasn't been a
10 slowdown, correct?

11 A Correct.

12 Q And so, in terms of the future, we can just -- it is
13 kind of cyclical, true?

14 MR. KING: I -- I didn't understand the question.

15 Q BY MR. SMITH: In terms of projecting the future
16 employment or future average hourly work for any employees
17 in the Universal Crew, you would agree that that is just
18 speculative, correct?

19 A Correct.

20 Q Now, the Universal Job Description, you talked about
21 how employees are cross-trained. Do you recall that?

22 A Yes.

23 Q So, was Camrin cross-trained?

24 A Yes, they have all had some cross-training and TASK
25 training.

1 Q Was Camrin cross-trained in the same duties as all of
2 the other five employees on the Universal Crew?

3 A Most of the time, the tasks they were assigned, they
4 -- we try to task them all as a group, whatever the
5 individual task was, typically related to plant
6 maintenance.

7 Q So -- so Camrin was not training the employees, but
8 was trained as an employee, correct?

9 A That is correct. Yeah.

10 *[Long pause]*

11 Q I want to go back to something about COVID-19. You
12 had -- you had said that unemployment compensation might
13 -- you believed that it decreased the number of job
14 applicants; is that correct?

15 A Yes.

16 Q Do you have any evidence that any of the employees
17 who applied to work at your company were receiving
18 unemployment compensation?

19 A I have no evidence of that, no.

20 Q So, what you stated was just conjecture, true?

21 A Yes.

22 Q You mentioned some -- Mining Safety and Health
23 Administration; do you recall that?

24 A Yes.

25 Q And are employees trained on safety requirements

1 pursuant to regulations set forth by that administration?

2 A Yes, they are.

3 Q And was Camrin trained on such regulations?

4 A Yes.

5 Q Did Camrin instruct the other employees --

6 A *[No audible response]*

7 Q Now, you have got six employees currently in the

8 Universal Crew, correct?

9 A Yes.

10 Q I mean, generally speaking, are these good employees?

11 A Yes.

12 Q So, are -- are these employees that you would like to
13 have make a career with the company?

14 A Yes.

15 Q Okay, and so you don't anticipate firing them in the
16 winter, do you?

17 MR. KING: Objection; speculation.

18 HEARING OFFICER NISLY: Sustained.

19 Q BY MR. SMITH: You haven't -- you haven't told any of
20 the employees that they will be terminated at any point in
21 the immediate future, and I am specifically talking about
22 the employees on the Universal Crew, correct?

23 A No.

24 Q And to your knowledge, to the best of your knowledge,
25 no other employee of Conco Quarries, Inc., has told any of

1 the members of the Universal Crew, that they will be
2 terminated during the winter; isn't that true?

3 A Not to my knowledge.

4 Q Now, you were talking about -- so these eight
5 quarries are pretty new, correct?

6 A They are new to me, yes.

7 Q Right, new to you.

8 A Correct.

9 Q And you would agree that it has taken longer than you
10 originally anticipated to get all of these quarries up and
11 operational, correct?

12 A Yes.

13 Q And, in fact, of the eight quarries, isn't it true
14 that a number of the quarries are actually inactive?

15 A Yes.

16 Q And which are those?

17 A buffalo, Stockton, Montevallo, Pittsburg, and I
18 forget...

19 Q Bolivar?

20 A Bolivar, yes.

21 Q Could you kind of walk me through what the long-term
22 plans are with respect to what the --- what -- when do you
23 think each of these locations will become active?

24 A It is hard to say specific timeframes, because a lot
25 of the -- some of the quarry locations are job specific

1 related, and so Montevallo is a quarry located near
2 Nevada. Should a job come up that we want to actively
3 pursue to sell material into, then we would wait until
4 that job came about to be active on that site. It would
5 be similar at any other locations, with the exception of
6 -- we believe Buffalo and Stockton and potentially Bolivar
7 could have enough of the market that we would want to
8 pursue that sooner, and make it more of an active
9 residential and commercial construction quarry, and not be
10 necessarily job specific.

11 Q And what is your business models tell you about when
12 that is likely to happen?

13 A Well, the sooner we can get into those markets. We
14 have already identified them as potential regular quarry
15 sales yards. So, we would like -- the sooner that we can
16 get crews established and get inventory established, that
17 we can go into those markets.

18 Q Do you have to purchase assets to make those quarries
19 operational, or do you already have those in stock?

20 A We don't have to purchase assets, but we do have to
21 acquire assets, whether internally or externally.

22 Q Does that mean like leasing from CRH, or what do you
23 mean by that?

24 A Externally means if we were leasing equipment.
25 Internally would be assets are already available somewhere

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1 in the CRH system.

2 Q Have you engaged any third parties to lease or rent
3 any assets for those other quarrying operations?

4 A We have engaged vendors, yes, to price out costs for
5 renting equipment. We already know the costs for mobile
6 equipment rentals.

7 Q Have you entered into any contracts with those
8 vendors?

9 A We don't have contracts. We have purchase orders,
10 which I guess could be considered a contract, for rental
11 of some of the mobile equipment, yes.

12 Q And pursuant to those purchase orders, do you have
13 custody of that equipment currently?

14 A Yes.

15 Q So is it -- just bear with me...

16 Is a purchase order the same as a lease?

17 A No. A purchase order is just an agreement at a set
18 price.

19 Q Okay, so you -- do you have any lease agreements,
20 though, that you discussed?

21 A No, no lease agreements.

22 Q Okay, so your purchase orders, does that cover all of
23 the assets that will be required to run those quarries?

24 A As we currently have them, yes. This means that we
25 didn't add additional purchase orders for when we need it.

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1 Q Okay, so you -- would it be fair to say that you have
2 some assets to operate some of the quarries, but depending
3 upon potentially how those quarries do, you may purchase
4 additional assets or lease additional assets?

5 A Yes.

6 Q I am going through my list, I have crossed off a
7 number of things.

8 This one is more just to clarify the record.

9 But do you recall when your attorney was listing off
10 mileage between different quarrying locations?

11 A Yes.

12 Q Do you agree with the mileage that he stated on the
13 record?

14 A Yes.

15 Q Okay. And do you recall the counties that your
16 attorney provided with respect to each of the quarry
17 locations?

18 A Yes.

19 Q And do you agree with the counties identified by your
20 attorney with respect to where each of those quarries are
21 located?

22 A Yes.

23 Q Let me see if I have anything else. I am almost
24 done.

25 Thanks for enduring the examination. I know it is

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1 not fun.

2

[Long pause]

3 Q I have one other question that I want to make sure I
4 ask.

5 So, have you extended offers to any employees, any
6 future employees, who aren't the six in the Universal
7 Crew?

8 A We extended -- are you talking currently or in the
9 past?

10 Q Currently.

11 A Yes. We currently have one offer extended, but we
12 have not had any kind of response back, so we have
13 rescinded that offer.

14 Q And how long ago was that?

15 A Three weeks.

16 Q Okay. And you would agree -- well, going into the
17 winter months is hiring much of a priority now?

18 A It is still a priority. We don't want to miss out on
19 potential employees. So, we may or may not keep that
20 hiring period open, but we -- we are trying to still fill
21 positions, based on qualifications.

22 MR. SMITH: All right, I don't have any more
23 questions.

24 Thank you.

25 HEARING OFFICER NISLY: Okay, can we go off the

1 record for a minute?

2 *[Off the record]*

3 HEARING OFFICER NISLY: On the record.

4 Okay, Ryan?

5 MR. SMITH: Did you want to swear him in?

6 HEARING OFFICER NISLY: Yes, I do.

7 (Whereupon,

8 **JASON MENDENHALL**

9 having been sworn/affirmed, was called as a witness
10 herein, and was examined and testified via video-
11 conference, as follows:)

12 HEARING OFFICER NISLY: Okay, will you state your
13 name and spell it for the Court Reporter?

14 THE WITNESS: My name is Jason Mendenhall;
15 J-a-s-o-n, Mendenhall, M-e-n-d-e-n-h-a-l-l.

16 HEARING OFFICER NISLY: Okay.

17 DIRECT EXAMINATION

18 Q BY MR. SMITH: Mr. Mendenhall, what is your job
19 title?

20 A I am President and Business Manager of Heavy
21 Construction Laborers' Local 663.

22 Q And how long have you served in that capacity?

23 A Since 2017.

24 Q And what -- what are the job duties that you do as
25 the President and Business Manager of the Local?

1 A Per the LIUNA Local Union Constitution, the
2 President and the Business Manager is the recognized
3 Business Agent for the Local, among other duties as
4 outlined in the Constitution.

5 Q Okay, could you describe some of the -- some of
6 those job duties that -- that takes up your day to day
7 time?

8 A I manage the -- all of the Business
9 Representatives, the day to day operations of those
10 individuals. I am charged with organizing and political
11 functions, and I also am the individual that is charged
12 with negotiating all Collective Bargaining Agreements on
13 behalf of the Local.

14 Q And prior to that, what was your job position?

15 A I was Recording Secretary for seventeen years.

16 Q With Local 663?

17 A With Local 663; that's correct.

18 Q And what sort of things did you do as the Recording
19 Secretary?

20 A The Recording Secretary is -- is charged under the
21 Constitution with taking minutes for all official
22 proceedings of the -- of the Local, whether it be
23 regular minutes from the regular Union meeting, minutes
24 from the Executive Board Meeting, and any PAC meetings,
25 Political Action Committee meetings.

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1 Q And prior to that what -- what were you doing?

2 A From '95 to '99, I was the Organizer for the
3 Western Missouri and Kansas Laborers' District Council.

4 Q And during that time, and based on your experience,
5 have you ever been involved with organizing a quarrying
6 operation?

7 A Yes, yes.

8 Q Okay, can you describe, kind of -- you know, what
9 -- what other operations you are familiar with, other
10 quarrying operations?

11 A I am familiar with Martin-Marietta, which is part
12 of Hunt-Martin, Missouri Rock located in Orrick, Beyer
13 Press Rock, obviously, Conco Quarries down in
14 Springfield, numerous operations. Some now have been
15 sold and/or are no longer in operation.

16 Q And what is your bargaining -- bargaining history
17 or relationship with Conco Quarries?

18 A January 1st of 2007, Local 676 merged into
19 Laborers' Local No. 663, and when -- when that occurred
20 in 2007, then I sat in with Tim Price as the -- as the
21 -- as the agent for that Unit, and I -- I assisted him
22 in collective bargaining with Conco Quarries, Conco
23 Companies, yes.

24 Q And do you currently have any CBA's with Conco
25 Quarries?

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1 A Yes. For the Willard Quarry.

2 Q Okay, and can you kind of describe the Willard
3 Quarry, you know, what -- what employees you represent
4 there?

5 A Yeah. We -- that is a consolidated agreement that
6 we have with Conco Quarries. They -- they sit down with
7 the Laborers, Laborers' 663, Operators Local 101, and
8 the Teamsters there in Springfield locally, and I
9 believe we have six or seven individuals there at
10 Willard, and all of the rest, I really can't tell you --
11 I can't give you reliable numbers on how many the
12 Operators or Teamsters represent, but I believe we have
13 six or seven at the Willard Quarry.

14 Q And how did the Local learn about these other, what
15 we are calling "Rural Quarries;" the Fair Play Quarry,
16 the Marshfield Quarry, etc.?

17 A Our Secretary and Treasurer, Tim Price, was
18 contacted by an individual that works, you know, on this
19 -- on this, quote/unquote, "Universal Crew," and we
20 started, you know, speaking with -- with that individual
21 and, you know, there were questions asked. There were
22 multiple conversations, and how the whole thing -- how
23 the whole thing really started was, there was an
24 individual that received an e-mail in error, and it was
25 -- it was meant for the Union side of the operation, but

1 this individual -- this individual actually received
2 that e-mail, and that e-mail indicated that once -- once
3 he completed his -- his probationary period, he would be
4 receiving a \$5.20 increase, instead of the -- of the
5 usual dollar, and the dollar that he was told.

6 So, he contacted Conco HR and said, "Well, you
7 know, I was told I was only going to be getting a dollar
8 increase after I served my probationary period, and this
9 e-mail says that I am to be receiving a \$5.20 increase,"
10 and I don't know who that individual spoke with, but the
11 -- the question was asked of this individual, "Which
12 quarry do you work at," and this individual --
13 individual said, "Well, I am going from Fair Play to --
14 from Fair Play in between Marshfield," and it was -- it
15 was said, "Well, you got that e-mail in error. That
16 wasn't intended for you." So that -- that is kind of
17 how the whole thing started, and that is the whole thing
18 really came about.

19 Q Once you are contacted, what did you learn about
20 the group of employees in these Rural Quarries, and
21 where they were working?

22 A When we -- when Tim Price and I sat down with --
23 with the six individuals off of the Universal Crew, we
24 were told by all six of them that -- that they go in
25 between -- they split time in between Fair Play and

1 Marshfield.

2 Q Did they talk about -- did they talk about going to
3 like any other quarries or --

4 A The -- the only other quarry that they mentioned
5 that they might have any association with was Willard.
6 They didn't mention any other quarries such as Milo,
7 Pittsburg; that -- that was one that was -- was never
8 mentioned.

9 So there were quite a few that never even came up
10 in that -- in the whole entire conversation. The
11 conversation was really between them and this Universal
12 Crew splitting time between Marshfield and Fair Play and
13 once in a while going in and out really quickly with
14 Willard.

15 Q Are you aware of one of the guys being referred to,
16 as either a lead man or by the Employer as a
17 "supervisor?" Are you aware of that?

18 A Yes, I am.

19 Q And who is that?

20 A That would be Camrin Shoemaker.

21 Q Is it typical to have Lead Men in other bargaining
22 units, in your experience?

23 A Yes. Whether that is -- whether you are talking
24 about heavy construction, building construction, or the
25 industries allied to construction, it is -- it is usual

1 and customary to have one individual designated as a
2 quote/unquote, "lead man," and that provision is
3 incorporated in multiple Collective Bargaining
4 Agreements that we have.

5 Q And is it common in those situations where the
6 Collective Bargaining Agreement designates a lead man,
7 that the lead man will actually perform bargaining unit
8 work?

9 A Yes. Yes. In fact, that lead man is -- is
10 designated as not really -- not so much as a function of
11 -- not really a function at all of management, but
12 really, that is triggered by so many, or a threshold of
13 laborers being on the job. Commonly, if there are -- if
14 there are five or more people at -- at one job site, one
15 is to be designated a lead man. That is one of our --
16 that is what one of our Collective Bargaining Agreements
17 provides for.

18 Q So how do you distinguish in your experience
19 between the lead man versus a supervisor is truly part
20 of management?

21 A Just really in the most traditional sense. You
22 know, the ability to hire and fire, the ability to
23 discipline, or the ability to effectively recommend
24 hire, fire, suspension, or discipline, and we have never
25 had a lead man that was given any of those -- any of

1 those authorities.

2 Q And based on everything -- based on the best of
3 your knowledge, does Mr. Shoemaker fit more in line with
4 a lead man or more in line with a supervisor, based on
5 your --

6 MR. KING: Objection; that is for the Hearing
7 Officer and the Regional Director to determine under the
8 legal standards that apply. What he believes or doesn't
9 believe is just his opinion.

10 MR. SMITH: I think he is entitled to offer an
11 opinion.

12 HEARING OFFICER NISLY: Go ahead.

13 THE WITNESS: Okay.

14 HEARING OFFICER NISLY: Overruled.

15 THE WITNESS: It is my opinion, and really is a
16 self-identified opinion from Camrin, that if -- if he
17 truly had any supervisory role or supervisory powers, no
18 one informed him, because when asked what he -- what he
19 did --

20 MR. KING: Objection. He is going into hearsay.
21 The testimony, it is hearsay. What someone said to
22 whomever, we are getting into that, that is totally
23 hearsay.

24 HEARING OFFICER NISLY: Sustained.

25 MR. SMITH: Okay.

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1 THE WITNESS: He would be -- can I answer the
2 question another way?

3 MR. KING: No.

4 Q BY MR. SMITH: Go ahead.

5 A *(Testimony stricken from the record.)*

6 MR. KING: I am going to object to that. I would
7 ask that that testimony be stricken.

8 You sustained the objection that it was hearsay,
9 and he -- he can't just come back in and basically
10 overrule the ruling, and say, "XXXXX."

11 HEARING OFFICER NISLY: I agree. Strike that.

12 If you want to ask the question a different way,
13 then you are welcome to do that.

14 Q BY MR. SMITH: Okay, with -- without -- did you
15 ever ask whether Camrin was a supervisor?

16 A No.

17 Q Okay. Did -- without going into the content of
18 what he said to you, did Camrin give you any reason to
19 believe that he possessed supervisory functions --

20 MR. KING: Objection. He can ask facts all day
21 long --

22 HEARING OFFICER NISLY: Sustained.

23 MR. SMITH: Okay. I will move on, because it is
24 not critical whether he identified or didn't identify
25 himself.

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1 Q BY MR. SMITH: Okay, so, I guess the next thing I
2 wanted to ask you about was mail-in versus manual
3 elections.

4 What did you request when you filed the Petition,
5 the RC Petition? Do you recall if you requested a mail-
6 in or a manual ballot?

7 A I believe I requested a manual.

8 HEARING OFFICER NISLY: Excuse me for a moment. I
9 don't know if I -- the mail ballot versus manual ballot
10 issue is not litigable. That is something you will have
11 to deal with in post-hearing briefs.

12 MR. SMITH: Okay.

13 Thank you.

14 Q BY MR. SMITH: All right, so that strikes a few of
15 my questions, so that makes it easier.

16 I guess the next area I wanted to talk about was
17 seasonality.

18 Are you -- so based on your experience of -- of
19 bargaining units with other quarrying companies, what is
20 your experience on the seasonality or lack of
21 seasonality of quarrying operations in the state of
22 Missouri?

23 A During my seventeen years as Recording Secretary,
24 among other duties, my primary duty was representation
25 of all non-construction industries allied to

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1 construction, which included pre-cast facilities,
2 quarries, sand plants, and what have you.

3 Basically, the only thing that shuts down a quarry
4 is inclement weather. We have seen -- we have seen
5 periods here and there, where there has been literally
6 no work, where everything was shut down, but as long as
7 there is ready-mix, heavy construction, precast; as long
8 as there is work in the industry, there is very little
9 shutdown, except for recognized and observed holidays,
10 and inclement weather.

11 Q Is it common in your experience to have periodic
12 hirings and firings throughout a calendar year in the
13 quarrying industry?

14 A Yes.

15 Q And it is common for -- to have periodic -- well,
16 let me rephrase that.

17 Is it common to have periodic mass firings or mass
18 hirings once a year on a regular basis in the quarrying
19 industry?

20 A No. Really your -- your -- your quarry industry,
21 and really all of your industries allied to construction
22 have a fairly constant stable workforce. There is going
23 to be individuals that -- that come and go, for -- for a
24 variety of reasons, and there is going to be individuals
25 that are hired to meet increased demand. But really, it

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1 -- it is a pretty stable workforce.

2 Q Is it pretty stable throughout the year?

3 A Yes, yes.

4 Q Okay. With regard to its stability, how does it
5 compare to other industries, say, for example, the
6 construction industry, in your experience?

7 A The -- the construction industry really has kind of
8 been ebb and flow, and if -- if -- if you are talking
9 about really truly a seasonal industry, you -- you might
10 have -- that might have -- you might have an argument
11 there. There might need to be a conversation there.
12 But when you are talking about the industries allied to
13 construction, especially like, you know, a quarry, they
14 -- there are so many products. There are so many
15 products for private construction, ready-mix, heavy
16 building, and other non-construction facilities, that it
17 -- it is a fairly stable industry.

18 Q Do they also stockpile ever?

19 A Yes.

20 Q Can you explain that?

21 A Well, in -- in all of -- in all of my years of
22 experience, you know, with the -- you know, representing
23 quarries, you are going to have stockpiling that takes
24 place, you know, on -- on a yearly basis, in
25 anticipation of a big job coming up, and those -- those

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1 clients are going to be -- they are going to give the
2 quarries notice on when they anticipate starting up,
3 when they are going to be pouring, whether it is a main
4 line, whether you are talking about a highway project,
5 or -- or what have you. Yeah, but stockpiling is common
6 in -- in the industry.

7 Q Okay.

8 MR. SMITH: I don't think I have any other
9 questions for you, so I will tender you for cross.

10 THE WITNESS: Okay.

11 CROSS EXAMINATION

12 Q BY MR. KING: Jason, just to confirm, you were
13 present this morning and heard the sworn testimony of
14 Chris Upp in its entirety?

15 A Yes.

16 Q If I am understanding your history of work
17 experience, I don't recall anything in there of you
18 saying you have ever been a manager for Conco Quarries,
19 Inc., right?

20 A I have not.

21 THE COURT REPORTER: Mr. King, can you just pull
22 your microphone a little bit closer, please?

23 Q BY MR. KING: Have you ever had experience as a
24 manager for CRH?

25 A No.

1 Q Were you involved in any way with the transfer of
2 the Rural Quarries by CRH to Conco Quarries, effective
3 January 1 of this year?

4 A No, I was not.

5 Q So you have no facts to refute what Mr. Upp
6 testified with respect to those decisions when they were
7 made and why.

8 MR. SMITH: I am going to object. First of all,
9 that is outside the scope of my direct examination, and
10 it calls for him to make a legal conclusion on whether
11 or not there are facts to refute certain legal
12 conditions.

13 MR. KING: Let me rephrase, because the only part
14 of that that has any remote credibility is the "refute"
15 part.

16 Q BY MR. KING: Since you have heard all of the
17 testimony, do you disagree with any facts to which he
18 testified regarding the acquisition, transfer, and
19 directions he was given with respect to these new
20 reports?

21 A No.

22 Q Just to clarify, you mentioned -- you mentioned
23 that the Willard Collective Bargaining Agreement is a,
24 quote, "consolidated" agreement, meaning that it is one
25 book. Right?

1 A That is -- that is how it is actually stated on the
2 front page of the Collective Bargaining Agreement,
3 "Consolidated Agreement."

4 Q Just for the record to note, it is one book, but
5 each Union has its own separate Collective Bargaining
6 Agreement with the Company. It is just printed in one
7 book.

8 A Okay. Yes.

9 Q Do you agree with that?

10 A Yeah. Yes, yes, I do.

11 Q Regarding the discussions with the six employees,
12 and at the time you had discussions with them, they were
13 working at Fair Play and Marshfield, again, kind of like
14 that other question, is there anything that -- that you
15 know that Mr. Upp testified to with respect to the
16 subcontractor at the other location, or the fact that
17 they maybe were going, those other employees to other
18 locations in the future, do you have any information
19 that is in disagreement with what Mr. Upp said in that
20 regard?

21 A When I met with the individuals -- when Tim and I
22 met with the six individuals in October, they didn't
23 mention any other operations or going to any other
24 quarries, except Willard once in a while. That -- that
25 is the only thing.

1 MR. KING: It is his term.

2 MR. SMITH: No, you are asking him about the
3 National Labor Relations Act specifically.

4 MR. KING: Well, he testified as to what he
5 considered a supervisor under the CBA, and I do have a
6 right to cross examination of him as to what he meant by
7 "supervisor" when he testified. So, I think the
8 question is valid on cross examination.

9 MR. SMITH: It's a different question.

10 MR. KING: Well, it is for the Hearing Officer to
11 rule.

12 HEARING OFFICER NISLY: Hold on a second.

13 I am going to have to have it repeated, because now
14 I have gone on and gotten lost in the middle of it.

15 What was the actual question?

16 MR. KING: Well, he -- the witness had used the
17 words "Lead Man" and "Supervisor," and my question was
18 simply, does he acknowledge with all of his thirty years
19 of experience at negotiations or whatever, that titles
20 don't dictate whether -- just by themselves, do not
21 dictate whether somebody is in or out of the bargaining
22 unit, do they?

23 HEARING OFFICER NISLY: Well, but I believe you had
24 about with the National Labor Relations Act, so I am
25 going to have to sustain it.

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1 MR. KING: Well, I just asked him a different
2 question. So I will -- to repeat it, so...

3 Q BY MR. KING: You did acknowledge the titles,
4 whether management calls them a super-duper person or if
5 the Union calls them a flunky, it doesn't determine
6 whether they are in a bargaining unit or not; is that
7 right?

8 A Authorities do, powers do.

9 Q Right, duties. And the only ones that I recall you
10 referencing were the right to hire, the right to fire,
11 and the right to effectively recommend. Is that
12 correct?

13 A Hire, fire, or effectively recommend discipline.

14 Q Right.

15 A Yes.

16 Q And if they do that, according to you, they would
17 be a supervisor.

18 A That is according to the National Labor Relations
19 Act, I believe, and I would have to defer to my legal
20 counsel for that definition.

21 Q Okay. And your testimony was based on those three
22 elements.

23 A Correct.

24 Q Do you have Employer's Exhibit 6?

25

[Long pause]

1 A Yes, I have it.

2 Q Okay, and had you reviewed it before the hearing
3 today?

4 A I have looked at it, yes.

5 Q Do you acknowledge that nowhere in there does it
6 reference a "Lead Man?"

7 A I have just had -- I have just had -- I have just
8 scanned it. I have just had a cursory review of it; I
9 haven't read it in-depth.

10 Q Well, the document will speak for itself, and --
11 but do you confirm that it does not reference
12 "supervisor?"

13 A No, the job title is Plant Maintenance and
14 Production, and that is what the -- that is what Local
15 663 seeks to represent here.

16 Q All right, Plant Maintenance and Production; it
17 doesn't say "Lead Man" does it?

18 A I don't know I would have to review the document,
19 but I can -- but I can answer that upon further
20 examination.

21 Q You used the term "bargaining unit position." You
22 do concede that there is no bargaining unit at the time,
23 yet, in this case. Right?

24 A Well, there -- according to our position, there is
25 a bargaining unit that we have requested to represent,

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1 and that -- that -- that is all plant maintenance and
2 production engaged in such at the Fair Play and the
3 Marshfield quarries. That is what we -- that is what we
4 have defined, and that is our statement of position.

5 Q I know what you asked for, but there has not yet
6 been a determination at the time, for the bargaining
7 unit, in this case, has there?

8 A No, that -- I -- I -- I would say that that is
9 probably the purpose of the hearing today, so.

10 Q So, the status of Camrin Shoemaker is not a
11 determined status yet, agree?

12 A That is in dispute.

13 Q All right, it is not in agreement yet, is it?

14 A No.

15 Q And you do agree that what -- let's just say Camrin
16 himself may think he is, Lead Person, Supervisor,
17 whatever, doesn't bind the Regional Director in this
18 case to determine his status, does it?

19 A I just know what he has told me.

20 Q That is not my question.

21 Whatever Camrin may think, one way or the other,
22 his desire or intent or whatever you want to call it,
23 does not bind the Regional Director in this case.

24 MR. SMITH: And I am going to object again for the
25 same reason that this is calling for a legal conclusion

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1 about will or will not bind the legal -- the Regional
2 Director.

3 HEARING OFFICER NISLY: Sustained.

4 Q BY MR. KING: Have you personally observed any of
5 the day to day work performed by the people that you
6 claim should be in the bargaining unit at any of the
7 Rural Quarries?

8 A No.

9 Q So all of your information in that regard -- in
10 that regard, would be coming from other sources?

11 A From the individuals that signed Authorization for
12 Representation Cards; that is where I got my
13 information.

14 Q So, hearsay information?

15 MR. SMITH: Objection. That's -- again, that calls
16 for legal conclusion.

17 HEARING OFFICER NISLY: Sustained.

18 Q BY MR. KING: You had testimony about seasonality.
19 You do acknowledge that this particular group, from your
20 standpoint, has yet to go through a winter season;
21 correct?

22 A I don't -- I don't believe I testified to the point
23 or to them not going to a seasonality issue or a period
24 of time where they -- where they would be laid off. I
25 -- I was just really speaking to, you know, to the other

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1 quarries that I represent, but I don't think I
2 specifically testified to them.

3 Q That is what I wanted to clarify.

4 Okay, Employer's Exhibit 12.

5 A Okay.

6 Q Do you have any information that would question the
7 accuracy of the information on Employer's Exhibit No.
8 12?

9 A No, and here is why; is we are not -- we are not
10 the --

11 Q No, no.

12 A Okay.

13 Q Now, me being a layman, and I am going with respect
14 to your prior testimony, that there is much of a
15 seasonality impact that I want to interpret in your
16 testimony, but looking from Employer's Exhibit 12,
17 roughly, it looks like there is a fifty percent
18 slowdown, at least at Galloway, and it does not wag off
19 here, I get it, but we don't have historical data at the
20 -- it looks like there is a bell curve, and you heard
21 the testimony of Mr. Upp, that there will be an even
22 more extreme bell curve at the Rural Quarries, versus
23 your testimony that there -- if I heard it right -- that
24 there is not very much impact during the winter months
25 because of this, that, or the other, but can -- can you

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1 help us understand where you were coming from, whereas
2 the data seems to indicate something else?

3 A Well, the -- the Galloway Quarry is not controlled
4 or represented by, you know, the Laborers. It is an
5 established quarry that Conco operates in a metropolitan
6 area.

7 With respect to these Rural Quarries, you know, the
8 fact that CRH has just charged Conco with all of these
9 quarries and making them profitable and getting them up
10 and going as functioning quarries with a good look of
11 business, that is -- that is a historical look back that
12 we don't have now. All I can say is, with the quarries
13 that we represent as 663, we don't see an historical,
14 you know, slowdown to the point that there is mass
15 layoff, there is mass firings. We just -- we don't see
16 that.

17 So, really, as far as looking at the Galloway
18 Quarry, I -- I -- I just think that it is -- it may not
19 be an accurate depiction of what actually happens in
20 regards to seasonality in the quarry business.

21 Q And to clarify one point, you mentioned things that
22 can sustain or avoid a layoff over the winter months,
23 was, I think, ready-mix.

24 A Yes.

25 Q In other words, if you are associated with a ready-

1 mix operation, there is a lot of aggregate that goes
2 into ready-mix, and ready-mix work, whether it is
3 foundation or whatever, does continue going to your
4 quarry work; would you agree?

5 A When you are talking about a -- a quarry operation,
6 yeah. When -- when there is still demand for ready-mix,
7 and there is lots -- lots of ready-mix out there, ready-
8 mix operations besides the ones that Conco Companies
9 operate, you are going -- you are going to have steady
10 demand. You may even have increased demand on, you
11 know, from time to time.

12 Q And do you remember the testimony Mr. Upp saying
13 that these Rural Quarries are not connected to a ready-
14 mix operation, didn't you?

15 A I do remember that, but I would -- there -- there
16 would be one caveat to that; when you are talking about,
17 you know, what Mr. Upp did testify to is, the Marshfield
18 production, and the reason that there is so much focus
19 on the Marshfield production, is that there is a large
20 Heavy Highway contractor that has ordered rock, you
21 know, from -- from that quarry for production, I
22 assuming mainline or some -- some significant heavy and
23 highway project.

24 When you are talking about those operations having
25 mobile plants, that is something that cannot really be

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1 banked on. You know, those are plants that may take and
2 produce significant amounts of -- of -- of ready-mix for
3 a dedicated project.

4 Q But that wasn't his testimony. But you did hear
5 his testimony.

6 A I heard his testimony, yeah.

7 Q And you don't know if he is saying it is different
8 from that testimony, as to these Rural Quarries.

9 A No, I -- no. Not at this time.

10 Q Do you remember Mr. Upp referencing past layoffs
11 that Conco Quarries has made?

12 A Yes.

13 Q But there have been past layoffs?

14 A Yes. Yes.

15 Q And how long have you personally been associated,
16 not Tim Price, but have you personally been associated
17 with the Conco Group of companies? Since when?

18 A Since January 1st, 2007.

19 Q That is thirteen years?

20 A Uh-huh.

21 Q And are you saying there have not been layoffs at
22 Willard in that thirteen-year period?

23 A Well, there was one layoff, but that was -- that
24 really stemmed from the Great Recession in, I believe,
25 '09 and '10, but --

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1 [Talking over each other]

2 Q [Indiscernible]

3 A No.

4 Q And you don't know what the layoff history has been
5 at Galloway?

6 A No. I do not represent Galloway.

7 Q And again, terminology of shutdown versus a
8 slowdown versus a whatever, you do confirm that in the
9 slower times at our quarry, a certain group of people
10 may be doing more maintenance work in the slower times,
11 as opposed to production work.

12 A Yes. Yes, that is common in all non-construction
13 that there is a -- that there is a period of time each
14 calendar year where maintenance is performed.

15 Q And that is generally the slower time of whatever
16 the season is for that particular company?

17 A Sometimes not. It -- it just really depends on the
18 -- the actual physical and mechanical condition of the
19 plant. I -- I have known several plants and parties to
20 go on maintenance that -- at busy times, but you can
21 only produce what your -- your plant is mechanically
22 capable of producing, so that depends.

23 Q I am almost finished.

24 Stockpiling; you have heard the testimony of Mr. Upp
25 and --

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1 A Yes.

2 Q -- you have heard a bunch of stuff that they have
3 had to work through, and now they are on this sort of
4 major -- it is "we are going to produce what we can
5 sell" type of thing. Does that make sense to you, in
6 your experience?

7 A Yes. Sometimes if the -- especially if --
8 especially if there is demand for that. That is
9 possible. Yes.

10 Q You testified that it is not unusual for somebody
11 to hire to meet demand, and you heard the testimony of
12 Mr. Upp -- well, strike that.

13 *[Long pause]*

14 MR. KING: I believe that is all of the questions I
15 have of you at this point. If he needs to be released,
16 I certainly would have no objection to that, but that is
17 not my call to make.

18 THE WITNESS: I will be here until 3:30.

19 MR. SMITH: I have a little bit of redirect, but I
20 don't know if the Board has any questions.

21 HEARING OFFICER NISLY: Go ahead.

22 REDIRECT EXAMINATION

23 Q BY MR. SMITH: Mr. King had asked you some
24 questions about maintenance during slower times.

25 A Yes.

1 Q Does the proposed unit of employees, the Universal
2 Crew, would that include maintenance work?

3 A Yes.

4 Q Okay, so would the employees still be working
5 during that slowdown when they are performing
6 maintenance work?

7 A Yes.

8 Q There was some discussion about Exhibit 12.

9 A Yes.

10 Q And I think there was a question asked whether you
11 can -- whether you have facts to dispute the exhibit,
12 and you were kind of cut off. What -- what was the
13 reason why you don't have facts to either substantiate
14 or dispute that exhibit?

15 A Well, the Laborers' International Union of North
16 America and Local 663, in particular, we don't represent
17 the -- the Galloway Quarry or any of its workers. That
18 is represented by another International.

19 So, I -- I don't -- I just don't have data on that
20 and I have no way to get, you know, data on -- on either
21 the manhours or the production at the Galloway Quarry.
22 So, I -- I just don't have those numbers. I don't have
23 that information.

24 Q All right, and do you recall being asked about
25 whether that graph represented a slowdown? Do you

1 remember that?

2 A Yes.

3 Q Are there other jobs that labor employees perform
4 during a slowdown in sales?

5 A Maintenance -- maintenance is probably the number
6 one thing that is -- is performed when -- when not
7 actually -- when during a period of high sales or high
8 production.

9 One thing about the graph -- about this graph,
10 going back to that for a little bit, I don't know if
11 that represents manhours or if that actually represents
12 tons sold. So, even -- even though you may not be
13 selling a lot at a quarry doesn't mean you are not
14 operating and/or, you know, performing maintenance
15 duties at that quarry.

16 Q There was a question asked about whether you
17 personally observed any of the Universal Crew at work;
18 do you remember that?

19 A Yes.

20 Q And is your testimony based on your experience with
21 other quarries, or only on the statements from the
22 employees?

23 A Actually both. It -- it is based on my experience
24 in my operations, but also direct -- direct conversation
25 and testimony from -- from the -- the six that are

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1 included in the Universal Crew under the employ of
2 Conco.

3 Q Do you recall there was -- Mr. King had a question
4 about whether job titles dictate whether or not someone
5 is a supervisor? Do you remember that?

6 A Yes.

7 Q Are there lead men job titles in other Collective
8 Bargaining Agreements that you are aware of?

9 A Yes, numerous.

10 Q And in those instances, do those job titles
11 typically dictate whether or not a person is a lead man
12 for that unit?

13 A If -- if there are sufficient numbers on that
14 project, one is -- one has to be by the provisions of
15 the CBA, designated as the Lead Man.

16 Q And do you -- based on your experiences, is that
17 designation something that is typically made in a job
18 posting or job description, or is that something that is
19 bargained for?

20 A It is something that is bargained for.

21 MR. SMITH: No further redirect.

22 MR. KING: Well, Jason, I believe you are off the
23 hook. I have no further questions based on that.

24 HEARING OFFICER NISLY: All right.

25 THE WITNESS: Thank you, Paul.

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1 MR. KING: You are welcome.

2 *[Witness excused]*

3 HEARING OFFICER NISLY: Okay, I would like to send
4 it back to Paul then for the rest of the Employer's
5 case.

6 *[Long pause]*

7 HEARING OFFICER NISLY: Mr. Upp, I would remind you
8 that you are still under oath.

9 THE WITNESS: Yes. So noted.

10 HEARING OFFICER NISLY: Okay, I believe -- let's
11 see. We were going to do recross now, right, I mean
12 redirect.

13 MR. KING: Redirect.

14 HEARING OFFICER NISLY: Okay, I am all caught up
15 now.

16 MR. KING: He should be reminded that he is still
17 under oath.

18 (Whereupon,

19

CHRIS UPP

20 having been previously sworn/affirmed, was recalled as a
21 witness herein, for a continuation of his examination, and
22 was further examined and testified as follows:)

23

REDIRECT EXAMINATION

24 Q BY MR. KING: Let's start with the question about
25 did CRH give you specific numbers to ramp up, quote,

1 "immediately," unquote, and again, I think you touched
2 on it, but I want to follow-up on that cross
3 examination.

4 Remind us again what your directions were coming in
5 the front door, from CRH and where they were expecting
6 you to go.

7 MR. SMITH: I am going to object based on hearsay.

8 MR. KING: It is redirect based off of you -- off
9 of your cross, so you opened up the door.

10 HEARING OFFICER NISLY: I am having trouble hearing
11 the question. I'm sorry.

12 MR. KING: I am right here, so I don't know whether
13 this -- maybe it is running out of juice.

14 Okay, there was testimony or a question asked about
15 CRH giving -- if CRH gives Mr. Upp a specific number or
16 directions that the Rural Quarries have to be ramped up,
17 quote, "immediately," end quote, and what I asked was,
18 to again remind us what directions CRH did give you
19 coming in the front door, and where they expect them to
20 go.

21 MR. SMITH: I am going to withdraw that objection.

22 HEARING OFFICER NISLY: Well, okay then. Carry on.

23 THE WITNESS: There -- there was no specific
24 timeline or projection, but it was understood that these
25 quarries were going to come under our control and that

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1 the ultimate goal is to turn them into profit centers.

2 Q BY MR. KING: There was a question about whether if
3 additional individuals had been hired, and I think you
4 said one had, and on that. We had testimony about three
5 people leaving. We know where we are now, six,
6 including Camrin. I believe your testimony was that the
7 projection is to get to improve eight to twelve, and as
8 many as twenty. Correct?

9 A Correct.

10 Q Now, what I realize also is sort of a timeline
11 here.

12 Not knowing what the future is, if you could, this
13 question is this...

14 If you could hire all of those people full-time
15 today, and maybe going into the winter that is not the
16 right decision to make, but if you could have hired
17 those earlier this year, would you?

18 A Yes.

19 Q You just couldn't hire them.

20 A We could not find qualified candidates.

21 Q In a perfect world with your experience, had you
22 been able to do so, would you have this little
23 complement now?

24 A Yes.

25 Q Just couldn't?

1 A Correct.

2 Q Your plan is to get that full complement as soon as
3 possible?

4 A At this point, going into the winter, being a
5 slower time, you don't want to hire people and then have
6 the potential for weather-related layoffs, and in
7 addition to slower hours.

8 Q Bad question.

9 Once it gets to next spring, is that your intent to
10 do it --

11 A Yes.

12 Q -- ASAP?

13 A Yes. To get one full crew, yes.

14 Q And then build from there?

15 A Correct.

16 Q Let's go to Mr. Camrin Shoemaker.

17 A Uh-huh.

18 Q I think you testified he -- he does not have the
19 authority to hire?

20 A Correct.

21 Q Or he is not involved in hiring.

22 A Correct.

23 Q Have you even had to fire anybody?

24 A No.

25 Q You had two people quit, correct?

1 A Yes.

2 Q And one requested to transfer from the supervisor
3 position to Willard.

4 A Yes.

5 Q So is it safe to say that you have not any
6 disciplinary issues yet?

7 A That required termination, no.

8 Q That individual who was being instructed, that
9 didn't want to follow the instructions, and walked out,
10 who was he being instructed by?

11 A Stacey Tennis.

12 Q And with respect to Camrin, does he assign job
13 duties?

14 A Yes.

15 Q Does he responsibly direct the other crew when Mr.
16 Tennis is not there?

17 A Yes.

18 Q How does that -- well, let's just go with him.

19 How has he, since he took over for the one that
20 went to Willard, how does he interface with the
21 customers?

22 A It is on a case by case, but it is generally only
23 if there is a product question. So, if there is a
24 material that we are out of, he might -- a customer
25 might ask when we will get a product back in to

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1 inventory, and then he would relay that back to the
2 customer, based on our production schedule.

3 Q And does he have the authority, the independent
4 judgment to redirect somebody to meet a customer's
5 needs?

6 A Yes.

7 Q Well, with respect to vendors, I think there was
8 some testimony on vendors, first of all -- help us
9 understand what kind of vendors these Rural Quarries
10 would be dealing with.

11 A Generally a processing plant, parts and supplies.
12 So it could be pieces of screen cloth, conveyor belting,
13 idler rollers, pressure ware parts, and things of that
14 nature; consumables, basically.

15 Q Was that idler --

16 A Idler.

17 Q -- rollers.

18 A I-d-l-e-r.

19 Q And is that something that that position had
20 before, and continues to have with Mr. Shoemaker, as far
21 as getting parts as necessary?

22 A He is being trained for that now.

23 Q And the person that left, did he handle that --

24 A Yes, between him and Stacey.

25 Q In dealing with those vendors, as well as after his

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1 training, did Mr. Shoemaker, would he be able to initial
2 off on those purchase orders to get those parts?

3 A He would have been able to put in the purchase
4 request, yes.

5 Q As your agent of the Company?

6 A Yes.

7 Q I don't know your business good enough, but in
8 judging a part, I don't know if there is a Class A part
9 or Class B part or a Class C part, or if it is cheaper,
10 is that position with respect to vendors able to
11 determine if you need that kind of a part or that over
12 there?

13 A Yes, he would have to be able to identify the part
14 to be able to order it correctly.

15 *[Long pause]*

16 Q With respect to Employer's Exhibit 12, is there
17 similar data for Willard?

18 A Yes.

19 Q And can you help us understand why the difference,
20 comparing Willard to Galloway, not with respect to the
21 bell curve, but as far as seasonality, continuous
22 runs...

23 Can you help us better understand why Willard would
24 be at this level, Galloway maybe at this level?

25 A Willard -- Willard has the ability to produce

1 specialized concrete-quality stone, and that level --
2 this is constant throughout the year.

3 So, while there is a core construction level of
4 commercial construction, residential construction, it
5 slows down in the wintertime, the winter months. We
6 would consider that a slower period, but when you add on
7 the layer of the concrete quality materials, then that
8 puts Willard in a little different category, and flags
9 -- there is still a little bit of bell curve at Willard,
10 but it is a little bit flatter, because they have this
11 level of business that is related --

12 Q Which these Rural Quarries do not.

13 A That's correct.

14 Q And do you stand by your testimony that Willard is
15 more flat than Galloway, that the Rural Quarries would
16 be more of a bell curve than Galloway?

17 A That is correct. And it is very job dependent, as
18 well.

19 So, we had a job in Marshfield that was specific to
20 that location, because of the proximity of the work, so
21 that particular job created a spike in that curve for
22 about three months.

23 Q Things are a little lower know about this
24 unexpected demand and this customer sort of inherited
25 some of these -- the Marshfield plant. Can you help us

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1 to better understand what you were testifying to,
2 specifically as to that unexpected work that came in,
3 and I think your testimony was that you expect that to
4 continue and not be --

5 A Right. Right. We can continue to see -- we -- the
6 Highway Department projects projects.

7 Q I'm sorry, what kind?

8 A The Highway Department, MoDot, for Missouri.

9 So they -- they can project projects eighteen
10 months in advance when they are coming along, so we know
11 that there is Another project in the eighteen-month
12 timeframe, that the likelihood of us producing material
13 for that job is high, so we know that job is coming, so
14 we know that we are going to have to have continued --
15 continued production that is going to maintain that
16 inventory level situation.

17 Q And that is what you are referencing? That is the
18 customer involvement?

19 A Yes, that is the end-use customer.

20 Q And you expect that work to continue?

21 A Yes.

22 Q And again, the only history that you have with
23 respect to the operation of these quarries is what you
24 gained this year by personal experience as a company.

25 A Yes.

1 Q You didn't inherit any records from Conco Quarries,
2 Inc. from whoever owned --

3 A No.

4 Q Now, it is a little confusing about this Willard
5 back and forth, and TASK, T-A-S-K, Training. I don't
6 think we have had testimony about the length of time
7 people in this Universal Crew may have been sent to
8 Willard for training. I don't know if that is six weeks
9 or a day.

10 Can you please help us understand how that actually
11 works?

12 A So, Willard is our core location for doing new
13 employee training and new hire training. So a lot of
14 the initial training which was up to three days, just a
15 pre-job hire. They were going to work, but they had
16 been hired, so those first two or three days are spent
17 at Willard getting the initial classroom training of --
18 I believe what has been referenced back and forth to
19 other TASK training that has happened is, we have had
20 them, different employees, based on what we have been
21 doing, we have them come to Willard and observe what is
22 going on, and observe in-task training on how to do that
23 at the other location, so basically they got trained on-
24 site hands-on, and then returned back to the quarry that
25 they were added to at that particular time, to perform

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1 that same function.

2 Q So, let's say something breaks down and you have a
3 particular task that needs to occur. In other words,
4 this is not school, but learning -- if something
5 happened and if you have somebody that has not been
6 "task-trained" on that task, you would bring them to
7 Willard from anywhere, Galloway or whatever, to -- to
8 observe that "task?"

9 A We would bring in a competent trainer. So somebody
10 that is competent in all of the safety and actual doing
11 of the work, to -- either on-site to train those people,
12 which is we have got to breakdown -- well, let's say the
13 Marshfield Plant was broken down and we needed to have
14 an experienced person, a competent person, we would have
15 them come to Marshfield and train them, "TASK-train"
16 them on the job, so they could see and learn and get
17 TASK-trained, and documented, and we are covered --
18 covered because we have got requirements that says that
19 everybody has to be TASK-trained before they can be put
20 on the job.

21 Q So that is required by law?

22 A Yes.

23 Q So the back and forth between Willard, whether it
24 is Willard people coming to Marshfield or Marshfield
25 going back to Willard, would it have been for the

1 training?

2 A Training, yes.

3 Q And there is an initial two or three days of brand
4 new employee training.

5 A Correct.

6 Q But there is not a day to day interchange between
7 our people or these people and Willard?

8 A Not typically.

9 Q When -- when -- would somebody be transferred?

10 A When there is a transfer or when there is a TASK-
11 training opportunity.

12 Q Just like a person transferred to Willard, correct,
13 permanently.

14 A *[No audible response]*

15 Q And again your testimony concerning difficulty to
16 hire, based on potential unemployment compensation, that
17 was based on your experience?

18 A Yes.

19 Q Let's go to -- and I don't know whether there is an
20 orientation...

21 I believe you testified that you were personally
22 involved in the hiring process for the people at issue
23 here?

24 A Yes.

25 Q Did that include explaining to them what the

1 position was, and what you expected the position to be?

2 A Yes.

3 Q And what were they told with respect to cross-
4 training and the fact that they could be moved around in
5 different quarries? What did you tell them?

6 A We instructed them that if we -- we weren't hiring
7 for specific positions in terms of the job
8 classifications. So, at no time during the hiring did
9 we say, "All right, we are hiring specifically for a Pit
10 Loader position." We always explained that we were
11 hiring for a quarry worker, and that then, based on
12 their experience, we would find which job fit them the
13 best, and we would also do the TASK training, so we
14 instructed them that if they had driven a truck, "You
15 may start in a truck, but we are going to train you on
16 how to run a loader," how to run a skid steer, how to
17 run a plant -- and so it -- it was explained to them.

18 In addition, when we were going through the hiring
19 process, during interviews, we would explain that, "This
20 is a portable crew," and depending on the time that we
21 actually did the interviews, we would tell -- we would
22 tell them where the crew was actually located, but we
23 would also explain that, "Well, you may be in this
24 location for right now," and then maybe in the next
25 month or two, they could very easily move to another

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1 location, to any one of the other quarries that we had
2 control over.

3 Q Did you reference those other quarries?

4 A Yes.

5 Q All right, regarding layoffs, were they ever
6 guaranteed that they would never be laid off?

7 A No.

8 Q Was it explained to them that there could be a
9 slow-down?

10 A Yes.

11 Q Okay.

12 A We -- we explained to our employees that due to
13 weather, primarily, that it is a seasonal business, and
14 weather related, and we could slow down.

15 Q The timeframe is kind of important. Inactive,
16 Buffalo, Strafford, Pittsburg, Montevallo, Bolivar, and
17 -- let's -- are the three positions that have been
18 referenced here of Marshfield, Fair Play, and Fair
19 Grove, other than the bargaining unit positions, if you
20 want to call them that, are there any permanently
21 staffed positions at those locations?

22 A Just the Sales Loaders and the Scale Clerks.

23 Q Are they at all three of those locations?

24 A Yes, except Fair Grove, one person performs both
25 duties.

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1 Q So, whether the roving crew or the Universal Crew
2 is there or not, you would have those three staffed
3 already; correct?

4 A Correct.

5 Q And I believe that he said they had already
6 purchased or arranged for equipment that will be moved
7 into these other quarries, as soon as you can get
8 approved to operate them, correct?

9 A Correct.

10 Q And when did the arranging of that equipment start
11 in this process, from you getting them in January?

12 A We probably started moving equipment in April, and
13 the -- the -- all of the equipment associated would move
14 with the people from Fair Play to Marshfield. If we had
15 to move to another location, we would use mobile
16 equipment. If we had to move into a site that didn't
17 have a crushing plant, we would have to rent that plant
18 at that time, but we currently only did it at Fair Play
19 and Marshfield, both of which had a plant already.

20 Q A crushing plant?

21 A Yes.

22 Q But you had to take -- or if you had a crushing
23 plant ready to go, and then --

24 A Yes.

25 Q Or as soon as it is moved?

1 A Yes.

2 [Long pause]

3 Q Okay, Employer's Exhibit 12, last question I
4 believe. If you can get that?

5 A Okay.

6 Q I don't know what your scale is over there. I
7 assume it is tons, but there was some question about
8 whether it is hours, is it tons, or what are we looking
9 at here?

10 A It is tons.

11 Q So it is product and not manhours.

12 A Right.

13 MR. KING: Okay, I believe that is all of the
14 questions I have at this point.

15 MR. SMITH: I have a couple of just very quick
16 recross questions, if I could be permitted.

17 HEARING OFFICER NISLY: Go ahead.

18 RECROSS EXAMINATION

19 Q BY MR. SMITH: Okay, so I didn't quite -- I am not
20 sure if the record is clear, and I just wanted to make
21 sure it is clear.

22 When you are talking about the locations where you
23 already have Sales Loaders staffed, which locations are
24 those?

25 A That is Marshfield, Fair Grove, and Fair Play.

1 Q Okay. Any other locations?

2 A No.

3 Q All right, and this will be my last sequence. I
4 just have a couple questions here.

5 There were some questions about what you told the
6 Universal Crew during the hiring process.

7 A Uh-huh.

8 Q Do you recall that?

9 A Yes.

10 Q In terms of the travel, you talked with them about,
11 would you agree there were only those three quarries
12 where they were told they might travel, the Fair Grove,
13 Fair Play, and Marshfield Quarries?

14 A Yes.

15 MR. SMITH: No further questions.

16 MR. KING: May I?

17 HEARING OFFICER NISLY: Yes.

18 FURTHER REDIRECT EXAMINATION

19 Q BY MR. KING: I don't want anything to be confused
20 here, but when they were first hired, those were the
21 three that you told them about.

22 Go to the picture, Exhibit 3.

23 *[Long pause]*

24 A Okay.

25 Q That is Exhibit 4, but that's fine. That's fine.

1 THE COURT REPORTER: Would you raise your right
2 hand, please?

3 (Whereupon,

4

STACEY L. TENNIS

5 having been sworn/affirmed, was called as a witness
6 herein, and was examined and testified via video-
7 conference, as follows:)

8 HEARING OFFICER NISLY: Okay, you can have a seat.

9 If you would, state your name and spell it for the
10 Court Reporter.

11 THE WITNESS: Stacey L. Tennis, S-t-a-c-e-y, middle
12 initial L, last name is T-e-n-n-i-s.

13 HEARING OFFICER NISLY: Thank you.

14

DIRECT EXAMINATION

15 Q BY MR. KING: Stacey, how long have you worked for
16 the Company?

17 A Nineteen years.

18 Q And in what positions?

19 A I started out as a Utility Operator, then Pressure
20 Operator, pretty much every position down there.

21 Q And at what location did you work?

22 A At Galloway.

23 Q And that position that you described, was it a
24 Union position?

25 A Yes.

1 Q And what union represents the bargaining unit for
2 the people at Galloway?

3 A International Brotherhood of Boilermakers.

4 Q Were you a member of the Union?

5 A Yes.

6 Q Were you an officer of the Union?

7 A Yes.

8 Q What position?

9 A President.

10 Q And at what point did you come over to what your
11 brethren might call the "dark side," and -- in
12 Management?

13 A In January, I became -- came out of the Union this
14 year.

15 Q And why was that?

16 A To take over the Rural Quarries, be more of
17 managerial, at Galloway and all of the other quarries we
18 were taking over.

19 Q And going back to Galloway, in your many years of
20 experience as a bargaining unit employee, just quickly,
21 the types of classifications of work that existed there
22 in production.

23 A Your Pressure Operator, Pit Loader, all Truck
24 Drivers, Water Truck, QC, Dozer and Excavators, Utility
25 guys, Maintenance, and Shop Mechanics there at that

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1 site.

2 Q And all of that -- all of those people were
3 represented by one union?

4 A Yes.

5 Q Not the Teamsters?

6 A No.

7 Q Not the Laborers?

8 A No.

9 Q Not the Operating Engineers?

10 A No.

11 Q At the quarry.

12 A Yes.

13 Q And you were here during the testimony of Mr. Upp
14 with --

15 A Yes.

16 Q -- respect to the drilling, blasting, the scraping,
17 of whatever. Is there anything to add to what he said
18 about what is being done down there?

19 A At Galloway, no. Drilling and blasting is done by
20 outside contractors. The stripping is done by Galloway
21 crews.

22 Q Can you find Employer's Exhibit 5 in your pile over
23 there?

24 A Okay.

25 Q Now, looking at that in your title as General

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1 Superintendent over Galloway, how -- how long were you
2 General Superintendent outside the Union at Galloway
3 before taking over the Universal Crew in January?

4 A Just in January, until now.

5 Q So, you -- to make sure --

6 A Yes.

7 Q You became a Manager over both Galloway and the
8 Universal Crew at the same time?

9 A I was a Supervisor at Galloway for approximately
10 thirteen years before I stepped up into the General
11 Superintendent position.

12 Q Okay, that is on me.

13 As a Supervisor down there, I assume you were
14 outside the unit?

15 A Not until -- no.

16 Q And what did you -- with respect to looking at
17 Employer's Exhibit 5, the number of people there, and of
18 course, that is current, is that the approximate size of
19 the unit of people when you were there before being a
20 Supervisor?

21 A Yes, we have always had about twelve people.

22 Q Okay. Who is Jason Page?

23 A He is the Site Supervisor now that has worked
24 there, oh, probably almost fifteen years, and -- and he
25 took my position on-site after I moved up to General

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1 Superintendent.

2 Q Okay. Now, going over to the -- now, Galloway is
3 just one location.

4 A Yes.

5 Q No traveling back and forth to do anything.
6 Galloway is just Galloway.

7 A Yes.

8 Q Again, we are going to jump over some things.
9 There has been testimony about these eight new quarries,
10 Rural Quarries, in this Universal Crew. What -- what
11 were you told about what you would be doing, and what
12 your directions were coming in the front door in January
13 of this year, with respect to the Rural Quarries?

14 A That I would be overseeing the hiring and getting
15 plants up and going, to see -- to meet production
16 demands, decide what needed to be done, and me and Chris
17 together worked on how many people we thought we might
18 need to meet those demands as we started into the --
19 overseeing safety and the production.

20 Q And prior to COVID hitting in March or April of
21 this year, once you were brought in in January, what was
22 it at that time, the anticipated starting and growth
23 projection of what you wanted to do to run these eight
24 quarries?

25 A We were looking at late spring or early summer,

1 late April or early May of trying to get the crews
2 started in there, so get everything going and trying to
3 get some crews hired, so. That is what we were
4 projecting then.

5 We run into some issues.

6 Q All right, explain.

7 A The plant at Fair Play, we got there and it was not
8 what we were explaining, so just probably spent six
9 weeks working on it, four to six weeks to get it up to
10 standards with the crew that we had, that we hired, and
11 then we ran that crew there probably six to eight weeks
12 at the most before we moved to Marshfield, to get the
13 demand up there.

14 Q So that six weeks of needing to get it in shape was
15 not anticipated by you going in the front door?

16 A No.

17 Q Had you not had that, would you have expanded to
18 that second crew, except for that?

19 A Possibly yes. Once we got in there and seen what
20 we had.

21 Q That would probably explain some of the hiring
22 waves that came in.

23 Again, getting back to my question, let's continue
24 with what you were told coming in the front door. You
25 ran into a problem, and -- so what were your marching

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1 orders, so to speak coming in long term?

2 A It was just to get the plants up and running, and
3 you know, of course, the main thing was getting the crew
4 hired, getting them trained, and trying to find
5 qualified people was very hard, so we didn't get a lot
6 of highly-qualified people. All of these people have
7 training in certain areas that we could cross over into
8 the quarry operation, and Brandon that came along had
9 the quarry experience, too, to help train and TASK train
10 as we went on with these guys.

11 Q Okay.

12 A So, coming in was just to get our foot in the door
13 to see what it was going to take to get these going, and
14 go from there.

15 Q How were you personally involved in hiring for the
16 Rural Quarries?

17 A I probably hired a half dozen at least, maybe a
18 little more. Me and Chris has been in several
19 interviews together, and some he has done and some I
20 have done.

21 Q And explain to me the process, just from your
22 perspective, between what Robin does and what Chris did
23 and what you did, just in this hiring process just this
24 year.

25 A Yeah, we would let Robin know how many openings we

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1 needed. She would take it from there and post it on the
2 boards that she posted it on, and then she would do a
3 general read-over. The names that she thought were
4 qualified, she would forward on to me and Chris, and
5 then we would look at them and let her know if we wanted
6 to interview, then she would set up the interview time,
7 place, and we would let her know where we wanted it, and
8 the times, and then from there, we would take it and get
9 back with her, and let her know which ones we wanted to
10 accept, and then she would accept that -- offer that
11 position, and go from there.

12 Q What is your personal background prior to coming to
13 work at Galloway?

14 A Prior to Galloway, I was working for Maples
15 Construction burying utility lines, fiberoptics, running
16 excavators, plows, to plow cable into the ground for
17 your phone lines and stuff. I did that for about three
18 years before coming to Galloway.

19 Q Was that a union position?

20 A No.

21 Q Who did you work for?

22 A It was Maples Construction out of Nixa, Missouri.

23 Q We have Employer's Exhibit 5, the organizational
24 chart, and we have kind of identified some other things.

25 Just on -- on a day to day basis, going down from

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1 you, General Superintendent, who -- who was in place
2 before Camrin Shoemaker?

3 A Brandon Smith.

4 Q So, explain to us how he got there, what he was
5 tasked to do, and how he inter-related with you and Mr.
6 Upp.

7 A He worked for me at Galloway Quarry, and we heard
8 that we may have this Universal Crew, he lived in the
9 Fair Play area and was considered -- considered for a
10 transfer, and not in the Lead Man position. I said,
11 "Let's talk," and we talked, and I thought he would make
12 a good prospect for it, so we took him on and went up
13 there with him. We looked it over and hired the crew.
14 He did most of the initial training, as far as the
15 maintenance and some of the equipment that we had at the
16 time, until the demands, I think got to him, and he
17 asked to move on to Willard.

18 Q Okay, could you get Employer's Exhibit 4, which is
19 the state -- yeah. Yeah.

20 Where are you based, in a given week -- let's start
21 in -- well, let's start before January. Let's start in
22 late December, where were you based and where did you
23 work?

24 A At Galloway Quarry.

25 Q Period?

1 A Yeah.

2 Q Since taking over the -- the Rural Quarries, where
3 have you been based, and from where do you work?

4 A Most of the time, I am based where the Universal
5 Crew is. I am not -- at the beginning, I was there more
6 than now. I am in and out. I am in there a few hours,
7 and I maybe in four different quarries before the day is
8 up.

9 Q Is it safe to say that you can't supervise all of
10 those locations?

11 A Yes. I rely on my supervisors, lead man, there to
12 take charge when I am not around.

13 Q And the one that left and went to Willard, the
14 types of things -- well, was he -- help us understand
15 how he was helping you. You said training --

16 A Yes.

17 Q What else did he do for you when you couldn't be
18 there?

19 A He would -- you know, when I couldn't be there,
20 especially to start the day, he would start the crews,
21 let them know what the plan was for the day, what
22 maintenance we needed one, and let them know the hours
23 we were working. Anything that was needed, he would try
24 to get on the phone and get the parts ordered, and try
25 to keep the day to day operation going with what we

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1 needed and the plan to move forward. If problems would
2 arise, he was there to take care of them.

3 Q And now, let's just take the ordering. He had the
4 authority to do that on his -- on his own?

5 A Yes. He had some. He was being trained in the
6 process, stepping into that position, and it takes a
7 little while to understand all of the ordering process,
8 but he had -- he was ordering some parts that he was
9 used to at Galloway.

10 Q And he left to go to Willard approximately when?

11 A I am trying to remember the -- probably late June,
12 just approximate.

13 Q And when -- who took over his position when he
14 said, "I can't do it," and went to Willard?

15 A For a little while there was nobody. Basically --
16 then I would have to stay there all day, and then we
17 approached Camrin about doing a trial as the Lead
18 person, and also I offered the other guys a chance, so
19 Camrin did it a week right off the bat, then probably
20 month later after Brandon left, all of the guys said
21 they liked his representation of them and how he led
22 when I wasn't there. So, I told him that he was still
23 on a trial, and that probably lasted, probably forty
24 days, approximately, that he was kind of on a trial
25 basis, just to see -- while I trained him to do the

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1 different parts and stuff, and now, he has been moved
2 up.

3 Q And, as far as -- was there a pay increase for
4 that?

5 A Yes. November -- on approximately November 9th, he
6 got a dollar an hour increase.

7 Q Was there any other period that we need to fill in
8 the blanks as far as -- the other guy was gone for about
9 a month, and you tried him out for a week. Nobody
10 rebelled against him, and so then he went into a forty
11 day, thirty or forty-day training. Was --

12 A Yeah. Sorry.

13 Q I am just trying to get the scene here. So, is
14 there any other hole that we missed?

15 A No. Well, the holes -- when there was no lead man.
16 I had to be there daily. It was hard to try to lead and
17 do other things. I had to handle myself until I got
18 enough faith in some of them and I said, "Okay, we are
19 going to do a trial and see who can handle being the
20 lead man, unless I find somebody to come in with enough
21 experience."

22 Well, the trial has worked, Camrin has stepped up.
23 He learns more and more as he goes.

24 There was maybe thirty days, I guess, approximately
25 thirty days that there was no true lead person, just me,

1 on-site.

2 Q Okay, and where do you reside?

3 A I -- my homestead?

4 Q Yes.

5 A I live in Clever, Missouri.

6 Q Okay, help me -- in relation to No. 4, where is
7 that?

8 A Clever is just south of Republic, Missouri, so to
9 drive to Marshfield, it is an hour drive. Fair Play is
10 an hour drive. Galloway is a thirty-minute drive.
11 Buffalo is probably -- I am trying to think; it is a
12 little over an hour from my house. Fair Grove is
13 probably about forty-five minutes. About all of them,
14 until you get on out to Stockton and Montevallo from my
15 house, are about -- are at least an hour to an hour and
16 a half.

17 Q We have the work hours for the crew in evidence.
18 What -- what does your typical week consist of?

19 Well, let's go on back to when we started in
20 January.

21 A Uh-huh.

22 Q If you can give us a rough idea of the number of
23 hours per week.

24 A Probably at the time in January, I was pushing
25 fifty, and then it got up to seventy and sometimes more,

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1 trying to get all of this lined out.

2 Q And when you had the guy who went to Willard in
3 place, help us kind of know what your hours -- how have
4 they been affected as we go through the --

5 A Yeah, when he left, then I needed to be there at
6 6:00 o'clock in the morning to start, because they need
7 somebody, and part of -- somebody has to have authority
8 on site. It doesn't matter how many -- there has to be
9 somebody with authority on site, so somebody to be there
10 with authority -- I didn't have the freedom to leave
11 when I had Brandon Smith there.

12 Q Okay.

13 A So I had to be on-site, and that made it more hours
14 for me to have to be there every morning at 6:00, so to
15 sometimes 6:00 at night.

16 Q Five days a week?

17 A There was a few Saturdays when we was at Fair Play,
18 but not too many, but a few; maybe three or four.

19 Q So, if my math is correct, about seventy to eighty
20 hours?

21 A Yes, I did do that for a while.

22 Q Help us understand this, you would have to have
23 somebody in authority on-site.

24 A When the MSHA inspector comes in, the Federal
25 Inspector, they ask who on-site has the authority to

1 represent if there is an issue, whether it is, you know,
2 a safety issue or whatever issue it is, they needed
3 somebody to be there to represent -- as an authority
4 figure, so they -- MSHA wants to know who that is as
5 soon as they come on-site, unless they have been there
6 years, and they know who it is. They always ask.

7 Q It can't be done by video conference, can it?

8 A We have not -- not that I have been -- I have not
9 done any like that. They are still coming out and
10 inspecting us.

11 Q So when Brandon was there, Brandon Smith, he had to
12 have authority?

13 A Yes. If MSHA showed up, he wouldn't deal with
14 them, but we always have all of our supervisors call the
15 Safety Director, and then the site person that is on --
16 like the lead man, would take MSHA around until the
17 Safety Director gets there, and then they stayed with
18 them.

19 Q And currently, now that he has gone through the
20 training, is that Camrin?

21 A Yes.

22 Q Is he fully authorized to act for the Company?

23 A He has already met with one MSHA Inspector when I
24 was gone, and he sent the Safety people down, but he was
25 with them a couple hours by himself.

1 Q Since he has been trained, and now is on-site and
2 authorized in that way, has that helped with your hours?

3 A Yes.

4 Q And where have you been able to go to?

5 A Some -- I have cut coming in at 6:00; sometimes I
6 don't get there until 7:00. I can go to the other
7 quarries and check in on things, and I don't have to be
8 down there a whole eleven hours a day, so it has kind of
9 cut me back. I can go home at a decent time, and not be
10 there the whole time. Nice to have somebody there in a
11 lead position that I can trust.

12 Q Is it safe to say that with respect to Galloway,
13 and now the Rural Quarries, that it is simply not
14 possible for one person to supervise all of that?

15 A No, you need somebody on-site at all times. I
16 mean, I oversee them, but then you need somebody on-site
17 to take care of problems that arise.

18 Q With respect to Camrin, I think you referenced --
19 does he assign work?

20 A Yes. During the day -- most days we go in and our
21 plan is to run, but if something happens or say somebody
22 is late, he will move people around to meet the demand.
23 Or if something breaks, he gets the guys assigned to the
24 job, whether he needs two or five, and if he only needs
25 two, he will take the other three off to do something

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1 else.

2 Q Are they required to follow his directions?

3 A Yes.

4 Q And with respect to vendors, there has been some
5 testimony by Mr. Upp, and again I am a little ignorant
6 of this, of what might break and what you might have to
7 order, how is he functioning in that?

8 A He is -- he is getting better. He is learning the
9 parts. As far as ordering, he is slowly getting into
10 that. He has dealt more with drilling and blasting as
11 he has ordering parts, which is outside contractors, and
12 that -- that can be a job in itself, because you have
13 got the safety of your men, and he has to coordinate
14 throughout the length of the blast, coordinating the
15 blasting.

16 Q Help us better understand that.

17 A So, when they -- when a drilling company comes in
18 -- the blasting company comes in and lays out a shot
19 pattern, and then the driller comes in and he has to
20 drill the holes, but Camrin or me has to make sure he is
21 following our safety guidelines, or if there are any
22 issues, he calls one of us.

23 Once that is done, the blasting company will come
24 in and load the product into the holes. So you have to
25 clear the area out and make sure everybody is clear, so

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1 when we blast, we don't have any incidents with anybody
2 getting hurt. So he makes sure the guys are with him
3 and we are where we are supposed to be, and then
4 coordinates with the blaster, and sounds the horns and
5 the time protocol, and then the shot goes off.

6 Q And again, the other crew members are required to
7 follow his directions?

8 A Yes.

9 Q With respect to customers, at these Rural Quarries,
10 how -- being in that position, how does he interchange
11 with them?

12 A He -- he is getting better. He is slowly getting
13 into that. We are not trying to throw everything on him
14 at once, so it is a slow training, but he is getting
15 some of those calls where he needs to know, "Hey, we
16 need to change the rock. We have got a big rock in here
17 that won't go down, and we need to find out why? What
18 has happened to this product, what he needs to know to
19 fix it.

20 Q And so, he can, you know, laterally do that, to fix
21 it?

22 A Uh-huh.

23 Q As far as acting an agent for the Employer, I think
24 there was some like ordering that he might be able to
25 sign off on. How does he operate that way?

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1 A We have slowly had him try to meet some of the
2 vendors to come in, so he is starting to meet them and
3 understand what they sell. He is starting to get some
4 of their phone numbers. He understands the product. We
5 have had some vendors come by and talk to him about how
6 things work, what they can do for us, so he understands
7 where they go, and the work process, and he knows
8 systems. It is something he can work on later, but he
9 can at least make the phone call and get the parts there
10 that he needs to continue production.

11 Q On his own?

12 A On his own.

13 Q Mr. Upp testified that they are really getting him
14 ready to fire yet. Do you concur?

15 A Yes.

16 Q And have you had anybody -- well, let's take that
17 second person who was being talked to and then walked
18 out. Did that involve --

19 A Yes.

20 Q When did that occur? Who was it and where did it
21 occur?

22 A It was at Fair Play. It was Kris Willoughby. I
23 don't remember the exact date of it. It was probably in
24 June, maybe early July.

25 He was doing part of the job and the belt was

1 choked down, and we were all -- they were all down there
2 digging. He was kind of standing there and not really
3 helping the other guys. I said, "You got to get a
4 shovel and get to work." So, he kind of half-chalantly
5 did it. "I am not here for excuses. I just need you to
6 do your job."

7 He said, "I'm done. I'm leaving," and he walked
8 out.

9 Q Was that during that period when Brandon was gone,
10 where you --

11 A Yeah, that was -- Camrin was there. He just wasn't
12 lead yet, and Brandon had just -- probably had only been
13 gone a --

14 Q Had Brandon still been there, in a situation like
15 that, and you were not there, did he have the authority
16 to do what you did?

17 A Yes, Brandon would have dealt with the issue.

18 Q No question.

19 A No.

20 Q Okay, so currently, if something like that
21 happened, then again, that would be Camrin's
22 responsibility?

23 A Yes, it is his responsibility at Marshfield, where
24 they are at right now.

25

[Long pause]

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1 Q With respect to hiring, I don't want to retread the
2 tire, so just how are you personally involved in the
3 beginning, and then up to date?

4 A At the very beginning, I hired -- I did a lot of
5 the interviews, and me and Chris Upp did a lot of
6 interviews together, or the original -- there were
7 originally six, but there were some brand new transfers,
8 and we hired five. I interviewed, I don't know,
9 approximately eleven people, and got those five. That
10 was some of my choices and some of mine and Chris'
11 together.

12 Q Coming in the front door, was it your intent that
13 these be forty-hour positions, or something different?

14 A We started out the first week trying to do forty
15 hours, and then we went to fifty, which was five 10's
16 pretty quick, and kind of stayed there for a while, and
17 we got the plant running and we were a little behind,
18 and that is when we worked a couple Saturdays. We
19 probably actually worked six 10's at that time. We
20 progressed from there to the eleven-hour days, and a few
21 12's occasionally.

22 Q But that is not the intent for long-term --

23 A No. No, we would like to get back closer to forty
24 hours a week.

25 Q And that is what you are trying to do even today.

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1 A Yes. This -- with winter approaching, normally we
2 will be cut down, but once we get our demand back or the
3 weather cuts into it, it is ten.

4 Q Let's go to that a little bit.

5 You -- you are closer to the scene.

6 A Uh-huh.

7 Q What do you anticipate now with these Rural
8 Quarries? It is now, November, whatever it is. A
9 shutdown, a slowdown? What do you anticipate now?

10 A At the Marshfield Quarry, it is what you call a wet
11 system; we run water to wash the rock. So once it gets
12 freezing and stays freezing, your pumps that pump water,
13 the hoses are going to freeze, so that plant, once it
14 gets to freezing and stays, we won't be able to run that
15 plant. It is a wet system where some plants are dry.
16 That will be the biggest issue at Marshfield.

17 Fair Play is kind of up in the air. It has got to
18 be -- you know, if it is freezing cold, you can't hardly
19 run the equipment. We will break down twice as much if
20 it gets below twenty degrees and stays there.

21 Q Do you anticipate layoffs?

22 A Just -- that -- yes and no. I mean, it is going to
23 depend on what the weather does. It is touch -- in
24 Marshfield, it is going to get slow, and there could be
25 small, minor layoffs.

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1 Q There has been some testimony about you tried to
2 hire some additional ones here.

3 A Uh-huh.

4 Q We will have testimony from Robin here in a minute,
5 for what is still left open from the testimony of Mr.
6 Upp. What are we trying to do, hiring now, or will you
7 cut that off?

8 A No, we still have one position open. I did some
9 interviews last week, and trying to find qualified
10 people, and I had three scheduled, two showed up, and
11 one was a no-show, and we have not accepted -- made an
12 offer to either one of those.

13 Very little experience is another issue.

14 Q And the one position is what?

15 A It -- it will be cross-trained there, so we need a
16 QC guy, which is Quality Control, to make sure we are
17 making the product that we need to make for the
18 customers. Water truck, we need to clean-up -- like I
19 said, we cross-train, so he may be doing all kinds of
20 different jobs.

21 Q Now, when do you anticipate gearing up next spring?

22 A Probably late March or early April, depending how
23 the spring rains come. That makes a big difference.

24 If we get a lot of flooding, most plants will
25 flood, and it takes some pumping to get them up and

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1 going.

2 Q It takes what?

3 A Pumping. You have to pump the water out, because
4 there is always a low spot in the pit, so you have to
5 pump the water out if you get a lot of rain.

6 Q Let's go back to Employer's Exhibit 3.

7 So there are batches of water in these?

8 A Yes, at the ones we have been at.

9 Q Well, that's okay.

10 So there is a pumping system?

11 A Yes. The pit will get under water and you can't
12 run -- I mean, it gets so deep that you can't drive your
13 mobile equipment out there to load the product. So we
14 are just -- so it is a safety issue, plus it is hard on
15 -- there are mechanical problems, as well as safety.
16 So, you have to run pumps to get the water out.

17 Sometimes you cannot run. Spring rains can shut you
18 down, and the -- when you have a very minimal crew, you
19 only have half a crew.

20 Q I don't need to go through the COVID stuff again,
21 but in a perfect world, what were you wanting to have
22 accomplished by next April or May?

23 A Well, hopefully we can have another crew hired
24 where we can combine them when we need to, or we can
25 split off and go to Fair Play. In the future, maybe

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1 next summer or later, either try to do Buffalo,
2 Stockton, and occasionally we head back into Fair Grove
3 and do a small batch here and there.

4 Q And just from your perspective, what is your
5 anticipated body count, both coming in the front door
6 from Mr. Upp's testimony, just from your closer eye
7 view, what is going to be needed to run these the way
8 CRH wants?

9 A We are going to need at least fifteen people, and
10 maybe up to twenty, depending on how far we expand into
11 these other sites. That is the only way we will be able
12 to keep everything going that we need to do.

13 Q Are there any plans to change the hiring process or
14 increase the pay, or anything to kind of jump start this
15 a little bit?

16 A I mean, everything is -- like now, staying the way
17 it is set up on the benefit sheet, if somebody did come
18 in with experience, we would consider more money if they
19 came in highly-qualified.

20 Q And the work is there for fifteen to twenty, and
21 forty hours a week, as soon as we get them.

22 A Yes.

23 Q Final thing, with respect to Camrin --

24 A Uh-huh.

25 Q If you are successful with the fifteen to twenty,

1 would there be another Camrin, or can the two of you
2 handle it?

3 A That -- that is something we will have to set back
4 and look at. There is the possibility there could be,
5 depending on how the organization -- yes, there is the
6 possibility. First we will try to do it, but if we end
7 up with twenty, and we get them scattered out, we
8 probably will have to have two.

9 At the other site, you have got to have somebody
10 with some authority, so there is going to have to be
11 some kind of authority figure if Camrin is at one and I
12 am at the other. Somebody has to be the authority
13 figure of some sort.

14 Q And as a final thing, what did you tell them --
15 what did you overhear when you and Chris met with them
16 to hire, about these other quarries and the requirement
17 being to possibly travel to these other locations?

18 A Yeah, we explained to them that, "We know,
19 depending on where you live, you may have a ten to
20 twenty-minute commute, to an hour commute, and you may
21 work at one site for months or weeks, and then the
22 middle of the week you could get pulled to another site.
23 So, you know, production will dictate which way you go
24 and how long we are at a site, and -- or some days you
25 might get pulled to go to another site."

1 MR. KING: I believe that is all of the questions I
2 have at this time.

3 CROSS EXAMINATION

4 Q BY MR. SMITH: All right, I have some cross
5 questions for you.

6 A All right.

7 Q The first one is something I thought I heard, but I
8 -- I wasn't sure if I heard it correctly, so I was just
9 hoping you could clarify.

10 Did you say that certain on-site supervisors at
11 Galloway are actually included in the Boilermakers'
12 unit?

13 A Jason Page is not. I was at one time when I was
14 there.

15 Q Was or was not?

16 A I was when I was there. Jason Page who is the Site
17 Supervisor now, is not.

18 Q And when you were there, were you a supervisor
19 there when you were in the unit, or just a production
20 worker?

21 A I started out as Production, and then moved into
22 Supervisor.

23 Q And in both capacities, you were in the bargaining
24 unit?

25 A Yes.

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1 Q Based on your time in that unit and your time as a
2 supervisor in Galloway, you say that a lot of the work
3 that you performed is comparable or substantially
4 similar to the role that Camrin is performing for the
5 Universal Crew?

6 A Yes.

7 Q Did you hear the previous testimony of Chris Upp?

8 A Yes, I heard Chris' testimony.

9 Q Did you hear him reference -- he kind of guessed
10 that Camrin probably spent eighty-twenty, maybe eighty
11 percent of his time performing production and
12 maintenance work, pit loader work, and then the other
13 portion of his time, about one-fifth of his time, was
14 more on -- on kind of leadership roles. Do you agree
15 with those percentages?

16 A Yes, pretty close.

17 Q So you testified to a few different things about
18 the hiring plans, and I am not sure if they necessarily
19 contradicted. I think they might just be potentially
20 talking about time periods.

21 Do you recall Mr. King asking you a question about,
22 you know, in a perfect world, do you try to hire the
23 people now and the work is there, and you said, "Yes."
24 Do you recall that?

25 A Yes.

1 Q But you also said that there could possibly be a
2 layoff at some point, but you hoped that there wouldn't
3 be during the winter months. How do you kind of
4 reconcile those two things?

5 A Well, when I said we would like to hire more, I
6 wasn't considering winter in my answer. Yes, we could
7 take more people and we have got one opening now, and
8 with the weather coming on, we would rather wait until
9 March or April, because there could be some layoffs due
10 to the weather, seasonally. And you hire a bunch of
11 people in and you might lose half of your crew.

12 Q Okay. Based on your experience, do you expect --
13 and also your ability to expand into Buffalo and some of
14 the other locations, based on your experience, do you
15 expect that eight to twelve number that was quoted, you
16 -- are you fairly confident that those employees will be
17 hired and all ready and available come March or April,
18 or do you think there is some uncertainty there?

19 A I believe there is still some uncertainty there,
20 but if we get them hired, and the spring and weather,
21 things happen, production needs.

22 Q You would agree with Mr. Upp's assessment that
23 there -- that it is more likely that you will develop
24 one crew first, of maybe eight to twelve guys, or girls,
25 sorry, who might perform sort of a roving crew type of

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1 job, maybe in like a year's time? Does that sound
2 reasonable?

3 A Yes.

4 Q Would you also agree that Camrin hasn't been
5 consulted with regard to hiring?

6 A He --

7 Q Let me rephrase.

8 Camrin hasn't been involved in the interview
9 process per -- correct?

10 A No, he hasn't.

11 Q Has he screened any of the applications?

12 A No.

13 Q Have you run any of the applications by him for
14 recommendation?

15 A No.

16 Q And you said there really hasn't been a firing
17 situation.

18 A No.

19 Q Let's see here...

20 You talked about Camrin having the authority to
21 make purchases; do you recall that?

22 A Yes.

23 Q And what -- were those purchases for like parts,
24 like maintenance parts? Is that what those are?

25 A Yes.

1 Q Are those pretty routine purchases, or do they --
2 or is that kind of an abnormal thing?

3 A We have routine and abnormal both. It just depends
4 on what happens, but you also have your routine things
5 you need to keep in stock.

6 *[Long pause]*

7 MR. SMITH: Okay, I think I will let you off the
8 hook.

9 THE WITNESS: Okay.

10 MR. SMITH: Thank you.

11 MR. KING: A little bit of redirect.

12 HEARING OFFICER NISLY: Okay.

13 REDIRECT EXAMINATION

14 Q BY MR. KING: How often per week, let's say -- just
15 currently, the training, etc., how often could Camrin do
16 things now that otherwise you would be doing, in other
17 words, if you were there, he is doing what you would do,
18 except you are not there?

19 A Well, I know last week, for example, I was only
20 there one day for a full day. Several days I was not
21 even there, and a couple days I might be there two
22 hours, and that is all. So he is pretty well in charge
23 over sixty percent that week, maybe seventy percent last
24 week, and he is progressing more and more, with the TASK
25 training and more and more of the authority positions.

1 He is still learning as he goes on who to call and
2 stuff, and getting numbers. It is gaining as the weeks
3 go by.

4 Q And with respect to the 53 1/2 hours, trying to go
5 back to 40, obviously you've needed product, and Camrin
6 is qualified to produce product when you need product,
7 so maybe eighty/twenty now, projected however, once you
8 get the crew in place, is that going to flip, or is it
9 going to be all supervision? How do you see that?

10 A Eventually it should flip, based on -- it is going
11 to be a gradual flip, depending on how many people we
12 get hired, and you know, the speed of it. So he will
13 slowly go to seventy, sixty, you know, and in a year or
14 two years, it could be all supervision.

15 *[Long pause]*

16 Q A little bit on purchases, only because of the term
17 "routine" or "abnormal," and we don't need to get into
18 that, whether it is a routine purchase, whatever that
19 means, or an abnormal purchase, and you were talking
20 about Camrin having responsibility for the purchasing
21 from vendors, it would be for both, would it not?

22 A Yes, he -- he -- let me rephrase it. He is still
23 being TASK trained to do this. He has got some
24 authority but he is still learning to do all of talk
25 that he can do.

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1 Q The long-term plan is that position, as
2 replacement, would have all of these functions that you
3 have described?

4 A Yes.

5 MR. KING: I think that is it for him.

6 Are we ready for another witness?

7 HEARING OFFICER NISLY: Anything else, Ryan?

8 MR. SMITH: No.

9 HEARING OFFICER NISLY: Okay.

10 MR. KING: Okay, Robin?

11 I'm sorry. Did the Hearing Officer have any
12 questions?

13 HEARING OFFICER NISLY: I do not. Thank you.

14 MR. KING: All right, you are through.

15 *[Witness excused]*

16 MR. KING: Robin, if you would like to come up,
17 please?

18 HEARING OFFICER NISLY: All right, Robin, if you
19 could stand and raise your right hand?

20 (Whereupon,

21

ROBIN PATNODE

22 having been sworn/affirmed, was called as a witness
23 herein, and was examined and testified via video-
24 conference, as follows:)

25 HEARING OFFICER NISLY: Okay, you can sit down, and

1 please state and then spell your name for the record.

2 THE WITNESS: Robin A. Patnode. That is R-o-b-i-n,
3 Middle initial A, and then, Patnode, P-a-t-n-o-d-e.

4 MR. KING: Is everybody able to hear her?

5 THE COURT REPORTER: If she could just speak up or
6 get the microphone closer, it would be great.

7 THE WITNESS: I am going to get closer.

8 THE COURT REPORTER: Perfect.

9 Thank you.

10 THE WITNESS: Do I need to start over?

11 THE COURT REPORTER: No.

12 MR. KING: No, if everybody heard her, I think we
13 are ready to go ahead.

14 DIRECT EXAMINATION

15 Q BY MR. KING: Robin, just how long have you been
16 with the Company, and what positions?

17 A I have been here five years. I started out as the
18 HR Coordinator.

19 Q And what is your current position?

20 A HR Generalist.

21 Q And help us understand what that is.

22 A HR Generalist just means you have lots of different
23 roles in HR, anywhere from recruiting to on-boarding, to
24 answering employee questions about benefits, open
25 enrollment, FMLA, short-term disability, long-term

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1 disability and things like that. They come up with
2 questions on 401(k).

3 Q And to who -- who is your supervisor?

4 A Randy Harwood.

5 Q And who is he?

6 A He is the HR Director and also the IT Director.

7 Q And below you, do you supervise or direct any other
8 employees?

9 A I do have one employee that I direct.

10 Q Who is that, and what do they do?

11 A Pat Hood, and she is helping out with the payroll
12 process.

13 Q And spell her name, please?

14 A Her first name is Pat, P-a-t, and last name is
15 Hood, H-o-o-d.

16 Q And before coming to the Company, where did you
17 work, and what did you do?

18 A Before coming to Conco Companies, I worked for a
19 company called Delegate, and they installed data
20 implementation, payroll, and also processed payroll for
21 lots of fast food companies and other companies in that
22 same field.

23 Q With respect to these Rural Quarries, how -- were
24 you personally involved and when did it start in
25 attempting to hire employees for this new group of

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1 quarries that we inherited in January?

2 A The process started with -- probably in March with
3 just putting together the Job Description, so that we
4 would be able to have that in place for these different
5 positions.

6 Q And how were you involved in putting that job
7 description together?

8 A Jacci Gamble, who is our Safety Director, she
9 helped me with -- to determine what type of roles that
10 would be very similar to what we have at Galloway, where
11 people would have to do multiple jobs. When we hired a
12 person, it wouldn't be for one specific role; there
13 would be many roles that people would have to do, based
14 on the size of the quarry.

15 Q And I am going to have you get in front of you,
16 Employer's Exhibit 13, 14, 15, and 16, and let's just
17 take 13.

18 A Okay.

19 **(Employer's Exhibit No. 13 through No. 16, marked for**
20 **identification.)**

21 Q BY MR. KING: Help us understand what the heck that
22 is.

23 A This is part of our recruiting system, this print
24 screen is, and it just shows basically when they were
25 posted, when this position was posted, and the postings

1 for different job boards it was on.

2 Q And let's take those job boards, and that is why this
3 exhibit particularly is in there.

4 I don't need the gory details, but let's identify,
5 "Hire A Hero," what is that?

6 A "Hire A Hero" basically helps us to specifically
7 direct this job to Vets, Veterans.

8 Q Veterans.

9 A Yes.

10 Q Thank you.

11 The next one down is "JOFDAV." What is that?

12 A And that is similar to the "Hire A Hero," only it has
13 to do with Disabled Veterans.

14 Q DAV, Disabled American Veterans?

15 A Yes.

16 Q Thank you.

17 And the next one down is "Recruit" -- I'm sorry,
18 "recruitAbility."

19 A That job posting is also one of our compliance ones
20 that to do also with disabilities.

21 Q Also a disability site?

22 A Uh-huh.

23 Q And then the next one down, "States (Compliance)."
24 Help us understand what that is.

25 A That is the Missouri jobsite. Missouri State.

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1 Q Missouri Division of Employment Security?

2 A The website for the State.

3 Q And then, "Compliance (USDiversity.)"

4 A And that is a website that helps us to get this job
5 out to people of color.

6 Q Beyond this, and we don't have it for CRH, what do
7 you also post through CRH's system?

8 A Yes, we post on their website, and we also post on
9 our Conco Companies' website, that directs them to the HR
10 website.

11 Q So just so the record is clear, we have these five
12 boards, job boards, or whatever, and then our internal CRH
13 and Conco Companies.

14 A That's correct.

15 Q Do you post anywhere else?

16 A We do have some sites that we don't post to, but they
17 -- it is -- they pick up the posting, for -- like for
18 Indeed.

19 Q They are trying to make money off of you.

20 A Yes.

21 Q Okay. Is -- is Employer's Exhibit 13 reflective of
22 the same type of procedure that you went through this year
23 for these Rural Quarries?

24 A Yes.

25 Q And does Employer's Exhibit 13 actually apply to the

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1 Rural Quarries?

2 A Yes, it does.

3 MR. KING: I would like to introduce Employer's
4 Exhibit 13 into the record.

5 MR. SMITH: No objection.

6 HEARING OFFICER NISLY: The evidence -- the exhibit
7 is received, sorry.

8 **(Employer's Exhibit No. 13, received into evidence.)**

9 Q BY MR. KING: And before leaving that, I see at the
10 top of Employer's Exhibit 13, it says, "Plant Maintenance
11 and Production - Fair Play, Missouri." Would that have
12 been for any of these quarries?

13 A Yes. I have to post it to one particular location.

14 Q Okay, yes, that is what I wanted to clarify.

15 A Yes.

16 Q So this wasn't only for Fair Play, but you could only
17 post one location.

18 A Right.

19 Q Thank you.

20 Employer's Exhibit -- before leaving there,
21 Employer's Exhibit 13 is still current?

22 A It is still on that.

23 Q Okay, now we are going to go back to the
24 chronological order from early 2020 to later in 2020.

25 What is Employer's Exhibit 14?

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1 A That is the very first job we posted for this Plant
2 Maintenance - Production position.

3 Q And unfortunately, it doesn't have a date on it and
4 you tried to get the date backdated, but approximately
5 when -- what period of time was covered by the Employer's
6 Exhibit 14 posting?

7 A This was posted on 4-9.

8 Q April 9, 2020?

9 A Right.

10 Q And how long did that stay up?

11 A It says 43 days on the exhibit.

12 Q Oh, I'm sorry. I am looking at -- that "43 days" --

13 A Yes.

14 Q Under "Age?"

15 A Uh-huh. Yes.

16 Q I don't want to misstate something.

17 So this posting, Employer's Exhibit 14, started on
18 April 9 and stayed up for 43 days.

19 A That's correct.

20 Q The document will speak for itself, but there is a
21 lot of increase here with names and then "Not selected,"
22 or "Not Considered." Who is writing in that stuff?

23 A That is based on when the -- they get to the end of
24 the process where the -- in the process when they have
25 been entered for it and maybe they weren't selected on

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1 account of experience level they were looking for, so at
2 the very end usually they will go through and see those
3 that were not hired and what the reason was. We have to
4 post a reason why they were not hired, why they were not
5 considered.

6 Q Got you. Okay.

7 Just how are you personally involved -- you
8 understand the posting, and then how are you involved in
9 interviewing or setting up interviews, or for what?

10 A So, the way the process works is I a request from a
11 manager and they request me to post a job and how many
12 people they would like to have -- how many people they are
13 going to need to fill this position, and then I go out and
14 post the job, and then as the applications come in, I
15 review them, look at their qualifications, if they are
16 qualified then I would send that on to Stacey and Chris,
17 the applications.

18 Q So you do an initial screening.

19 A Right.

20 Q Before it even gets to Chris Upp or Stacey Tennis.

21 A Correct.

22 Q The internal system.

23 A Uh-huh.

24 Q And then they do the interviewing -- if I am
25 understanding it correctly, you get a report, and then who

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1 is typing this stuff in?

2 A Well, based on the information, you get that from
3 Stacey and Chris, the hiring managers, they would tell me
4 what I need to put in that.

5 Q So --

6 A So they interviewed them and they felt that they were
7 not qualified, and some of the applicants, they were not
8 as qualified as somebody else they had interviewed, then
9 that is the employee that they would *[voice trailed off.]*

10 Q And are you physically typing this, or is this your
11 assistant?

12 A I am typing it. It is a dropdown, and I am
13 selecting.

14 Q Okay.

15 MR. KING: I would like to introduce Employer's
16 Exhibit 14 into the record.

17 MR. SMITH: No -- no objection.

18 HEARING OFFICER NISLY: The exhibit is received.

19 **(Employer's Exhibit No. 14, received into evidence.)**

20 Q BY MR. KING: No. 15, again, if there is anything
21 unusual, but let's first of all try to get a timeframe on
22 this one. Can you tell us when this one would have been
23 started?

24 A On June.

25 Q And if I am learning from the other one, when it

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1 says, "Age," "9-0-D" --

2 A That is ninety days.

3 Q June, July, August?

4 A Yes.

5 Q And I notice this one is a couple of pages. What was
6 causing this to -- this reopening, or -- help us to
7 understand.

8 A Well, we opened it and there were several people
9 interviewed, and it was -- there were a lot of people that
10 had applied, but there were only so many people that were
11 actually qualified for the position.

12 Q And just from your perspective, as far as -- as -- we
13 start out with Employer's Exhibit 14, a one-pager, April
14 and May, and it looks like in June through August, there
15 is more interest in your kind of jobs. Is there anything
16 to help us understand from the seasons standpoint in
17 hiring for a quarry, that helps -- is that a fair
18 assessment?

19 A Yes, we had more candidates during this time.

20 MR. KING: I would like to introduce Employer's
21 Exhibit 15 into the record.

22 MR. SMITH: No objection.

23 HEARING OFFICER NISLY: The exhibit is received.

24 **(Employer's Exhibit No. 15, received into evidence.)**

25 Q BY MR. KING: And finally, Employer's Exhibit 16, it

1 doesn't look like there is very much there.

2 Let's first of all try to get a date as to when this
3 would have been posted, and then we have to look also at
4 Employer's Exhibit 13, which is -- is that part of the
5 same posting?

6 A Yes.

7 Q Okay, but just what is No. 16?

8 A That is a list of candidates from this last posting,
9 which at -- we were just looking for one person to fill
10 that position.

11 Q And is this posting still open?

12 A Yes, it is.

13 Q And I look up on 16, and it looks like the age is
14 "57-D." How long is it anticipated this will be -- will
15 remain open, or do you know?"

16 A Right now we are leaving it open -- we did have a
17 candidate that we did want to hire for this, but this
18 person is not interested because they didn't want to
19 respond to any e-mails or phone calls, to talk with them
20 about the job offer. So, once that happens, then we --
21 that is why we leave the job open until the person
22 actually starts, so we -- if they don't show up or they
23 don't accept the offer, then we still have the candidates
24 we can --

25 MR. KING: I would like to introduce Employer's

1 Exhibit 16 into the record.

2 MR. SMITH: No objection.

3 HEARING OFFICER NISLY: The exhibit is received.

4 **(Employer's Exhibit No. 16, received into evidence.)**

5 Q BY MR. KING: You have been present during the
6 testimony from earlier today?

7 A Yes.

8 Q Just -- I don't know if this is the right term...
9 Did Mr. Harwood or someone else explain to you
10 early in 2020, at least what the Company was wanting to
11 do, from the standpoint of hiring?

12 A Yes. This is where it started out in the payroll
13 systems, and I was told that these would be under our
14 umbrella at this point, and a lot of quarries we were
15 going to be at, and we wanted to hire some additional
16 people. Actually be a portable crew.

17 Q Okay. I don't do these postings, whatever -- were
18 either of these boards -- is that kind of stuff being
19 explained to them, you know, roving crew, or a --

20 A Yes, it is part of the job description, as well.
21 There are somethings in there that indicate a portable
22 crew.

23 Q Do you actually post the job description?

24 A Yes.

25 Q Oh, okay. Well, that explains that.

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1 So, the job description that you updated with
2 Jacci, in March, or whatever, 2020, it would actually be
3 part of your posting --

4 A Yes.

5 Q To all of these sites?

6 A Yes.

7 Q Including the internal ones, the HR and --

8 A Correct.

9 Q Well, that abbreviates that.

10 Is there anything out of the ordinary, from your
11 perspective, to what the managers needs from, just from
12 a hiring standpoint, from your perspective?

13 A Just the fact that there was multiple job duties in
14 this position. I think it is really difficult to find
15 somebody that is going to have all of those skillsets,
16 so he is looking for the candidate to have so much
17 experience, but we also know that it is going to be very
18 difficult to find somebody that can fill all of those
19 roles.

20 Q Okay. Would you agree or concur, just from your
21 vantage point, as part, as you know, that the game plan
22 in 2021 is to gear back up earlier next year, and to try
23 to get these fifteen or twenty people hired?

24 A Yes, we will post more like this. It is going to
25 be -- usually in the wintertime, we don't do a lot of

1 posting.

2 Q So it is nothing unusual --

3 A No.

4 MR. KING: I believe that is all of the questions
5 that I have for this witness.

6 MR. SMITH: I believe I do have -- go ahead.

7 HEARING OFFICER NISLY: I was just going to tell
8 you to go.

9 MR. SMITH: Okay. I won't have too many questions
10 for you.

11 CROSS EXAMINATION

12 Q BY MR. SMITH: Do you use the same, whatever this
13 system is, for postings at like Willard or Galloway?

14 A Yes. We just have one system.

15 Q Okay. And do you post the entry level wage rate
16 for positions at Willard and Galloway?

17 A We don't include *[voice trailed off -*
18 *indiscernible]*

19 Q You need to speak up.

20 THE COURT REPORTER: Can you repeat that?

21 THE WITNESS: We don't always include the -- the
22 amount of wage, but it is usually gone over during the
23 interview process.

24 Q BY MR. SMITH: So, is it your understanding that --
25 that Galloway and Willard pay a higher entry rate of pay

1 than does positions for the roving crew?

2 A Entry level? I don't believe there is much more on
3 the entry level. *[Voice transmission garbled and*
4 *dropped]*

5 Q I'm sorry, I couldn't hear you.

6 A Okay.

7 MR. KING: Yeah, you really need to speak up.

8 THE WITNESS: There is always going to be an entry-
9 level amount and it is usually around the same amount.

10 Q BY MR. SMITH: Okay, are you aware of whether or
11 not people paid at Willard are paid differently than
12 similarly situated workers in the roving crew, and if
13 you are not, I don't want to force you to answer. I am
14 just curious?

15 A There are some jobs that pay differently that are
16 non-union.

17 Q Okay. Is it possible that there might be -- these
18 same job sites might have competing applications? For
19 example, an application for an opening at Willard
20 running concurrent with an application, or I should say,
21 a job posting at --

22 A Yes.

23 Q Go ahead.

24 A No, finish. Sorry.

25 Q Yeah, is it possible you might have more than one

1 quarry location to have job openings at the same time?

2 A Yes.

3 Q And did that happen, to your knowledge, in 2020?

4 A Yes.

5 Q Okay. With -- with which quarry, if you can
6 recall.

7 A Galloway.

8 Q Do you remember when the Galloway position was
9 posted?

10 A I don't recall. I would have to look at -- I would
11 have to look at my recruiting system to see when that
12 was.

13 MR. KING: You are going to have to speak as loud
14 as you can.

15 THE WITNESS: I don't recall. I would have to look
16 that up in the recruiting system.

17 Q BY MR. SMITH: And without giving a specific date,
18 do you remember like was it the summertime or do you --
19 do you --

20 A It was the summertime.

21 Q Okay. And I know we touched on this, but I am not
22 sure I got a complete answer.

23 Do you know, and it is okay if you don't, but do
24 you know if the rate of pay for a Production Worker at
25 Galloway is greater than the rate of pay for a

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1 Production Worker at -- on the Universal Crew, as the
2 positions are described in the job postings?

3 A The rate of pay is different.

4 Q But -- but is -- is that rate higher or lower than
5 the rates for the non-union quarries?

6 A I think it is higher.

7 Q Okay.

8 MR. SMITH: No further questions.

9 REDIRECT EXAMINATION

10 Q by MR. KING: I -- I don't know is there a limit on
11 questions as to the Laborer unit employees or Teamsters
12 or Operating Engineers, or whatever, but the question
13 is, if you have competing job postings at Willard, do
14 you recall whether they were Teamster, Operating
15 Engineers, Laborers, or even non-union positions at
16 Willard this year?

17 A I think we had one at Willard.

18 Q In what category? Laborers, Operating Engineers,
19 Teamsters, or non-union?

20 A It was a union.

21 Q And which of the three, if you recall?

22 A I am trying to remember.

23 Willard doesn't have a lot of turnover. I am
24 trying to remember if there was even one.

25 *[Long pause]*

1 Q Okay, let's shift to Galloway. That's fair.

2 We have Boilermaker positions, and I assume we have
3 non-union positions, like a Stacey Tennis or whomever.
4 Are the job postings that occurred at Galloway, say in
5 the summer months, do you recall how many there were,
6 and were they union or non-union?

7 A For Galloway, I think there was a couple postings,
8 and they were in the summertime.

9 Q Union or non-union?

10 A They were union.

11 Q Do you remember what classifications?

12 A You mean the type of role they were in?

13 Q Yes, production, maintenance --

14 A It was the same thing.

15 Q Okay. And do you know whether they were
16 successfully filled or not?

17 A They were successfully filled. I don't know if it
18 was a posting we may have taken down, because just
19 because *[Voice trailed off]*.

20 Q And when you posted this for Galloway, was it clear
21 in that posting, that it was hired -- that they would be
22 employed only for that quarry?

23 A The posting was specific to what quarry it was.

24 Q All right, so they wouldn't even have known about
25 the posting unless they applied for it, for the roving

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1 crew.

2 *[Talking over each other]*

3 A They would have seen both postings.

4 Q Do you recall anyone applying for Galloway also
5 applying for the roving crew?

6 A Yes, there were people applying for both.

7 Q They applied for both?

8 A Uh-huh.

9 Q And when they were interviewed, did they have the
10 choice to go either way if they were qualified?

11 A Yes.

12 Q And they chose Galloway?

13 A They chose Galloway. That was part of the
14 decision.

15 Q Okay.

16 MR. KING: Okay, I think that clarifies that.

17 Those are the only questions I have of her.

18 MR. SMITH: I have no further questions.

19 Thank you.

20 HEARING OFFICER NISLY: I have a couple questions.

21 EXAMINATION BY THE COURT

22 HEARING OFFICER NISLY: On Employer's Exhibit 13
23 and 16, I am just trying to decipher and clarify what --
24 what is going on here.

25 Is that for the same job posting, only different

1 pages of it? Because we have got the posting start date
2 was October 21st, and the age of it right now is 57
3 days. Is that all the same thing or not?

4 THE WITNESS: Yeah. So Exhibit 13 and 16 go
5 together.

6 HEARING OFFICER NISLY: Okay, they do. I thought
7 so.

8 So, this is still open, and it is still open for --
9 okay, where did I see that? The job posting it says,
10 "7." Does that mean how many of these positions are
11 available, in like the middle of the top -- it says,
12 "Plant Maintenance % Production, Fair Play, Missouri,
13 Job Requisition Detail, Candidates 10, Job Posting 7."

14 Does that mean seven of these Production and
15 Maintenance positions are available?

16 THE WITNESS: No, that is job postings.

17 HEARING OFFICER NISLY: Okay. I am -- I was just
18 trying to understand what it is.

19 THE WITNESS: Sure.

20 HEARING OFFICER NISLY: But this job posting is
21 still open at this time?

22 THE WITNESS: Yes, it is.

23 HEARING OFFICER NISLY: Okay, thank you.

24 MR. KING: I have nothing further off of that with
25 this witness.

1 HEARING OFFICER NISLY: Okay, you are excused.

2 Thank you, Robin.

3 THE WITNESS: Thank you.

4 *[Witness excused]*

5 MR. KING: The Employer has no additional evidence
6 to present.

7 HEARING OFFICER NISLY: Okay.

8 MR. KING: I don't know if it is a -- but we rest,
9 or whatever.

10 HEARING OFFICER NISLY: All right, Mr. Smith?

11 MR. SMITH: And I hope everyone is happy with a
12 couple -- I did have him on-call to testify, and he was
13 very gracious and lent his time to this hearing, but I
14 don't think it will be necessary that he provide further
15 testimony. So, I think we can wrap up for the day, and
16 then the other bit of news that I think, Mr. King, might
17 be happy with, is, you know, based on the testimony that
18 was provided, I don't see a need to pursue the subpoena
19 any further.

20 HEARING OFFICER NISLY: So it is withdrawn?

21 MR. SMITH: Yes.

22 HEARING OFFICER NISLY: Okay. All right, well, we
23 have the stuff at the end, and please forgive me if I
24 bumble through it, because I haven't done it before.

25 It says I am supposed to obtain on the record the

1 exact final position of the parties regarding the unit
2 contentions, just anything that we raised during here.

3 Mr. Smith, do you still, on the scope of it -- so
4 will it still be just the Marshfield and Fair Play
5 quarries, or can we categorize it as this "Roving Crew"
6 or "Universal Crew?"

7 MR. SMITH: If -- would it be okay if I was able to
8 speak with Jason about that the first thing tomorrow,
9 and provide an answer to you, or do you need --

10 HEARING OFFICER NISLY: Well, you can put it in
11 your brief.

12 MR. SMITH: Okay, that is what I would like.

13 HEARING OFFICER NISLY: That will be fine.

14 And, I am understanding, Mr. King, the Employer's
15 position is that the Unit Scope should encompass anybody
16 involved in this Universal Crew, which is about seven to
17 eight locations? Is that correct?

18 MR. KING: Yes, ma'am. Yes, that has not changed.

19 HEARING OFFICER NISLY: Okay. The total number in
20 the unit sought, and we know.

21 Sorry, I am mumbling; mumbling and bumbling in the
22 same record. I apologize, but...

23 Okay, Petitioner, do you wish to proceed to an
24 election in any alternate unit if the unit sought is
25 found to be inappropriate by the Regional Director or

1 the Board?

2 MR. SMITH: In an election?

3 HEARING OFFICER NISLY: If you don't give the exact
4 unit that you petitioned for, do you still want to go to
5 election, or is it that one or nothing?

6 MR. SMITH: I believe at this point --

7 HEARING OFFICER NISLY: We don't know.

8 MR. SMITH: We don't know, but I think we are
9 leaning toward going forward with an immediate election,
10 but I would like to discuss that with the Union first.

11 HEARING OFFICER NISLY: Sure.

12 MR. SMITH: Before I provide an answer.

13 HEARING OFFICER NISLY: Okay, and I think we have
14 already heard from the parties that they don't have any
15 further witnesses or evidence that you wish to present;
16 is that correct?

17 MR. SMITH: Correct.

18 HEARING OFFICER NISLY: Okay.

19 MR. KING: That's correct.

20 HEARING OFFICER NISLY: Okay. What is the
21 estimated length of the transcript, Jen?

22 THE COURT REPORTER: Probably 250.

23 MR. KING: Can't hear her.

24 HEARING OFFICER NISLY: Are you still muted?

25 THE COURT REPORTER: 250.

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1 HEARING OFFICER NISLY: Okay. Thank you.

2 [Long pause]

3 HEARING OFFICER NISLY: All right, now -- okay, I
4 am just reading this.

5 Now, I would like to explore election details in
6 the event an election is directed.

7 If an election is directed, does any party which is
8 entitled to receive the Voter List, that would be the
9 Petitioner, wish to waive the ten-day or any portion of
10 the ten-day requirement?

11 MR. SMITH: I'm sorry, can you repeat the question?

12 HEARING OFFICER NISLY: The Petitioner is entitled
13 to have the list ten days before the election, and
14 generally, at the time that the Decision is issued, the
15 Employer is granted two days to get that list together.
16 So, when they are figuring out how quickly to make the
17 election after the Decision is issued, they have to make
18 it at least twelve days to take care of that, unless
19 somebody waives some time to have the list. So, if you
20 waived five days, then the election could be the next
21 week, or something like that.

22 It is for the Decision Writer to help them to
23 decide what he needs to put in the Decision, because
24 those are already figured out when they actually issue a
25 Decision.

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1 MR. SMITH: Given the size of the unit and that it
2 is not a terribly big unit at this point, you know, we
3 would really only want to waive that in the direction
4 that accelerated the election.

5 So, we would --

6 HEARING OFFICER NISLY: So if you waived some days,
7 like if you waived five days -- I am not asking you to,
8 but I am just giving you the option so that they know
9 what is going on.

10 MR. SMITH: Yes, we would be willing to waive that
11 amount of time which results in a quicker election,
12 absolutely.

13 HEARING OFFICER NISLY: Okay, so can we say five
14 days, or some other number?

15 MR. SMITH: That works for us.

16 HEARING OFFICER NISLY: Okay. Has either party's
17 position changed concerning the election details
18 provided in its Petition, Statement of Petition, or
19 Responsive Statement of Position? Has anybody changed
20 anything from what they have already put in there, what
21 you have asked for?

22 I believe the Employer asked for it to be
23 dismissed, or in the alternative, to not have it until
24 April; is that correct, Paul?

25 MR. KING: You want me to go first?

1 HEARING OFFICER NISLY: Yes.

2 MR. KING: Sure. Nothing has changed other than
3 what I clarified at the beginning, where there was a
4 mistake on the date. We would propose an election, I
5 believe, on --

6 HEARING OFFICER NISLY: Right. You wanted to make
7 it on Friday instead of --

8 MR. KING: Yes.

9 HEARING OFFICER NISLY: Okay.

10 MR. KING: Right, the 7th through the 14th; as far
11 as the expanding unit principle, the seasoned employer
12 principle, that has not changed.

13 HEARING OFFICER NISLY: Right.

14 MR. KING: The supervisory status of Camrin has not
15 changed, and I can't remember -- I believe in the
16 Petition, the Petitioner had requested a mail ballot,
17 and I -- I believe, we took the position that it should
18 be an in-person or manual ballot, but I don't know if
19 that is in our Statement of Position or not. It is
20 certainly our position, and that has not changed.

21 HEARING OFFICER NISLY: Okay, well, as I believe we
22 talked about before, if you want to lobby for a manual
23 election, that is something that you would need to put
24 in your brief, and the Decision Writer will take that
25 into consideration, and it is just not litigable, so we

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1 did not litigate, but you can put forth all of your
2 reasons in your --

3 MR. SMITH: I had a question on --

4 HEARING OFFICER NISLY: Yes.

5 MR. SMITH: Including that issue in our brief, are
6 we -- you know, I am guessing the record is closed.
7 Some of the factors that were announced by the Board, in
8 that recent decision in early November, do require sort
9 of a factual analysis, are the parties permitted, for
10 purposes of their brief, to rely upon extra records,
11 news articles, things about --

12 HEARING OFFICER NISLY: Sure.

13 MR. SMITH: -- your County's --

14 HEARING OFFICER NISLY: Well, yeah. Because that
15 is kind of what that -- that case, that -- that *Aspirus*
16 *Keweenaw* -- whatever, that you guys both have access to,
17 correct?

18 MR. SMITH: Correct.

19 HEARING OFFICER NISLY: So it should have the
20 necessities, what kind of information you would need to
21 put in there to convince them to have a manual election
22 as opposed to a mail ballot election, or you can turn it
23 around and say, "But there is COVID everywhere and it
24 is getting worse," for example, if that is part of it,
25 if you are saying, "We really believe it should be a

1 mail ballot election." So I would take that as the
2 latest guidelines for what kind of information they are
3 looking for to make a decision on whether it would be
4 mail or whether it would be manual, if they decide to
5 hold an election at this time.

6 MR. KING: We don't -- we aren't going to argue
7 that position now. You have got the new case that came
8 down from the NLRB itself, so it speaks for itself.
9 Yes, we both are aware of that case, both have seen it.

10 There is the new GC-2101, November 10, memorandum,
11 based on that case, which we both have access to, which
12 also references the earlier July 6, 2020 GC Memorandum
13 20-10.

14 This stuff right here is what John Hopkins prints
15 off, everything that you would ever want to know about
16 COVID, and a little note, that is why I put these
17 counties into the record there, because it is my
18 understanding that the full disclosure is that none of
19 this makes any difference until we have the date of the
20 Decision.

21 HEARING OFFICER NISLY: And --

22 MR. KING: Then if we go back fourteen days from
23 that date, which doesn't exist yet. So all this is is
24 nice historical stuff as of today or yesterday, or
25 whenever my people printed it off.

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1 So, at least that is what the GC is trying to say,
2 that it will work around. Obviously, we will look for
3 that data, when that date is set, then you go back
4 fourteen days, if this county, of wherever these
5 quarries are, has a problem, then we will say, let's
6 just move it to this county where it is not a problem.

7 I just want to be open.

8 HEARING OFFICER NISLY: Well.

9 MR. KING: We have, I believe, six different
10 counties covered by these eight positions, six, and so
11 we will find one that is COVID-friendly, our position.

12 HEARING OFFICER NISLY: Right.

13 Did we put the payroll cycle on the record yet?

14 MR. KING: Well, there was testimony about a weekly
15 payroll cycle with -- ending -- I think it was Sunday
16 through Saturday, pay on the following Friday.

17 HEARING OFFICER NISLY: Right.

18 MR. SMITH: That is what I recall, too.

19 HEARING OFFICER NISLY: I thought I heard it, but I
20 just wanted to be sure.

21 I am still going through this.

22 Does any party anticipate the need for the Notice
23 of Election and ballots to be translated into any
24 language besides English?

25 MR. KING: No.

1 MR. SMITH: No.

2 HEARING OFFICER NISLY: All right. Okay.

3 The Regional Director will issue a Decision in this
4 matter as soon practical, and will immediately transmit
5 the document to the parties and their designated
6 representatives by e-mail -- by e-mail. That is how it is
7 going to be transmitted.

8 If an election is directed, the Employer must provide
9 the Voter List to be timely filed and served. The Voter
10 List must be received by the Regional Director and the
11 parties named in the Direction, within two business days
12 after the issuance of the Direction, unless a longer
13 period, based on extraordinary circumstances is specified
14 in the Decision and Direction of Election.

15 A Certificate of Service on all parties must be filed
16 with the Regional Director when the Voter List is filed.
17 The Region will no longer serve the Voter List.

18 The Employer must submit the Voter List in an
19 electronic format, approved by the General Counsel, unless
20 the Employer certifies that it does not have the capacity
21 to produce the list in the required format.

22 The List must be filed in a common everyday
23 electronic file formats that can be searched.
24 Accordingly, unless otherwise agreed to by the parties,
25 the List must be provided in a table in a Microsoft Word

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1 file, or a file that is compatible with Microsoft Word.
2 The first column of the List must begin with each
3 employee's last name, and the list must be alphabetized,
4 overall, because we are not doing departments here, by
5 the last name. Because the List will be used during the
6 election, the font size of the list must be the
7 equivalent of Times New Roman, 10 or larger, otherwise I
8 can't see it. That font does not need to be used, but
9 the font must be that size or larger. A sample optional
10 form for the List is provided on the NLRB website at
11 www.NLRB.gov.

12 The Board has stated that it is presumptively
13 appropriate for the Employer to produce multiple
14 versions of the List where the data required is kept in
15 separate databases or files, so long as all of the lists
16 link the information to the same employees, using the
17 same names, in the same order, and are provided within
18 the allotted time (see 79 Federal Register 74356). If
19 the Employer provides multiple lists, the list used at
20 the election will be the list containing the employees'
21 names and addresses. This List must include the full
22 names, work locations, shifts, job classification, and
23 contact information, including home addresses, available
24 personal e-mail addresses, and available home and
25 personal cellular telephone numbers of all eligible

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1 voters.

2 The Employer must also include in a separate
3 section of that list, the same information for those
4 individuals the parties have agreed will be permitted to
5 vote, subject to challenge, or those individuals, who
6 according to the Decision and Direction of Election,
7 will be permitted to vote subject to challenge.

8 While I am thinking about it, Jen, have all exhibits
9 been received? I think I missed the very first one. Are
10 all of the exhibits received?

11 MR. SMITH: We would so agree.

12 MR. KING: Might as well pile on Ryan's, just to make
13 sure.

14 MR. SMITH: I agree. Every exhibit was received from
15 my perspective.

16 HEARING OFFICER NISLY: Okay. It is my
17 understanding, and let me make sure that I understand that
18 you guys want to file briefs rather than having Oral
19 Arguments at the end. Is that right?

20 MR. KING: Yes.

21 MR. SMITH: Yes.

22 MR. KING: I was waiting for the Petitioner to go
23 first, but yes.

24 HEARING OFFICER NISLY: Well, you both were talking,
25 so, I just wanted to put it on there so it is official.

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1 Jen, am I missing anything?

2 THE COURT REPORTER: I don't believe so.

3 HEARING OFFICER NISLY: Okay, the hearing is -- oh,
4 I'm sorry. I'm sorry. No, it is not. I take it back.

5 Paul, I apologize?

6 MR. KING: There is a circumstance, and it may just
7 be on me.

8 I am going to be on a little holiday trip, or
9 whatever you want to call it, with my wife on Sunday and
10 Monday, and then, can the parties agree to have it
11 Tuesday, or is that just a "no-no," and you are stuck?

12 HEARING OFFICER NISLY: I -- let me confer.

13 Yes, you can ask.

14 MR. KING: All right, can I have an extra day?

15 MR. SMITH: We will not object.

16 HEARING OFFICER NISLY: We are going off the record.

17 *[Off the record]*

18 HEARING OFFICER NISLY: Okay, yeah, it is okay.

19 The brief will be due on Tuesday, November 24th,
20 and the parties are reminded that they should request an
21 expedited copy of the transcript -- I think you just did
22 that -- from the Court Reporter. Late receipt of the
23 transcript will not be grounds for an extension of time
24 to file briefs if the Regional Director has allowed
25 post-hearing briefs, which he did.

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1 If there is nothing further, the hearing will be
2 closed.

3 MR. KING: I --

4 HEARING OFFICER NISLY: What? What?

5 MR. KING: I thought you wanted us to respond.

6 The Employer has nothing further.

7 HEARING OFFICER NISLY: Okay. Petitioner?

8 MR. SMITH: The Petitioner has nothing further.

9 Thank you.

10 MR. KING: Thank you all.

11 HEARING OFFICER NISLY: And thank you for not
12 making this as horrible as it could have been.

13 The hearing is now closed.

14 ***[Whereupon, the hearing was closed at 4:51 p.m.]***

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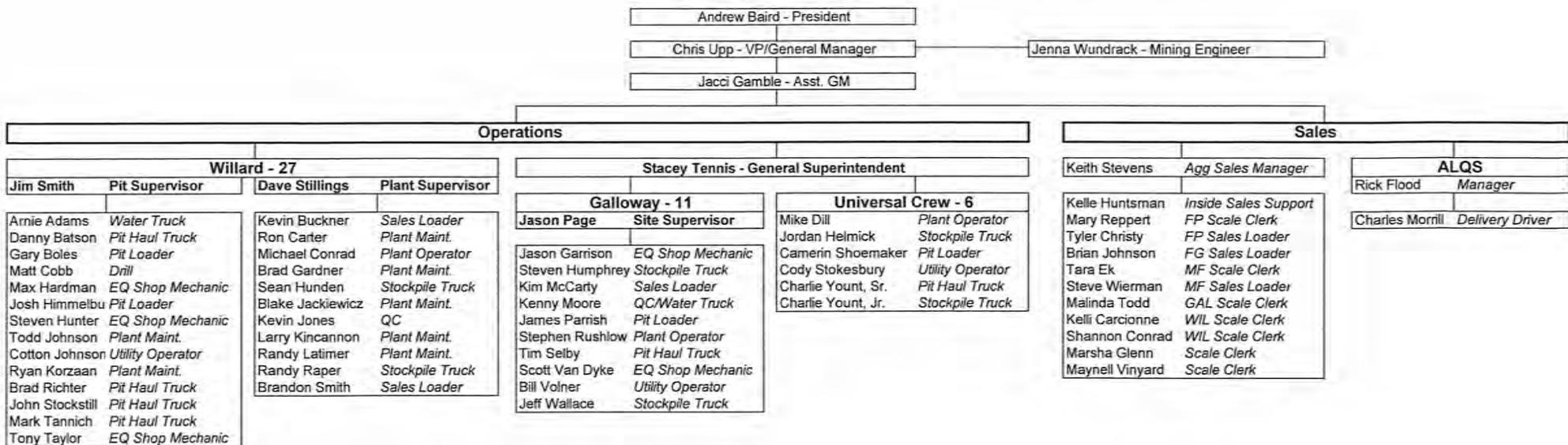
CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), in the matter of **CONCO QUARRIES, INC. (Employer) and HEAVY CONSTRUCTION LABORERS' LOCAL No. 663, Affiliated with LABORERS' INTERNATIONAL UNION OF NORTH AMERICA (Petitioner)**, Case No. 14-RC-267769, on Monday, the 16th of November, 2020, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, at the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected exhibit files are missing.


Jennifer Molinaro, Official Reporter

APPENDIX 4

Conco Quarries - Org Chart



NLRB Case No. 17-RC-267769 Employer: Conco Quarries, Inc. Petitioner: Heavy Construction Laborers Local #663 11/16/20 Representation Case Hearing	Employer Exhibit 5
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APPENDIX 5

Date Range: 01/01/20 - 11/07/20

Employee	Total Hours
Job: 000465. Stone - Fair Play Quarry	
639526 Dill, Michael	493.75
639530 Willoughby, Kristopher	409.75
639531 Looney, Dayton	190.25
639532 Shoemaker, Camrin	407.25
639552 Yount, Charles III	396.75
	1,897.75
Job: 000496. Stone - Marshfield Quarry	
639526 Dill, Michael	834.00
639530 Willoughby, Kristopher	11.50
639531 Looney, Dayton	11.50
639532 Shoemaker, Camrin	827.50
639552 Yount, Charles III	861.75
639645 Yount, Charles II	804.25
639674 Stokesberry, Cody	702.25
640002 Helmick, Jordan	527.75
	4,580.50
Job: 000497. Stone - Fair Grove Quarry	
639532 Shoemaker, Camrin	87.00
	6,565.25

APPENDIX 6

10 Year Average Galloway Quarry

