UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

KALEIDA HEALTH,

Employer,

and

CONCERNED CARPENTERS FOR A DEMOCRATIC UNION

Petitioner,

Case 3-RC-077821

and

BUFFALO BUILDING & CONSTRUCTION TRADES COUNCIL, AFL-CIO,

Intervenor.

REQUEST FOR REVIEW OF
REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

BACKGROUND AND FACTS 1

The Parties And The Currently-Governing Collective Bargaining Agreements. 1

The Petition And The Proposed Bargaining Unit. 2

Proceedings Before Region 3 Of The NLRB. 6

COMPELLING REASONS FOR REVIEW 6

ARGUMENT 7

POINT I The Regional Director Erred In Her Application Of The "Health Care Rule" To This Case. 8

A. The Regional Director Ignored Key And Material Facts In The Record. 8

B. The Regional Director Departed From Board Precedent. 13

C. Even If The Health Care Rule Is Applied, There Are Extraordinary Circumstances Which Require A Different Outcome Than That Reached In The June 7 Decision. 15

POINT II The Regional Director Erred By Failing To Properly Apply The "Community Of Interest" Standard To The Petitioned-For Bargaining Unit. 18

CONCLUSION 25

AFFIDAVIT OF SERVICE BY E-MAIL on all parties to this matter 26

TABLE OF AUTHORITIES

Page

Cases

Allis Chalmers Mfg. Co., 77 NLRB 719 (1948) 21

American Potash & Chemical Corp., 107 NLRB 1418 (1954) 21

Beaunit Corp., 224 NLRB 1502 (1976) 24

Dezcon, Inc., 295 NLRB 109, 111 (1989) 18

Kaiser Foundation Hospitals, 312 NLRB 933 (1993) 13, 15, 22

Mallinckrodt Chemical Works, 162 NLRB 387 (1966) 21, 23

NLRB v. Action Automotive, Inc., 469 U.S. 490, 491 (1985) 18

NLRB v. Catalytic Industrial Maintenance Co., 964 F.2d 513 (5th Cir. 1992) 18

NLRB v. Hearst Publications, Inc., 322 U.S. 111 (1944) 17

NLRB v. Yeshiva University, 444 U.S. 672, 691 (1980) 17

Packard Motor Car Co. v. NLRB, 330 U.S. 485 (1947) 17

Specialty Healthcare and Rehabilitation Center, 357 NLRB No. 83 (2011) 18, 21

Teamsters (California Dump Truck Owners Assn.), 227 NLRB 269, 272 (1969) 3, 9

Turner Industrial Group, LLC, 349 NLRB 428 (2007) 21

Page

Statutes And Regulations

29 U.S.C. §158(f) 3, 8-9

29 U.S.C. § 159(b) 7, 17

29 U.S.C. §160(k) 20

29 C.F.R. §103.30(a) 8, 15

29 C.F.R. §103.30(b) 8

29 C.F.R. §102.67(c) 7, 17

Advice Memorandums

Wegman's Food Markets, Inc., 3-CA-17272 (1992) 13

BACKGROUND AND FACTS

The Parties And The Currently-Governing Collective Bargaining Agreements.

The Employer, Kaleida Health ("Kaleida"), operates five (5) acute-care hospitals in the Western New York area. Intervenor Buffalo Building and Construction Trades Council ("BBCTC") is an organization consisting of local construction trade unions. Kaleida has several collective bargaining agreements ("CBAs") with labor organizations, including a Memorandum of Agreement ("MOA") with the BBCTC. A copy of the MOA is attached as **Exhibit A.** The MOA allows Kaleida to "directly contract hire individual employees" from the BBCTC, as would a construction building contractor. Exhibit A. Notably, the MOA lists only seven (7) terms and conditions of employment, including merely the start and end time, an apprentice-to-journeyman ration (with reservations), and a few employer rights (to "select and use the most efficient methods or techniques of construction," no "early quits" or organized coffee breaks, no minimum shift work, no non-productive personnel, and that crew size is at the discretion of Kaleida). *Id.* All other terms and conditions of employment are governed by pre-existing CBAs with the respective craft unions that signed the MOA. *Id.*

Kaleida's MOA with the BBCTC is an agreement under section 8(f) of the National Labor Relations Act ("Act"), which allows employers "engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members… ." 29 U.S.C. § 158(f); see also, transcript of the April 30, 2012 representation hearing held before Region 3 of the National Labor Relations Board at page 33. (hereinafter cited to as "TR. (page number)." A copy of the April 30, 2012 transcript is attached at **Exhibit H.** The MOA was first entered into by Kaleida

and the BBCTC in 2006, and was later renewed in 2007 and 2011. TR. 32 – 33, 86. The Employer and BBCTC spent merely a half-hour negotiating the first MOA, and then only a few minutes each time it was renewed primarily to change the dates of the agreement. TR. 83 – 86. All of the core issues of collective bargaining, such as wages, contributions to trust funds, etc., were not negotiated by Kaleida and the BBCTC. TR. 85. Such core terms and conditions of employment were merely incorporated into the MOA by way of the CBAs of the respective craft unions that were signatories to the MOA. TR. 85; Exhibit A.

On March 30, 2012, Petitioner Concerned Carpenters for a Democratic Union ("CCDU") filed a petition seeking representation of "all journeymen and apprentice carpenters and millwrights who are employed by the Employer and who perform work on building, construction and renovation projects within the Employer's existing facilities." A copy of the March 30, 2012 Petition is attached as **Exhibit B.** The employees in the petitioned-for unit were already represented in the MOA by the Northeast Regional Council of Carpenters ("NRCC"), which is one of the craft unions that is a signatory to the MOA through its affiliate, Carpenters Local Union No. 289. Exhibit A. The CBA which contains the vast majority of the terms and conditions of employment for the carpenters in the petitioned-for unit is an agreement between the NRCC and various multi-employer associations (the "Associations"). A copy of the 2011-2016 CBA between the NRCC and the Associations is attached as **Exhibit C** ("NRCC CBA"). Clearly, the NRCC CBA is also an 8(f) agreement within the construction industry.

The Petition And The Proposed Bargaining Unit.

Petitioners seek to carve out a unit of apprentice and journeymen carpenters and millwrights from an existing unit of construction employees employed by Kaleida. The collectively-negotiated agreements – both the MOA and the NRCC CBA – are section 8(f) pre-

hire agreements which would otherwise be unlawful if entered into with a non-construction industry employer, in this case an acute-care hospital. 29 U.S.C. §158(f); TR. 14, 33, 135. There was never a showing of majority support for the MOA and/or the NRCC CBA. The entering into of agreements outside of the construction industry without majority support is unlawful under the Act and constitutes an unfair labor practice. 29 U.S.C. §158(f).

The NRCC CBA contains provisions which are typical of construction industry agreements, including, among others, an eight (8) day union security clause (Exhibit C at Article 4), and a union-only signatory subcontracting clause (*Id.* at Article 24). The inclusion of such covenants in agreements negotiated with employers outside of the construction industry is unlawful. See, e.g., *Teamsters (California Dump Truck Owners Assn.)*, 227 NLRB 269, 272 (1969).

The Employer activities constitute the activities of a General Contractor in the construction industry. TR. 29-35, 41, 42. In contemplation of performing its construction renovation work in-house, Kaleida obtained a General Contractor's license from the City of Buffalo. TR. 41, 42. Kaleida's intent in entering the MOA and NRCC CBA was to perform construction work in-house. TR. 29, 30, 35. The Employer maintains a separate and distinct "Division of Construction and Planning" headed by Vice President and Chief Technology Officer David Croston. TR. 70.

The MOA led to the replacement of construction industry employers (i.e. outside contractors) who had performed similar work with the direct-hire employees covered by the MOA. TR. 35, 36, 83, 84. Certain BBCTC affiliates, including the International Brotherhood of Electrical Workers, Local 41, refused to sign the MOA. Consequently, Kaleida subcontracts its electrical work to a union electrical firm, Ferguson Electric. TR. 45, 118-121. Ferguson Electric

employs electricians to work side-by-side with the NRCC-represented carpenters, in the performance of renovation projects covered under the MOA. TR. 45, 118-120.

The Employer's needs which prompted the MOA included, in part, the "expeditious completion of small construction projects related to Kaleida renovations," "the timely and cost effective completion of the small projects," and "to enable the Employer to secure at all times a sufficient force of skilled carpenters." TR. 40, 41; Exhibit A; Exhibit C "Preamble." Conspicuously absent from the MOA is any mention of "maintenance work." Exhibit A. Kaleida prepares a budget for each construction project, purchases materials, gets the proper building permits, schedules and coordinates the different trade crafts and works with architects, etc., as would any general contractor employed in the construction industry. TR. 30, 31, 46, 47, 66. Among the projects worked on under the MOA are jobs valued in excess of $4.5 million dollars. TR. 33-36.

The work performed by the Employer's carpenters (and the Employer's other craft employees) has been in all respects, identical to that performed in the construction industry. TR. 84. Indeed, the carpenters employed pursuant to the MOA and NRCC CBA often have decades of experience in the carpentry trade. TR. 181-226. Kaleida lays off and hires construction workers, including carpenters, depending on its project needs. TR. 84. Such a flux in the workforce is a hallmark of the construction industry, wherein current and anticipated project needs establish employment levels and periodic changes to the same.

Maintenance workers employed by Kaleida are represented by the International Union of Operating Engineers ("IUOE") and the Service Employees International Union ("SEIU"). TR. 36. The CBAs covering said maintenance workers describes the work they perform, which is "maintenance type work," meaning "small break fix" and otherwise maintaining "existing

structures and mechanisms within the building." TR. 37, 71. The CBAs covering maintenance employees pre-existed the MOA. TR. 71. Kaleida did not enter into the MOA to supplement its maintenance crews. TR. 71-72.

Maintenance workers are assigned work by way of a "ticket system," whereby maintenance jobs and "break fix" jobs are submitted through tickets which are assigned to maintenance employees. TR. 38. Kaleida employees covered by the MOA are not assigned tickets. TR. 38. While maintenance workers are skilled in "troubleshooting," the construction workers working under the MOA take "something that doesn't exist, that exists on a piece of paper, through architectural drawings, construction drawings, and actually creating and building something new, using new materials, first-time use of materials to create … that structure." TR. 39. Maintenance employees lack the skills to perform the work under the MOA. TR. 39, 40, 50, 79, 80, 96. The work performed by the petitioned-for unit of carpenters involves construction projects lasting from weeks to months, costing anywhere from several thousand dollars to several million dollars. TR. 34 – 35; see also, Kaleida's list of in-house construction projects for 2009-2011, attached as **Exhibit D.** The Employer, during its last round of negotiations with its skilled maintenance units, made clear those units understood the line delineating maintenance work and construction work performed by the BBCTC represented employees. TR. 67.

The skills set, tolls, etc. of the BBCTC represented carpenters working at Kaleida is no different from the skills set, tools, etc. of the carpenters who worked on the Employer's latest new-build projects. TR. 72 – 75, 82, 200. The work performed by other crafts under the MOA (specifically, those represented by the Laborers International Union of North America, Local No. 210 and the NRCC) is no different from work done by those crafts while working for outside construction industry employers. TR. 72 – 75, 80, 138, 139, 105 – 107. Carpenters employed

under the MOA have received apprenticeship training in the carpentry trade, while maintenance workers represented by the IUOE and SEIU did not receive similar training. TR. 40, 192. The carpenters employed under the MOA spend 1% - 2% of their time performing simple maintenance tasks. TR. 81, 82, 195, 196. Meanwhile, the employees in Kaleida's maintenance bargaining units "do not engage in renovations" and the maintenance units and the current construction unit "are two different entities." TR. 93.

Proceedings Before Region 3 Of The NLRB.

A representation hearing took place before Region 3 of the NLRB on April 30, 2012. Petitioner submitted a timely post-hearing brief in support of the Petition. A copy of Petitioner's May 9, 2012 Brief is attached as **Exhibit E.** The Regional Director reached a Decision and Direction of Election on June 7, 2012 ("June 7 Decision"), denying the petitioned-for unit and direction an election for the entire unit currently covered by the MOA, including *every* craft employed in the Employer's construction unit. A copy of the June 7 Decision is attached as **Exhibit F.** Petitioner sought and was granted leave to file a request for review on or before June 29, 2012. A copy of the June 15, 2012 extension of filing a request to review is attached as **Exhibit G.**

COMPELLING REASONS FOR REVIEW

The Regional Director's June 7, 2012 Decision and Direction of Election should be reviewed because of the following reasons:

(1) A substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.

(2) The Regional Director's decisions on substantial factual issues are clearly erroneous on the record and such error prejudicially affects the rights of Petitioners.

ARGUMENT

Section 9(b) of the Act states in relevant part, "[t]he Board shall decide in each case whether, in order to *assure the employees the fullest freedom in exercising the rights guaranteed by this Act*, the unit appropriate for such purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof." 29 U.S.C. § 159(b)(emphasis added). The Regional Director, by way of her June 7, 2012 Decision and Direction of Election, flagrantly violated this fundamental principle of the Act by, in essence, trapping employees in a bargaining unit they never agreed to participate in, governed by a contract they never voted for, and as a result of the June 7 Decision, have no practical way of changing their situation.

As is demonstrated below, the June 7 Decision merits review for several reasons. As a threshold matter, the Regional Director herself admitted that this case "presents a novel issue," (Exhibit F at page 14) which clearly falls under the standards for review set forth in §102.67(c) of the Board's Rules and Regulations, as it raises "a substantial question of law or policy... because of (i) the absence of ... officially reported Board precedent." 29 C.F.R. §102.67(c).

Further, the Regional Director's complete disregard for material facts in the record and her ad hoc misapplication of Board precedent have resulted not only in prejudice against the Petitioner, but in the abandonment of the principles of workplace democracy found in the Act. Petitioner respectfully requests that the Board issue a ruling on this case that conforms to relevant Board precedent to the extent possible, is based on the material facts in the record, and supports the fundamental principles embodied in the Act.

I. The Regional Director Erred In Her Application Of The "Health Care Rule" To This Case.

Section 103.30 of the Board's Rules and Regulations ("Health Care Rule") sets forth the eight (8) appropriate bargaining units for acute care hospitals, and states in relevant part, "[e]xcept in extraordinary circumstances and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units" for petitions filed under sections 9(c)(1)(A)(i) or 9(c)(1)(B) of the Act. 29 C.F.R. §103.30(a). However, "[w]here extraordinary circumstances exist, the Board shall determine appropriate units by adjudication." 29 C.F.R. §103.30(b).

The facts in the record for this case establish that the Health Care Rule should not apply, as the bargaining unit employees of the Employer are primarily engaged in the building and construction industry for the purposes of evaluating the petitioned-for unit. The at-issue employees are erecting capital changes to Employer-owned buildings, and not performing maintenance work. Further, Board precedent clearly establishes that the Health Care Rule does not apply where, as here, a petition seeks to sever a separately-identified unit of employees from an existing unit rather than to create a new unit of previously un-represented employees. Finally, even if the Health Care Rule applies, the Regional Director applied it in the face of clearly extraordinary circumstances which necessitate a different outcome from that contained in the June 7 Decision and Direction of Election.

A. The Regional Director Ignored Key And Material Facts In The Record.

Petitioners seek to carve out a unit of apprentice and journeymen carpenters and millwrights from an existing unit of construction employees employed by Kaleida. The collectively-negotiated agreements – both the MOA and the NRCC CBA – are section 8(f) pre-hire agreements which would otherwise be unlawful if entered into with a non-construction

industry employer, in this case an acute-care hospital. 29 U.S.C. §158(f); TR. 14, 33, 135. There was never a showing of majority support for the MOA and/or the NRCC CBA. The entering into of agreements outside of the construction industry without majority support is unlawful under the Act and constitutes an unfair labor practice. 29 U.S.C. §158(f).

The NRCC CBA contains provisions which are typical of construction industry agreements, including, among others, an eight (8) day union security clause (Exhibit C at Article 4), and a union-only signatory subcontracting clause (*Id.* at Article 24). The inclusion of such covenants in agreements negotiated with employers outside of the construction industry is unlawful. See, e.g., *Teamsters (California Dump Truck Owners Assn.)*, 227 NLRB 269, 272 (1969).

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The Employer's needs which prompted the MOA included, in part, the "expeditious completion of small construction projects related to Kaleida renovations," "the timely and cost effective completion of the small projects," and "to enable the Employer to secure at all times a sufficient force of skilled carpenters." TR. 40, 41; Exhibit A; Exhibit C "Preamble." Conspicuously absent from the MOA is any mention of "maintenance work." Exhibit A. Kaleida prepares a budget for each construction project, purchases materials, gets the proper building permits, schedules and coordinates the different trade crafts and works with architects, etc., as would any general contractor employed in the construction industry. TR. 30, 31, 46, 47, 66. Among the projects worked on under the MOA are jobs valued in excess of $4.5 million dollars. TR. 33-36.

The work performed by the Employer's carpenters (and the Employer's other craft employees) has been in all respects, identical to that performed in the construction industry. TR. 84. Indeed, the carpenters employed pursuant to the MOA and NRCC CBA often have decades of experience in the carpentry trade. TR. 181-226. Kaleida lays off and hires construction workers, including carpenters, depending on its project needs. TR. 84. Such a flux in the workforce is a hallmark of the construction industry, wherein current and anticipated project needs establish employment levels and periodic changes to the same.

Maintenance workers employed by Kaleida are represented by the IUOE and the SEIU. TR. 36. The CBAs covering said maintenance workers describes the work they perform, which is "maintenance type work," meaning "small break fix" and otherwise maintaining "existing structures and mechanisms within the building." TR. 37, 71. The CBAs covering maintenance

employees pre-existed the MOA. TR. 71. Kaleida did not enter into the MOA to supplement its maintenance crews. TR. 71-72.

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The skills set, tolls, etc. of the BBCTC represented carpenters working at Kaleida is no different from the skills set, tools, etc. of the carpenters who worked on the Employer's latest new-build projects. TR. 72 – 75, 82, 200. The work performed by other crafts under the MOA (specifically, those represented by the Laborers International Union of North America, Local No. 210 and the NRCC) is no different from work done by those crafts while working for outside construction industry employers. TR. 72 – 75, 80, 138, 139, 105 – 107. Carpenters employed under the MOA have received apprenticeship training in the carpentry trade, while maintenance

workers represented by the IUOE and SEIU did not receive similar training. TR. 40, 192. The carpenters employed under the MOA spend 1% - 2% of their time performing simple maintenance tasks. TR. 81, 82, 195, 196. Meanwhile, the employees in Kaleida's maintenance bargaining units "do not engage in renovations" and the maintenance units and the current construction unit "are two different entities." TR. 93.

Such clear and undisputed facts lead to the conclusion that the petitioned-for unit is a construction craft unit, not subject to the Health Care Rule and certainly not a maintenance unit under the Health Care Rule. In the face of such overwhelming evidence, the Regional Director noted only the bargaining history of the MOA. Exhibit F at page 9. Even in this limited review of pertinent issues, the Regional Director nevertheless failed to address key facts. Specifically, while the Regional Director noted that the MOAs were "negotiated" by the parties, she failed to address the fact that the so-called "negotiations" were simply short meetings to put new dates in the MOA. TR. 86. Further, while the Regional Director remarked that "the MOA contains some terms and conditions of employment," the record clearly demonstrates that the two-page MOA contains *only a few terms and conditions of employment*, and otherwise simply defaults to the respective CBAs of the thirteen (13) individual crafts covered by the MOA, each originally negotiated by the representatives of the separate local unions and employers (other than Kaleida). Compare, Exhibit A and Exhibit C. Even if she had presented such facts accurately, however, they simply would not rebut the overwhelming evidence that the petitioned-for unit is a construction unit, not subject to the Health Care Rule. The Regional Director offered no other evidence from the record to support her conclusion that the Health Care Rule Applied. No attempt was made to rectify the fact that, under the Regional Director's theory, the unit covered by the MOA was working under an unlawful, non-construction pre-hire agreement.

Even more shocking is that the Regional Director was presented with an advice memorandum from the General Counsel, Division of Advice when an employer not generally known as being engaged in the construction industry will be, for the purposes of the administration of the Act, deemed "primarily engaged in the building and construction industry." *Wegman's Food Markets, Inc.*, 3-CA-17272 (1992). The Advice Memo analyzes facts virtually identical to those in the present case, and concluded that an employer can be deemed as primarily engaged in the building and construction industry for purposes of the Act when such factual criteria is met. *Id.* In response to Petitioner's presentation of the *Wegman's Food Markets* Advice Memorandum, the Regional Director chose simply to note that it was "not binding on the Board," regardless of the fact that it came from the Office of the General Counsel, intended to offer advice *to Regional Directors*, among others, and that "[t]he [Health Care] Rule cannot simply be ignored because an employer that is otherwise subject to the Rule, has chosen to perform its own in-house renovations," with no factual or legal support for such a conclusion.

B. The Regional Director Departed From Board Precedent.

> Section 103.30(c) [the Health Care Rule] is not applicable to petitions which seek to sever, or carve out, a group of employees from an existing unit, whether or not that unit conforms to those established by the Rule. By its terms, Section 103.30(c) applies only to petitions for 'additional units,' that is, petitions to represent a new unit of previously unrepresented employees, which would be an addition to the existing units at a facility.

Kaiser Foundation Hospitals, 312 NLRB 933, 934 (1993).

Contrary to this very clear holding by the Board, the Regional Director determined in her June 7 Decision that "[s]ection 103.30(c) does not authorize petitions to sever or carve out a group of employees from an existing nonconforming unit." Exhibit F at page 14. In order to support this clearly erroneous legal conclusion, the Regional Director's reasoning descends into

a mire of logical inconsistencies, factual inaccuracies, and conclusions completely free from factual or legal basis.

Specifically, after spending the first half of the Decision explaining why the Health Care Rule applied to the petitioned-for unit, the Regional Director determined that the Health Care Rule "is intended to apply only to petitions for a 'new unit of previously unrepresented employees,'" and that "the current collective-bargaining relationship between the Employer and the BBCTC and the signatory unions is not one that is clearly recognized by the Board under Section 103.30(c)." Exhibit F at page 14. With no legal or factual support, the Regional Director then concludes that "for the purposes of determining an appropriate unit, the craft employees at issue herein are akin to a residual unit of unrepresented employees, as only a Section 8(f) relationship exists pursuant to the pre-hire agreement between the Employer and the BBCTC and the signatory unions." *Id.* The Regional Director offers no legal support for how a group of employees, represented by a collective bargaining agent in an organized collective bargaining unit can possibly be considered to be "residual" or "unrepresented."

In an even more bizarre twist, the Regional Director then goes on to completely undermine her conclusion that the at-issue employees are "akin to a residual unit of unrepresented employees," and makes the argument that, in the alternative, they should be considered to be "a pre-existing non-conforming unit," which somehow enjoy "limited Section 9(a) representational status." *Id.* at page 17. The Regional Director offers no legal support for how a unit which was created only six (6) years ago – long after imposition of the Health Care Rule – could be considered "pre-existing" for the purposes of the application of the Healthcare Rule, nor does she explain or offer support for the absurd proposition that an employee can

somehow enjoy "limited [not defined by her] Section 9(a) representational status" when they are quite clearly covered by an 8(f) agreement.

Board precedent required the Regional Director to analyze the at-issue petition *without applying the Health Care Rule*, as the petition seeks to carve-out a unit from a larger pre-existing unit. *Kaiser Foundation Hospitals*, 312 NLRB at 934. By failing to do so, the Regional Director provided grounds for review of the June 7 Decision by the Board. The need for such review is made only more compelling by the Regional Director's illogical and self-contradictory analysis, leading to the absurd legal conclusions that the employees in a pre-existing bargaining unit are "residual," "unrepresented," in a "pre-existing non-conforming unit," or that they somehow enjoy "limited Section 9(a) representational status." Such legal conclusions are a clear departure from any known Board precedent and therefore should be reviewed by the Board.

C. Even If The Health Care Rule Is Applied, There Are Extraordinary Circumstances Which Require A Different Outcome Than That Reached In The June 7 Decision.

The Health Care Rule requires bargaining units for acute care hospitals to fall within eight (8) categories, "[e]xcept in extraordinary circumstances." 29 C.F.R. §103.30(a). The circumstances of this case are clearly extraordinary, and should the Health Care Rule apply, the petitioned-for bargaining unit should nevertheless be allowed representation under the Act.

On March 30, 2012, Petitioner filed a petition seeking representation of "all journeymen and apprentice carpenters and millwrights who are employed by the Employer and who perform work on building, construction and renovation projects within the Employer's existing facilities."

Such employees were already part of an established larger unit of employees employed by Kaleida, encompassing a multi-craft unit of construction employees, consisting of asbestos workers, boilermakers, bricklayers, cement masons, ironworkers, laborers, millwrights, painters,

plasterers, plumbers and steamfitters, roofers, road sprinklerfitters, and of course, carpenters. Exhibit A. Each craft covered by the MOA is represented by a labor organization that is a signatory to the MOA. *Id.* The MOA is an 8(f) pre-hire agreement, which refers to pre-existing CBAs with each of the relevant craft unions. *Id.*

The petitioned-for employees are currently governed by an 8(f) agreement between the NRCC and The Associations, which has been incorporated by reference in the MOA. Exhibit A, Exhibit C. Said employees, therefore, are in a bargaining unit they did not authorize to represent them, and governed by an MOA and a CBA that they did not vote for.

According to the Regional Director's June 7 Decision, the *only* appropriate unit for the relevant employees *is the one they are already in*, being a multi-craft unit governed by an MOA that cedes the overwhelming majority of the terms and conditions of employment to the various craft CBAs. Exhibit F. Therefore, the *only possible way* for the at-issue employees to have a say in their representation or otherwise affect the terms and conditions of their employment with Kaleida, is to convince the other craft workers in the existing bargaining unit to repudiate the MOA – which has the effect of repudiating their individual CBAs, bargained for by their own respective craft unions and tailored to their own specific needs and wants in their particular craft – in favor of a bargaining unit that would remove them from the protections of their own craft-oriented CBAs and the benefits contained therein, such as pension and employee benefit funds. Such an undertaking would be highly impractical, if not impossible; and for Petitioner's needs, completely undesirable.

Thus, the end result of the Regional Director's June 7 Decision is that the petitioned-for employees have been denied their fundamental rights under section 7 of the Act. They will not have the opportunity to bargain collectively through a representative of their own choosing, and

will instead be at the mercy of the Employer and the NRCC, who would be free to continue their 8(f) relationship with neither the consent nor the input of the relevant employees working under the MOA. The employees would never be able to invoke "the fullest freedom in exercising the rights guaranteed by this Act" as guaranteed by section 9(b). 29 U.S.C. § 159(b). Finally, the Board will have ceded its power to decide the unit appropriate for the purposes of collective bargaining to a single Employer representative and a single representative of the BBCTC, who meet for a few minutes every year to change the dates of the MOA. TR. 33, 63, 63, 134.

Such an outcome must surely be an "extraordinary circumstance" as described in the Health Care Rule. 29 C.F.R. §103.30(c). In other words, as the outcome of the Regional Director's over-zealous application of the Health Care rule flies in the face of the most fundamental rights and principals of the Act; surely an "extraordinary circumstance" is created, necessitating an entirely different approach. As the Supreme Court noted in *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111 (1944),

> [w]ide variations in the forms of employee self-organization and the complexities of modern industrial organization make difficult the use of inflexible rules as the test of an appropriate unit. Congress was informed of the need for flexibility in shaping the unit to the particular case and accordingly gave the Board wide discretion in the matter.

Id. at 134. Further, the Supreme Court has also noted, "[t]he issue as to what unit is appropriate for bargaining is one for which no absolute rule of law is laid down by statute, and none should be by decision." *Packard Motor Car Co. v. NLRB*, 330 U.S. 485, 491 (1947). The Supreme Court has been known to overturn a decision concerning representation where, as here, such a decision is based on "conclusory rationales rather than examination of the facts of each case." *NLRB v. Yeshiva University*, 444 U.S. 672, 691 (1980).

Thus, even if the Health Care Rule arguably may apply to the petitioned-for unit, the Regional Director erred and departed from precedent by failing to acknowledge that the outcome of her June 7 Decision would be to invalidate the section 7 rights of the at-issue employees and failing to realize that such an outcome most certainly would be an "extraordinary circumstance" warranting a different approach under the Health Care Rule itself.

II. The Regional Director Erred By Failing To Properly Apply The "Community Of Interest" Standard To The Petitioned-For Bargaining Unit.

The Regional Director applied the wrong standard to the petition by invoking the Health Care Rule in circumstances that clearly negate such an analysis. See, Point I(A) and (B), *infra.* The petitioned for unit is clearly a construction unit, and should be analyzed as such. *Id.* The test for whether a petitioned for unit is appropriate is the same in construction industry settings as it is generally:

> [i]n determining an appropriate unit in the construction industry, as in all other settings, the Board seeks to fill the objectives of insuring employee self-determination, promoting freedom of choice in collective bargaining, and advancing industrial peace and stability. Under the Act, *our task is to determine not the most appropriate or comprehensive unit, but simply an appropriate unit.* (*P.J. Dick Contracting*, 290 NLRB 150 (1988). In doing so, we look first to the unit sought by the Petitioner. If it is appropriate, our inquiry ends.

Dezcon, Inc., 295 NLRB 109, 111 (1989); see also, *NLRB v. Catalytic Industrial Maintenance Co.*, 964 F.2d 513 (5th Cir. 1992)(applying community of interest test in multi-craft unit covered by 8(f) agreement to sanction individual craft units); *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985)(in determining whether a proposed unit is appropriate, the Board's "focus is on whether the employees share a 'community of interest'"); *Specialty Healthcare and Rehabilitation Center*, 357 NLRB No. 83 (2011). Here, the carpenters share a longstanding and undeniable community of interest.

All the carpenters employed by the Employer work under the terms and conditions set forth in the NRCC CBA. Exhibit C. This 65-page, single-spaced document sets forth virtually all the economic and non-economic terms applicable to the petitioned for unit: wages, benefits, grievance procedure, subcontracting restrictions, union security arrangements including dues check-off, holidays, toll provisions, safety, substance abuse and background checks, jurisdictional dispute procedures, etc., etc. Notably, the other crafts which are parties to the MOA work under different economic and non-economic terms which are set in their respective collective bargaining agreements. The carpenters working for the Employer work under the same terms and conditions, indeed the same NRCC CBA, as carpenters employed by area contractors. Exhibit C. The NRCC CBA drives and determines carpenters' working terms and conditions whether at the Employer or outside union signatory contractors. TR. 43, 44, 168, 169, 189, 190.

The carpenters' jobsite stewards police the Employer's compliance with the NRCC CBA. They do not police the Employer's compliance with the other crafts' agreements. TR. 77 – 79, 123. Other crafts have their own stewards who are responsible for policing those crafts' agreements. TR. 103. Carpenters perform carpentry work only. They do not perform the work of the plumbers, electricians, painters, tapers, glaziers, asbestos workers, plasterers, laborers, etc. No different than on any construction site, the carpenters perform carpentry work, while other crafts perform their work. TR. 43, 135, 170, 171, 187 – 189, 224, 225. The tools utilized by carpenters are unique to the trade and require specialized training and skills to use. TR. 44, 188, 190, 200.

Each craft working under the MOA collects its own union dues based on the hours worked by its members. The BBCTC does not collect dues. TR. 108, 109. The dues from

carpenters go solely to their union, the NRCC. TR 135. The carpenters have their own New York State certified apprentice program, dedicated solely to training carpenters. TR. 190, 191. Carpenter-trained apprentices work for Kaleida. TR. 192.

Carpenter foremen direct the work of carpenters. Foremen from other crafts direct the work of their respective crafts, but never the work of carpenters. TR. 78, 104, 123, 183, 184, 189, 193, 194, 203, 205 – 207. The carpenters work side-by-side with craftpersons from other trades, which is no different from the general practice in the construction industry. In the construction industry, a multitude of bargaining units, divided by craft, is the norm on any construction side. TR 46, 76, 77, 121, 187, 189, 200. The Employer's supervision structure mirrors that generally found on construction sites containing a multitude of craft bargaining units. The top supervision will have general authority, while lower-level supervision will be more specialized according to craft. TR. 90, 193, 194, 195.

Carpenters utilize their own gangboxes for storage of their tools and materials. Only the carpenters have keys to their gangboxes. TR. 45, 190, 191. Maintenance employees have their own separate equipment and storage boxes. The tools of maintenance employees are not as advanced as the tools utilized by carpenters working under the MOA. TR. 213 – 215.

The carpenters have engaged in jurisdictional disputes with other crafts employed under the MOA. TR. 82, 83, 114, 141, 142, 173. These "protection of craft work" disputes are common in the construction industry where crafts are organized on a bargaining unit by bargaining unit basis and work side-by-side on projects. 29 U.S.C. §160(k).

There has never been any showing, of any nature, that the Employer's construction employees desire to organize without regard to craft lines. There has never been a showing of support for the BBCTC, or any of the constituent crafts including the NRCC and/or its

predecessors. The only showing of interest by the Employer's carpenters has been that provided by the Petitioner pursuant to a craft designation. TR. 135. There is no interchange among the employees, including carpenters, working under the MOA. That is, carpenters stick to performing carpentry work, plumbers to plumbing work, laborers to laborers work, etc. As stated above, each craft works under the terms and conditions set forth its outside collective bargaining agreement, which is incorporated by reference into the MOA. TR. 187, 223, 224; Exhibit A.

Petitioner submits that even if the standard required "the *most* appropriate unit," the petitioned for unit would qualify. In fact, the current arrangement is most accurately described as multiple bargaining units, each working under terms set forth in its standard CBA. Clearly, the petitioned-for unit meets the requisite standard of "*an* appropriate standard." *Specialty Healthcare*, 357 NLRB No. 83 at *7 (emphasis added). The Employer's carpenters are a true craft unit, a distinct and homogeneous group of journeypersons and apprentices with their own skills set, terms and conditions of employment, work jurisdiction and identity. *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966); *American Potash & Chemical Corp.*, 107 NLRB 1418 (1954); *Allis Chalmers Mfg. Co.*, 77 NLRB 719 (1948); *Turner Industrial Group, LLC*, 349 NLRB 428 (2007). They have traditionally bargained as a craft (e.g., the NRCC CBA) and they should be permitted to continue to do so, albeit with a bargaining representative which is palatable to the employees.

The Regional Director concluded, contrary to the above-cited facts in the record, that the petitioned-for unit would be inappropriate, even if the Health Care Rule did not apply, pursuant to the criteria set forth in *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966), which addresses the separation of a craft unit from a pre-existing, larger unit. Exhibit F at page 18. The Board

will analyze the following when evaluating a petition for separating a craft unit from a pre-existing, larger unit:

> whether the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen or a functionally distinct department; the collective-bargaining history related to those employees; the extent to which the petitioned-for unit has established and maintained a separate identity during its inclusion in the overall unit; the degree of integration of the employer's production process; the qualifications of the union seeking severance; and the pattern of collective bargaining in the industry.

Kaiser Foundation, 312 NLRB at 935.

Here, the Regional Director found that the petitioned-for unit was inappropriate for the following reasons: (1) the carpenter's duties are "essential to the Employer's overall renovation process;" (2) the BBCTC and Kaleida "have a stable six-year collective bargaining history in an overall craft unit;" (3) there is "no evidence that the joint collective-bargaining representatives failed to give adequate representation to the employees;" (4) the Petitioner is " a recently-formed union with no history of collective-bargaining;" and (5) that there were "no compelling circumstances which would warrant a disturbance of the bargaining unit established by mutual consent." Exhibit F at pages 21, 22.

The Regional Director has based her above-referenced findings on clearly erroneous facts and conclusions of law, and should be reviewed. Specifically, while the Regional Director has found the at-issue employees to be "essential to the Employer's overall renovation process," the standard to apply is the extent the at-issue employees are integrated in the employer's overall *production processes*. *Kaiser Foundation*, 312 NLRB at 935. Kaleida runs an acute-care hospital; the extent that the carpenters may or may not affect its "overall renovation process" is, without further evidence of the effect of the renovation process on the entire operation or patient care, immaterial. Notably, the Board in *Mallinckrodt Chemical Works* found that the high

degree of integration between the employees in the petitioned-for unit and the employees in the pre-existing unit was key because the end product – enriched uranium – was "sold to the Atomic Energy Commission" and that "[c]ontinued stability in labor relations at such facilities is vital to our national defense." 162 NLRB at 398. There is no evidence on the record that the carpenters are highly integrated with the provision of health care to patients at any Kaleida acute-care hospital, nor any evidence demonstrating how a separate unit of carpenters could negatively affect patient care, national defense, or any other compelling concern.

Second, a six-year 8(f) bargaining history is neither "long" nor "stable." 8(f) agreements may be rather easily rescinded by either party to the agreement. Preserving such an agreement – especially over a petitioned-for 9(a) bargaining unit – does not promote a stable bargaining relationship. Furthermore, the "long-term collective bargaining history" found in either of the on-point cases for craft separation were for 9(a) bargaining units which existed for far longer than a mere six (6) years. Specifically, the unit in *Kaiser Foundation* had existed for almost forty (40) years, while the unit in *Mallinckrodt* had existed for twenty five (25). *Kaiser Foundation*, 312 NLRB at 935; *Mallinckrodt*, 162 NLRB at 399. The record simply does not support the Regional Director's conclusion that a six (6) year old 8(f) agreement was "stable" for the purposes of a craft-separation analysis.

Third, contrary to the conclusions of the Regional Director, there most certainly is evidence that the joint collective-bargaining representatives "failed to give adequate representation to the employees:" the at-issue petition. The very first time that the at-issue employees provided an opinion about their bargaining representative was the showing of support from 90% of the proposed bargaining unit for *a different bargaining representative:* the CCDU. There has never been a showing of support by said employees for either the BBCTC or the

NRCC. The evidence which is lacking from the record is that the joint collective-bargaining representatives *have ever given adequate representation* to the at-issue employees. Further, Region 3 of the NLRB has found cause to issue complaint against the NRCC for unfair labor practices by the NRCC perpetrated against, among others, carpenter members of the unit covered by the MOA Robert Kulczyk and James Kilger. TR. 182, 221; June 28, 2012 Order Consolidating Cases, Consolidated Complaint and Notice of Hearing ("June 28 Complaint"), a copy of which is attached at **Exhibit I.**

Fourth, contrary to the conclusions of the Regional Director, Petitioner has a wealth of experience with collective-bargaining. Specifically, a member of the CCDU's steering committee and carpenter employee of Kaleida, Bob Kulczyk, had experience negotiating three CBAs sine 1999. TR. 181, 182, 190. Mr. Kulczyk is an experienced carpenter, with almost thirty four (34) years working in the craft, who is clearly qualified to represent carpenters and the issues particular to their craft in negotiations. TR. 182. The Regional Director's determination that the CCDU has "no history of collective-bargaining" is simply erroneous. Notably, the Regional Director found in the attached June 28 Complaint that the CCDU "has been a labor organization within the meaning of Section 2(5) of the Act." Exhibit I.

Fifth, there are clearly compelling circumstances for disturbing the unit represented by the 8(f) MOA, as failing to do so would trap the at-issue employees in a bargaining unit they never supported working under an agreement they never voted for. See, Point I(C), *supra.* Additionally, contrary to the conclusion of the Regional Director, the established bargaining unit was *not established by "mutual consent,"* at least, it was never established by the consent of the employees in the unit. The fact that the unit was established by the consent of the Employer and an 8(f) representative never chosen by the carpenters themselves is immaterial.

Petitioner notes that the Regional Director's reliance on *Beaunit Corp.*, 224 NLRB 1502 (1976) is misplaced, because the facts are clearly distinguishable from the case at bar. Specifically, the Board in *Beaunit* found there to be a lack of evidence that the intervenor – being the union representing the larger unit that petitioner sought severance from – had ever failed to give adequate representation to the 9(a) bargaining unit it represented. *Id.* at 1504. There was a 7 ½ year history of *labor peace* between the intervenor and employer, as well as the fact that employees had an earlier opportunity to separate from the larger unit, and failed to avail themselves of such an opportunity. *Id.* Such issues are simply not relevant to the present case, where the employees in an 8(f) unit have demonstrated an interest in a different bargaining representative upon the first opportunity to do so.

Most important, however, is the bevy of facts that the Regional Director simply ignored in her analysis. The record clearly indicates that the petitioned for unit consists of a distinct and homogeneous group of carpenters, acting as a functionally distinct department and maintaining a separate identity during their inclusion in the larger unit working under the MOA. Such evidence was simply flatly ignored by the Regional Director, in favor of other considerations which, as shown above, are not supported by facts or the relevant case law. The Regional Director's June 7 Decision should be reviewed on the issue of properly applying the "community of interest" standard.

CONCLUSION

For the reasons stated above, Petitioner requests a review of the June 7, 2012 Decision and Direction of Election by the Regional Director. Petitioner further requests that the Board decide that the petitioned-for unit is an appropriate unit, and direct an election for said unit as soon as possible. In the alternative, Petitioner requests that the Board direct that the Regional

Director re-evaluate the record in this matter, with direction not to apply the Health Care Rule or otherwise deny the section 7 rights of the carpenters employed by Kaleida in the current bargaining unit of construction workers.

Dated: June 29, 2012

/s/ Richard D. Furlong
Richard D. Furlong, Esq.
Special Counsel
Lipsitz Green Scime Cambria, LLP
Attorneys for Petitioner
42 Delaware Avenue, Suite 120
Buffalo, NY 14202
716-849-1333
rfurlong@lglaw.com

AFFIDAVIT OF SERVICE BY E-MAIL

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

LYNN M. LOMBARD, being duly sworn, deposes and says; deponent is over 18 years of age and is not a party to the action.

On June 29, 2012, deponent served the within Request for Review upon:

Catherine Creighton, Esq. (ccreighton@cpjglaborlaw.com)

Raymond G. Heineman, Esq. (rheineman@krollfirm.com)

Michael Connors, Esq. (mconnors@kaleidahealth.org)

National Labor Relations Board, Region 3 Office (nlrbregion3@nlrb.gov)

by attaching a true copy of same to an email known to me to be proper.

/s/ Lynn Lombard
LYNN M. LOMBARD

Sworn to before me this
29th day of June 2012

/s/ Richard D. Furlong
Notary Public

EXHIBIT A

MEMORANDUM OF AGREEMENT
BETWEEN
BUFFALO BUILDING & CONSTRUCTION TRADES COUNCIL OF BUFFALO AND KALEIDA HEALTH

This Memorandum of Agreement ("Agreement") entered into this 1st day of July 2011, by and between Kaleida Health, 726 Exchange Street, Buffalo, New York 14210 (hereinafter "Kaleida") and the Building & Construction Trades Council of Buffalo, New York and Vicinity, AFL-CIO (hereinafter "Council").

Whereas the parties recognize the need for expeditious completion of small construction projects related to Kaleida renovations (hereinafter referred to as "small projects"), which must be completed in a timely fashion and without work stoppages:

Now, therefore, to encourage the timely and cost effective completion of the small projects, the Council and Kaleida hereby agrees that Kaleida at its option, can directly contract hire individual employees from the Council on a per diem time basis to assist in Project work (contractual terms of employment applicable to the trade in which such individually hired employees work, as modified by this Agreement, shall apply.)

The following terms and conditions shall be in effect for the duration of the Project and shall supersede the corresponding terms and conditions in the respective existing local collective bargaining agreements.

1. It is the intent of this Agreement that the Employer receives a full day's work for a full Day's wages. Employees are to be at their work place at the established starting time and during all breaks. There shall be no "early quits." There shall be no organized coffee breaks.

2. The employer may select and use the most efficient methods or techniques of construction, tools or other labor saving devices to accomplish the work.

3. The starting time for the first shift may be adjusted to any time between 7 am and 9 am, at the discretion of Kaleida.

4. Building trades will provide apprentices upon request of Kaleida, up to a three-to-one ratio, or lower ratio if allowed by the appropriate collective bargaining agreement.

5. There shall be no minimum shift work for the duration of the Project. However, shift work of one or two-day duration shall only be used when requested by Kaleida and agreed to by the affected Union or Unions.

6. Shift work hours and premiums shall be in accordance with applicable collective bargaining agreements, except as provided in sub-paragraphs "3" and "5" of this Section.

7. There shall be no non-productive personnel or featherbedding. Foreman and stewards are to perform work as directed by Kaleida. Crew size shall be at the discretion of Kaleida. Kaleida may use their own employees in key management positions such as Superintendent or Assistant Superintendent. Alternatively, Kaleida may request by name and employ members of the trades for these positions.

TERM OF THE AGREEMENT

This Agreement shall become effective and binding on the parties on the 1st day of July 2011, and shall continue in full force and effect until July 30, 2016. All projects started before July 1, 2011, but which are not yet completed as of July 30, 2016, will be completed under the terms and conditions of this Agreement. Thereafter, Kaleida shall have no further obligations under this Agreement upon its termination.

In Witness Whereof, the parties have caused this Agreement to be executed and effective as of the day and year first written above:

KALEIDA HEALTH BY: _____ 7/1/11
David Croston Vice President Date

FOR THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF BUFFALO, NEW YORK AND VICINITY, AFL-CIO:

BY: _____

FOR THE LOCAL UNIONS:

ASBESTOS WORKERS LOCAL UNION NO. 4

BY: _____

BOILERMAKERS LOCAL UNION NO. 7

BY: _____

BRICKLAYERS LOCAL UNION NO.3

BY: _____

CARPENTERS LOCAL UNION NO.289

BY: _____

CEMENT MASONS LOCAL UNION NO. 111

BY: _____

ELECTRICAL WORKERS LOCAL UNION NO.41

BY: _____

ELEVATOR CONSTRUCTORS LOCAL UNION NO.14

BY: _____

IRONWORKERS LOCAL UNION NO.6

BY: _____

LABORERS LOCAL UNION NO.210

BY: _____

MILLWRIGHTS LOCAL UNION NO.1163

BY: _____

OPERATING ENGINEERS LOCAL UNION NO. 17, 17A, 17B, 17C & 17RA

BY: _____

PAINTERS DISTRICT COUNCIL NO. 4

BY: _____

PLASTERERS LOCAL UNION NO. 9

BY: _____

PLUMBERS AND STEAMFITTERS LOCAL UNION NO.22

BY: _____

ROOFERS LOCAL UNION NO. 74

BY: _____

ROAD SPRINKLERFITTERS LOCAL UNION NO. 669

BY: _____

TEAMSTERS LOCAL UNION NO. 449

BY: _____

TECHNICAL ENGINEERS UIOE LOCAL UNION NO. 17D

BY: _____

FOR THE PROGRAM MANAGER:

BY: _____

EXHIBIT B

FORM NLRB-502

FORM EXEMPT UNDER 44 U.S.C.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 03-RC-077821	Date Filed 3/30/2012

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer is concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the NLRA.

1. **PURPOSE OF THIS PETITION** *(If box RC, Rm, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)* **(Check One)**

☒ RC-CERTIFICATION OF REPRESENTATIVE – A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as a representative of the employees.

☐ **RM-REPRESENTATION (EMPLOYER PETITION)** – One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.

☐ **RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE)** – A substantial number of employees assert that the certified or currently recognized bargaining representatives is no longer their representative.

☐ **UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES)** – Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

☐ **UC-UNIT CLARIFICATION** – A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: *(Check one)* ☐ In unit not previously certified. ☐ In unit previously certified in Case No. _____

☐ **AC-AMENDMENT OF CERTIFICATION** – Petitioner seeks amendment of certification issued in Case No. _____
(Attach statement describing the specific amendment sought.

2. Name of Employer	Employer Representative to contact	Tel. No. 310-0369
Kaleida Health	Dave Croston	Fax No. 716-859-2499
3. Address(es) of Establishment(s) Involved *(street, city, state, ZIP code)* 100 High Street, Buffalo, NY 14203		Cell No.
		e-Mail

4a. Type of Establishment *(factory, mine, wholesaler, etc.)*	4b. Identify principal product or service
Hospital	Health Care

5. Unit Involved *(in UC petition, describe presentbargaining unit and attached description of proposed clarification.)*

Included All journeyperson and apprentice carpenters employed by the the Employer and presently covered under the collective bargaining agreement between the Buffalo Building Trades Council, AFL-CIO and Kaleida Health.
Excluded Supervisors, clerical, guards, boilermakers, cement masons, ironworkers, laborers, millwrights, painters, plasterers, and plumbers and steamfitters.

(If you have checked box RC in 1 above, check and complete EITHER 7a or 7b, whichever is applicable.)

6a. Number of Employees in Unit:
Present 45
Proposed *(By UC/AC)*

6b. Is this petition supported by 30% or more of the employees in the unit?* ☒ Yes ☐ No
*Not applicable in RM, UC, and AC

7a. ☒ Request for recognition as Bargaining Representative was made on *(Date)* 3/28/12 and Employer declined
Recognition on or about *(Date)* 3/28/12 *(If no reply received, so state.)*

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent *(If none, so state.)*		Affiliation AFL-CIO	
Buffalo Building and Construction Trades Council, AFL-CIO			
Address c/o Paul Brown, Plasterers Local 9, 314 Oliver Street, N. Tonawanda, NY 14120	Tel. No. 716-432-1294	Date or Recognition or Certification	
	Cell No.	Fax No. 716-694-2655	e-Mail

9. Expiration Date of Current Contract If any *(Month, Day, Year)*	10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop *(Month, Day, and Year)* n/a
unknown	

11a. Is there now a strike or picketing at the Employer's establishment(s) Involved Yes ☐ No ☒	11b. If so, approximately how many employees are participating? n/a

11c. The Employer has been picketed by or on behalf of *(Insert Name)* n/a, a labor organization, of *(Insert Address)* _____ Since *(Month, Day, Year)* _____

12. Organizations or individuals other than Petitioner *(and other than those named in items 8 and 11c)*, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. *(If none, so state.)*

Name	Address	Tel. No.	Fax No.
None		Cell No.	e-Mail

13. Full name of party filing petition (if labor organization, give full name, including local name and number)
Concerned Carpenters For a Democratic Union

14a. Address *(street and number, city, state and ZIP code)*	14b. Tel. No.	14c. Fax No.
P.O. Box 150 Cheektowaga, NY 14225	14d. Cell No. 716-662-3424	14e. e-Mail

15. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filed in when petition is filed by a labor organization)*
n/a

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

Name *(Print)*	Signature	Title *(If any)*
Richard D. Furlong, Esq.	Richard Furlong	Attorney

Address *(street and number, city, state and ZIP code)*	Tel. No. 716-849-1333	Fax No. 716-855-1580
Lipsitz Green Scime Cambria, LLP 42 Delaware Avenue, Suite 120, Buffalo, NY 14202	Cell No. 716-583-1801	eMail rfurlong@lglaw.com

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

1568548891

EXHIBIT C

NORTHWEST REGION AGREEMENT

Between

"THE ASSOCIATIONS"

and the

NORTHEAST REGIONAL COUNCIL OF CARPENTERS
UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA
91 Fieldcrest Ave.
Raritan Plaza 2, Floor 2
Edison, NJ 08837

June 1, 2011 – May 31, 2016

NORTHWEST REGION AGREEMENT

between

"THE ASSOCIATIONS"

representing

Construction Employers Association
of Central New York, Inc.
6563 Ridings Road
Syracuse, New York 13206
(315) 437-3717

Mohawk Valley Construction
Employers Association
728 Court Street
Utica, New York 13502
(315) 624-0276

Eastern Contractors Association, Inc.
6 Airline Drive
Albany, New York 12205
(518) 869-0961

Labor Relations Section (LRS) of the
Northern New York Builders Exchange, Inc.
22074 Fabco Road
Watertown, New York 13601-1755
(315) 788-1330

Construction Industry Association
of Rochester, NY, Inc.
180 Linden Oaks
Suite 100
Rochester, NY 14625
(585) 586-1580

Contractors Association of the Southern Tier
65 East Main Street
Falconer, New York 14733-1336
(716) 665-4026

Construction Industry Employers Association
2660 Williams Street
Cheektowaga, NY 14227
(716) 875-4744

Southern Tier Association of Contractors
15 Belden Street
Binghamton, NY 13903
(607) 771-7000

The Building Industry Employers Association
of Niagara County, New York
631 Main Street
Niagara Falls, NY 14301
(716) 285-9338

and the

NORTHEAST REGIONAL COUNCIL OF CARPENTERS UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

91 Fieldcrest Ave.
Raritan Plaza 2, Floor 2
Edison, NJ 08837

TABLE OF CONTENTS

	PREAMBLE	1
ARTICLE 1	RECOGNITION	1
ARTICLE 2	SCOPE OF AGREEMENT	1
ARTICLE 3	GEOGRAPHICAL JURISDICTION	1
ARTICLE 4	UNION SECURITY	2
ARTICLE 5	ASSOCIATIONS SECURITY	2
ARTICLE 6	WORK IN OTHER AREAS	2
ARTICLE 7	GRIEVANCE AND ARBITRATION PROCEDURES	3
ARTICLE 8	HOURS OF WORK AND OVERTIME	3
ARTICLE 9	SHIFT WORK	4
ARTICLE 10	MAKE-UP DAY	5
ARTICLE 11	OCCUPIED PREMISES	5
ARTICLE 12	HOLIDAYS	5
ARTICLE 13	WAGE PAYMENT	5
ARTICLE 14	CALL-IN PAY & DISCHARGE	5
ARTICLE 15	PRE-APPRENTICES & APPRENTICES	6
ARTICLE 16	HOURLY WAGE AND FRINGE BENEFIT SCHEDULE	6
ARTICLE 17	FRINGE BENEFITS	7
ARTICLE 18	BONDING	9
ARTICLE 19	DUES CHECK-OFF	9
ARTICLE 20	STEWARDS	10
ARTICLE 21	MOBILITY OF MANPOWER	10
ARTICLE 22	JOBSITE FACILITIES & CONDITIONS	10
ARTICLE 23	TOOLS	11
ARTICLE 24	SUBCONTRACTING	11
ARTICLE 25	PROCEDURE FOR APPYING FOR WAIVER OF SUBCONTRACTING	12
ARTICLE 26	MOST FAVORED NATIONS	14
ARTICLE 27	ONE-TIME AGREEMENT	14
ARTICLE 28	SAFETY & SUBSTANCE ABUSE & BACKGROUND CHECKS	14
ARTICLE 29	ALTERNATE DISPUTE RESOLUTION	15
ARTICLE 30	UNION MEMBERS CONTRACTING WORK	15
ARTICLE 31	BAN ON PIECE WORK & LUMPING WORK	15
ARTICLE 32	JURISDICTIONAL DISPUTES	15
ARTICLE 33	NON-DISCRIMINATION	15
ARTICLE 34	APPLICATION OF AGREEMENT	16
ARTICLE 35	HOUSING AND REHABILITATION	16
ARTICLE 36	SMALL COMMERCIAL	16
ARTICLE 37	MAINTENANCE AGREEMENT FOR INDUSTRIAL FACILITIES	17
ARTICLE 38	MILLWRIGHT	17
ARTICLE 39	PILEDRIVING	17
ARTICLE 40	DIVING	18
ARTICLE 41	PREVAILING RATES-HOLD HARMLESS CLAUSE	19
ARTICLE 42	ADMINISTRATION AND SAFETY PROGRAMS	19
ARTICLE 43	VALIDITY	20
ARTICLE 44	DURATION AND TERMINATION	20
APPENDIX A	Local 291	21
	Counties of Albany, Clinton, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington	
APPENDIX B	Local 277	23
	Counties of Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego and St. Lawrence	

APPENDIX C Local 277 25
Counties of Cayuga, Seneca and Yates
APPENDIX D Local 277 26
Counties of Broome and Tioga
APPENDIX E Local 277 32
Counties of Chemung, Cortland, Schuyler, Steuben, Tompkins
APPENDIX F Local 277 35
Counties of Chenango, Delaware, Otsego
APPENDIX G Local 276 42
County of Erie, Townships of Persia and Perrysburg in Cattaraugus County and Grand Island
APPENDIX H Local 276 48
Counties of Genesee, Niagara, Orleans and Wyoming (except for the townships of Castile, Gainesville, Genesee Falls, Perry, Pike and Warsaw)
APPENDIX I Local 276 51
Counties of Allegany, Chautauqua and Cattaraugus (except for the Town of Perrysburg and the Village of Gowanda in Town of Persia)
APPENDIX J Local 276 55
Counties of Livingston, Monroe, Ontario and Wayne, and the townships of Genesee Falls, Castile, Perry, Warsaw, Gainesville and Pike in Wyoming County
APPENDIX K Collections Policy 58
SIGNATURE PAGE 66
NON-ASSOCIATION EMPLOYER SIGNATURE PAGE 67
NON-ASSOCIATION EMPLOYER SIGNATURE PAGE 68

PREAMBLE

This Agreement, herein after referred to as "the Agreement," is entered into in order to forge a long-term partnership that will promote stability between the Union, and Employer to facilitate the peaceful adjustment of grievances and disputes between the Employer and the Union and its members; to prevent waste, unnecessary and avoidable delays, strikes and lockouts and the results through them to the Employer of cost and expense, and to the Employees covered hereby of loss of wages; to enable the Employer to secure at all times sufficient force of skilled carpenters; to provide that employment hereunder shall be in accordance with conditions and at wages herein agreed upon, and by reason of the Agreement and to the purpose and intent thereof, to bring about stable conditions in the industry, keep costs of work in the industry as low as possible, consistent with fair wages and proper working conditions as provided for here under.

The Union agrees to work with the Employers to formulate a world class quality attitude and program.

ARTICLE 1
RECOGNITION

The Agreement is entered into by the Associations/Employer on behalf of their designating members who employ or may employ unit employees and The Northeast Regional Council of Carpenters, and of the United Brotherhood of Carpenters and Joiners of America, or any successor Council, hereafter referred to as the "Union". The Union recognizes the Associations as the exclusive bargaining representative of all designating members of the Associations. The Associations recognize the Union as the exclusive bargaining representative for all employees covered by the Agreement.

The parties agree that the collective bargaining unit covered by the Agreement is a single multi-employer bargaining unit consisting of employers represented by the Associations that are bound to the Agreement, including any individual employers who are not members of the Associations but who sign the Agreement or agree to be bound to it.

The Union recognizes the Associations as authorized to act in collective bargaining negotiations for all their designating members and for non-member employers who agree to the Agreement.

ARTICLE 2
SCOPE OF AGREEMENT

Section 1. The Agreement shall cover on-site commercial, industrial, and institutional work and the wages and conditions set forth for such work. The Agreement also covers all work in connection with sewage disposal, water and waste water treatment, reservoirs, marinas and all work on any site where building is involved. Any facilities specifically established to service an individual project shall be covered by the Agreement.

Section 2. Heavy & Highway Agreements of the Union are separate and apart from the Agreement. For the counties of Chenango, Delaware, Erie, Niagara, Orleans, Otsego, Genesee and Wyoming (except for the townships of Castile, Gainesville, Genesee, Genesee Fall, Perry, Pike and Warsaw), see appendices.

Section 3. Shop Agreements of the Union are separate and apart from the Agreement.

ARTICLE 3
GEOGRAPHICAL JURISDICTION

The Agreement covers the jurisdiction of all of the counties of Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Erie, Essex, Franklin, Fulton,

Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Tioga, Tompkins, Warren, Wayne, Washington, Wyoming and Yates.

ARTICLE 4
UNION SECURITY

Section 1. It shall be a condition of employment that the employees of any employer covered by the Agreement who are members of the Union in good standing on the effective date of the Agreement shall remain members in good standing and those who are not members in good standing on the effective date of the Agreement, or who are hired on or after its effective date, shall, on the 8th day following its effective date, or the 8th day following the beginning of employment (whichever is later) become and remain members in good standing.

Section 2. In consideration of the foregoing, the Union agrees to supply competent, skilled and qualified journeypersons and apprentices to the Employer upon his/her request, to perform work coming within the trade, craft and geographical jurisdiction of the Union, and to continue to provide training in accordance with Federal and State mandates.

Section 3. It is agreed that employees covered by the Agreement will not perform work for non-signatory Employers, except for area standards campaigns.

Section 4. The Union shall be allowed to visit the jobsites of the Employer. Employers will assist in obtaining clearance into plant facilities for access to the jobsite for the Union, if possible.

Section 5. The Union agrees to obtain insurance certificate(s) and indemnification if required by the owner for the project prior to conducting site visits.

Section 6. The Employer recognizes the Union as the exclusive bargaining agent under section 8(f) of the National Labor Relations Act for all of its Employees within the contractual bargaining unit.

ARTICLE 5
ASSOCIATIONS SECURITY

Section 1. Each Association shall be the bargaining unit for all Employers in its geographic region bound by the Agreement.

Section 2. No modification, variation, or waiver of any term or provision herein shall be valid unless agreed upon in writing by both the affected Associations and the Union.

Section 3. The affected Associations shall be a party to any and all local negotiations regarding Project Labor Agreements when the Union is involved, provided the Owner agrees.

Section 4. The Associations shall furnish lists of all existing and newly designated carpentry contractors to the Union.

ARTICLE 6
WORK IN OTHER AREAS

The Employer agrees that if it performs any work covered under any collective bargaining agreement of the Union, within New York State, excluding New York City, the Employer shall be bound to the terms

and conditions of those agreements applicable to the construction site location where said work is being performed as if it were signatory to the applicable agreement for the duration of the work; said employer shall have no continuing obligation under any terms of the collective bargaining agreement, which shall cease to exist upon the Employer's termination of work in the area and all wages and fringes must be paid in full.

This article specifically excludes any reference and the employer will not be bound to section 9(a) of the National Labor Relations Act if included in the local agreement outside the Geographic Jurisdiction, Article above, covered by the Agreement. It is not granting recognition based on any proof of majority status by the Union, as it is not contemplated that such proof will be provided. Nothing herein shall prevent granting recognition hereafter in accordance with the National Labor Relations Act.

ARTICLE 7
GRIEVANCE AND ARBITRATION PROCEDURES

Section 1. During the term of the Agreement, any question relating to its interpretation or any dispute arising from any provisions shall be subject to the following grievance and arbitration procedure, it being understood that this clause shall not be used for the purpose of determining subjects relating to trade jurisdictions.

a. The Job Steward shall attempt to resolve the dispute on the job with a senior representative of the Employer.

b. In the event that the dispute is not resolved by Step (a), a Council Representative and a Representative of the Association/Contractor shall meet within two (2) business days and attempt to settle the dispute.

c. Should Step (b) not resolve the issue in dispute within five (5) business days, the two parties to the Agreement shall each appoint equal numbers to form a Joint Committee to hear the dispute and a decision by a majority of the Joint Committee shall be final and binding on the parties.

d. In the event that the Joint Committee is unable to decide the dispute within 15 business days, either party may request arbitration by submitting in writing, with a copy to the other party, a request to the American Arbitration Association for a list of arbitrators, one of whom shall be selected by the Joint Committee following AAA guidelines. The decision of the Arbitrator shall be final and binding on all parties concerned. The expenses of the arbitrator shall be borne equally by the two parties to the Agreement.

Section 2. During the term of the Agreement, and during the period of hearing grievances and arbitration, neither party shall order or sanction any lockout, strike or other work stoppage or slowdown.

ARTICLE 8
HOURS OF WORK AND OVERTIME

Section 1. The first five days, Monday through Friday inclusive, shall constitute a working week. The normal work day shall consist of eight (8) hours plus one-half (1/2) hour unpaid for lunch. The lunch period should be scheduled at approximately the midpoint of the shift. The starting time shall be between the hours of 6 a.m. and 9 a.m., set by the Employer and shall not be changed from day to day. This start time may be changed by mutual agreement of the parties.

Section 2. Work performed before or after the above specified hours and on Saturday shall be paid on a time and one half (1-1/2) basis or after the employee has worked more than eight (8) hours in a day or

40 hours during the work week. All work performed on Sundays and recognized holidays shall be paid on a double time basis.

Saturday is also payable at the straight time rate if the employee misses work, except where a doctor's or hospital's verification of illness is produced Monday through Friday when work was available to the employee. The intent is to challenge the abuse of some employees missing work Monday through Friday intentionally and then going back to work for time and one half (1-1/2) pay on Saturday.

Section 3. It shall be the intent of the Agreement that work shall be restricted to 40 hours per week except in case of emergency, or to meet the project schedule.

Section 4. If the nature of the overtime is such that the regular lunch period must be worked, then the men shall receive an additional one-half (1/2) hour pay at the appropriate overtime rate.

Section 5. To the extent permitted by law, the work week may be four days in duration (Mon. – Thurs.) with each day consisting of ten (10) hours work at the straight-time rate. Any work performed outside these limits would be at the appropriate overtime rate. It is the intent of the parties that a 4-10s schedule shall be for a minimum of four (4) days in a row. Where a 4-10s schedule is worked, Friday shall be allowed as a make-up day. If, however, weather prohibits work on Friday, Saturday is allowed as a make-up day, but will be worked at the appropriate overtime rate.

ARTICLE 9
SHIFT WORK

Section 1. The following schedule is applicable to two (2) or three (3) shifts per day:
1st Shift: 8 hours work for 8 hours pay.
2nd Shift: 7 1/2 hours work for 8 hours pay
3rd Shift: 7 hours work for 8 hours pay

Section 2. Ten (10) or Twelve (12) Hour Shifts:

(a) One or two shifts may be employed in a twenty-four (24) hour period, seven days per week, with prior notification to the Union, paying the appropriate wages and fringe benefits.

(b) All Employees working more than ten (10) hours will receive an additional one-half (1/2) hour paid lunch period.

(c) The Employer need not balance the shift size.

(d) Shift may overlap at the Employers option.

(e) The first shift will not start earlier the 6:00 AM unless prior Union approval is obtained.

(f) When two shifts are worked, the second shift shall be considered, for payroll purposes, as having been worked in their entirety on the same day on which the first shift started.

Section 3. Any work outside the regular shift shall be at the respective overtime rate. No employee shall be permitted to work two shifts except foremen or welders. (Starting time can be changed by mutual consent.) Each shift shall have a one-half (1/2) hour unpaid lunch period.

Section 4. Shift work must continue for a minimum of three (3) consecutive days, unless prior Union approval is obtained.

Section 5. Shift work shall be defined as implementing at least two (2) shifts in a twenty-four (24) consecutive hour period.

Section 6. It is understood that there is no guarantee, that on any given day, one shift might vary due to weather, equipment breakdown, or changes in operation schedule, provided notice is given two hours prior to the beginning of the shift.

ARTICLE 10
MAKE-UP DAY

Make-up day is on Saturday in the week in which a day or days are lost due to inclement weather. Pay for this make-up day will be straight time, it being understood that work on this day is voluntary on the part of the employees and that further, all Employees working on the job be given the same opportunity to work. No discriminatory action will be taken against any employee who declines said work.

For a 4-10s schedule, see Hours of Work and Overtime Article 8, Section 5.

ARTICLE 11
OCCUPIED PREMISES

A shift may be worked in any occupied building, outside of the regular work hours, at the straight time hourly rate, excluding Saturdays, Sundays and Holidays. This requires mutual agreement of the parties unless specified by the bid documents or owner mandates. The Employer is to notify the Union when this work will occur.

ARTICLE 12
HOLIDAYS

The recognized holidays for the term of the Agreement, for which overtime rate shall be paid, if worked, is as set forth: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day. Any holiday which occurs on Sunday shall be observed the following Monday. If Christmas falls on a Saturday, it shall be observed on the prior Friday.

ARTICLE 13
WAGE PAYMENT

Wages shall be paid weekly on the job before the end of the shift, on the regular payday. Such wages are to be paid in lawful money, redeemable at a local financial institution. No more than four (4) business days pay shall be withheld from the employee(s) on pay day. Pay envelopes or check stubs shall show the employers name and address, employees name, the hours worked, and the amount of payment enclosed. Any deductions from wages, including payroll deductions, now or hereafter required, shall also be marked on the pay envelopes or check stubs. Waiting time is to be charged until wages are received, not to exceed eight (8) hours. Any variation from the above, due to clerical or unforeseen circumstances, will be discussed between the Union and the Employer prior to any penalty being assessed. For mailed checks, postmark or other receipt is proof of timely payment.

ARTICLE 14
CALL-IN PAY & DISCHARGE

Section 1. No new Employee shall be sent out on any given day for less than eight (8) hours work. When the Employer instructs an Employee to report for work and does not employ said Employee, the Employer shall pay two (2) hours applicable wages, except if unable to employ said Employee because of inclement weather, utility failure, strike, riot or civil disturbance.

Section 2. Under no circumstances will the Union send out a carpenter whom the Employer has

discharged for cause, provided the Employer has filed an appropriate letter with the Union that the carpenter is not for re-hire.

Section 3. When an Employee has been discharged, he/she shall upon discharge, be given cause, and shall receive a one (1) hour notice with pay. The Employer, at his/her discretion, may discharge the Employee at the end of the regular hours of work. In this case, the Employee shall receive one-half (1/2) hour pay at the applicable overtime rate. He/she shall be paid in full on the next regular business day. For mailed checks, postmark or other receipt is proof of timely payment.

ARTICLE 15
PRE-APPRENTICES & APPRENTICES

Section 1. Pre-Apprentices and Apprentices shall be paid the following rates and fringe benefits (Health, Pension, Annuity):

Pre-Apprentice:	$11 per hour with Health only
First Level Apprentice	50% of basic rate with $7.25/hr Health, $1.00/hr Pension
Second Level Apprentice	60% of basic rate with $7.25/hr Health, $1.00/hr Pension
Third Level Apprentice	70% of basic rate with $7.25/hr Health, $2.00/hr Pension, $1.50/hr Annuity
Fourth Level Apprentice	80% of basic rate with $7.25 Health, $2.00/hr Pension, $1.50/hr Annuity

Section 2. Ratios of Journeypersons to Apprentices shall be 3:1, unless specified differently by the New York State Department of Labor.

Section 3. The Employer is allowed to use Pre-Apprentices at a ratio of one Pre-Apprentice to three Journeymen for the first Pre-Apprentice, and one Pre-Apprentice to six Journeymen for additional Pre-Apprentices. Pre-apprentices shall be enrolled as applicants for future openings in the apprenticeship program. The Empire State Carpenters Apprenticeship Committee and the Employer shall evaluate the Pre-Apprentice for such openings during his six months of employment. Pre-Apprentices may be used on all projects to the extent permitted by law.

Section 4. Employers will comply with pre-apprentice and apprentice ratios on a by-job or per-firm basis in compliance with the New York State Department of Labor.

ARTICLE 16
HOURLY WAGE AND FRINGE BENEFIT SCHEDULE

See wage charts in appropriate area appendices.

<u>Foremen & General Foremen</u>
See appropriate appendices for premiums

Section 1. All Carpenters shall receive orders only through the Carpenter Foreman, if one is employed.

Section 2. When six (6) or more Carpenters or Millwrights are employed on a job, the Employer shall designate one as foreman.

Section 3. No Carpenter foreman shall have more than twenty (20) men under his/her supervision.

Section 4. When three (3) carpenter foremen are employed, the fourth (4th) shall be a General Foreman. When an Employer employs a General Carpenter Foreman on a job, he/she shall receive the amount specified in the appropriate area appendices.

Hazardous Waste Worker

When an employee covered by this Agreement performs work within a contaminated area on a hazardous waste site, that is State and/or Federally designated as such, and where relevant State and/or Federal regulations require employees to be furnished and those employees use or wear required forms of personal protection, then in such case an employee shall receive his regular hourly rate plus $1.50 per hour.

Certified Welders (DOT, ABS)

Certified welders shall receive $1.00 per hour over the journeyman's rate of pay when the employee is required to be certified and performs DOT or ABS specified welding work. If the Employer spends any part of the day welding, the Employer shall receive welder's rate of pay for the entire day.

Pile Drivers

Pile Drivers shall receive $0.25 per hour over the journeyman's rate of pay when performing piledriving work, except for in the counties of Erie, Niagara, Orleans, Genesee, Wyoming, Chautauqua, Cattaraugus, Allegany, Livingston, Ontario, Wayne and Monroe which are covered by a separate piledriving agreement that expires in 2012. Contact the appropriate association for more information on these counties.

ARTICLE 17
FRINGE BENEFITS

Section 1. The Employer agrees that it shall make fringe benefit contributions in the amounts set forth in the Hourly Wage and Fringe Schedule (by counties) set forth in Articles 16 and 42and the appendices of this Agreement to those fringe benefits funds designated below in Section 8 ("Funds") by the Associations and the Empire Union. In the event that the Association(s) and the Union agree upon change(s) in the designation of Funds in Section 8 and/or the Carpenters International Training Fund in Section 9 during the term of this Agreement, written notice of such change will be given to each Employer and Association and each affected Fund at least thirty (30) days prior to the effective date of such change.

Section 2. The parties to this agreement, upon prior consultation with the designated Funds' Boards of Trustees, shall have the right to allocate, or to reallocate on a prospective basis, at the appropriate times, those wages and contributions properly attributable to those Funds and/or the Carpenters International Training Fund under their respective Trust Agreements. It is recognized that the specific fringe benefit funds and method of remittance to receive contributions may be changed during the term of this Agreement where a specific fund has been merged or consolidated into another fund of similar purpose.

Section 3. The Employer shall be bound by and shall comply with the Trust Agreements, plans and/or rules, policies and regulations of the applicable Funds, including the Funds' Joint Policy for the Collection of Delinquent Contributions ("Collection Policy"), as may be amended from time to time, to the extent not inconsistent with this Agreement. A copy of the Funds' Joint Collection Policy effective as of October 6, 2010 is attached to this Agreement.

Section 4. Contributions that require monthly remittance must be received by the respective Fund Office on or before the 15th day of the month following the month during which the hours were worked by the employee ("Due Date"). If payment is not received by the Fund Office by the 1st day of the month following the Due Date, the Employer shall be deemed delinquent. Contributions that require weekly remittance must be received by the respective Fund Office by the end of the week that the hours were worked by the employee ("Due Date"). If payment is not received by the Fund Office within five (5) business days after the Due Date (the end of the pay week), the Employer shall be deemed delinquent.

Section 5. The Employer agrees that, should it become delinquent in any of its obligations to any Fund, as set forth in this Agreement, it shall be liable for such penalties and costs as may be provided for by the Trust Agreement, resolution and Collection Policy of the respective Fund(s), including, but not limited to, interest, liquidated damages, and costs of collection including attorney's and accounting fees.

Section 6. The Employer acknowledges and agrees that the Funds shall be authorized to cause audits to be made of the payroll, wage and other records of the Employer as the Funds shall deem necessary to determine whether and to what extent the Employer has made the contributions specified in this Agreement, as provided in the Trust Agreement, resolution and Collection Policy of the respective Fund(s).

Section 7. The Union shall have the right to remove from all work sites in any area within the geographic jurisdiction of the Council, all employees from the employ of any employer who is fifteen (15) days or more delinquent in the payment of all monies determined to be due to the funds. If the Union does remove the employees, they shall not be obligated to again furnish employees to any of the employer's work sites in any area within the geographic jurisdiction of the Council, unless and until all contributions have been made as required. Where such action is necessary as a result of the delinquency of any employer in the payment of wages or fringe benefits as set forth elsewhere in this Agreement, such delinquent employer shall be required to pay the affected employees wages and fringe benefits for each day, as directed herein, for a period not to exceed three (3) days prior to returning to employment for such employer. If it has been determined that an employer is delinquent, said employer will be assessed liquidated damages, accountant fees and attorney fees as provided in the Funds' Collection Policy.

Section 8. The designated Funds are listed below:

EMPIRE STATE CARPENTERS WELFARE FUND
All Counties remit to Empire State Carpenters Welfare Fund

EMPIRE STATE CARPENTERS ANNUITY FUND
All Counties remit to Empire State Carpenters Annuity Fund

EMPIRE STATE CARPENTERS PENSION FUND
Local Union 291 shall remit contributions to the Empire State Carpenters Pension Fund, and the Empire State Carpenters Pension Fund reciprocates the contributions to the Carpenters Local 370 Pension Fund.

Former Local 66 area, see below.

EMPIRE STATE CARPENTERS APPRENTICESHIP COMMITTEE
All Counties remit to Empire State Apprenticeship Committee

IN FORMER LOCAL 66 ONLY
The Employer will remit pension contributions to the Southern Tier Building Trades Welfare Plan, or its successor, as agent, for the Carpenters Local 66 of Olean, New York and Vicinity Pension Plan ("Local 66 Pension Plan"). In the event that the Employee is a Traveler (i.e., from a home local other than Local 66), the contribution will be forwarded by the Southern Tier Building Trades Welfare Plan to the home local as provided in a duly executed Reciprocity Agreement. In the event the Local No. 66 Pension Plan's actuary determines that the Local 66 Pension Plan is not fully funded, then future increases in pension contributions shall be credited to such Pension Plan to assure it is actuarially sound.

The Employer will remit Annuity contributions to the Empire State Carpenters Annuity Fund.

Section 9. CARPENTERS INTERNATIONAL TRAINING FUND
In addition to any contributions otherwise called for herein, the parties agree that the Employer shall make a contribution of ten cents ($.10) per hour worked for each employee covered by this Agreement to the Carpenters International Training Fund on or before the 15th day of the month following the month of the work performed. The Employer hereby agrees to be bound by the Agreements and Declarations of Trust for the Carpenters International Training Fund as they exist and as they may be amended or restated, and to such rules, regulations and other governing documents adopted pursuant to such Trusts. Upon request the employer may receive the latest annual report prepared for the Carpenters International Training Fund.

ARTICLE 18
BONDING

Section 1. One of the following two options will be mandatory for all signatory Employers performing work within the jurisdiction.
(a) Every Employer must secure a payment bond of $75,000.00 and submit a copy to the Fund Office where work is being performed at the same time as the signed contract is produced. It will be the responsibility of the respective Fund Office to ensure compliance.
(b) In lieu of a $75,000.00 bond, an Employer will pay benefits on a weekly basis.

Section 2. Where there has been an audit of an Association member, and no significant deficiency has been found within twelve (12) months preceding the audit, the Association member shall not be required to be bonded.

Section 3. (a) Under this policy, all contributions that require monthly remittance must be received by the respective Fund Office on or before the 15th day of the month following the month during which the hours were worked by the employee. If payment is not received by the Fund Office by the 1st day of the month following the due date the Employer shall be deemed delinquent.
(b) Under this policy, all contributions that require weekly remittance must be received by the respective Fund Office by the end of the week that the hours were worked by the employee. If payment is not received by the Fund Office within five (5) business days after the end of the pay week, the Employer shall be deemed delinquent.

ARTICLE 19
DUES CHECK-OFF

Section 1. The Employer agrees to deduct from the basic wage rate of employees covered by the Agreement, an amount as shown in the wage schedule for a dues check-off. Deductions will be made and submitted to the respective Fund Office in the area where the Employer is working. The Union has the option of increasing or decreasing the dues deduction, with 30 days written notice to Employers and Associations.

Section 2. Executed copies of Dues Check Off Authorization Forms will be kept on file by the Union, with a copy provided to the Employer upon request.

Section 3. The Union will indemnify and hold the Employer harmless against any and all claims, demands, or other forms of liability which may arise out of, or by reason of any action taken, or not taken, by the Employer at the request of the Union, in accordance with the provisions of this Article.

ARTICLE 20
STEWARDS

Section 1. On all jobs that employ less than five (5) carpenters, the Union shall have the right to appoint the working steward from the carpenters in the crew. On all jobs that employ five (5) carpenters or more, the Union shall have the right to appoint a working steward from the hall. The Union will promptly notify the Employer. The steward will be allowed a reasonable period of time to perform his/her duties. He/she shall not have the right to waive, change, or modify any of the terms of the Agreement. He/she shall remain on the job as long as or whenever work is being performed directly by the Employer, except under the following circumstance: "If the project advances to a point where only one Employee is needed, he/she shall be the foreman". In the event the Employer needs an additional Employee(s), the steward will be recalled first, provided he/she is qualified to perform the work. Should this Section be violated, the Employer will be given notification and will be subject to penalty pay for the stewards lost time. Disputes under this Section will be referred to the Grievance and Arbitration Procedure.

Section 2. The Steward shall be employed whenever any work covered by the Agreement is being performed, provided he/she is qualified to perform such work.

Section 3. It is specifically understood that the Steward shall have no authority to threaten or encourage work stoppage or work slowdowns. To threaten, encourage or cause such action shall be grounds for discharge.

ARTICLE 21
MOBILITY OF MANPOWER

A signatory Employer's workforce shall be afforded full mobility throughout the entirety of the Union as long as said workforce is from the Council, excluding Stewards if the crew is five (5) or more.

ARTICLE 22
JOBSITE FACILITIES & CONDITIONS

Section 1. When conditions warrant, a weather tight building or room large enough to accommodate the Employees, for use as a shelter, shall be provided. This building or room shall be provided with heat and sufficient lighting for use during the Employees' lunch period.

Section 2. When ordering manpower, it will be the Employers responsibility to inform the Union of the duties that the carpenter will be performing.

Section 3. Comfort station(s) will be provided to conform with the local health laws.

Section 4. Cool fresh drinking water shall be available on the job-site at all times. If it is necessary to provide ice to retain the coolness of water, it will be so required of the Employer.

Section 5. Employees shall be permitted a ten (10) minute coffee break, approximately midpoint between the starting time and the lunch break, at their work station.

Section 6. All carpenters shall have five (5) minutes at noon and five (5) minutes at night for the purpose of picking up their tools and securing them.

Section 7. The Employer shall see that a First Aid Kit is furnished on the jobsite and that the same shall be kept completely supplied with the necessary medical equipment.

Section 8. In case of an injury to any Employee covered by the Agreement, the Employer shall insure that the Employee is properly cared for and is given first aid at the jobsite and, if seriously injured, the Employer shall insure that ambulance service is provided to the hospital, or car service to the injured Employee's home. If the injured Employee must remain at home or in the hospital, he/she must be paid for the balance of the workday.

Section 9. The Employer shall supply the necessary raingear and boots when conditions warrant their use. This raingear shall remain the property of the Employer and must be returned upon request, or in the absence of a request at no later time than the Employees termination of employment. The Employee shall be financially responsible for the equipment not returned, not to exceed $25.

ARTICLE 23
TOOLS

Section 1. No Employee covered by the Agreement shall be allowed to furnish straight edges, mitre boxes, levels over 48", saw horses, benches, hand screws, ladders, battery operated tools, or power tools of any kind or description on any construction job. Employees shall not be allowed to lease or rent any of the above mentioned articles. No employee of the craft shall lease or rent the use of his/her car, truck, or power equipment to any employer.

Section 2. The Employer agrees to furnish all welding equipment, including hats, hoods, glasses, gloves, etc., in accordance with OSHA.

Section 3. The Employer will furnish utility knife blades, chalk, hacksaw blades, keel, drill bits, and taps.

Section 4. All special tools and/or equipment of any nature shall be furnished by the Employer.

Section 5. The Employer shall furnish all files and grinders. All filing and sharpening of Employees saws shall be the responsibility of the Employer.

Section 6. The Employee shall provide all hand tools of the trade to perform the required assignments.

Section 7. When carpenters tools are left in a secured room or gang box, the Employer shall be responsible for loss of same by fire or theft by forcible entry in a maximum amount of $400.00. This provision is subject to presenting an itemized list of tools, at the time of hire, upon the Employers request. The Employer reserves the right to verify such tool list before acceptance. The Employee must make claim of tool loss within two (2) business days from time of the event.

Section 8. There shall be no restrictions of time-saving tools, provided health and safety are not endangered.

ARTICLE 24
SUBCONTRACTING

Section 1. The Employer agrees that when subcontracting work covered by the Agreement, which is to be performed within the geographical area covered by the Agreement, and at the site of construction, alteration or repair of a building, structure, road or other work, it will subcontract such work to a signatory Employer who is a party to the Agreement.

However, the signatory Employer shall not require the Subcontractor to change jurisdictional

assignments or historic practices of his/her trade or company in this geographical area (for example, where the company's employees are represented by another union in this geographical jurisdiction).

The Union recognizes that non-union contractors have secured an increasing percentage of the construction market and that there may be situations where suitable and signatory subcontractors are not available or do not quote a price prior to bid.

Additionally,

In such situations where the Employer has limited control or the Owner has input in the selection of subcontractors (Employer will supply evidence upon request)

In such situations where the Employer has no contract with the subcontractors

In such situations where Owner provisions require D/M/WBE participation

Where any of these are the case, the Employer shall be relieved of the requirements to sublet to subcontractors subject to the Agreement. In this case, every effort will be made to arrange a pre-job conference between the Union and the subcontractor.

Section 2. If it is found that a signatory Subcontractor is not complying with providing the wages, hours, fringe benefits and working conditions of the Agreement, the Union shall give the signatory Employer two (2) business days' notice in writing that the Subcontractor is in non-compliance. Upon such notification, the signatory Employer shall be responsible for payment to such Subcontractor's employees for wages, fringe benefits, and for providing conditions of the Agreement as of the date of written notice. It being understood and agreed that this is the sole remedy available, and that no punitive damages shall be demanded.

Section 3. The Union, the Association, and the signatory Employer agree that this subcontracting clause can only be enforced by the Union through the grievance and arbitration provisions of this contract and, if necessary, appropriate court action to enforce a grievance or arbitration award. It is specifically agreed by the Union that it will not take any economic or jobsite actions to enforce said clause or any grievance awards, arbitration awards, or court orders or judgments, pertaining to this subcontracting clause or violations of it by the signatory Employer.

Section 4. Upon written request to the Employer's home office, the Employer shall furnish the names of all awarded carpenter subcontractors to the Union.

Section 5. See Appendix H for additional rules.

ARTICLE 25
PROCEDURE FOR APPYING FOR WAIVER OF SUBCONTRACTING

Section 1. It is understood that there may be instances when suitable and competitive union subcontractors may not be available to bid certain subcontracts. In such instances, the Employer and/or the Association will notify the Union in a timely manner prior to the bid or at least one (1) week prior to the award of the subcontract, and the Union will endeavor to locate suitable and competitive subcontractors to bid the work. If the Employer and the Union are unable to locate such subcontractors, it is understood and agreed that the Employer will be relieved of the subcontracting clause for such subcontracts, provided that the following procedures are adhered to: **(See Sections 2, 3 and 4 below for geographic applicability and instructions.)**

The procedures are as follows:

(1) The Employer will notify the Union of the name, address, phone number, and principal or contact person of the non–signatory subcontractor selected.

(2) The Employer agrees to insert language as follows into each subcontract:

(a) Subcontractor must carry Workmen's Compensation Insurance and N.Y.S. Disability Insurance through an insurance carrier approved and listed with the State Compensation Board, in addition to N.Y.S. Unemployment Insurance. Proof of such coverage must be provided before the award.

(b) Subcontractor will comply with state and federal laws and regulations regarding withholding taxes and classification of employees and/or independent contractors. Failure to comply with either (2A) or (2B) could result in termination of subcontract in accordance with the termination clause of the contract.

(3) Any disputes relative to this Article will be resolved by a meeting and/or discussion between a representative of the Employer and the Union, and if available, the Association. If the dispute is not resolved by the above, then any dispute relative to this understanding will be resolved by a four (4) person committee that consists of an Association representative, a representative from the Employer, the Executive Secretary-Treasurer of the Northeast Regional Council of Carpenters, or his designee, who shall be chairman of the committee, and a representative of the respective Local. The chairman shall convene the committee within seventy-two (72) hours. Any decision of the panel shall be by majority vote and shall be final and binding on the parties' signatory to this Agreement, for that respective project. All Associations shall receive a copy of any decision rendered by the panel. If there is a violation determined, then the violator shall lose the use of this Procedure for one year.

(4) This Article, Procedures for Applying for a Waiver of Subcontracting, will be in force and effect for the duration of this Agreement.

(5) This Article, Procedures for Applying for a Waiver of Subcontracting, shall only be available to signatory Employers when performing a prime or general construction contract or letting a primary subcontract. Such general or prime contract shall be defined as those contracts between the Contractor/Employer and the project Owner which included in the contract scope of work three (3) or more CSI (Construction Specification Institute) technical specifications sections, covered under this Agreement, except that a combination of the following specification sections shall only count as one (1) section:

Interior Metal Stud System (09111)
Gypsum Wallboard Assemblies (09250/09260)

Section 2. Applies to Local 291, excluding Greene, Saratoga, Warren and Washington counties.
Employers should call the Eastern Contractors Association or Regional Council to obtain forms and information pertaining to this procedure.

Section 3. Applies to Saratoga, Warren and Washington counties.
The Waiver of Subcontracting is not granted automatically by following the appropriate steps. Contractor must contact Council Regional Managers Bill Banfield (bbanfield@esrcc.org) or Dave Haines (dhaines@esrcc.org) by email and ask for a waiver on a case-by-case basis. Requests should also be copied to Eastern Contractors Association.

A subcommittee will be formed to determine when flexibility in subcontracting is warranted and develop procedures for implementation effective 6/1/2012.

Section 4. Applies to Local 277 (counties of Herkimer, Lewis, Jefferson, Madison, Oneida, Onondaga, Oswego and St. Lawrence).

On a job-by-job basis, Employers should contact Council Regional Managers Bill Banfield (bbanfield@esrcc.org) or Dave Haines (dhaines@esrcc.org) by email to request forms for the project they are bidding with a copy to Earl R. Hall, Executive Director of the CEA (email address: ehall@syrabex.com).

ARTICLE 26
MOST FAVORED NATIONS

Should the Union at any time hereafter enter into an agreement with any employer performing work covered by the terms of the Agreement with terms and conditions more advantageous to such Employer, or should the Union in the case of any Employer which is bound to the Agreement countenance a course of conduct by such Employer enabling it to operate under more advantageous terms and conditions than is provided for in the Agreement, the Employers party to the Agreement shall be privileged to adopt such advantageous terms and conditions provided the Employer, through the Association, has sent written notice to the Union calling the matter to its attention.

ARTICLE 27
ONE-TIME AGREEMENT

Section 1. For purposes of attracting non-signatory contractors, the Associations agree on a one-time, single-project agreement for any contractor, provided that the Union notifies the Associations in writing, of the details of any newly signatory contractors, i.e., name of contractor, duration of agreement, etc. The Union will furnish the Associations with all necessary information on any newly signatory contractor within one month of their signing. This article shall be in force and effect for the duration of the Agreement. For these purposes, all other terms and conditions of the Agreement, except for duration, will apply. Such contracts shall only be valid when signed by the Union and Employer.

Section 2. The Union will furnish the Associations with a list of all signatory Employers as of the date of the Agreement and all additional newly signatory Employers within a timely manner. The Union will furnish the Associations with a copy of all project labor agreements pertaining to the geography covered by the Agreement, owner understandings, International Agreements, etc. within a timely manner.

Section 3. The provisions of the bonding article shall apply to this article.

ARTICLE 28
SAFETY & SUBSTANCE ABUSE & BACKGROUND CHECKS

Section 1. To the extent permitted by applicable law, the Employer may conduct drug and substance abuse testing and background checks.

When the owner of a project or other similar representative mandates substance abuse testing or protocol in lieu of the agreed upon protocol existing in the Agreement, the parties agree that the signatory employer is authorized to substitute such new protocol regarding substance abuse testing.

Whenever the United States Department of Transportation standards regarding substances to be tested and testing levels change, shall so similarly occur to the substances to be tested and testing levels.

Section 2. To the extent permitted by applicable law, the Employer is entitled to conduct pre-employment "physically fit for duty" testing. If he or she passes the test, he/she will be paid two hours

straight time or the time it took to take the test, whichever is greater. Such payment shall be made on the next regular payday once he/she is employed.

Section 3. All Employees shall be required to have completed the OSHA 10-Hour Construction Outreach Training Program.

ARTICLE 29
ALTERNATE DISPUTE RESOLUTION

The Union and the Employer agree to consider implementation of a Workers' Compensation ADR Program, except in Local 291, where the parties have adopted as a part of the Agreement the ECA/Basic Trades Workers' Compensation Program including the Workers' Compensation Alternative Disputes Resolution Addendum.

ARTICLE 30
UNION MEMBERS CONTRACTING WORK

UBC Members contracting work must show proper compensation insurance (and notice posted to the effect) and become signatory to the Agreement before hiring a member of this Council.

ARTICLE 31
BAN ON PIECE WORK & LUMPING WORK

No employee shall do any piece work, lump work or take any contract for labor from any Employer or owner, unless this employee is identified as a contractor and he/she is following contracting for a livelihood subject to all the terms and conditions of the Agreement provided herein.

ARTICLE 32
JURISDICTIONAL DISPUTES

Section 1. Jurisdictional Disputes which involve the Union, including any of its affiliated Local Unions, it is agreed not to use or be bound by the Plan for the Settlement of Jurisdictional Disputes.

Section 2. The Employer will make a good faith effort to assign work on the basis of traditional and customary craft jurisdictional lines in each area. All questions, complaints or disputes dealing with craft jurisdiction, shall be resolved using such customary or traditional methods provided the Employer is signatory to Collective Bargaining Agreements to the Unions who dispute the work.

Section 3. All jurisdictional disputes which involve the Union shall be settled through arbitration where the arbitrator shall be bound by and render his/her decision according to the criteria developed by the National Labor Relations Board through adjudication of the jurisdictional disputes under Section 10 (k) of the National Labor Relations Act, 29 U.S.C. 160 (k). The assignments of the Employer shall be followed and work shall continue uninterrupted until the dispute is resolved. Decisions rendered by the Arbitrator shall be final, binding, and conclusive on the effected Employer and the Union or Unions, provided the effected unions agree to participate and be bound. The Parties agree to utilize the rules of the American Arbitration Association for selection of an arbitrator and conduct of the arbitration.

ARTICLE 33
NON-DISCRIMINATION

The Employer and the Union mutually agree that they will comply and cooperate with all laws, codes, rules, regulations, executive orders and administrative decisions, whether State or Federal, dealing with

non-discrimination in training, membership, employment, job tenure, promotions and every other matter covered by such laws, codes, etc. not herein expressly mentioned. They shall not discriminate against any qualified employee or applicant for employment because of race, creed, color, sex, religious belief, national origin, physical impairment or status as a disabled veteran.

ARTICLE 34
APPLICATION OF AGREEMENT

There shall be no discrimination against any Employer or Employee. If an Employer having an agreement direct with the International Union does any work in the territory covered by the Agreement, he must comply with all the conditions contained in the Agreement.

ARTICLE 35
HOUSING AND REHABILITATION

Section 1. Work Covered by this Article.

(a) This Article shall apply to all rehabilitation work on residential structures. For the purpose of this Article, "rehabilitation" shall be defined to include all work, including repair and alteration on any existing structure which is intended for residential use.

(b) On new housing, this Article shall be applicable only to site construction of all new work done by the Employer on one (1) family, two (2) family, row housing and garden type homes or apartments, which are not more than four (4) stories above ground level and are used as dwellings.

(c) Any work which is not specifically set forth in Sections A and B above shall not be covered by this Housing and Rehabilitation Article, but instead, shall be covered by and performed pursuant to the standard collective bargaining agreement between the Employer, Association and Union.

Section 2. By mutual agreement between the Union and the Employer, a wage rate for Housing and Rehabilitation work may be established.

ARTICLE 36
SMALL COMMERCIAL

On all commercial projects, valued at $3,000,000 or less, and/or industrial projects valued at $1,000,000 or less, seventy-five percent (75%) of the basic wage scale with full fringes will apply. The Employer is to notify the area business agent office when this work will occur. Such projects shall be single contract, or in the alternative, contracts for general construction. This wage scale shall apply to the general contractor or subcontractor acting as a prime contractor and his/her subcontractors signatory to the Agreement whose contracts jointly do not exceed the $3,000,000 and/or $1,000,000 limitation. In the event a multiple contract system is used by the owner-client, those subcontractors not signatory to the Agreement, whose contracts may or may not be assigned to the general contractor or subcontractor acting as a prime contractor, shall be excluded in determining the $3,000,000 and/or $1,000,000 limitation. The signed contract with the owner-client shall determine the dollar amount under this clause. Phased construction exceeding $3,000,000 and/or $1,000,000 total to be performed in sequence without each phase being subject to call for bids shall not be considered within the confines of the Agreement. Construction management or time and material contracts must contain an upset price within the $3,000,000 and/or $1,000,000 limitation. For commercial projects valued at over $3,000,000, the seventy-five percent (75%) of the basic wage scale with full fringes will be applied by mutual agreement on a job-by-job basis.

For industrial projects valued at over $1,000,000, the seventy-five percent (75%) of the basic wage scale with full fringes will be applied by mutual agreement on a job-by-job basis.
See appendix for rate schedule.

ARTICLE 37
MAINTENANCE AGREEMENT FOR INDUSTRIAL FACILITIES

Section 1. Maintenance work performed at industrial facilities will be paid at seventy-five per cent (75%) of the basic rate, with one hundred per cent (100%) fringes.

Section 2. Maintenance work is defined as "any work done within the existing footings of the structure which does not require alterations to the existing structure."

Section 3. A pre-bid conference will take place in order to determine if the work falls within this section. If no resolution is reached between the parties, an expedited arbitration will occur.

Section 4. See Appendix H for terms and conditions in the Counties of Genesee, Niagara, Orleans and Wyoming (except for the townships of Castile, Gainesville, Genesee Falls, Perry, Pike and Warsaw) areas.

ARTICLE 38
MILLWRIGHT

Section 1. It is understood that Employers who sign the Agreement are obligated under the terms and conditions of other agreements of the Union, including the Millwrights Local 1163, or successor union, statewide agreement. As such, Employers do not have to sign that agreement, but shall perform work as if they were signatory to such. It is understood that journeypersons may, from time to time, perform the work of both carpenters and millwrights. No restrictions will be put on journeypersons that will prevent them from performing work of both types. When carpenters are worked in the millwright trade, they shall be paid under the terms of the Millwright agreement and vice versa. Benefits shall be paid at the appropriate rates and both millwright and carpenter benefits can be paid via the same method of payment. Any Administration and Safety Program funds shall go to the appropriate Association, unless the employer is designated to the Millwrights Contractors Association.

Section 2. The above section shall not be applied in Allegany, Cattaraugus and Chautauqua counties. See Appendix I for those areas.

ARTICLE 39
PILEDRIVING

This Article covers only pile driving and its allied work in the general construction of buildings. All pile driving shall be done by Piledriver members of the United Brotherhood of Carpenters & Joiners of America. This includes all wood, steel and concrete sheet piling and bracing of same. Sheath piling of embankments, sheath piling of pier holes and trenches for the foundation of buildings (whether vertical or horizontal sheathing is used), underpinning of walls and columns with tubes driven by hydraulic, air or screw jacks, steam hammer or any other machinery which may be necessary to drive same, all sand drains, all wood, steel and concrete sheath piles excepting that work conceded to be done by engineers, oilers and/or firemen is not included in this Article.

(a) Unload all piles, load and unload, erect and dismantle all equipment used in the aforementioned types of work; cut, weld or burn all piles, remove pile butts from job site when a rig is used for same; set up and drive all sheeting of wood or other material, brace and shore same.

(b) All labor employed in building, driving, staying, pulling and cutting off of all pre-cast concrete piles while still in leads, pile jackets, composite piles, cast in place concrete piles and any pre-cast structural shapes or units, the setting of which is performed with pile driving equipment when concurrent with pile driving operations. Also maintenance of the boom from the king pin out when the

rig is being used by pile drivers and operation of valve for the control of hammer shall be operated by pile bucks when said valve is outside of cab.

(c) In clam shell work, where a pile driver rig is used, there shall be a pile driver employed as a signalman and also a tag line man where needed, when pertaining to pile driving work.

(d) The handling of all materials that have been or are to be used to accomplish any of the work herein described shall be done by pile drivers.

Section 1. Reasonable notice shall be given the Union in manning jobs.

Section 2. Crew sizes are at the prerogative of the employer.

Section 3. Raingear, if required, shall be provided the pile driver crew by the Employer and must be returned to the Employer at the end of each work shift.

Section 4. The pile drivers agreement does not cover sheathing driven by a hand held hammer.

Section 5. Pile load test equipment shall be erected and dismantled by pile drivers. Maintenance work on such equipment shall be performed by pile drivers.

Section 6. For the counties of Erie, Niagara, Orleans, Genesee, Wyoming, Chautauqua, Cattaragus, Allegany, Livingston, Ontario, Wayne and Monroe a separate piledriving agreement is already in place that expires in 2012. Contact the appropriate association for more information on these counties.

ARTICLE 40
DIVING

Section 1. When the services of divers and tenders are required, the divers and tenders work shall be done under jurisdiction of the United Brotherhood of Carpenters and Joiners of America.

Section 2. Work which requires the use of diving apparatus, hard hats, scuba or otherwise and will so be termed "Commercial Diving Operations" and will be undertaken by the divers and tenders of the Local Union No. 289. It should be understood that only in very rare instances, should SCUBA be utilized in Commercial Diving Operations and must be done so in the strict accordance with the following safety standards. The Drive Crew shall consist of all UBC members without exception.

Section 3. All operational standards for diving activities will meet or exceed the Association of Diving Contractors "Consensus Standards for Commercial Diving Operations". All work will be in compliance with the appropriate State and Federal safety laws including O.S.H.A. Commercial Diving regulations 1910, Sub Part T.

Section 4. The diving rate of pay shall include the divers own personal diving dress, helmet and personal support gear, "from the umbilical connection down" in surface supplied operations or "excluding his air" with SCUBA operations. If requested by the employer, and the supplied equipment meets the above applicable safety standard, the diver may furnish his own air and support equipment and he shall negotiate a rental fee for such equipment with the Employer.

Section 5. The Employer shall provide all "tools of the trade" used by commercial divers while working underwater. The topside power units for tools of the trade and all equipment assisting in the divers life support function will be operated and maintained by the Diving Crew.

Section 6. It is understood that the Employer is not required to bear the expense of annual physicals and other required testing necessary for employment compliance with governing agencies for commercial diving operations.

Section 7. There will be no Z dives.

Section 8. Stand by Diver receives dive pay only if he/she gets wet.

Section 9. For a diver to receive overtime worked at the dive rate of pay, he must have received the dive rate of pay for the entire regular work day, otherwise overtime worked will be paid at the tender's rate of pay. The tender's rate of pay shall be one dollar ($1.00) per hour over the journeyman rate of pay.

Section 10. Penetration Pay: – 0 to 50' free, 51' to 100' $.75 per foot, 101' and deeper $1.00 per foot. The definition of penetration is pipe penetration or like matter only. It does not include caverns, chambers etc. If unique conditions exist the employer and employee will make every effort to adjust the compensation to mutually agreeable terms.

Section 11. Depth Pay: – 0-80' free, 81' to 100' $.50 per foot, 101' to 150' $ .75 per foot, 151' and deeper shall be $1.25 per foot. The deepest dive of the day shall constitute the depth pay.

Section 12. When services of divers are required in air lifting (an underwater vacuum, used to clean a surface) operations, it shall be performed by members of the Brotherhood.
- Diver - Wet Day: $490/day
- In Broome & Tioga Counties the rate shall be $290/day plus hourly benefits.
- Diver - Dry Day +$1.00/hour over journeyman wage
- Diver Tender - Wet or Dry Day +1.00/hour over journeyman wage

Section 13. If any part of the day is spent diving, the diver shall receive the hourly diver rate of pay for the entire normal workday. If there is more than one diver on the crew and the service of only one diver is needed within the day, the divers may choose to split the dive day in the water, but are doing so with the understanding that the Employer may split the dive rate of pay between the divers on an hourly basis. The dive rate of pay is not to be less than four (4) hours in a workday. Each split-day diver will receive a split rate of pay for the day; four (4) hours at the dive rate of pay and four (4) hours the tender rate of pay.

ARTICLE 41
PREVAILING RATES-HOLD HARMLESS CLAUSE

In the event that the prevailing posted rates and conditions set forth in specifications for governmental or related projects which are subject to prevailing rate statutes are less than the rates and conditions set forth in the Agreement, then the prevailing rates and conditions in the project specifications shall control and rates and conditions in the Agreement shall be superseded.

ARTICLE 42
ADMINISTRATION AND SAFETY PROGRAMS

Section 1. Each Employer shall pay to the Administration and Safety Program in the appropriate area the amount shown with the fringe benefit payments described above.

Section 2. The Associations each agree to establish individual Administration and Safety Programs for the purpose of meeting all costs to the Associations of conducting labor relations, and all matters and problems incidental thereto, on an industry-wide basis in their individual areas for the benefit of all

employees and employers performing work in said area. The activities to be financed by the funds of the Administration and Safety Programs may include any legitimate activity not specifically prohibited below. The various Boards of Directors of the Associations in accordance with their By-Laws, shall administer the funds of the Administration and Safety Programs.

Section 3. Anything contained herein to the contrary notwithstanding, there is specifically excluded from the purposes of the Administration and Safety Programs the right to use any of its funds for lobbying in support of anti-labor legislation and/or to subsidize employers during periods of work stoppage or strike.

Section 4. Upon termination of payments allocable to the Administration and Safety Programs by reason of the expiration of the Agreement, or because of the absence of a contractual obligation upon the Employer to make payments so allocable, or for any other reason, the assets and fund of the Administration and Safety Programs shall not be distributed among any Employers, or to the Union, but shall be held by the individual Associations, which shall continue to administer and expend such assets and fund for the purposes, and subject to the conditions set forth in this Section 3.

See individual appendices for amounts.

ARTICLE 43
VALIDITY

If any provisions of the Agreement violates any applicable statues, or is held by any Court or Government Agency having jurisdiction, such invalidity shall not affect the validity of the remainder of the Agreement. In the event any section or portion thereof, shall be declared invalid, it is further agreed that the parties hereto shall meet within a period of sixty (60) days to redraft a new section, or portion thereof, which shall be valid and which shall replace the section, or portion thereof, declared invalid.

ARTICLE 44
DURATION AND TERMINATION

The Agreement shall become effective on June 1, 2011 and shall remain in effect until May 31, 2016 and shall continue thereafter from year to year, unless either party notifies the other party in writing not less than sixty (60) days prior and not more than ninety (90) days prior to May 31, 2016 or not less than sixty (60) days prior to and no more than ninety (90) days prior to any anniversary date thereafter that either party desires to modify the Agreement.

APPENDIX A – Local 291
Counties of Albany, Clinton, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington

Eastern Contractors Association, Inc.: Counties of Albany, Clinton, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington

TRADE JURISDICTION

The Association and any signatory Employer party to this Agreement who is not a member of the Association, recognizes the trade autonomy and jurisdiction set forth in the Constitution of the United Brotherhood of Carpenters.

PREMIUM WAGE RATES

Foreman: $1.25
General Foreman: $2.50

WAGE INCREASES/ADMINISTRATION AND SAFETY PROGRAM (ASP)

Increases effective the first pay period beginning on or after the dates listed.

For the counties of Albany, Fulton, Greene, Montgomery, Rensselaer, Schenectady and Schoharie

7/1/2011: $0.29

Distribution:

Wage	$27.35
Health	$7.11
Annuity	$0.50
Pension	$8.09
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.02
ASP	$0.27
Total Package	$43.84

Future Increases (distribution to be determined)
6/1/2012: $0.98
6/1/2013: $1.45
6/1/2014: $1.61
6/1/2015: $1.67

ASP: 1% of the base wage

For the counties of Clinton, Essex and Franklin

7/1/2011: $0.39

Distribution:

Wage Rate	$23.41
Health	$6.91
Annuity	$0.00
Pension	$8.09
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.02
ASP	$0.15
Total Package	$39.08

Future Increases (distribution to be determined)
6/1/2012: $0.88
6/1/2013: $1.29
6/1/2014: $1.44
6/1/2015: $1.49

ASP: 6/1/2012: $0.15; 6/1/2013: $0.20; 6/1/2014: $0.20; 6/1/2015: 1% of the base wage

For the county of Saratoga
7/1/2011: $0.00

Distribution:	
Rate	$27.22
Health	$7.11
Annuity	$0.00
Pension	$8.09
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.02
ASP	$0.12
Total Package	$43.06

Future Increases (distribution to be determined)
6/1/2012: $0.96
6/1/2013: $1.41
6/1/2014: $1.57
6/1/2015: $1.62

ASP: May change as of 6/1/2012

For the counties of Hamilton, Warren and Washington
7/1/2011: $0.40

Distribution:	
Rate	$24.65
Health	$7.06
Annuity	$0.00
Pension	$8.09
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.02
ASP	$0.12
Total Package	$40.44

Future Increases (distribution to be determined)
6/1/2012: $0.91
6/1/2013: $1.34
6/1/2014: $1.49
6/1/2015: $1.54

ASP: May change as of 6/1/2012

APPENDIX B – Local 277
Counties of Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego and St. Lawrence

The Construction Employers Association of Central New York: Counties of Onondaga, Oswego

Northern New York Builders Exchange: Counties of Jefferson, Lewis and St. Lawrence

Mohawk Valley Construction Employers Association: Counties of Herkimer, Madison and Oneida

TRADE JURISDICTION

The Association and any signatory Employer party to this Agreement who is not a member of the Association, recognizes the trade autonomy and jurisdiction set forth in the Constitution of the United Brotherhood of Carpenters.

PREMIUM WAGE RATES

Foreman: $1.00
General Foreman: $2.25

WAGE INCREASES/ADMINISTRATION AND SAFETY PROGRAM (ASP)

Increases effective the first pay period beginning on or after the dates listed.

For the county of Onondaga
7/1/2011: $0.39

Distribution:

Rate	$25.09
Health	$7.55
Annuity	$0.69
Pension	$5.23
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.04
ASP	$0.17
Total Package	$39.27

Future Increases (distribution to be determined)
6/1/2012: $0.88
6/1/2013: $1.30
6/1/2014: $1.44
6/1/2015: $1.49

ASP: $0.17

For the counties of Jefferson, Lewis and St. Lawrence
7/1/2011: $0.41

Distribution:

Rate	$25.09
Health	$7.55
Annuity	$2.61
Pension	$5.23
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.04
ASP	$0.15
Total Package	$41.17

Future Increases (distribution to be determined)
6/1/2012: $0.92
6/1/2013: $1.36
6/1/2014: $1.52
6/1/2015: $1.57

ASP: $0.15

For the county of Oswego
7/1/2011: $0.41

Distribution:		Future Increases (distribution to be determined)
Rate	$25.09	6/1/2012: $0.92
Health	$7.55	6/1/2013: $1.36
Annuity	$2.61	6/1/2014: $1.52
Pension	$5.23	6/1/2015: $1.57
Edu. & Training	$0.40	
UBC	$0.10	ASP: $0.17
Labor Mgmt.	$0.04	
ASP	$0.17	
Total Package	$41.19	

For the county of Oswego "A" Rate
Only for work performed within the secured areas of any nuclear power plant within Oswego County
7/1/2011: $0.42

Distribution:		Future Increases (distribution to be determined)
Rate	$26.60	6/1/2012: $0.92
Health	$7.55	6/1/2013: $1.36
Annuity	$2.61	6/1/2014: $1.52
Pension	$5.23	6/1/2015: $1.57
Edu. & Training	$0.40	
UBC	$0.10	ASP: $0.17
Labor Mgmt.	$0.04	
ASP	$0.17	
Total Package	$42.70	

For the counties of Herkimer, Madison and Oneida
7/1/2011: $0.37

Distribution:		Future Increases (distribution to be determined)
Rate	$24.08	6/1/2012: $0.85
Health	$7.55	6/1/2013: $1.25
Annuity	$0.24	6/1/2014: $1.39
Pension	$5.23	6/1/2015: $1.44
Edu. & Training	$0.40	
UBC	$0.10	ASP: $0.10
Labor Mgmt.	$0.04	
ASP	$0.10	
Total Package	$37.74	

APPENDIX C – Local 277
Counties of Cayuga, Seneca and Yates

The Construction Employers Association of Central New York: Counties of Cayuga, Seneca and Yates

TRADE JURISDICTION

The Association and any signatory Employer party to this Agreement who is not a member of the Association, recognizes the trade autonomy and jurisdiction set forth in the Constitution of the United Brotherhood of Carpenters.

Work jurisdiction for employees working under this agreement shall include Setting of VLT "Video Lottery Terminals". All moveable office partitions. Windows: set, stay, level and brace all window frames and sash, as well as curtain walls traditionally done by the carpenter. Bathroom Partitions and Accessories. All roof blocking: providing no voiding of warranties. Firestop: All penetrations through carpenter partitions for carpenter use.

PREMIUM WAGE RATES

Foreman: $1.25
General Foreman: $2.00

WAGE INCREASES/ADMINISTRATION AND SAFETY PROGRAM (ASP)

Increases effective the first pay period beginning on or after the dates listed.

For the counties of Cayuga, Seneca and Yates

7/1/2011: $0.37

Distribution:

Rate	$22.85
Health	$7.40
Annuity	$1.00
Pension	$5.69
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.04
ASP	$0.17
Total Package	$37.65

Future Increases (distribution to be determined)

6/1/2012: $0.84
6/1/2013: $1.24
6/1/2014: $1.38
6/1/2015: $1.43

ASP: $0.17

APPENDIX D – Local 277
Counties of Broome and Tioga

Southern Tier Association of Construction Contractors (STACC): Counties of Broome, Tioga

TRADE JURISDICTION

The Employer is desirous of employing skilled workmen in all Trade subdivisions as set forth in this Agreement. The Employer agrees to assign the following items of Work, which have been consistently proven to be the work of the carpenters, to the carpenters. Our claim of jurisdiction, therefore, extends over all divisions and sub-divisions of the trade, including but not limited to: carpenters, joiners, millwrights, machinery erectors, piledrivers, lathers, bridge, dock, and wharf carpenters, divers, underpinners, timbermen, core drillers, shipwrights, boat builders, ship carpenters, caulkers, cabinet makers, bench hands, stair builders, millmen, wood and resilient floorlayers and finishers, carpet layers, display workers, shinglers, siders, insulators, acoustic and dry wall applicators, shorers and house movers, loggers, lumber and sawmill workers, furniture workers, reed and rattan workers, shingle weavers, casket and coffin makers, box makers, railroad carpenters, car builders; all those engaged in the operation of wood working or other machinery required in the fashioning, milling, or manufacturing of products used in the Trade, or engaged as helpers to any of the above divisions or sub-divisions; all such work and jurisdiction as may have been acquired by reason of amalgamation or merger with former national or international unions and as may be hereafter acquired.

Throughout this claim of jurisdiction the following words and phrases as used therein shall be considered to have the following meanings respectively, unless the context shall clearly indicate a different meaning in the connection as used: the trade jurisdiction of the United Brotherhood of Carpenters and Joiners of America consists of milling, fashioning, joining, assembling, erecting, fastening, or dismantling all material of wood, plastic, metal, fiber, cord and composition, and all other substitute materials. The handling, erecting, installing, and dismantling of machinery and equipment, and the manufacturing of all materials where the skill, knowledge, and training of the carpenter or joiner are required, either through the operation of machine or hand tools, either at the job site or in the production shops, mills, and factories.

Section 1. CARPENTER

When the terms 'carpenter" and/or "joiner" are used they shall mean all sub-division of the construction trade where the skill, knowledge, and training of a carpenter are required. All carpenter work performed in conjunction with Heavy and Highway construction shall be done under the terms of the Local Heavy and Highway Agreement prevailing in the jurisdictional area where the project is located.

A. Forms and related work.

The work of the carpenter shall include, but not be limited to, the stringing out, prefabing, constructing, assembling, setting, aligning, dismantling, and stripping of all forms for concrete or any other plastic substance requiring a form or mold, whether made of wood, metal, plastic, or any other type of material, whether for footings, foundations, columns, decks, slabs, or roofs or any other structural member of a house, building, tunnel, or any structure of any description.

The carpenter shall:

1. Strip, release, and repair all concrete forms that are to be reused on sight or used at another Site.
2. Build all forms for arches, flat arches, decks, flat slabs, beam sides, and beam bottoms, and they shall shore and brace same.
3. Set and place all Span-all or similar type beams and stringers connected with the building and supporting of all concrete forms.
4. Do all framing, clamping, and bracing necessary in connection with setting and aligning of all wood, metal, or substitute material, column forms, and the stripping and/or releasing of same.

5. Build and place precast forms for pipe chases, open-cut forms, forms for light poles and signs.
6. Erect, set, align, and level all prefabricated, built in place, or patented forms including curb, sidewalk, and gutter forms.
7. Set all forms, centers, and bulkheads, fabricate and set all screeds and stakes for concrete and mastic floors.
8. Make all templates for anchor bolts and place and level the bolts for structural members or machinery. Do the installation of leveling plates, including the grouting and mixing of same.
9. Do the handling and signaling where power is used for the setting or dismantling of forms or any other material erected by carpenters, including the tying, tagging, and receiving from yard to point of installation.
10. Do the power rigging of all materials used by the carpenters such as new or cleaned lumber. This includes panel forms to be reused or modified, including component parts, such as whalers, braces, strong backs, etc.
11. Do the stripping in its entirety of all deck forms, ceco pans, or similar type pans, panel forms, plastic, fiberglass or paper forms, plywood decks, beam bottoms, beam sides, and column forms.
12. Strip Symons forms, Panel forms, Allen forms, and similar patented forms, and all plywood or wood forms, along with forms made of any other material.
13. Repair, revamp, or remodel all panel forms.
14. Assemble, set, and release Blaw-Knox forms, including the erection and releasing of inverts.
15. Install water-stop (in forms) of plastic, metal, or other material.
16. Handle hand lines used to raise or lower forms and material to actual point of installation.
17. Install precast concrete wall panels including tilt-up panels, regardless of whether the concrete panels are cast on the job or away from the job site.
18. Unload, set, plumb, align, point, caulk, grout, and patch siporex wall panels.
19. Drill holes for the insertion of bolts including rock anchors to hold forms or any other item installed by carpenters.
20. Set forms for sidewalk, sidewalk lights, curbs, and gutters and do all welding and burning incidental to carpentry.
21. Strip all forms for concrete work where the material is to be reused on site or at any other site.
22. Jack slip forms, and do all semi- and unskilled work connected therewith.
23. Where precast or prestressed concrete slabs, walls, or sections are used, load, unload, and place such slabs, walls, or sections. Mix, handle, convey, place, and spread grout for any purpose. Cut concrete or aggregate in any form, by hand or mechanical means using grindstones, air, or water. On all superstructure concrete pours on decks and walls where forms are required, a carpenter shall be employed to watch the pour.

B. Material handling

Rough materials. The carpenter shall move all rough materials from the stockpiles designated by the contractor s representative.

Semi-finish materials. The unloading and stockpiling of drywall, floor tile, and acoustical tile shall be the work of the carpenters, if the time required to complete said work is less than two hours.

Finish materials.

1. Trim materials, such as fixtures, showcases, display cases, cabinets, paneling, casing, stops, molding, baseboard, chair rails, sash, doors, doorjambs, shall be unloaded, unboxed, or uncartoned, and installed by the carpenters.
2. Office furniture that arrives on the job site knocked down shall be unloaded, assembled, leveled, aligned, and set by the carpenters.
3. Materials, which are covered by understandings with other organizations, such as lab equipment, Nesbitt bookcases, library stacks and shelving, refrigerated cases, walk-in coolers, metal trim, shall

be unloaded and handled by the carpenters.

4. Any finished products installed by carpenters shall be unloaded by the carpenters.
5. If a mixed load of rough and finished materials arrives on the job site, it is agreed that a composite crew based on the percentage as defined by the bill of lading shall unload to stockpile area on the main floor.

C. General Construction.

The carpenter shall:

1. Build, erect, plank, and dismantle the scaffolds of all trades on the job, from the ground up, including self-supporting scaffolds and morgan scaffolds, or any special designed scaffolds, or those built for special purposes, when such scaffolds are to be build over fourteen (14) feet in height. Place mudsill, align, and level. Install all structural members, including frames, braces, hand rails, planking, ledger boards, and all material necessary for completion of scaffolding
2. Lay, cut, or fasten (with clips or spotweld) all roof deck planking, floor planking and/or slabs whether gypsum, concrete (Insulroc-Tectum-Flinkote) or any other similar plank which are laid dry regardless of whether the joints are later filled or not.
3. Erect all grid type ceilings or install Z type ceilings and the necessary runners - channels - wall angles cross T's and all other necessary parts of the ceiling installations. Apply acoustic tile whether glued or nailed, install acoustical ceilings, suspended acoustical ceilings, and H&T Solo Tile suspended systems in their entirety, and install insulation whether glued or blown.
4. Erect all dry wall construction, both studs and board, whether metal, wood, plastic, or any other material.
5. Install all mar-lite, mire-wall, or wonder board whether interior or exterior.
6. Apply composition roofing shingles.
7. Set, stay, level, and brace all window frames and sash.
8. Make and set all frames, sash, doors, blinds, trim, store and other fixtures, jambs, bucks, casings, molding, chair rails, mantels, base or mop boards, wainscoting, furniture, china closets, kitchen cabinets, wardrobes. Install bowling alleys and displays. Assemble, erect, 'and install seats, benches, chairs, and other furniture in schools, theatres, churches, halls, and other places of assemblage on floors of any kind, including the anchor bolts or other devices and/or method of fastening of the above. Install interior cabs for elevators, metal bucks, doors and partitions.
9. Install Alberene (of Duroc type stone) for table tops, countertops, sinks, back splashes, and sills. Fill joints with epoxy or similar type cement.
10. Do all framing in connection with the setting of metal columns.
11. Install and remove all staging of all swinging and hanging scaffolds. Build and construct all derricks, make mortar boards, boxes, trestles, horses, and ladders. Do all the shoring, razing, and moving of buildings.
12. Build and erect all temporary enclosures whether made of wood, plastic, metal, or canvas, including combinations of the above.
13. Unload, handle, install, and weld expansion, armored joint and annored plate whether used on road, bridges, approach ramps, or buildings.
14. Erect mortar and brick hoists and concrete distributors used in erecting buildings or fireproofing floors, or for pouring concrete buildings, building or repairing coal pockets, breakers, washers, tipples.
15. Operate winches and jacks whether operated manually or operated mechanically by portable operating devices, used to handle material to be installed or erected by members of the United Brotherhood of Carpenters and Joiners of America and all tagging and signaling incidental to the Trade.
16. Manufacture and erect cooling towers and tanks. Install wood, plastic, and metal awnings, door shelters, marquees, and jalousies.
17. Fit installation and fastening of stops, beads, and molding in doors and windows framing all false

work, derricks and hoists, travelers, and all lumber and material used in the construction industry.

18. Install all builders hardware, including door hardware and tracks of every description. Install caulking and weather stripping, fit and hang all doors (combination or otherwise) and fitting of screens for doors, windows, and other openings.
19. Install draperies, curtains, venetian blinds, and pockets for same.
20. Install, erect, and/or apply all shingles (roof or sidewall), siding, wallboard., or sheets composed of wood, wood pulp, plastic, transite, or composition materials or any other material including combined or faced with metal regardless of the manner attached.
21. Unload, handle, install, and/or apply all rubber or plastic one piece roofs whether sealed with a heat iron or glued (such as Goodyear Rubber Roofs, Carlise, or Trocal Plastic Film Roofs) including all accessories and flashing.
22. Erect all wood, metal, plastic, and composition partitions and trim materials for toilets and bathrooms. Erect and install formica laminated toilet partitions and doors. Install studless solid gypsum wallboard partitions in their entirety.
23. Install and/or erect porcelain enameled panels and metal siding. Install Marlite and Mirawall Board (interior and exterior).
24. Install and handle laboratory equipment including cabinets and work benches, bookcases either separately or used in conjunction with heating and/or air conditioning units, blackboards, and bulletin boards.
25. Install all Herman-Nelson Cabinets, Nesbitt, Schemenauer, Trane, Warner-Webster, Inducto Bookcases and Cabinets regardless of name and regardless if used separately or in conjunction with heating and/or air conditioning units.
26. Fasten all wooden, plastic, or composition cleats to iron work or any other materials, erect and install stran steel or similar material, cut and hand all lumber or other materials between girders and joists for fireproofing or concrete centers.
27. Erect all wood, metal, plastic, and composition partitions, cut and apply all furring, make and fasten wood, brackets for metal ceilings and side walls, erect all wood furring for cornices, and put all grounds for plaster or cement finish.
28. Install all molding and trim made of wood, metal, plastic, or composition, install nm-strips for plumbers or other trades or cut for pipes through floors, joists, or partitions composed entirely or in part of wood or other material erected by carpenters.
29. Erect the structural parts of a house, building, or structure made of wood or any substitute such as plastics or composition materials, put together roofs and partitions.
30. Build and erect stairs, store, office, bank, and other fixtures, shelving, racks whether of wood or other materials.
31. Install insulation whether glued, nailed, stapled, stud, spot-welded or blown.
32. Erect, dismantle and/or reinstall all fences.
33. Unload, assemble, and install playground equipment, whether made of metal, wood, plastic, or any other material.
34. Cut, assemble, and install all landscaping members whether made of metal, wood, plastic, or any other material.
35. Erect pre-engineered metal buildings such as Butlers, Armco, or any other name brand, including, but not limited to columns, rafters, purlins, gurts, braces, trim, siding, and roofing sheets.
36. Dismantle buildings or any other structures where the materials to be salvaged were installed by carpenters and the tools of the Trade are required.
37. Load, unload, carry, distribute, and handle all rods and material for use in reinforcing concrete construction. Load, unload, carry, distribute, handle, and install all mesh when iron workers are not employed.

D. Ship carpenter.

The term "ship carpenter" shall mean the ship carpenter, joiner, caulker, shipwright, and boat builder on

all boats including those made of fiberglass and plastic, and the building and repairing of same, the making and installation of all furniture, and application of all insulation.

E. Railroad carpenter.
The term "railroad carpenter" shall mean the carpenter work, joining, or any of its subdivisions when said journeymen are employed directly by railroad corporations in maintenance and repairing property of the railroad along the lines of the railroad proper, but will not apply to office and other buildings of corporation situated away from the operating line of the road.

F.Stair builder.
The term "stair builder" shall cover the cutting, assembling, and erecting of rough stair carriages and platforms for same; the laying out, manufacturing, either by hand or machine, all crooks, easements, and casements, newel posts, strings, risers, wainscoting, or panel work for stairs; the making of molding for stairs; the erecting of the stairs complete, including the furring, both of sides and underneath same; the working and erecting of all hand rails and balusters.

G. Millman/cabinet maker.
The term "millman, cabinet maker, and bench hand" shall mean the making, cutting, milling, tooling, handling, assembling, and manufacturing in shop, mill, or factory of store, display, office, theatre, hall, church, school, and bank fixtures and furniture, mantel pieces, cabinets of all types, dressers, wardrobes, china closets, ornamental work of wood or composition, panel work, partitions, precut and prefit trim and doors, show and wall cases, butcher shop fixtures, pallets, sash, doors, trim, molding, screen and storm sash doors, flooring, plywood, making of pool and billiard tables, household fixtures and furniture, and other tables and desks, refrigerators and ice boxes.

Section 2. LATHERS.
The Employer agrees to recognize the jurisdictional claims of the Wood, Wire, and Metal Lathers subdivision of the Carpenters Trade that have been established by agreement between the Lathers and other crafts, awards contained in the Green Book, and other decisions of record.
A. The items of work performed under this section shall be:
1. Installation of metal lath and accessories, application of metal lath on floors and ceilings, applications of metal lath on columns, pilasters, walls, and partitions, picture molding, metal corner beads and guards, casing beads and plaster stops, chair rail, base screed, metal base, ceiling runners or tracks, and similar metal lathing and plastering accessories attached before plastering.
2. Installation, soldering, and fastening of the following materials: Gypsum lath and exterior lathing material, metal lath or any material used as a base for plaster acoustical material, cornerites, beads, stops, and all other accessories, backing board, finish drywall, sheet lead and metal materials, on floor, wall, or ceiling.
3. Installation of ceiling suspension systems exposed grid systems of metal tee members, semi-exposed grid systems, fire-rated exposed grid systems, environmental and luminous system, concealed systems directly hung from hanger wires, accessible concealed systems, concealed systems requiring carrying channels.

PREMIUM WAGE RATES
Foreman: 10% of Journeyman base wage
General Foreman: 10% of Journeyman base wage

WAGE INCREASES/ADMINISTRATION AND SAFETY PROGRAM (ASP)

Increases effective the first pay period beginning on or after the dates listed.

For the counties of Broome and Tioga (STACC)

7/1/2011: $0.37

Distribution:

Rate	$23.06
Health	$7.40
Annuity	$0.78
Pension	$5.69
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.04
ASP	$0.14
Total Package	$37.61

Future Increases (distribution to be determined)

6/1/2012: $0.84

6/1/2013: $1.25

6/1/2014: $1.38

6/1/2015: $1.43

ASP: $0.14

APPENDIX E – Local 277
Counties of Chemung, Cortland, Schuyler, Steuben, Tompkins

Southern Tier Association of Construction Contractors (STACC): Counties of Cortland, Tompkins

Construction Association of the Southern Tier (CAST): Chemung, Schuyler and Steuben

TRADE JURISDICTION

1. The trade autonomy of the United Brotherhood of Carpenters and Joiners of America consists of the milling, fashioning, joining, assembling, erection, fastening or dismantling of all material of wood, plastic, metal, fiber, cork and composition and all other substitute materials. The handling, erection, installing, and dismantling of machinery and equipment, and the manufacturing of all materials where the skill, knowledge and training of the Carpenter or Joiner are required, either through the operation of machine or hand tools, either at the job site or in production shops, mills, and factories.

2. The Union's claim of jurisdiction, therefore, extends over the following divisions and sub-divisions of the trade:
Carpenters and Joiners, Pile Drivers, Bridge, Dock and Wharf Carpenters, Divers, Underpinners, Timbermen and Core Drillers, Shipwrights, Boat Builders, Ship Carpenters, Joiners and Caulkers, Cabinet Makers, Bench Hands Stair Builders, Millmen, Wood and Resilient Floor Layers and Finishers, Carpet Layers, Shinglers, Siders, Insulators, Acoustic and Dry Wall Applicators. Sharers and House Movers, Loggers, Lumber and Sawmill Workers, Furniture Workers, Reed and Rattan Workers, Single Weavers, Casket and Coffin Makers, Box Makers, Railroad Carpenters and Car Builders and all those engaged in the operation of wood working or other machinery required in fashioning, milling or manufacturing of products used in the trade, or engaged as helpers to any of the above divisions of sub-divisions, and the handling, erecting and installing of material on any of the above divisions or sub-divisions, burning, welding, rigging and the use of any instrument or tool for layout work, incidental to the trade. When t1 1e terms "carpenter" and "joiner" are used, they shall mean all the sub-divisions of the trade.

3. The employer agrees to recognize and assign carpenters to do the work as outlined in the Trade Autonomy of the United Brotherhood of Carpenters as stated. Specifically the following is the work of the Carpenters:

a. The laying, cutting and fastening of all roof deck planking, Whether gypsum-concrete- insulroc-tectum or any other similar planks which are laid dry, regardless of whether the joints are later filled or not.
b. Tile erection of all grid type ceilings or installation of Z type ceilings and the necessary runners-channels-wall angles-cross T's-and all other necessary parts of the ceiling installation.
c. The installation of all Mar Lite and Mirawell Board whether interior or exterior.
d. The erection of all dry wall construction both studs and board, whether metal or wood.
e. The installation of all Herman-Nelson Cabinets, Nesbitt Cabinets, Schemenauer, Trane, Warner-Webster Cabinets and similar type Cabinets regardless of name.
f. TI1e installation of all Porcelain Enamel Panels, Interior and/or Exterior, except window wall or curtain wall construction.
g. The stripping of all forms for concrete work where the material is to be re-used, except flat arch work, forms not to be re-used.
h. The installation of all display cases and the necessary metal trim.
i. The application of composition roofing shingles on new construction only.
j. All windows made of wood, metal, or aluminum, historically done by carpenters.
k. All roof blocking.
l. Electrical hardware installations.

m. Bathroom partitions and accessories.
n. Setting of all gaming equipment e.g. video lottery terminals.
o. All moveable office partitions of any material.

4. In executing this Agreement, the parties hereto agree to be bound by the terms and provisions of the agreement creating the Impartial Disputes Board for Settlement of Jurisdictional Disputes; to be bound by Disputes Board Decisions, Hearing Panel Decisions, which may arise under this agreement.

PREMIUM WAGE RATES

Counties of Chemung, Cortland, Schuyler, Steuben and Tompkins
Foreman: 10% of Journeyman base wage
General Foreman: 10% of Journeyman base wage

WAGE INCREASES/ADMINISTRATION AND SAFETY PROGRAM (ASP)

Increases effective the first pay period beginning on or after the dates listed.

For the counties of Counties of Cortland, Tompkins (STACC)
7/1/2011: $0.41
Distribution:

Rate	$24.61
Health	$7.40
Annuity	$2.90
Pension	$5.69
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.04
ASP	$0.25
Total Package	$41.39

Future Increases (distribution to be determined)
6/1/2012: $0.93
6/1/2013: $1.37
6/1/2014: $1.52
6/1/2015: $1.57

ASP: 1% of base wage (STACC)

For the county of Schuyler
7/1/2011: $0.41
Distribution:

Rate	$24.61
Health	$7.40
Annuity	$2.90
Pension	$5.69
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.04
ASP	$0.25
Total Package	$41.39

Future Increases (distribution to be determined)
6/1/2012: $0.93
6/1/2013: $1.37
6/1/2014: $1.52
6/1/2015: $1.57

ASP: 1% of base wage (CAST)

For the county of Chemung (CAST)
7/1/2011: $0.41
Distribution:

Rate	$24.61
Health	$7.40
Annuity	$2.06
Pension	$5.69
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.04
ASP	$0.25
Total Package	$40.55

Future increases (distribution to be determined)
6/1/2012: $0.93
6/1/2013: $1.37
6/1/2014: $1.52
6/1/2015: $1.57

ASP: 1% of base wage (CAST)

For the county of Steuben (CAST)
7/1/2011: $0.41
Distribution:

Rate	$24.61
Health	$7.40
Annuity	$2.92
Pension	$5.69
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.04
ASP	$0.25
Total Package	$41.41

Future increases (distribution to be determined)
6/1/2012: $0.93
6/1/2013: $1.37
6/1/2014: $1.52
6/1/2015: $1.57

ASP: 1% of base wage (CAST)

APPENDIX F – Local 277
Counties of Chenango, Delaware, Otsego

Southern Tier Association of Construction Contractors (STACC): Counties of Chenango, Delaware and Otsego

TRADE JURISDICTION

This shall include all construction where the skill, knowledge and training of a carpenter are required.

Section 1.

1. The carpenter shall make, set and align all concrete forms when same are made of wood or any other form material.
2. The carpenter shall strip, release and repair all concrete forms.
3. The carpenter shall build all forms for arches, flat arches, decks, beam sides, beam bottoms and they shall shore and brace same. The stripping and/or releasing of beam sides and bottoms and the removal of all bracing and shoring (i.e. support jacks and stringers). The carpenter shall build, set, place and brace all forms for airport runways, aprons, parking areas, truck holding areas, parking lots and entrance roads.
4. The carpenter shall set, place all Span-all or similar type beams and stringers connected with building and supporting of all concrete forms.
5. The carpenter shall do all framing, clamping and bracing necessary in connection with setting and aligning of all wood, metal or substitute material, column forms and the stripping and/or releasing of same.
6. The carpenter shall build and place precast forms for pipe chases; open-cut forms; forms for light poles and signs.
7. The carpenter shall erect, set, align and level all prefabricated or patented forms including curb, screed and gutter forms. The tying, tagging and receiving in connection with the setting and removal of metal forms.
8. The carpenter shall set all forms, centers and bulkheads including the fabrication and setting of screeds and stakes for concrete and mastic floors. The carpenter shall notch all screeds where required. The carpenter shall build and install all keyway and camphor strip.
9. The carpenter shall make all templates for anchor bolts and place and level the bolts. The carpenter shall align, level and grout all leveling plates.
10. Where power is used for the setting or dismantling of forms or any other material erected by carpenters, handling and signaling shall be done by carpenters.
11. The installation of precast concrete wall panels including tilt-up panels regardless of whether the concrete panels are cast on the job or away from the job site shall be done by carpenters.
12. The carpenter shall unload, handle, install, fasten and weld expansion, armored joint and armored plate whether used on roads, bridges, approach ramps or buildings.
13. The carpenters shall install water-stop (in forms) of plastic, metal or other material.
14. The carpenters shall drill holes for the insertion of bolts including rock anchors to hold forms.
15. Blaw-Knox forms - assembling - setting and releasing - including the erection and releasing of inverts.
16. Simmons form and other similar type forms shall be unloaded, handled, assembled, set, braced and released by carpenters.
17. All forms for bridge abutments, decks, pads, leveling plates shall be built, set, stripped, assembled and braced by carpenters.
18. All work pertaining to carpentry including form building, bracing, shoring and stripping in or on tunnels is the work of the carpenter.
19. The carpenter shall unload, rig, handle and set all Bollards whether set in concrete, sand or any other materials.

20. The carpenter shall build and erect all temporary heat enclosures whether made of wood, plastic, metal or canvas including combinations of the above.
21. The carpenter shall install all masonry ties whether glued, nailed or mechanically fastened.

Section 2.

1. The building, erecting and dismantling of all scaffolds (except ordinary trestle scaffold) and all self-supporting scaffold over fourteen (14) feet in height, or any special designed scaffolds or those built for special purposes shall be built by carpenters. The making of horses. trestles and ladders is the work of the carpenter.

Section 3.

1. The setting, staying, leveling and bracing of all window frames and sash shall be done by the carpenter (except such frames and sash covered by agreements with other trades).
2. The making and setting of all frames, sash, doors, blinds, trim, store and other fixtures. assembling, erecting and installing of seats, benches, chairs and other furniture in schools, theatres, Churches, halls and other places of assemblage on floors of any kind including the anchor bolts or other devices and/or method for fastening of the above.
3. The installation of all builders hardware, including door tracks of every description. The installation of weather stripping; fitting and hanging of all doors (combination or otherwise) and fitting of screens for doors, windows and other openings.
4. The installation and/or laying of floor and wall coverings of carpet, wood, cork, linoleum, resilient tile, plastic and/or metal wall tile, rubber, plastic and composition tile and all metal accessories. The installation of rugs, carpets, draperies, curtains and venetian blinds and pockets for same.

Section 4.

1. The installation, erection and/or application of all shingles (roof or sidewall), siding, wallboard or sheets composed of wood, wood pulp, plastic, plaster, transite or composition materials or any other material including combined or faced with metal regardless of the manner attached.
2. The unloading, handling, installation and/or application of all rubber or plastic one piece roofs whether sealed with a heat iron or glued (such as Goodyear Rubber Roofs or Trocal Plastic Film Roofs) including all accessories and flashing.
3. The unloading, handling and erection of all wood, metal plastic and composition partitions. The fabrication and installation of all bathroom partitions and doors, whether made of wood, metal, plastic, formica, fiberglass, composition materials or combinations is the work of the carpenter. Unloading, handling and installation of studless solid gypsum wallboard partitions in its' entirety.
4. The installation and/or erection of porcelain enameled panels and metal siding. The installation of Marlite and Mirawall Board (interior or exterior).

Section 5.

1. The installation and handling of laboratory equipment including cabinets and work benches, bookcases either separately or used in conjunction with heating and/or air conditioning units.
2. The installation of all Herman-Nelson Cabinets, Nesbitt, Schemenauer, Trane, Wamer-Webster, Inductor Bookcases and Cabinets regardless of name. (Note: Regardless if used separately or in conjunction with heating and/or air conditioning units).

3. The installation, unloading and handling of display cases and trim store fixtures, refrigerated cases and/or boxes. The installation of Alberene (of Duroc type stone) for table tops, countertops, sinks, back splashes and sills. The filling of joints with epoxy or similar type cement.

Section 6.

1. The laying, cutting and fastening (with clips or spotweld) of all roof deck planking floor planking and/or slabs whether gypsum concrete (Insulm-Tectum-Flinkote) or any other similar plank which are laid dry regardless of whether the joints are later filed or not

Section 7.

1. The installation of acoustic tile whether glued, clipped, stapled or nailed.
2. Acoustical suspended ceilings in its entirety.
3. H & T Solo Tile suspended systems.
4. The installation of all insulation whether glued, nailed, stapled, stud or spot-welded or blown on.

Section 8.

1. The unloading, handling, installation and erection of all Stran-Steel, Penn Metal, Permalok, Donn, Adas, Twin-Lok nailable bars and studs including top and bottom runners (interior and exterior).
2. Unloading, handling, installation and erection of U.S.G. or any other named brand Metal Studs including top and bottom runners to receive sheet-rock, gypsum wall and other materials attached by screws, nails or adhesive.

Section 9.

1. The unloading, handling, fitting and installation of sheet rock, gypsum wall board or similar materials whether attached by screws, nails, clips or adhesive.

Section 10.

1. Unloading, handling, installation and/or erection of all solar heat materials including imbedded items and panels.
2. Cooling towers, (made of metal, wood, ceramic, plastic, fiberglass or any other material) unloading, handling, erection and dismantling by carpenters.

Section 11.

1. The carpenter shall unload, handle and distribute any finished products installed by carpenters.

Section 12.

1. The above and subsequent sections are an overview, but are not limited to.

(The installation of the following items and materials shall be by members of the United Brotherhood of Carpenters and Joiners of America.)

A. Acoustical tile
   Acoustical Suspended systems
   Aluminum window sills and stools
   Aluminum frames and door including hardware when set in masonry or prepared openings.
   Aluminum trim (interior)
   Anchor bolts (welded to reinforcing steel in foundations)
   Armor Plate unloaded, rigged, handled, installed by carpenters
   Asbestos plastic shingles
   Asbestos sheeting (corrugated or flat)
   Asphalt shingles
   Astro Turf (total installation of shock-absorbing pan and Astro Turf)

B. Backing for telephone equipment (plywood and other type composition)
   Backing (metal) for cabinet work
   Backing board - to receive acoustical tile

Backing - for plumbing fixtures and accessories which effect the structure Cutting and chasing which affects the structure.
Base - snap-on metal; cove metal to wood or masonry walls; rubber or substitute material
Bathroom mirrors (flush mounted with small cabinets with doors)
Blackboards - unloading, distribution and installation of natural slate blackboards in mastic
Bollards - unloading, handling, rigging and setting
Bookcases - cabinets and tops
Brick and Masonry ties, (glued, nailed or mechanically fastened).
Bulletin boards
Bulkheads set by carpenters

C. Cabinets (fire extinguishers) without pipe connections
Cabinets - all types (kitchen, bathroom, laboratory, classroom, gym, etc.) Cemesto board panels
Chalkboards
Colorith (exterior panels mounted and secured to wood – wood furring with metal screws or clips - including caulking of the joints)
Caulking of window or door frames (metal or wood)
Classroom bookcases and cabinets
Cooling towers - layout, unloading, handling, erection and dismantling
Corner guard - interior or exterior on drywall construction
Cork (vinyl-covered sheet cork) cork nailed on
Curtain track (mounted on exposed ceiling surfaces)
Curb angles (metal) attached to concrete forms
Collimator room (push-out) interior wall panels

D. Door bucks (metal) unloading, handling, setting, bracing, plumbing and aligning
Doors - glass patio doors - prefabricated
Doors - aluminum automatic doors and frames
Doors - sliding frames (aluminum) attached to wood frame openings
Doors - Interior hollow metal door frames
Drywall - applied to wood studs, metal studs or resilient channels (including unloading and handling)
Doorbells - combination mechanical doorbells and peepholes
Display cases (self-service refrigerated) handling, setting and connecting by carpenters

F. Fire-wall panels (sandwich type)
Floors - all wood, wood block and patent type floors -bowling lanes Floors - Higgins (or similar type) stretchwood tile flooring
Floor sanding and scraping
Furniture -unloading, distribution, assembly and arrangement whether crated or uncrated.

G. Gypsum wallboard and other type panels fastened directly to wood or metal studs; fastened directly to ceiling joists; wood or metal furring (including unloading and handling)
Granite faced or stoned faced wall panels (exterior and interior) complete installation by carpenters (including unloading and handling).

H. Hampers, laundry chutes, clothes hood and lines
Handling, unloading and distribution of all finished products made and/or carrying the "Union Label" of the United Brotherhood shall be performed by carpenters, including all forms built on the job site

I. Insulrock and Porete planking laid dry and steel joists with clips or weld.
(Note: when pointed in mastic - done by roofer)
Insulrock Roof decking
Insulation - styrofoam fiberglass fastened by nails-clips-adhesive-staples or stud weld
Insulation (rigid or flexible) held in place with stic-klips, studweld and adhesive to masonry walls and ceilings
Insulation (Kaiser insulation sheathing) regardless of method of fastening
Insulation (fibre glass) on masonry walls and ceiling of plenum chambers
Insulation interior metal partitions

J. Jack rods - falsework; erection and moving by crane of falsework for support of concrete forms to next point of use and handling of Jack Rods during slip-form operation
Jack Rods (in slip forms) - if Jack Rods are designed to lift form and are to be left in the pour or removed at the discretion of the Contractor. rods will be installed and removed by carpenters

K. The installation of all kitchen and other type cabinets

L. Laboratory equipment - metal - wood - stone or composition material Lagging - cutting, carrying and placing
Laminated drywall
Latex underlayment - to receive resilient flooring
Leveling Plates - alignment, leveling, grouting
Lockers - (metal, wood, fiberglass, plastic or composite)
Louvers - (exterior or interior)

M. Metal windows to wood sub-frames
Metal windows set into wood cased openings secured to wood liners
Metal pan forms-handlingand setting in position including installation of spreaders and struts
Mail boxes - Mechanical chimes
Metal buildings, (siding, roofing, steel erection, form work, interior finishes)
Metal-edge gypsum roof plank
Metal studs (nailable or screwable) Penn-Metal; Permalok; Donn, etc.
(including unloading and handling)
Metal acoustical sidewalls, acoustical fiber-glass batts and metal grid systems Medicine cabinets - with or without mirrors
Metal form for tilt-up concrete wall panels
Metal sash in prepared masonry openings at top and bottom and metal wall studs at sides and end
Magazine racks

N. Nail-lock bar and backing board to receive acoustical tile
Nailing bars (Donn, etc.) to receive sheetrock for acoustical tile
Nucite chalkboard

O. Omnia plank installation (laying of concrete block on wood floor slabs)
Outriggers (scaffold or bridge) installation by carpenters

P. Partitions - movable partitions and metal door frames
Power shelf units - installation and assembling
Precut concrete slot risers (rigging and erecting)
Precast concrete column beams (rigging and erecting)
Plastic column and beam covers (installation by carpenters)

Pomeroy "H" bars (installation by carpenters)
Porcelain enamel panels, insulated porcelain enamel panels used as column covers and filler strip
Plastic material (corrugated or flat) when insulated at same time and same manner with transite, asbestos board or concrete board fastened to metal or wood. Also when used to cover sides and roofs of a building or other exterior section
Plastic Roofs – one piece handling and installation

Q. Quonset buildings - carpenters erect all Stran-Steel framing

R. Rigging of metal pan form and flat deck forms
Rigging of forms, timbers and wooden trusses - including the tying and signaling Rigging (by power) carpenter form material
Retaining wall forms and curbs
Robertson panels (siding) attached to wood or metal studs
Rubber Roofs - one piece handling and installation

S. Screeds
Screed chairs (setting by carpenters)
Simplex & Gates forms (installation and releasing)
Solar Heat Panels and imbeded Solar Items
Spancrete floor docking - erection by carpenters
Siporex wall panels (exterior) complete installation by carpenters
Styrofoam insulation - between wood furring strip and/or studs on outside walls
Sheet lead - installation of sheet lead including cutting and fitting on doors, door and window frames, doors for X-Ray radiation rooms
The installation of all building construction material bonded or laminated to sheet lead
Stran-Steel - carpenters shall erect all nailable Stran-Steel members including
Stran-Steel trusses, Stran-Steel partitions, studs joists or any other nailable Stran-Steel member.
(This shall apply regardless of trade name or manufacturer.)
Sheeting (.032 to #22 gauge) aluminum corrugated fastened to wood -metal studs or nailable studs.
Study booths - installation of partitions, panels, doors, main and auxiliary desk and misc. trim
Sheet rock or rock lath (clipped on furring channel as a base for acoustical tile)

T. Trench wall (precast concrete) setting and installing
Thermal insulation on walls and ceilings
Transite (corrugated) fastened to metal or wood
Tectum planking - cutting and placing

V Vanities - bathroom (all types)
Vanity Tops - fitting installation by carpenters)
Venetian blinds (hanging, adjusting, threading cords and installing top closures)

W. Wood shake shingles
Window trim surrounds
Welding - Acetylene and electric - used as tool of the trade
Window frames - wet, stayed, plumbed and braced
Windowframes - nailed or screwed to nailing strip embedded in concrete
Window frames - metal interior
Window stool - (16 gauge metal)
Wall panels (Ar-Lite) exterior (setting, aligning, plumbing and caulking)
Weldwood Glasweld pawls - (attached to wood or metal studs)

PREMIUM WAGE RATES

Counties of Chenango, Delaware, Otsego

Foreman: $3.50

General Foreman: $6.00

WAGE INCREASES/ADMINISTRATION AND SAFETY PROGRAM (ASP)

Increases effective the first pay period beginning on or after the dates listed.

For the counties of Chenango, Delaware, Otsego (STACC)

Building

7/1/2011: $0.41

Distribution:	
Rate	$25.36
Health	$9.35
Annuity	$3.11
Pension	$6.10
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.06
HRA	$0.35
ASP	$0.45
Total Package	$45.28

Future Increases (distribution to be determined)

6/1/2012: $1.01

6/1/2013: $1.49

6/1/2014: $1.66

6/1/2015: $1.71

ASP: 1% of total package (STACC)

Heavy Highway

7/1/2011: $0.41

Distribution:	
Rate	$25.36
Health	$9.35
Annuity	$3.11
Pension	$6.10
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.06
HRA	$0.35
ASP	$0.25
Total Package	$45.08

Future Increases (distribution to be determined)

6/1/2012: $1.01

6/1/2013: $1.49

6/1/2014: $1.66

6/1/2015: $1.71

ASP: 1% of total package (STACC)

APPENDIX G – Local 276
County of Erie, Townships of Persia and Perrysburg in Cattaraugus County and Grand Island

Construction Industry Employers Association: County of Erie, Townships of Persia and Perrysburg in Cattaraugus County and Grand Island

TRADE JURISDICTION

Section 1. BUILDING INDUSTRY

a. The Employer agrees that the following job classifications, equipment and work operations are within the jurisdiction of Carpenters Local No. 289 and will assign the work, as well as all other work which has traditionally been assigned to carpenters, to employees represented by Carpenters Local No. 289 except where there is a Decision of Record providing otherwise as set forth in Article XIV of this Agreement.

b. The milling, joining, assembling, erection, fastening or dismantling of wood, plastic, metal, fiber, cork and composition and all other substitute materials. The handling, cleaning, erecting, installing and dismantling of machinery, equipment and all materials used by carpenters. The work jurisdiction includes, but is not limited to the following divisions and subdivision: Carpenters and Joiners, Millwrights, Piledrivers, Bridge Dock & Wharf Carpenters, Divers, Underpinner, Timber Workers, Joiners & Caulkers, Cabinet Makers, Stair Builders, Wood and Resident Floor Layers and Finishers, Carpet Layers, Shinglers, Siders, Insulators, Acoustic and Dry Wall Applicators, Sharers and House Movers, Lathers, Show Display and Exhibition Workers and helpers to any of the above divisions or subdivisions regardless of the material and the handling, installing and erecting of material used in any of the divisions or subdivisions, including welding, burning, rigging and the use of any instrument or tool for layout work incidental to the trade. The following agreements shall determine work assignments:

c. WOOD WINDOWS: All work associated with the installation, dismantling, remodeling, refurbishing of Wood Window units. Said units may be true wood or vinyl, aluminum, or other protective skins. This shall also include new window installations. The method of fastening or the product being fastened to is not a factor in the assignment. All Wood Windows shall be the work of the Carpenter. It should be specifically noted that this shall also include any work done to the wood sash or any other component of the said window.

d. Any pre-glazed window made of any composition in unprepared openings shall be set, stayed, leveled, plant or braced by Carpenters. Any pre-glazed windows made of any composition attached to metal steel or wood opening shall be the work of the Carpenter.

e. All work designated to be performed by members of Carpenters Local No. 289 as contained in agreements between the United Brotherhood of Carpenters and Joiners of America and the International Association of Bridge, Structural and Ornamental Iron Workers dated June 3, 1953 and amended June 5, 1957 General Agreement October I, 1968 amended February I, 1974. Rigging Agreement May I, 1971, Window Agreement June 18, 1957 and amended May27, 1987 shall be performed under the terms of this Agreement.

f. All work designated to be performed by members of the United Brotherhood of Carpenters and Joiners of America as contained in agreement between the United Brotherhood of Carpenters and Joiners of America and Laborers' International Union of North America Hod Carriers, Building and Common Labor Union November 25, 1968, roof plank, etc, June 30, 1959, door bucks, cabinets, acoustical tile (stripping of forms October 3, 1949) fixtures, furniture, etc, All work shall be performed under the terms of these agreements.

g. All work designated to be performed by members of the United Brotherhood of Carpenters and Joiners of America as contained in Agreements between Carpenters United Brotherhood of Carpenters and Joiners of America and Bricklayers, Masons, and Plastic International Union of America dated April 1931 (installation of cork and substitutes) shall be performed under the terms of this Agreement

h. Agreements between the United Brotherhood of Carpenters and Joiners of America and the International Brotherhood of Electrical Workers under dates of February 1,1956, February 1, 1958, June 1, 1963 and July 20,1967,

i. Agreements between the United Brotherhood of Carpenters and Joiners of America and United Association of Journeyperson and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada dated October 6,1964, April 21,1965, June 29,1965, May 3,1967 and June 17, 1968,

j. Agreements between the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers and the United Brotherhood of Carpenters and Joiners of America, dated October 6, 1964,

k. Any international agreements that have been inadvertently omitted and all agreements similar to the above that are negotiated during the life of this Agreement, shall be in full force and effect as though written in this contract.

l. All Millwright jurisdiction as performed in past area practice, All Floor Laying jurisdiction in past area practice.

m. This Agreement shall cover all work which consists of all floor prep and final sweep associated with the installation of the floor covering material, taking up and laying of VCT tile and other resilient tile, new and old carpets, linoleum, rubber on walls, floors and ceilings, plastic and metal wall tile, The waxing of linoleum and rubber and all floor coverings, Fitting devices for the attachment of carpet and other floor coverings, including metal edge on steps and openings for the protection of linoleum and other floor coverings and the spreading of all adhesives that may be required to properly prepare the surface to receive the floor covering material The installation of plywood, masonite or similar material to be used as a foundation for linoleum, tile, carpet, etc" shall be Resilient Floor Layers and Linoleum Workers, except when installation of such base of foundation is included in the carpentry contract. The Union agrees to furnish all employees on work as above specified. Installation of metal and ceiling tile and like trade names (acoustical ceilings).

n. Unloading of all metal products involving ceiling work and slat wall. Installation and unloading of all chalk board and brand name materials used in school equipment. Unloading and installation of all gym bleachers, floors, backstops, and equipment. Installation of all interior trim, handrails, bookshelves, case work, etc. Unloading and installation of all finished cabinets (laboratory fixtures and tops), Fume Hoods, etc.

o. Installation of sheetrock (drywall) or like named product in its entirety. Unloading and installation of metal studs to receive same.

p. All lockers of any composition shall be the work of the carpenter to include, but not limited to, the unloading, installation or any other modification.

q. All phases Fire-stop shall be the work of the carpenter.

r. All partitions of any composite shall be the work of the Carpenter to include, but not limited to, the unloading, installation or any other modification.

s. Installation of all interior wall and trim materials ¬paneling, moulding, chair rail, base, door casings, signs (door-hanging, etc.), the unloading of windows, the installation of all roof blocking and parapet walls, the unloading and installation of low voltage electrical hardware (including, but not limited to door hardware, etc.). All casino gaming equipment and furniture. all movable office furniture and ,partitions (5-6 ft. fabric screens), metal, plastic or fabric dividers.

t. Unloading and distribution of all building hardware locksets, push plates, door closures, door hinges, door stops, etc. to be installed by Carpenters.

u. Unloading and installation of all stores fixtures, wall units, check out counters -shelving units, freezer and cooler units, display racks, etc.

v. The installation of all store shelves including glass and all interior trim materials.

w. Installation of Bowling Alleys and Pin Setters Equipment (Benches, etc.).

x. Handling & Distributions of all furnishings and appliances to the point of erection and installation. (Per agreement with Laborer's Local 210.)

y. Installation of all styrofoam and like named products used in construction when nailed or fastened to Building.

z. Use of all laser operations when laying out carpenter work.

aa. The fabricating of all screeds and stakes (Green Book).

bb. Unloading and installation of all hospital x-ray equipment and morgue equipment.

cc. Installation and unloading of all dock and levelers.

dd. Erection and removing of all scaffolds and guard rails (Green Book decision April 28, 1920).

ee. Installation of bath and toilet room medicine cabinets, clothes hooks, hampers, magazine racks, and storage cabinets and shelves per International Agreement.

ff. Setting and Installation of all concrete formwork ¬including all shoring, bracing and building of forms -stripping of all concrete form work for buildings, excluding forms one board high. Laborer's Memorandum of Understanding of October 3, 1949 -layout work of all concrete forms. Gang forms to be handled by the Carpenter at all times (final ship out agreement with Laborer's Local 210).

gg. Expansion joints used in building construction. (Mechanical Joints).

hh. All such work and jurisdiction as may have been acquired by reason of amalgamation or merger with former national or international unions. The work herein is intended to describe the jurisdiction of Carpenters Local No. 289, and is not intended to exclude any work which is covered by the United Brotherhood and Joiners of America.

ii. LATHERS Erecting, constructing, installing and completing of all light iron construction furring; making and erecting of brackets, clips and hangers; wood, wire and metal board or other material which takes the place of same to which plastic or acoustical material is adhered; comer beads, all floor construction; arches erected for the purpose of holding plaster, cement, concrete or any other plastic or acoustical material.

jj. All carrying bars, perlins and furring, regardless of size; light iron and metal furring of all descriptions, such as rods, channels, flat iron, nailock, screw-lock, pomeroy, T-bar, H-bar, metal splines and other ceiling bars or systems for the receipt of metal lath, rock lath, gypsum board, and acoustical tile or any other materials. All metal studs when studs are to receive a dry wall finish, such as gypsum board, wall board, wooden paneling, etc., or when such studs are to receive metal lath, rock lath or other material for the application of plaster or other sprayed on wet material; and all other light iron furring erected to receive lath and plastic or acoustical materials.

i. The nailing, tying and fastening of all wire and metallic lath, such as wire cloth, wire mesh, expanded metal lath, hyrib lath and all rib and flat expanded metal lath and wire of all description as well as the placing of all hangers and all inserts used for the purpose of supporting suspended ceiling of any of the above types or light iron and metal furring which receive lath and plastic or acoustical materials; the placing of all types of floor lath, such as hynb lath, paperback steehex floor lath, Penn metal rib and all other appurtenances connected therewith.

ii. The tying, nailing, clipping or fastening of all types of lath regardless of size, such as woodlath, plaster board, button board, flaxlinum board, bishopric celotex, gypum lath, rocklath, sheetrock or any other types of material erected to receive or hold plastic or acoustical material.

iii. The erection of all metal plastering accessories, such as metal comer beads, door and window casing beads, metal picture mould, metal chair rail, metal base and other base screen, and any and all other metal plastering accessories which are covered and/or serve as a ground, guard, or screen for plastic material.

iv. The handling on the job site of all material or materials falling within the trade jurisdiction of the Lathers from the site of delivery on the job to the point of the job where work is to be performed with said materials.

v. The work of the fabrication of all Lathing materials on the job shall be assigned to Journeyperson Lathers.

vi. In the event that the Employer who is a party to this Agreement assigns work set forth above to a labor organization other than the carpenters, it shall not be a defense to any arbitration, proceeding before an impartial jurisdictional dispute board, or any other legal action that the employer has a

collective bargaining agreement with, that other labor organization which purportedly provides for an assignment of the work to that other union.

kk. FLOOR COVERING Work consisting of cutting and/or forming of all materials in preparation for installing of floors, walls and ceilings except acoustic tile; the installation of all hardwood floors including strip, square, parquet, flat surface wood blocks, plank floors and all sanding, finishing and refinishing of old floors; the installation of all resilient floors, wall and ceiling materials to include all carpet, cork, linoleum, rubber, VCT, vinyl,. seamless floors and all other forms or finishing thereof, the installation of all artificial turf, the installation of carpets, including the cutting and/or fitting thereof, the installation of padding and all preformed resilient floor coverings; the installation of all devices for the attachment of floor, wall and ceiling coverings; track sewing of carpets; drilling of holes for sockets and pins; putting on dowels and slats; the installation of underlayment, sealants, patching compounds in preparations of floors, walls and ceilings; the unloading and handling of all materials to be installed, and the removal of all materials, cleaning, waxing and vacuuming in preparing floor when contracted for by the Contractor, shall be done by employees covered under this Agreement. Removal of floor material to be performed by Floor Contractor.

Section 2. HEAVY AND HIGHWAY: The parties recognize the existence of a heavy and highway industry. The parties will, during the period of this Agreement, with due consideration of the problems peculiar to the heavy and highway industry study practical and suitable practices and procedures.

FLOOR COVERING

In the interest of promoting a more harmonious relationship between the employers and the Union and those employers and carpenters engaged in the floor laying industry and performing floor covering work, it is agreed that this addendum will become part of the Master Construction Agreement(s), applicable in the jurisdiction of the Empire State Regional Council of Carpenters.

Work Jurisdiction and Preservation

Work consisting of cutting and/or forming of all materials in preparation for installing on floors, walls and ceilings, except acoustical tile; the installation of all hardwood floors including strip, square edge, parquet, flat surface wood blocks, plank floors, and all sanding, finishing and refinishing of old floors; the installation of all resilient floors, wall and ceiling materials to include all carpet, cork, linoleum, rubber, asphalt, vinyl, seamless floors and all other forms or finishing thereof; the installation of all artificial turf; the installation of all carpets, including the cutting and/or fitting thereof; the installation of padding and all preformed resilient floor coverings; the installation of all devices for the attachment floor, wall and ceiling coverings; track sewing of carpets; drilling of holes for sockets and pins; putting on dowels and slats; the installation of underlayment, sealants, patching compounds in preparations of floors, walls and ceilings; the unloading and handling of all materials to be installed, and the removal of all materials, cleaning, waxing and vacuuming in preparing floors when contracted for by the Contractor, shall be done by employees covered under this Agreement, removal of flooring material to be performed by the Floor Contractor.

Should a signatory employer perform floor covering work in any of the local jurisdiction(s) covered by the Empire State Regional Council of Carpenters, the employer shall work under the terms and conditions of the Collective Bargaining Agreement, in place in that area; inclusive of all terms, conditions and trust agreements covering the applicable fringe benefit funds.

The same shall apply to all sub-contractor(s) of the contractor and their employees engaged in floor covering work. Employee(s) hired through another local union jurisdiction shall receive the local negotiated wage and fringe benefit(s) provided for in the Collective Bargaining Agreement applicable to the area where the work is being performed.

Fringe benefits shall be purchased through the appropriate fund in the geographic jurisdiction covering the project location of the work. Agreements shall be honored for reciprocity to the home local funds of the participating floor layers. Dues, working dues or local union assessment(s) shall be paid directly to Carpenter's Local Union 42, 11 Kay Fries Drive, Stony Point, New York 10980.

Local Union 42 having jurisdiction over floor covering throughout the Empire State Regional Council of Carpenters shall receive notice by the employer 24 hours prior to the commencement of work, inclusive of location and the name of all employee floor layers employed at said location. Any request by the employer for additional floor layers that may be required shall be directed to Carpenters Local Union 42. Local Union 42 will make every effort to assign directly or indirectly, regionally qualified bargaining unit members of the craft industry. Persons employed by the employer in the floor laying industry performing floor covering work as herein defined, shall, with seven (7) days of commencing employment become members of Carpenters Local Union 42.

It is agreed that signatory employers have complete mobility of the Union workforce throughout the jurisdiction of the Empire State Regional Council of Carpenters. It is further agreed that an employer's request for a four day, ten hour work week shall not be unreasonably denied when requested 24 hours in advance of its commencement. Said request shall be made to Carpenters Local Union 42. All work performed after a ten hour day or 40 hours in the same 7 day work week (Monday through Sunday) shall be paid at the overtime rate required by the Collective Bargaining Agreement in the area that the work was first performed. The foregoing shall apply to all work performed by the same worker In that week regardless of location, who shall be paid at the overtime rate provided for in the area where overtime work is performed. A Union Shop Steward will be required on all projects.

PREMIUM WAGE RATES

Building

Foreman: 10% of Journeyman total package
General Foreman: 10% of Foreman total package

Heavy Highway

Foreman: 10% of Journeyman total package
General Foreman: 10% of Journeyman total package

Pile Driving

Foreman: 10% of Journeyman total package

WAGE INCREASES/ADMINISTRATION AND SAFETY PROGRAM (ASP)

Increases effective the first pay period beginning on or after the dates listed.

For the county of Erie, Townships of Persia and Perrysburg in Cattaraugus County and Grand Island

Building

7/1/2011: $1.65

Distribution:

Rate	$28.30
Health	$10.00
Annuity	$6.53
Pension	$6.60
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.04
ASP	$0.15
Total Package	$52.12

Future Increases (distribution to be determined)

6/1/2012: $1.17
6/1/2013: $1.73
6/1/2014: $1.92
6/1/2015: $1.99

ASP: $0.15

Heavy Highway

7/1/2011: $1.65

Distribution:

Rate	$30.05
Health	$10.00
Annuity	$6.53
Pension	$6.60
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.04
ASP	$0.15
Total Package	$53.87

Future increases (distribution to be determined)

6/1/2012: $1.21

6/1/2013: $1.79

6/1/2014: $1.99

6/1/2015: $2.06

ASP: $0.15

APPENDIX H – Local 276
Counties of Genesee, Niagara, Orleans and Wyoming (except for the townships of Castile, Gainesville, Genesee Falls, Perry, Pike and Warsaw)

The Building Industry Employers Association of Niagara County, New York: Counties of Genesee, Niagara, Orleans and Wyoming (except for the townships of Castile, Gainesville, Genesee Falls, Perry, Pike and Warsaw)

TRADE JURISDICTION

The parties hereto agree that only members of the unit referred to herein shall perform work in the following classifications: Heavy-Highway and Bridge work; Commercial and Industrial work; the handling, milling, fashioning, joining, assembling, erection, fastening or dismantling of all materials of wood, plastic, metal, fibre, cork and composition, and all other substitute materials; the laying of all cork or composition flooring; rubber tile, mastic tile, cork tile, and all linoleum; the manufacture of all wood and substitute materials, where the skill, knowledge and training of a carpenter are required, either by the operation of the machinery or hand tools, the unloading and handling of all materials; the erection, fitting, plumbing, leveling, aligning, and setting of precast concrete pieces; the manufacture and/or production of all concrete pieces made by precasting poststressing, or by prestressing; the unloading, handling and installation of store fixtures; the unloading, handling and placing of all refrigerated cases and/or boxes.

Section 1. The following trade jurisdiction and the work performed by employees in such categories, are the work of the member of that unit covered by this Agreement; carpenters and joiners, reed and rattan workers, railroad carpenters, ship carpenters, caulkers and joiners, bench hands, cabinet makers, stair builders, floor layers, millwrights, box makers, furniture workers, bridge, dock and wharf carpenters, shipwright and boat builders, car builders and all workers engaged in the running of woodworking machinery, the laying of all canvas roofs and decks, and all insulation workers; and any and all additional work agreed upon between the parties, orally or in writing, shall be the work of the members of the unit covered by this Agreement.

Section 2. Any member of the unit covered by this Agreement, shall perform such welding work as is an adjunct to the trade, as agreed upon and declared by the National Building and Construction Trades Council, which has ruled that the welding torch, the electric welder, and any other type of welding are tools of the trade.

Section 3. Only members of the Unit covered by this Agreement shall engage in the setting, plumbing and bracing of all steel and aluminum sash on open walls, and wherever such sash is fastened to wood.

Section 4. Where substitutes are utilized, replacing the materials, normally used by members of the Unit covered by this Agreement, and requiring the skill and tools of members of the Unit, same shall be handled, erected, placed and/or installed only by members of the Unit covered by this Agreement.

The parties hereto further agree as follows:

Section 5. Only members of the Unit covered by this Agreement shall be engaged in the following:

a. Fabricating, erecting and dismantling of all falsework.
b. Where power is used for the setting or dismantling of forms or any other materials erected by Carpenters, all handling and signaling shall be done by the Carpenter.

c. The fabrication and/or setting of all templates, including anchor bolts necessary for structural members or machinery and the placing and/or leveling of these bolts is included.
d. All framing in connection with the setting of metal columns.

e. The setting of all forms, centers and bulkheads, the fabrication and setting of screeds and stakes for concrete and mastic floors where the screed is notched or fitted or made up of more than one member. The making and setting of all forms used in concrete work.
f. Fastening on of all wooden, plastic or composition cleats to iron work or on other materials.
g. The erection and installation of all Stran Steel or similar material.
h. Setting and hanging of all sash, doors, inside and outside blinds, windows and other frames.
i. Erection or application of all shingles, siding wallboard, or sheets composed of wood, wood pulp, plastic, plaster, transite or composition materials or any other material including combined or faced with metal regardless of the manner attached.
j. Erection of all wood, metal, plastic and composition partitions.
k. The erection of cooling towers and tanks.
l. The laying and finishing of all floors, including wood, cork, asphalt, linoleum, vinyl, rubber or other type of resilient floor covering.
m. The installation of rugs, carpets, draperies and curtains.
n. The installation and handling of laboratory equipment including cabinets and work benches, bookcases and cabinets either separately or used in conjunction with heating and/or air conditioning units, blackboards, bulletin boards, billboards, meter boards, and boards of all types.
o. The erection of porcelain enameled panels and metal siding.
p. The assembling and setting of all seats in theaters, halls, churches, schools, banks, stadiums and open-air theaters and other buildings.
q. The application of acoustic tile whether glued or nailed.
r. Acoustical suspended ceiling in its entirety.
s. All insulation whether nailed or glued or blown.

Section 6. All Carpenter layout work (in or outside of building) from established Bench Marks, Lot Line or Center Line and the necessary instruments to perform same.

a. Concrete Forms: Wooden forms shall be cut and fabricated by the Carpenter. This is to include all column forms, beam bottoms, beam sides, common wedges, common stakes and the sizing of precut and similar types of materials often used in the making of concrete forms.

b. Stripping: All patented forms shall be stripped by the Carpenter to the point of releasing them from concrete, column forms, beam bottoms and beam sides shall be stripped by the Carpenter. The breaking of Snap-Ties is the work of the Carpenter when same is done to permit the releasing of concrete forms.
c. Scaffolding: The members of the unit covered by this Agreement shall erect and dismantle all wooden or pole scaffolding, erect and dismantle all Morgan and similar type scaffolding, and all scaffolding rising to above fourteen (14) feet, including the decking, planking, hand rails and toe boards of same to comply with the State and Federal Safety Codes. Scaffold to be used by Carpenters regardless of height shall be the work of Carpenters.
d. All weather protection including all types of falsework and the covering of same with any material that is secured by any means.
e. To convey all power equipment and accessories used in the performance of their work.
f. Unloading and distribution of all hardware.

Section 7. Other than the unloading and stockpiling of dimensional lumber and materials not related to Carpenter jurisdiction, the unloading and conveying of all materials, fixtures, cases and furniture used by or installed by the Carpenter.

a. The first cleaning (mopping or washing), waxing and/or polishing of floors installed by the Carpenter.
b. Stripping, dismantling and handling of concrete forms and falsework, including beam bottoms, beam sides and flat surfaces along with building of centers for fireproofing purposes, and the erection of composition, gypsum and precast concrete roof blanket.

c. All Carpenter work in conjunction with sewers, shafts, tunnels, subways, caissons, cofferdams, dikes, dams, aqueducts, culverts, flood controls and airports, and the shoring, underpinning, raising and moving of all structures.
d. All insulation applied by any means, when such insulation is applied over metal laths, ceiling, above soffits, behind facia work and ceiling drop, and in metal stud walls or partitions of any description regardless of finish material applied to metal studs.
e. Notwithstanding the foregoing jurisdictional claims made by the Carpenter, the parties hereby agree that such claims are subject to Charter Grants to the United Brotherhood of Carpenters and Joiners of America, Green and Gray Book Decisions of Record, 10-K Decisions of General Application, Agreements of Record between Local Unions and Agreements of Record between International Unions.

ITEMS TO BE NEGOTIATED WITH THE UNION: Maintenance; Housing and Residential; Heavy & Highway; Subcontracting Language

PREMIUM WAGE RATES
Foreman: 10% of Journeyman total package
General Foreman: 10% of Foreman total package

WAGE INCREASES/ADMINISTRATION AND SAFETY PROGRAM (ASP)
Increases effective the first pay period beginning on or after the dates listed.
For the Counties of Genesee, Niagara, Orleans and Wyoming (except for the townships of Castile, Gainesville, Genesee Falls, Perry, Pike and Warsaw)

Building
7/1/2011: $1.65

Distribution:		Future Increases (distribution to be determined)
Rate	$28.30	6/1/2012: $1.19
Health	$10.00	6/1/2013: $1.76
Annuity	$1.73	6/1/2014: $1.96
Pension	$4.97	6/1/2015: $2.02
Edu. & Training	$0.40	
UBC	$0.10	ASP: $0.10
Labor Mgmt.	$0.04	
ASP	$0.10	
Total Package	$45.64	

Heavy Highway
7/1/2011: $1.65

Distribution:		Future Increases (distribution to be determined)
Rate	$28.30	6/1/2012: $
Health	$10.00	6/1/2013: $
Annuity	$1.73	6/1/2014: $
Pension	$4.97	6/1/2015: $
Edu. and Training	$0.40	
UBC	$0.10	ASP: $0.10
Labor Mgmt.	$0.04	
ASP	$0.10	
Total Package	$45.64	

APPENDIX I – Local 276
Counties of Allegany, Chautauqua and Cattaraugus (except for the Town of Perrysburg and the Village of Gowanda in Town of Persia)

Contractors Association of the Southern Tier (CAST): Counties of Allegany, Chautauqua and Cattaraugus (except for the Town of Perrysburg and the Village of Gowanda in Town of Persia)

TRADE JURISDICTION

Section 1. The trade autonomy of the United Brotherhood of Carpenters and Joiners of America consists of the milling, fashioning, joining, assembling, erection, fastening or dismantling of all material of wood, plastic, metal, fiber, cork and composition and all other substitute materials. The handling, erecting and installation and dismantling of machinery and equipment and the manufacturing of all materials, where the skill, knowledge and training of the Carpenter and Joiner are required, either through the operation of machine or hand tools, either at the job site or in the production shops, mills or factories.

Section 2. Our claims of jurisdiction therefore extend over the following divisions and subdivisions of the trade: Carpenters and Joiners; Millwrights; Piledrivers; Bridge, Deck and Wharf Carpenters; Divers; Underpinners; Timbermen and Core Drillers; Ship-wrights; Boat Builders; Ship Carpenters; Joiners and Caulkers; Cabinet Makers; Bench Hands; Stair Builders; Millmen; Wood and Resilient Floor Layers and Finishers; Carpet Layers; Shinglers; Sider; Insulator; Acoustic and Dry Wall Applicators; Shorers and House Mover; Loggers; Lumber and Saw Mill Workers; Furniture Workers; Reed and Rattan Workers; Shingle Weaver; Casket Makers; Box Makers; Railroad Carpenters; Car Builders and those engaged in the operating of woodworking or other machinery required in the fashioning, milling or manufacturing of products used in the trade or engaged in as helpers to any of the above divisions or sub-divisions and the handling, unloading and distributing of finished products, erecting and installing of any of the above divisions or subdivisions; burning, welding, rigging and the use of any instrument or tool for layout work, incidental to the trade. When the term "Carpenter and Joiner" is used, it shall mean all sub-divisions of the trade.

Section 3. It is agreed that the following items of work which have been consistently proven to be the work of Carpenters shall be performed by Carpenters.

a. The laying, cutting and fastening of all roof deck planking, whether, gypsum, concrete, insulroc, tectum or any other similar planks which are laid dry, regardless of whether the joints are later filled or not.
b. The erection of all grid type ceilings or installation of Z type ceilings and the necessary runner, channels, wall angles, cross T's and all other necessary parts of the ceiling installation.
c. The installation of all Mar Lite and Mirawall Board whether interior or exterior.
d. The erection of all dry wall construction both studs and board, whether metal or wood.
e. The installation of all Herman-Nelson Cabinets, Nesbitt Cabinets, Schemenauer, Trane, Warner-Webster Cabinets and similar type cabinets regardless of name.
f. The installation of all Porcelain Enamel Panels, interior and exterior, installation of all windows and doors regardless of material.
g. The stripping of all forms for concrete work where the material is to be reused, except flat arch work and forms not to be reused.
h. The installation of all display cases and the metal trim.
i. The erection and dismantling of all scaffolding fourteen (14) feet and over with Laborers tending. It is also understood where mud sills are required, the leveling of same is the work of the Carpenters.
j. The manning of all power nails and compressors to run the same.
k. The manning of jacks on slip forms.

l. The rigging, setting, aligning and leveling of precast and post-stressed concrete shall be the work of the Carpenters.
m. Fabrication and installation of structural plastic, as well as other plastic materials, installation of metal shelving and operation of laser beams.
n. Erection of certain types of pre-engineered metal buildings.
o. All installation of imbedded metals and related machine bases.
p. All carpenter work related to (piles, forms, etc.) the removal and clean-up of asbestos and hazardous waste.
q. That Line and Grade Work incidental to any phase of the Building Construction (including grading, excavation, erection, construction, repair, alteration, modification, etc. of any building) shall be considered to be the jurisdiction of the Carpenter and shall be assigned by the Employer to the Carpenter, except that the Employer may continue to accomplish this process according to his past practice using job supervisory personnel.
r. On a hazardous work place or site, carpenters trained in hazardous work shall be employed to perform the work traditionally performed by the carpenters, subject to availability.
s. Roof blocking except as required by manufacturers warranty, toilet room partitions and accessories, the setting of Video Lottery Terminals, electronic hardware and demountable partitions (cubicles, office partitions & fabric dividers).

Section 4. It is agreed that until the Impartial Jurisdictional Disputes Board awards the above items of work to another trade, they are to be erected with Carpenters. If the Impartial Jurisdictional Disputes Board, National Labor Relations Board, or an International Agreement awards any of these items to another trade, they shall be removed from this Agreement.

MILLWRIGHTS

Section 1. Listed herein are the working rules of the Millwrights of the Carpenters in Allegany, Chautauqua and Cattaraugus counties and are in addition to and are not to conflict with the conditions of the Carpenter Clause set forth herein.

Section 2. The Job Steward shall be appointed by the Council Representative. The Job Steward shall be employed on the job at all times that any worker covered by this Agreement is employed on such job. The Job Steward shall not be laid off, discharged nor transferred except by prior agreement with the Council Representative. The super seniority of the Job Steward shall be construed to mean up to, but not including the last foreman on the job at the time of lay off. The Job Steward is subject to a residency requirement and must reside within the geographical limits of Allegany, Chautauqua and Cattaraugus counties. In case the job is shut down, the Steward shall be the first member recalled after the first foreman on the job.

Section 3. The Steward shall act as Safety Man to protect all members of the Brotherhood and shall be charged with seeing that all provisions of this Agreement are complied with and he shall not be discriminated against by the Contractor for the performance of his duties and Stewardship.

Section 4. All Millwrights are to be allowed five (5) minutes to wash up and pack tools at 12:00 Noon and at the close of the working day.

Section 5. The Employer shall furnish or provide sanitary toilet facilities and suitable quarters to Millwrights.

Section 6. The Contractor shall furnish all edge and special tools such as dial indicators, precision levels over twelve inches (12"), crescent wrenches over twelve inches (12") and tools in excess of one-half inch (1/2") socket drive. He shall also replace employee's edge tools worn or broken on the job.

Section 7. Where there are two or more Millwrights employed on the job, one shall be designated Foreman and receive the Foreman's scale of wages, which shall be $1.50 (One Dollar and fifty Cents) over the scale of Journeyman. He shall be paid on a weekly basis and shall be paid for all Holidays occurring during the week. There shall be a General Foreman after the 24th Millwright is employed and he shall receive $2.00 (Two Dollars) per hour above the Journeyman scale of wages and also shall be paid for all Holidays occurring during the week.

Section 8. When a gang consists of six men, including apprentices, but excluding the Foreman, the Foreman shall not be required to use tools except to lay out work and check work previously done. No Foreman shall have supervision over more than twelve (12) Millwrights.

Section 9. Employees regularly employed who report ready for work and are not put to work because of inclement weather shall receive one (1) hour pay. In order to be eligible for this one (1) hour pay, the Employee agrees to remain on the job one (1) additional hour.

Section 10. It is agreed that the Millwrights pension and annuity shall be contributed according to the Local 66 Pension and Money Purchase Annuity Plans as listed in Article 17, Fringe Benefits.

PREMIUM WAGE RATES

Building

Foreman: $1.50

General Foreman: $2.00

Millwrights

Journeyman: $0.25 over Carpenter Journeyman Rate

Foreman: $0.25 over Carpenter Journeyman Rate

General Foreman: $0.35 over Carpenter Journeyman Rate

WAGE INCREASES/ADMINISTRATION AND SAFETY PROGRAM (ASP)

Increases effective the first pay period beginning on or after the dates listed.

Counties of Allegany, Chautauqua and Cattaraugus (except for the Town of Perrysburg and the Village of Gowanda in Town of Persia)

Building

7/1/2011: $0.37

Distribution:

Rate	$22.84
Health	$7.00
Annuity	$1.61
Pension	$5.22
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.04
ASP	$0.14
Total Package	$37.35

Future Increases (distribution to be determined)

6/1/2012: $0.84

6/1/2013: $1.24

6/1/2014: $1.37

6/1/2015: $1.42

ASP: $0.14

Alfred Town

7/1/2012: $0.41

Distribution:

Rate	$24.61
Health	$7.40
Annuity	$1.77
Pension	$6.84
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.04
ASP	$0.25
Total Package	$41.41

Future Increases (distribution to be determined)

6/1/2012: $0.93

6/1/2013: $1.37

6/1/2014: $1.52

6/1/2015: $1.57

ASP: 1% of the base rate rounded up

Millwrights

7/1/2011: $0.37

6/1/2012: $0.84

6/1/2013: $1.24

6/1/2014: $1.37

6/1/2015: $1.42

ASP: $0.14

APPENDIX J – Local 276
Counties of Livingston, Monroe, Ontario and Wayne, and the townships of Genesee Falls, Castile, Perry, Warsaw, Gainesville and Pike in Wyoming County

Construction Industry Association of Rochester: Counties of Livingston, Monroe, Ontario and Wayne, and the townships of Genesee Falls, Castile, Perry, Warsaw, Gainesville and Pike in Wyoming County

TRADE JURISDICTION

The Employer acknowledges the following as the jurisdictional claims of the United Brotherhood of Carpenters and Joiners of America. Notwithstanding these claims, however, the Employer's obligation in making work assignments shall be in accordance with provisions of Section 5 of the Article.

Section 1. Jurisdictional claims: Home building and house construction work; commercial and industrial work; the handling, milling, fashioning, joining, assembling, erection, fastening or dismantling of all materials of wood, plastic, metal, fiber, cork and composition, and all other substitute materials; the manufacture of all wood and substitute material, where the skill, knowledge and training of a Carpenter are required, either by the operation of machinery or hand tools, the unloading and handling of all materials; the erection, fitting, plumbing, leveling, aligning and setting of precast concrete pieces; the manufacture and/or production of all concrete pieces made by precasting, poststressing or by prestressing; the unloading, handling and installation of store fixtures; the unloading, handling and placing of all refrigerated boxes and/or cases; the setting, plumbing and bracing of all steel and aluminum sash on open walls and wherever such sash is fastened to wood; the handling erection, placing and/or installation of substitutes replacing the materials normally used by members of the Unit covered by the Agreement and requiring the skills and tools of members of the Unit;

Section 2. The following trade jurisdiction and the work performed by the employees in such categories: Carpenters and joiners, reed and rattan workers, railroad Carpenters, ship Carpenters, caulkers and joiners, bench hands, cabinet makers, stair builders, floor layers (as provided for in the Floorlayer Addendum between the Union and the Association), millwrights (as provided for in the Millwright-Pile driver Agreement between the Union and the Association), box makers, furniture workers, bridge, dock and wharf Carpenters, shipwright and boat builders, car builders and all workers engaged in the running of woodworking machinery, the laying of all canvas roofs and decks, and all insulation workers; and any and all additional work agreed upon between the parties, orally or in writing;

Section 3. Jurisdictional claims: Fabricating, erecting and dismantling of all false work; handling and signaling where power is used for the setting or dismantling of forms or any other material erected by Carpenters; the fabrication and/or setting of all templates, including anchor bolts necessary for structural members or machinery and the placing and/or leveling of these bolts included; all framing in connection with the setting of metal columns; the setting of all forms, centers and bulkheads, the fabrication and setting of screeds and stakes for concrete and mastic floors where the screed is notched or fitted or made up of more than one member; the making and setting of all forms used in concrete work; fastening on of all wooden, plastic or composition cleats to iron work or other materials; the erection and installation of all Strand Steel or similar materials, setting and hanging of all sash, doors, inside and outside blinds, windows and other frames; erection or application of all wood shingles, siding wallboard, or sheets composed of wood, wood pulp, plastic, plaster transite or composition materials or any other material including combined or faced with metal regardless of the manner attached; erection of all wood metal, plastic and composition partitions; the erection of cooling towers and tanks; the installation of rugs, carpets (as provided in the Floor Layer Agreements between the Union and the Association), draperies and curtains; the installation and handling of laboratory equipment including cabinets and work benches, bookcases and cabinets either separately or used in conjunction with heating

and/or air conditioning units, black boards, bulletin boards, bill boards, meter boards and boards of all types; the erection of porcelain enameled panels and metal siding; the assembling and setting of all seats in theaters, halls, churches, schools, banks, stadiums, and open-air theaters and other buildings; the application of acoustic tile whether glued or nailed; acoustical suspended ceiling in its entirety; all insulation whether nailed, glued or blown; the building and dismantling in their entirety from the ground up of all scaffolds over 14 ft. in height; the building and dismantling of all wood and specially designed scaffold in their entirety; the watching of forms during a concrete pour, where a workman is assigned for such purpose.

Section 4. Installation of all air supported dome structures and apparatus, regardless of use; installation of the Tecktum roof system in their entirety and any similar system regardless of trade or patent name; installation of insulated panels for exterior walls or cooler units, including doors or other apparatus; installation of all corrugated fiberglass siding shall be assigned to Carpenters, that will be attached to wood or steel, installation of all windows, regardless of material, fastening systems or material attached to, shall be the work of the Carpenter; installation and construction of bleacher seats, indoor or outdoor, regardless of material, shall be the work of the Carpenter.

The Carpenters shall perform all work on buildings in conjunction with tunnels that is normally done by Carpenters on any other type of construction.

Section 5. Any members of the Unit covered by this Agreement shall perform such welding and burning work, as is an adjunct to the trade.

Section 6. All firestopping and gaming equipment.

FLOORLAYER CONTRACT

Section 1. The Floorlayer addendum only applies to contractors that sign this addendum. Signing the Empire State Regional Council of Carpenters Local 85 Agreement does not obligate the contractor to the Floorlayer addendum.

Section 2. Jurisdiction: Work consisting of cutting and/or forming of all materials in preparation for installing on floors, walls and ceilings, except acoustical tile; the installation of all hardwood floors including strip, square edge, parquet, flat surface wood blocks, plank floors and all sanding, finishing and refinishing of old floors; the installation of all resilient floor, wall and ceiling materials to include all carpet, cork, linoleum, rubber, asphalt, vinyl, seamless floors and all other similar materials in sheet, interlocking, liquid or tile form, the installation of all artificial turf, the installation of all carpets, including the cutting and/or fitting of; the installation padding and all preformed resilient floor coverings; the installation of all devices for the attachment of floor, wall and ceiling coverings; track sewing of carpets, drilling of holes for sockets and pins; putting on dowels and slats; the installation of underlayments, sealants, patching compounds in preparations of floors, walls and ceilings; the unloading and handling of all materials to be installed, and the removal of all materials; cleaning; waxing and vacuuming in preparing floor when contracted for by the Contractor, shall be done only by employees covered under this Agreement. Removal of flooring material to be performed by Floor Contractor. Also all Lettering, logos, and artwork on floors.

Section 3. Unless specified in the Floorlayer Addendum, all terms, working conditions and requirements are the same as those in the Local 85 Agreement.

Section 4. When the hall is called, the first man dispatched shall be the steward.

Section 5. Foreman Differential: If more than two men are hired out of the hall, a foreman shall be appointed and paid twenty-five ($0.25) cents per hour in addition to journeyman's wages and fringes.

LABOR MANAGEMENT COOPERATION

The parties are participants in a multi-trade, multi-employer labor-management Construction Cooperation and Education Trust, which operates under the name of UNICON. The parties will support UNICON as provided in the UNICON Trust Agreement. The current UNICON contribution is $0.08.

PREMIUM WAGE RATES

Foreman: 5% of Journeyman total package
General Foreman: 7% of Journeyman total package

WAGE INCREASES/ADMINISTRATION AND SAFETY PROGRAM (ASP)

Increases effective the first pay period beginning on or after the dates listed.
For the counties of Livingston, Monroe, Ontario and Wayne, and the townships of Genesee Falls, Castile, Perry, Warsaw, Gainesville and Pike in Wyoming County

Building
7/1/2011: $0.43

Distribution:	
Rate	$26.32
Health	$8.00
Annuity	$4.06
Pension	$4.30
Educ and Train	$0.40
UBC	$0.10
Labor Mgmt	$0.12
Sub	$0.33
ASP	$0.15
Total Package	$43.78

Future Increases (distribution to be determined)
6/1/2012: $0.98
6/1/2013: $1.45
6/1/2014: $1.61
6/1/2015: $1.67

ASP: 0.4% of total package

Floorlayer
7/1/2011: $0.37

Distribution:	
Rate	$24.03
Health	$8.00
Annuity	$4.00
Pension	$2.25
Edu. & Training	$0.40
UBC	$0.10
Labor Mgmt.	$0.04
ASP	$0.13
Total Package	$38.95

Future Increases (distribution to be determined)
6/1/2012: $0.87
6/1/2013: $1.29
6/1/2014: $1.43
6/1/2015: $1.48

ASP: 0.4% of total package

APPENDIX K – Collections Policy
Effective October 2010

Empire State Carpenters Annuity Fund
Empire State Carpenters Apprenticeship Fund
Empire State Carpenters Pension Fund
Empire State Carpenters Welfare Fund
Empire State Carpenters Charitable Trust Fund
Empire State Carpenters Labor-Management Cooperation
Empire State Carpenters Scholarship Fund

Joint Policy For Collection Of Delinquent Contributions

Article 1
General Policy

1.1 General Provisions

A. Collection of Contributions. It is the policy of the Empire State Carpenters Annuity Fund, Empire State Carpenters Apprenticeship Fund, Empire State Carpenters Pension Fund, Empire State Carpenters Welfare Fund, Empire State Carpenters Charitable Trust Fund, Empire State Carpenters Labor-Management Cooperation, and Empire State Carpenters Scholarship Fund (collectively, "the Funds") to collect all employer contributions as they are due and to make such diligent and systematic efforts as are appropriate under the circumstances to do so.

B. Remaining Employer Obligation. If an employer ceases to have an obligation to contribute to one of the Funds under that Fund's Trust Agreement, a collective bargaining agreement ("CBA"), or applicable law, the employer shall remain subject to this Policy with regard to the time period during which the employer was obligated to contribute to the Fund.

C. Remedies. The Trustees have the legal right to exercise all remedies allowable under the Restated Agreement and Declaration of Trust for the Funds (collectively, "the Trusts"), the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and other applicable laws, including but not limited to:

1. the right to establish a date on which contributions are due;

2. the right to audit the financial records of the employers, including but not limited to, payroll ledgers, federal and state tax returns, IRS Forms 941 and such other books and records of the employers that are necessary in order for the auditors to ascertain that the proper contributions have been made;

3. the right to establish a random audit program;

4. the right to require that a delinquent employer pay the cost of an audit, interest (as provided in Section 2.1(C)), attorneys' fees, and any other expenses incurred by the Fund in determining the amount of a delinquency and in collecting a delinquency;

5. the right to recover liquidated damages (as provided in Section 2.1(D) and Article 6);

6. the right to require a bond or a cash deposit as security for prompt future payments due from an employer that has been habitually delinquent in its contributions to the Fund; and

7. the right to take any other steps and to perform all other acts that are necessary in order to collect contributions due to the Fund in a timely and expeditious manner.

D. Collection Procedures. This Policy for Collection of Delinquent Contributions ("Policy") set forth herein shall be followed unless the Boards of Trustees determine that they should be waived in a particular instance.

E. Resolution by the Board of Trustees. All questions or disputes relating to the interpretation, meaning and/or application of this Policy shall be finally and exclusively resolved by the relevant Board of Trustees in the exercise of its discretion and in the performance of its fiduciary obligations to the Fund's participants and beneficiaries, in the protection of the financial integrity and soundness of the Fund and the efficient and effective administration of the Fund.

F. Employer Notification Obligation. Employers subject to this Policy are required to notify the Fund in writing of any changes or modifications to the name in which the employer conducts business under this Policy. Notification of the establishment of a new business entity by the employer must also be reported to the Fund.

Article 2
Collection Procedure and Other Procedures in Cases of Delinquency

In accordance with the Trust Agreement, ERISA, and the above declaration of policy, the following administrative steps shall be taken to effectuate the collection of delinquent contributions:

2.1. Administrative Steps to be Taken by the Fund Office

A. Due Date Defined. Contributions and the supporting remittance report, shop report or weekly payroll report (collectively referred to herein as "Contributions") are due on the date the employer's CBA requires payment or if the CBA does not state a due date, then Contributions are due on or before 48 hours following the end of the payroll period ("Due Date"). Contributions shall become delinquent if not received by the first day of the month following the Due Date.

B. Verbal Notice to Employer. In the event the Fund has not received Contributions by the Due Date, and to the extent practicable, in addition to the procedures described below, the Fund Office shall contact the employer and the local Union by telephone, to attempt to effectuate payment of Contributions.

C. Interest. Interest shall be assessed against a delinquent employer if Contributions are not received by the first day of the month following the Due Date. Interest shall be calculated at the minimum rate of .75% per month, compounded, unless a greater rate is otherwise specified in the applicable CBA, or at any other rate as the Trustees may fix from time to time. Interest shall be calculated from the first day of the month in which the Due Date occurred until the date Contributions are paid.

D. Written Notice to Employer. If Contributions are not received by the first day of the month following the Due Date, the Empire State Carpenters Fringe Benefit Funds' Fund Office ("Fund Office") will send a written notice to the employer at the employer's business address on file with the Fund Office advising the employer that Contributions are past due and that Contributions and interest must be received within 60 days of the date of the notice. The notice shall state that the employer may be liable for additional interest, liquidated damages, attorneys' fees and court costs incurred to collect Contributions.

E. Notice to Delinquency Counsel of Employer Dispute. The Fund Office shall immediately notify the Funds' Delinquency Counsel as soon as it learns that the employer is disputing its obligation to contribute on behalf of one or more employees, or because the CBA has expired, or the employer otherwise argues it no longer is required to make contributions.

F. Initiation of Legal Action. If Contributions are not received within 60 days of the date of the notice to the employer, as described in Section 2.1(D), the Fund Office shall refer the matter to the Funds' Delinquency Counsel for collection. Delinquency Counsel shall follow the procedures set out in Article 3 of this Policy.

G. Payment of Principal but Not Interest. If an employer pays the principal amount of the delinquency, but does not pay accrued interest and/or any other amounts owed, acceptance of the principal amount shall not constitute a waiver of the Fund's claim for accrued and unpaid interest and/or any other amounts.

Article 3
Legal Action and Settlement

3.1 Review Criteria

A. Action by Delinquency Counsel. When a collection matter has been referred by the Fund Office, Delinquency Counsel shall initiate legal action in Federal Court, unless Delinquency Counsel recommends a different course of action based upon pertinent factors which include, but are not limited to, the following:

1. the amount of the delinquency;

2. the length of time the delinquent amount has been owed;

3. the financial condition of the employer;

4. the employer's past performance as a contributing employer;

5. the likelihood of collecting on a judgment once it is obtained;

6. any other factor that, in the discretion of Delinquency Counsel, may have a material bearing on the collection of the delinquent Contributions.

The Board of Trustees, in its sole discretion, shall determine whether a lawsuit shall be commenced. If the Trustees decide not to litigate a particular matter, they may, in their discretion, apply such delinquent amounts to an employer's account and such amounts will be considered due and owing upon any subsequent delinquency of that employer.

3.2 Settlement Negotiations. Delinquency Counsel, the Fund Director or the Collections Coordinator is authorized to enter into settlement negotiations, either orally or in writing, with delinquent employers. Delinquency Counsel, the Fund Director or the Collections Coordinator may not agree to any settlement that waives or compromises the amount owed, including interest, liquidated damages, attorneys' fees or costs. Such settlements must be approved by the Board of Trustees or its designee, as appointed pursuant to Section 3.8 below.

3.3 Rejection of Proposal for Settlement. Delinquency Counsel, Fund Director or the Collections Coordinator may, without Board consultation, reject any proposal for settlement that contemplates the

payment of amounts due over a period of time, if its acceptance would result in collection of less than the total amount owed. Such rejection shall be subject to the Board of Trustees' subsequent review.

3.4 No Waiver of Interest, Liquidated Damages, or Attorneys' Fees. Unless the Trustees specifically agree to the contrary, no settlement may permanently waive the collection of interest, liquidated damages or attorneys' fees, although any settlement may suspend the collection of interest, liquidated damages, or attorneys' fees until a subsequent delinquency if the current collection of those amounts would involve unwarranted expense.

3.5 Determination by the Board of Trustees. The Board of Trustees reserves the right to accept or reject an employer's proposal to pay delinquent Contributions, interest, liquidated damages, and attorneys' fees over a period of time and to compromise any claim or delinquent account as recommended by Delinquency Counsel; provided however, that any such decision to extend the time for payment, or to compromise the amount owing, complies with the Department of Labor Prohibited Transaction Exemption 76-1.

3.6 Settlements over Time. Settlements calling for payment over time or compromising the amount, including interest, liquidated damages, attorneys' fees or costs, must be in writing and signed by the employer unless it would be inappropriate under the circumstances to do so. The Trustees must approve any proposal for any payment schedule that exceeds twelve months for all amounts owed, including interest and fees.

3.7 Expedited or Delayed Collection Action. Notwithstanding the procedures set out in this policy, the Board of Trustees may refer any delinquent account to Delinquency Counsel at an earlier or later date than provided for herein when circumstances warrant that collection action be expedited or delayed.

3.8 Board of Trustees Collection Committee. The Trustees may appoint a Collection Committee of at least one Employer Trustees and one Union Trustees to act on behalf of the Board of Trustees, as provided for under this Policy. If such Committee has been appointed, all actions required to be taken by the Board of Trustees can be taken by such Committee on behalf of the entire Board.

Article 4
Payroll Audit Policy

4.1 Payroll Audit

A. Timing of Audit. The Board of Trustees shall have discretion in determining which employers will be audited in each year. In general, each employer participating in the Funds with a contribution history that exceeds a minimum threshold established by the Trustees and determined from time to time based on relevant facts and circumstances (including the level of work in the geographic area), shall be audited at least once during a three-year period. It is the intention of the Trustees that all employers contributing a particular Fund be audited at least once during a five-year period, such period to commence from the date of the last audit of the employer, or, in cases where an employer has not previously been audited, within one year from the date the employer first became a participating employer in the Fund subject to the statutory period of limitation for contract actions.

B. Audit Period. The period audited shall be three years, unless circumstances dictate otherwise. In instances in which the Trustees decide not to audit a particular employer at least once during a three-year period, the period audited shall be determined by the Trustees based on the particular facts and circumstances.

C. Trustee Discretion. Notwithstanding the guidelines of this Section 4.1, the Trustees may, in the exercise of their discretion, determine that the audit schedule set forth above should not be followed in a

particular instance. For example, the Trustees may, in the exercise of their discretion, decide not to conduct an audit if an employer has consistently reported accurately or, if facts and circumstances indicate that a particular employer may be reporting inaccurately or inconsistently, the Trustees may direct that the Fund's auditor to conduct an audit. If an audit uncovers inaccurate or inconsistent reporting by an employer, the Fund's auditor shall monitor such employer and schedule a subsequent audit within the appropriate statute of limitations.

4.2 Remaining Employer Obligation.
If an employer ceases to have an obligation to contribute to the Fund under the Trust Agreement, a CBA, or applicable law, the employer shall remain subject to these audit procedures for the purpose of verifying that the employer made the proper contributions during the time period in which the employer was obligated to contribute to the Fund.

4.3 Notice to Fund Office and Employer.
Prior to conducting each audit, the Fund's auditor shall notify the Fund Office of its intent to conduct an audit and shall review the employer's CBA and any pending issues. The Fund Office will forward a letter to the employer advising it of the impending audit, citing the Trustees' authority to conduct the audit and describing the records required to be made available at the audit.

4.4 Employer Response.
After an audit of an employer is conducted, the Fund's auditor shall review the auditor's findings with the employer. After providing the employer with a reasonable time to respond to the auditor's findings, the auditor shall issue a final report to the Fund with its payroll audit findings. All final audits should be presented to the Fund's collection coordinator prior to issuance to the employer.

4.5 Demand Letter.
Upon receipt of the Fund auditor's report, the Fund Office shall send a letter to the employer demanding payment, within 14 days of the date of the letter, of any amounts found to be due by the auditor, including any costs and fees of the audit, if applicable. The letter shall state that interest on the delinquent Contributions shall be calculated as set forth in Section 2.1(C), calculated separately as to each person on whose behalf the employer is delinquent in making Contributions and for the specific time period the employer was delinquent for that employee. For the purpose of implementing the procedures set out in Articles 2 and 3 of this Policy, the Due Date shall be thirty calendar days after the Fund Office's letter described herein.

4.6 Cost of Audit.
The employer shall pay the actual cost of a payroll audit except that if the payroll audit results in a finding that the employer has underpaid by 3% or less of its annual contributions during any twelve month period covered by the audit.

4.7 Employer Refusal.
In the event an employer refuses to permit an audit upon request by the Trustees or if the employer refuses the Fund's auditor access to pertinent records, then the Fund Office shall refer the matter to Delinquency Counsel. If appropriate, the Fund's Collection Coordinator shall provide a letter giving the employer seven days to schedule the audit. If the employer does not comply, the matter should be referred to Delinquency Counsel to issue a written demand to the employer's last address on file with the Fund Office that the employer make available such books and records as are necessary for the Fund's auditor to conduct an audit. If the records are still not made available, Counsel shall institute legal action to enforce the Trustees' right to conduct a payroll audit and the employer shall pay to the Funds all costs and attorneys' fees incurred as a result of the employer's refusal to permit an audit or

refusal to make available all pertinent records, unless Delinquency Counsel recommends a different course of action.

4.8 Overpayment.
If a payroll audit identifies an overpayment by the employer, the payroll auditor shall advise the employer that (a) to receive a Refund (as defined in Section 5.9), the employer must submit a request to the relevant Board of Trustees in writing, stating the reason for the overpayment and proving that the contribution or payment was made because of mistake of law or fact; (b) the Board of Trustees will decide in its sole discretion whether a Refund will be granted; (c) any such Refund shall be recovered by the employer through a credit against future contributions as determined by the Board and communicated to the employer in writing; and (d) any attempt by the employer to recoup any overpayment through a procedure other than the one described in this paragraph (for instance, by the employer unilaterally taking a credit) shall result in the automatic forfeiture of the Refund and the treatment of any credit taken by an employer as a delinquent contribution. Notwithstanding the foregoing and subject to Article 5, if an employer demonstrates that it overpaid its Contributions to the Fund, the Fund Office shall credit the employer with up to 12 months of Contributions.

Article 5
Mistaken Contributions

5.1 Refund of Excess Contributions.
Subject to the terms and conditions of this Policy, an employer that makes Contributions to a Fund in excess of the amount required by the terms of the employer's CBA, the Trust or applicable law and under a mistake of fact or law, may request a Refund of the amount of such excess contributions.

5.2 Written Request Required.
No Refund of excess contributions shall be granted by the Fund without a written request for such Refund having been received 6 months after the date that such excess contributions were received by the Fund.

5.3 Reduction.
A. Any Refund of excess contributions made to an employer shall not include interest or investment earnings attributable to the overpayment, and, as described in subparagraphs (A) and (C), shall be reduced by the amount of any investment losses attributable to the overpayment. If a Fund incurred a direct or indirect cost, expense or liability as a result of an excess contribution, any Refund of such contribution shall be reduced by the full value of such cost, expense or liability. In no event shall a credit or Refund of contributions be taken or allowed for any period during which coverage has been provided by a Fund to an individual based on the employer's Contributions, regardless of whether the Fund actually paid benefits or premiums on behalf of that individual.

B. Each Fund under this Policy shall treat its cash account as the source of any Refunds of excess contributions to employers in cases in which the refunded contributions in that plan year to date are less than 1% of the total employer contributions in the aggregate made to the respective Fund during the plan year prior to the plan year in which the Refund is made. This rule shall be applied separately by each Fund.

C. Once 1% of the total employer contributions made to a Fund during the plan year prior to the year in which the Refund(s) is made have been refunded to employers in the aggregate by a Fund under (B) in a given plan year, any subsequent Refunds shall be reduced by the amount of any investment loss by the Fund, calculated as follows. Investment losses shall be calculated by the Fund based on the investment return for the Fund as a whole from the first day of the calendar quarter in which the mistaken contribution was made through the first day of the calendar quarter in which contributions are returned,

unless the Trustees determine that another method more reasonably reflects the circumstances in a particular Refund.

5.4 Employer Responsibility.
The obligation to discover and delineate the amount of excess contributions within the time limits provided within this Policy is the sole and exclusive responsibility of the employer.

5.5 Effective Date of Request for Refund.
The request of the employer for Refund of excess contributions must be in writing and shall not be effective until it is received by the Fund.

5.6 Supporting Documentation.
The request of the employer must contain copies of all documentation upon which the employer relies to substantiate its request or which may be required by the Fund to verify the exact amount of the excess contributions.

5.7 Time Period for Refund.
The Refund of contributions shall be considered as returned within the required period if the employer establishes to the satisfaction of the Trustees its right to a Refund of contributions within 6 months after the date on which the Trustees determined that a mistake occurred.

5.8 Employer Compliance.
The failure and/or refusal of the employer promptly and fully to comply with any or all of the provisions of this policy shall result in the denial of the request for the Refund of excess contributions.

5.9 Definition of Refund.
As used in this policy, the term "Refund" shall include the offset of previously-submitted excess contributions against currently due contributions ("credits"). As such, upon approval of the Trustees, an employer may be permitted to credit excess contributions, less the Fund's set-offs described in this Policy, against current contributions only to the same extent and under the same terms and conditions as such employer may be entitled to a Refund under this Policy. Any employer attempt to recoup any excess contribution through a procedure other than the one described in this paragraph (for instance by the employer unilaterally taking a credit) shall result in the automatic forfeiture of the Refund and the treatment of any credit taken by the employer as a delinquent contribution.

Article 6
Liquidated Damages, Attorneys' Fees and Costs

6.1 Liquidated Damages.
Liquidated damages shall be calculated from the Due Date, and shall become due and owing if suit is commenced. The amount of the liquidated damages shall be 20% of the delinquent Contributions.

6.2 Attorneys' Fees.
Attorneys' fees shall be due to the Fund from a delinquent employer at the hourly rate charged to the Fund for such services, or at the fair market hourly rate charged by attorneys in the New York Metropolitan area, who specialize in ERISA collection, for all time spent by Counsel in collection efforts pursuant to Article 3 hereof or in enforcing the Board of Trustees' right to payroll audits pursuant to Article 4 hereof.

6.3 Audit Costs.
Subject to the limitations in Section 4.7, all costs (including, but not limited to, attorneys' and accountants' fees) incurred (a) to determine, discover and collect delinquent Contributions, (b) to obtain the information necessary or to properly allocate, credit and record such Contributions as necessary to

administer the Funds, and (c) to enforce the Trustees' right to audit the employer's payroll records, shall be due to the Fund from the delinquent employer, including, but not limited to, any fees incurred in determining, discovering, and collecting Contributions from the employer, arbitration fees, filing fees, arbitrator's fees, fees for service of process, travel, copying charges, postage, expert fees, and such other costs as would otherwise be charged to the Board of Trustees to determine, discover, and collect any of the amounts described herein.

Article 7
Reports

7.1 Reports.
The Fund Office, or as the case may be, Delinquency Counsel of the Funds' auditor, shall prepare a delinquency and audit report to be presented periodically at the Boards of Trustees' meetings. The report shall identify by Fund the delinquent employers, the amount owed, and the Due Date of the delinquent Contributions and the steps that have been taken to collect delinquent Contributions. The determination of the Trustees with respect to action on such Contributions, and the specific basis thereof, shall be recorded in the minutes. The report shall also include a list of those employers who have undergone an audit during the period since the last Trustees' meeting.

7.2 Agreements.
The Fund Office shall maintain a file of currently effective CBA's and other agreements detailing the basis upon which employers are obligated to make Contributions.

7.3 Settlements.
All written settlements of delinquencies shall be on file in the Fund Office.

IN WITNESS THEREOF, the parties to this Agreement hereby sign and duly execute this Agreement that is effective June 1, 2011 through May 31, 2016

(s) Gary Squires, Negotiation Committee Chairman

(s) Aaron Hilger, Managing Director
Construction Industry Association of Rochester, Inc.

(s) Todd G. Helfrich, Managing Director
Eastern Contractors Association, Inc.

(s) Brad Walters
Contractors Association of the Southern Tier

(s) Earl R. Hall, Executive Director
Construction Employers Association of CNY, Inc.

(s) James Logan
Construction Industry Employers Association

(s) Jack Endryck
Mohawk Valley Construction Employers Association

(s) Brad Walters
Southern Tier Association of Contractors

(s) Terry Petrie
LRS of Northern New York Builders Exchange

(s) Angelo Massaro
The Building Industry Employers Association of Niagara County, New York

NORTHEAST REGIONAL COUNCIL OF CARPENTERS
Northwest Region

(s) Michael Capelli
Executive Secretary Treasurer

(s) David Haines
Regional Manager

(s) William Banfield
Regional Manager

NON-ASSOCIATION EMPLOYER SIGNATURE PAGE

IT IS HEREWITH AGREED that all the terms and conditions in the agreement attached hereto and effective June 1, 2011 through May 31, 2016, and thereafter as herein specified between the "Associations" and the Northeast Regional Council of Carpenters are applicable to and are binding upon the employer whose signature is affixed hereto.

Non- Association Employer (Please Print)	Employer Identification Number
Address	Telephone Number
City - State - Zip	Facsimile Number
Company Officer or Representative (Please Print)	Title (Please Print)
Signature	Date

NYS Unemployment Ins. Number	New York State Disability Number	Workers' Compensation Number

NORTHEAST REGIONAL COUNCIL OF CARPENTERS
NORTHWEST REGION MASTER AGREEMENT

Signed by: _____

Title: _____

Date: _____

Witnessed by: _____

Title: _____

Date: _____

Union/Contractor's Copy

NON-ASSOCIATION EMPLOYER SIGNATURE PAGE

IT IS HEREWITH AGREED that all the terms and conditions in the agreement attached hereto and effective June 1, 2011 through May 31, 2016, and thereafter as herein specified between the "Associations" and the Northeast Regional Council of Carpenters are applicable to and are binding upon the employer whose signature is affixed hereto.

Non- Association Employer (Please Print)	Employer Identification Number
Address	Telephone Number
City - State - Zip	Facsimile Number
Company Officer or Representative (Please Print)	Title (Please Print)
Signature	Date

NYS Unemployment Ins. Number	New York State Disability Number	Workers' Compensation Number

NORTHEAST REGIONAL COUNCIL OF CARPENTERS
NORTHWEST REGION MASTER AGREEMENT

Signed by: _____

Title: _____

Date: _____

Witnessed by: _____

Title: _____

Date: _____

Copies to "Associations" and Fund Office(s)

EXHIBIT D

2009			
			Spent
	BGH	Inpatient Renovations	$ 41,503.00
		ICU/CCU Renovation	$ 3,457,198.00
		Laboratory Svcs Level 7	$ 305,865.00
		BGH Loading Dock Relocation	$ 1,660,677.00
		BGH Primary Specialty Clinics Reloc	$ 1,870,733.00
		Nursing Administration/HR Relo 14N	$ 528,642.00
		BGH A8-A15 Renovation	$ 465,275.00
		BGH Inpatient Dialysis	$ 1,052,487.00
		VIA Improvements	$ 65,206.00
		Renovation of Old Generator Room	$ 237,753.00
		Renovation of A-12 (OMH requirements)	$ 244,340.00
	WCHOB	WCHOB Cafeteria Renovations	$ 350,705.00
		Post Partum Beds	$ 572,300.00
		WCHOB Step Down Unit	$ 28,222.00
		Labor & Delivery Assessment	$ 166,139.00
	MFS	MFS 2nd Angio	$ 992,914.00
		MFS PAT Relocation	$ 397,239.00
		MFS Labor/Delivery & Nursery Renovation	$ 807,256.00
		MFS GI Relocation	$ 211,633.00
		MFS Minor Procedure Relocation	$ 94,340.00
	DMH	DMH ASU 4th Flr	$ 61,008.00
		DMH Lobby and Dining Renovation	$ 96,405.00
2010			
			Spent
	BGH	Bariatric Clinic Relocation	$ 1,120,008.00
		ICU/CCU Renovation	$ 4,543,476.00
		Laboratory Svcs Level 7	$ 518,056.00
		BGH Loading Dock Relocation	$ 1,666,966.00
		BGH Primary Specialty Clinics Reloc	$ 3,008,702.00
		BGH A-12 Renovation	$ 493,457.00
		BGH SPD/Materials Management Renovations	$ 345,987.00
		BGH Inpatient Dialysis	$ 1,472,857.00
		BGH 14N Stroke Center Renovation	$ 293,673.00
		BGH A8-A15 Renovation	$ 3,801,936.00
		BGH B-8 Office Renovation	$ 4,758.00
		BGH C-3 Surgical Clinic	$ 101,074.00
		BGH A2 Neuro OR Suite	$ 363,361.00
		BGH B RAC Relocation	$ 1,094,188.00
		BGH Pharmaceutical Waste Rm Renovation	$ 26,085.00
		Orthopedic Clinic/Central Reg/Noor Clinic	$ 147,601.00
		Health Information Management Relocation	$ 552,186.00

J+1

		GI/Urology Relocation	$ 109,221.00
		Renovation of Old Generator Room	$ 239,515.00
		BGH Electrical Room Upgrade	$ 1,458,600.00
		Cooling Tower Replacement Project	$ 925,122.00
		Flagship AHU Upgrade	$ 507,698.00
		Flagship Helipad Project	$ 119,726.00
	WCHOB	WCHOB CT Scanner	$ 436,136.00
		WCHOB Cafeteria Renovations	$ 801,430.00
		WCHOB Step Down Unit	$ 1,489,625.00
		WCHOB Labor & Delivery Assessment	$ 503,336.00
		WCHOB Fisher Price Lobby Renovation	$ 277,875.00
		WCHOB Post Partum Beds	$ 2,692,231.00
		WCHOB Pharmaceutical Waste Rm Renovation	$ 21,298.00
		Hematology/Oncology	$ 627,217.00
		V6 Ob/Gyn Nursing Unit Upgrades	$ 24,944.00
		ADOS Testing Center	$ 64,897.00
		V8 Med Surg Nursing Unit Upgrades	$ 67,227.00
		Fuhrman Office/Lab Consolidation	$ 10,555.00
		Ob/Gyn Leadership Offices	$ 35,470.00
		V4/T6 Office Relocations	$ 29,199.00
		WCHOB V9 Parent Lounge Renovation	$ 3,000.00
		WCHOB Central Sterile Renovation	$ 32,800.00
	MFS	MFS PAT Relocation	$ 353,536.00
		MFS 2nd Angio	$ 1,626,645.00
		MFS Labor/Delivery & Nursery Renovation	$ 1,495,162.00
		MFS GI Relocation	$ 1,948,304.00
		MRI Magnet Relocation	$ 411,299.00
		MFS Pharmaceutical Waste Rm Renovation	$ 12,865.00
		Renovation of MFS Coffee Shop	$ 28,855.00
		MFS Employee Health Renovation	$ 34,638.00
		Millwork Project	$ 2,624.00
		2W Semi-Private Room Conversion	$ 10,245.00
		2nd Flr Childbirth Education Room Renovation	$ 22,127.00
		Lobby Reception Desk Flooring	$ 1,066.00
		MFS Coffee Shop Flooring	$ 9,276.00
		MFS Physicians Lounge Renovation	$ 27,547.00
	MFG	System ED Observation/Monitoring- MFG	$ 409,713.00
		MFG Pharmaceutical Waste Rm Renovation	$ 18,070.00
		Surgical Intensive Care Waiting Room Renovation	$ 30,049.00
	DMH	DMH Geriatrics Relocation	$ 273,209.00
2011			Spent

	BGH	BGH A-12 Renovation	$ 494,044.00
		BGH Inpatient Dialysis	$ 1,471,818.00
		KH Pharmaceutical Waste Rooms	$ 25,001.00
		BGH Ortho/ Noor Clinics/Cntrl Reg	$ 950,747.00
		BGH HIM Relocation	$ 1,957,809.00
		BGH GI/Urology Reloc	$ 158,359.00
		BGH A8-A15 Renovation	$ 5,530,725.00
		BGH 14N Stroke Center Renovation	$ 644,701.00
		KH SPD Instrument Tracking	$ 3,372,676.00
		BGH Critical Care Initiative	$ 3,938,945.00
		BGH E-Bldg Garage Entrance	$ 290,996.00
		BGH MRI & CT Imaging	$ 4,306,115.00
		BGH Neuro Surgery Relocation	$ 233,975.00
		BGH Ground Flr Observation Svc	$ 149,068.00
		BGH A1N OP Imaging/ Cardiology Renovation	$ 650,834.00
		BGH B5 MRU Therapy Renovation	$ 30,932.00
		Flagship Helipad Project	$ 1,691,791.00
		Flagship AHU Upgrade	$ 5,154,785.00
	WCHOB	KH Pharmaceutical Waste Rooms	$ 21,298.00
		CHB V4 V6 D2 V8 Construction	$ 920,384.00
		WCHOB Labor & Delivery Assessment	$ 746,472.00
		WCHOB Post Partum Beds	$ 5,686,178.00
		WCHOB Step Down Unit	$ 3,121,029.00
		WCHOB Tim Horton's	$ 57,520.00
	MFS	MFS Labor/Delivery & Nursery Renovation	$ 1,496,866.00
		KH Pharmaceutical Waste Rooms	$ 12,865.00
		MFS GI Relocation	$ 2,168,361.00
		MFS HIM Buildout	$ 285,025.00
		MRI Magnet Relocation	$ 1,217,250.00
		MFS Recovery Bays Build-Out	$ 424,847.00
		MFS Central Supply Renovation	$ 177,648.00
	MFG	KH Pharmaceutical Waste Rooms	$ 18,070.00
	DMH	DMH Geriatrics Relocation	$ 288,524.00
		KH Pharmaceutical Waste Rooms	$ 9,808.00
		DMH ED Observation Unit	$ 123,751.00

EXHIBIT E

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

KALEIDA HEALTH,

Employer,

and

CONCERNED CARPENTERS FOR A DEMOCRATIC UNION

Petitioner,

Case 3-RC-077821

and

BUFFALO BUILDING & CONSTRUCTION TRADES COUNCIL, AFL-CIO,

Intervenor.

POST-HEARING BRIEF SUBMITTED ON BEHALF OF PETITIONER CONCERNED CARPENTERS FOR A DEMOCRATIC UNION

Richard D. Furlong, Esq.
Special Counsel
Lipsitz Green Scime Cambria, LLP
Attorneys for Petitioner
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Buffalo, NY 14202
716-849-1333
rfurlong@lglaw.com

PRELIMINARY STATEMENT

Pursuant to NRLB Rules and Regulations §102.67(a), Petitioner, Concerned Carpenters For a Democratic Union ("Petitioner") submits this brief and urges that the Regional Director direct an election in the petitioned-for unit, Board Exhibit 1(a), as amended at the hearing (TR. 232-235): "All journeyperson and apprentice carpenters [added by amendment, "and millwrights"] employed by the Employer and presently covered under the collective bargaining agreement between the Buffalo Building and Construction Trades Council, AFL-CIO and Kaleida Health."

SUMMARY OF PETITIONER'S POSITION

Petitioner summarizes its position as follows:

1. There is no contract bar to the processing of the Petition;
2. The Employer, Kaleida Health ("Employer") is "primarily engaged in the building and construction industry" for purposes of 29 USC §158(f).
    A. The pertinent Memorandum of Understanding ("MOU") (Jt. Exhibit 4) signed by the Intervenor Buffalo Building and Construction Trades Council, AFL-CIO ("Intervenor" or "BBT")) and the Employer is a pre-hire agreement which can only be entered with employers engaged primarily in the construction industry.
    B. Incorporated into the MOU is a pre-hire agreement between the Northeast Regional Council of Carpenters ("NRCC") and The Associations (Jt. Exhibit 3) ("NRCC CBA") which, like the MOU, can only be entered with employers engaged primarily in the construction industry.

C. Bargaining units created by the Health Care Rule, 29 CFR §103.30(f)(2), including those comprised of skilled maintenance employees cannot exist on a pre-hire basis, but only upon a showing of majority support pursuant to 29 USC §159(a). The Employer-BBT/NRCC relationship is governed by 29 USC §158(f), not 29 USC §159(a).

3. The unit sought in the Petition is appropriate.

   A. The carpenters employed pursuant to the MOU/NRCC CBA are a distinct and homogeneous group of skilled journeypersons and apprentice craftspersons.

4. The carpenters employed pursuant to the MOU/NRCC CBA are construction workers, not maintenance employees.

5. Bargaining history should focus on the NRCC CBA, not the MOU.

   A. The importance of bargaining history, in 8(f) settings, is minimal and cannot override community of interest factors.

6. Petitioner's leaders have substantial experience representing carpenters.

ARGUMENT

POINT I

THERE IS NO CONTRACT BAR TO THE PROCESSING OF THE PETITION

In the weeks leading up the April 30, 2012 hearing, the NRCC and BBT urged the Region to deem the MOU/NRCC CBA as a bar to the processing of the Petition. Though the NRCC and the BBT appeared to drop their claim at the hearing (TR. 13-14), we nonetheless note the following:

1. If the NRCC alleges the relationship with the Employer is governed under 29 USC §158(f), no bar exists to the processing of the Petition. *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd sub nom. *Ironworkers Local No. 3 v. NLRB*, 843 F2d 770 (3rd Cir.), cert denied, 488 US 889 (1988);
2. If the NRCC alleges the relationship with the Employer is governed by 29 USC §159(a), then the eight (8) day construction industry union security clause (Jt. Exhibit 3, Article 4) set forth in the NRCC CBA is illegal and the agreement cannot act as a bar to the processing of the Petition. *Peabody Coal Co.*, 197 NLRB No. 152 (1972); *Paragon Products Corp.*, 134 NLRB No. 86 (1961); *Gary Steel Supply Co.*, 144 NLRB No. 45 (1963).

Whether by concession or by case law, there is no contract bar to processing the Petition.

POINT II

THE NRCC LACKS STANDING TO PARTICIPATE
IN A HEARING ADDRESSING QUESTIONS CONCERNING REPRESENTATION

The NRCC alleges that the bargaining representative for carpenters is the Intervenor BBT representing a single, multi-craft skilled maintenance unit and further, that the Petitioner is seeking to fragment that unit in violation of the Health Care Rule (29 CFC §103.30(f)(2)) (TR. 19). This argument raises an interesting paradox: If the Intervenor is the bargaining representative, then it is well-settled the NRCC lacks standing to raise any questions concerning representation and/or participate in the hearing inasmuch as there is no indication the NRCC has been able to secure even one (1) authorization card (*see, NLRB Casehandling Manual*, ¶11023, 11194.2). Conversely, if the NRCC seeks intervention based on the NRCC CBA with The Associations (Jt. Exhibit 3) (*FWD Corp.*, 138 NLRB 386 (1962), it tacitly concedes it and not the

BBT is the bargaining representative for carpenters, and only carpenters. The irony of the latter contention, if taken, is that the NRCC is then clearly is attempting to deny to the Petitioner the same status it claims for itself: bargaining representative for carpenters working under the MOU. (TR. 8-12).

POINT III

THE EMPLOYER, KALEIDA HEALTH,
IS PRIMARILY ENGAGED IN THE BUILDING AND
CONSTRUCTION INDUSTRY FOR PURPOSES OF THE ACT

In *Wegman's Food Markets, Inc.*, 3-CA-17272 (1992), the Division of Advice spelled out the criteria by which an employer, not generally known as being engaged in the construction industry, will be, for purposes of the administration of the Act, deemed "primarily engaged in the building and construction industry." Here, the facts are virtually identical to those recited in the Division of Advice analysis:

1. The collectively negotiated agreements (here, both the MOU (Jt. Exhibit 4) and the NRCC CBA (Jt. Exhibit 3) are Section 8(f) pre-hire agreements which would otherwise be unlawful if entered into with a non-construction industry employer (TR. 14, 33, 135).
2. The parties to the MOU/NRCC agreements acknowledge there was never a showing of majority support, at any time, prior to or during the pendency of their relationship. The consummation of a bargaining relationship without a showing of majority support is only permitted in the construction industry. It is not permitted in the healthcare industry or any other.
3. The NRCC CBA contains provisions which are typical of construction industry agreements, including, among others, an eight (8) day union security clause (Jt. Exhibit 3,

Article 4) and a union only signatory subcontracting clause (Jt. Exhibit 3, Article 24). Again, inclusion of such covenants in agreements negotiated outside of the construction industry is illegal.

4. The Employer's intent has been to act as a General Contractor (TR. 29-35, 41,42).
5. The Employer, in contemplation of performing its construction work in-house, obtained a General Contractor's license from the City of Buffalo (TR. 41, 42).
6. The Employer's intent in entering the MOU/NRCC CBA was to perform construction work in-house (TR. 29, 30, 35).
7. The Employer maintains a separate and distinct "Division of Construction and Planning" headed by witness David Croston (TR. 70).
8. The MOU led to the replacement of construction industry employers (i.e. outside contractors) who had performed similar work with the direct hire employees covered by the MOU (TR. 35, 36, 83, 84).
9. Certain BBT affiliates, including the International Brotherhood of Electrical Workers, Local 41, refused to sign the MOU. The Employer subcontracts its electrical work to a union electrical firm, Ferguson Electric (TR. 45, 118, 119, 120, 121). Ferguson Electric employs electricians to work side by side with the NRCC represented carpenters, in the performance of renovation projects covered under the MOU (TR. 45, 118, 199, 120).
10. The Employer prepares a budget for each construction project, purchases materials, gets the proper building permits, schedules and coordinates the different trade crafts and works with architects, etc., as would any general contractor employed in the construction industry (TR. 30, 31, 46, 47, 66).

11. The Employer's needs which prompted the MOU included, in part, the "expeditious completion of small construction projects related to Kaleida renovations," "the timely and cost effective completion of the small projects." (TR. 40, 41; see also, Jt. Exhibit 4, MOU, 2nd and 3rd paragraphs) and "to enable the Employer to secure at all times a sufficient force of skilled carpenters" (see, NRCC CBA, Jt. Exhibit 3, "Preamble"). Conspicuously absent from the MOU is any mention of "maintenance work."
12. The work performed by the Employer's carpenters (and the Employer's other craft employees) has been in all respects, identical to that performed in the construction industry (TR. 84). Indeed, the carpenters employed pursuant to the MOU/NRCC CBA often have decades of experience in the carpentry trade (*see,* generally, testimonies of R. Kulczyk and J. Kilger; TR 181-226).
13. The Employer lays off and hires construction workers, including carpenters, depending on its project needs (TR. 84). Such a flux in the workforce is a hallmark of the construction industry, wherein imminent project needs drive employment levels.

In the context of the MOU/NRCC CBA relationship, the Employer is clearly acting as a construction industry employer. As a threshold matter, the Region should give both the Intervenor and the NCRR the benefit of the doubt: i.e., their Section 8(f) agreements are lawful because they were signed with a construction industry employer. And of course, this is not a section 9(a) relationship based on majority status which would otherwise be required before entering a bargaining relationship with a health care facility. Nor is there any authority for the proposition that the Health Care Rule, 29 CFR §103.30(f)(2) applies to employers engaged primarily in the building and construction industry. Rather, that Rule is intended to apply to acute care facilities acting as acute care facilities.

POINT IV

THE UNIT SOUGHT IS APPROPRIATE

The test for whether a petitioned for unit is appropriate is the same in construction industry settings as it is generally: "In determining an appropriate unit in the construction industry, as in all other settings, the Board seeks to fill the objectives of insuring employee self-determination, promoting freedom of choice in collective bargaining, and advancing industrial peace and stability. Under the Act, **our task is to determine not the most appropriate or comprehensive unit, but simply an appropriate unit** (emphasis added) (*P.J. Dick Contracting,* 290 NLRB 150 (1988). In doing so, we look first to the unit sought by the Petitioner. If it is appropriate, our inquiry ends. *Dezcon, Inc.*, 295 NLRB No. 19 (1989); *see also, NLRB v. Catalytic Industrial Maintenance Co.*, 964 F2d 513 (5th Cir., 1992) [applying community of interest test in multi-craft unit covered by 8(f) agreement to sanction individual craft units]. Here, carpenters share a longstanding and undeniable community of interest.

1. All the carpenters employed by the Employer work under the terms and conditions set forth in the NRCC CBA (Jt. Exhibit 3). This 65-page, single spaced document sets forth virtually all the economic and non-economic terms applicable to the petitioned for unit: wages, benefits, grievance procedure, subcontracting restrictions, union security arrangements including dues check-off, holidays, tool provisions, safety, substance abuse and background checks, jurisdictional dispute procedures, etc., etc. Notably, the other crafts parties to the MOU work under different economic and non-economic terms which are set in their respective collective bargaining agreements. And, the carpenters working for the Employer work under the same terms and conditions, indeed the same NRCC

CBA, as carpenters employed by area contractors. The NRCC CBA (Jt. Exhibit 3) drives and determines carpenters' working terms and conditions whether at the Employer or outside union signatory contractors. (TR. 43, 44, 168, 169, 189, 190).

2. The carpenters' jobsite stewards police the Employer's compliance with the NRCC CBA. They do not police the Employer's compliance with the other crafts' agreements (TR. 77, 78, 79, 123). Other crafts have their own stewards who are responsible for policing those crafts' agreements (TR. 103).
3. Carpenters perform carpentry work only. . They do not perform the work of plumbers, electricians, painters, tapers, glaziers, asbestos workers, plasterers, laborers, etc. No different than on any construction site, the carpenters perform carpentry work, while other crafts perform their work (TR. 43, 135, 170, 171, 187, 188, 189, 224, 225).
4. The tools utilized by carpenters are unique to the trade and require specialized training and skills to use (TR. 44, 188, 190, 200)
5. Each craft working under the MOU collects its own union dues based on the hours worked by its members. The BBT does not collect dues (TR. 108-109). The dues of carpenters goes solely to their union, the NRCC (or, as the case may be, its predecessor (TR. 135).
6. The carpenters have their own New York State certified apprentice program, dedicated solely to training carpenters (TR.190, 191). Carpenter trained apprentices work for the Employer (TR. 192).
7. Carpenter foremen direct the work of carpenters. Foremen from other crafts direct the work of their respective crafts, but never the work of carpenters (TR. 78, 104, 123, 183, 184, 189, 193, 194, 203, 205, 206, 207)).

8. Carpenters work side by side with craftspersons from other trades, which is no different from the general practice in the construction industry. And in the construction industry, a multitude of bargaining units, divided by craft, is the norm on any construction site (TR. 46, 76, 77, 121, 187, 189, 200).
9. The Employer's supervision structure mirrors that generally found on construction sites containing a multitude of craft bargaining units. The top supervision will have general authority, while lower level supervision will be more specialized according to craft (TR. 90, 193, 194, 195).
10. Carpenters utilize their own gangboxes for storage of their tools and materials. Only the carpenters have keys to their gangboxes (TR. 45, 190, 191).
11. Maintenance employees have their own separate equipment and storage boxes (TR. 213). The tools of maintenance employees are not as advanced as the tools utilized by carpenters working under the MOU (TR. 214-215).
12. The carpenters have engaged in jurisdictional disputes with other crafts employed under the MOU (TR. 82, 83, 114, 141, 142, 173). These "protection of craft work" disputes are common in the construction industry where crafts are organized on a bargaining unit by bargaining unit basis and work side by side on projects (*see*, 29 USC §160(k)).
13. There has never been any showing, of any nature, that the Employer's construction employees desire to organize without regard to craft lines. There has never been a showing of support for the BBT, or any of the constituent crafts including the NRCC and/or its predecessors. The only showing of interest by the Employer's carpenters has been that provided by the Petitioner pursuant to a craft designation (TR. 135).

14. There is no interchange among the employees, including carpenters, working under the MOU. That is, carpenters stick to performing carpentry work, plumbers to plumbing work, laborers to laborers work, etc. And, as stated above, each craft works under the terms and conditions set forth its outside collective bargaining agreement (TR. 187, 223, 224), which is incorporated by reference into the MOU (Jt. Exhibit 4).

Petitioner submits that even if the standard required "the **most** appropriate unit" the unit sought would qualify. In fact, the current arrangement is most accurately described as multiple bargaining units, each working under terms set forth in its standard collective bargaining agreement. And, as stated above, if the NRCC is not the representative of carpenters and only carpenters and if its CBA (Jt. Exhibit 3) is not limited strictly to a distinct and homogeneous craft of carpenters, then an obvious question is presented: does the NRCC even have standing to participate in this hearing?

The petitioned for unit surely meets a more relaxed standard of "**an** appropriate unit." And the Employer's carpenters are a true craft unit, a distinct and homogeneous group of journeypersons and apprentices with their own skills set, terms and conditions of employment, work jurisdiction and identity. *Mallinckrodt Chemical Works*, 162 NRLB 387 (1966); *American Potash & Chemical Corp.*, 107 NLRB 1418 (1954); *Allis Chalmers Mfg. Co.*, 77 NLRB 719 (1948); *Turner Industrial Group, LLC*, 349 NLRB 428 (2007). They have traditionally bargained as a craft (i.e., NRCC CBA) and they should be permitted to continue to do so, albeit with a bargaining representative which is palatable to the employees.

POINT V

THE UNIT COVERED BY THE MOU/NRCC CBA
IS NOT A "MAINTENANCE UNIT" COVERED BY THE HEALTH CARE RULE

The NRCC's chief contention is that the MOU/NRCC CBA covers not construction workers but rather "skilled maintenance" workers subject to a stand alone unit under the Health Care Rule, 29 CFR §130.30(f)(2). (TR. 17-19). This contention can most charitably be characterized as silly, for the reasons that follow:

1. The Employer already has two maintenance bargaining units, comprised of roughly 40 employees, represented by two labor organizations (i.e., SEIU and Operating Engineers) not parties to these proceedings. (TR. 36).
2. The maintenance bargaining units have collective agreements with the Employer which limit their applicability to "maintenance type work" (TR. 71).
3. GC Memorandum 91-03 defines skilled maintenance employees as:

> All skilled maintenance employees (generally includes all employees involved in the maintenance, repair, and operation of the hospital's physical plant systems, as well as their trainees, helpers, and assistants). Classifications which should generally be included in such units are carpenter, electrician, mason/bricklayer, painter, pipefitter, plumber, sheet metal fabricator, automotive mechanic, HVAC (heating, ventilating, and air conditioning) mechanic, maintenance mechanic, chief engineer, operating engineer, fireman/boiler operator, locksmith, welder, and utility man (53 FR No. 170, pp. 33923-24, 284 NLRB at 1561-62).

The Petitioner does not seek to represent maintenance workers working on physical plant systems. Rather, Petitioner seeks to represent highly trained carpenters who perform construction renovations on projects ranging from several thousand dollars to several million dollars (Jt. Exhibit 1).

4. The Employer's maintenance employees "keep the building going from a sense of a small break fix, the out of alignment, the calibration, you know, the locks elements of things, the things that typically tend to have wear and tear on them. They maintain those existing structures and mechanisms within the building. They also provide a preventative element possibly by changing filters and doing that type of work." Daniel Croston, V.P. and Chief Technology Officer for the Employer, responsible for facilities, construction, clinical engineering and security (TR. 28-29; quote from 37).
5. The work performed by the petitioned for carpenters involves construction projects lasting from weeks to months and costing anywhere from several thousand dollars to several million dollars (Jt. Exhibit 1, list of projects from 2009-2011; TR. 34-35).
6. The Employer dispatches its maintenance workers through a ticket system (TR. 38). The ticket system directs the maintenance worker to a task to be completed, and once done, the worker returns for the next ticket/task (TR. 38). There is no ticket system for BBT represented carpenters, who are assigned to lengthy projects working side by side with other crafts (TR. 31, 38, 39).
7. The carpenters employed under the MOU have a superior skills set to maintenance employees (TR. 39, 40, 50, 79, 80, 96).
8. The skills set, tools, etc. of the BBT represented carpenters is no different than the skills set, tools, etc. of the carpenters who worked on the Employer's latest new build projects (see, Carpenters Exhibits 1, 2 and 3) (TR. 72, 73, 74, 75, 82, 200).
9. The Employer, during its last round of negotiations with its skilled maintenance units, made clear those units understood the line delineating maintenance work and construction work performed by BBT represented employees. (TR. 67).

10. The work done by other crafts under the MOU (in this case, members of Laborers Local No. 210) is no different than work done by those crafts while working for outside construction industry employers (TR. 105, 106, 107).
11. The Employer's maintenance employees possess rudimentary construction skills and could not have adequately performed on the projects shown in NCRR Exhibits 1, 2 and 3. (TR. 39, 50, 54, 55, 223, 224).
12. The Employer's maintenance employees are not compensated at the levels applicable to carpenters working under the MOU/NRCC CBA. (TR. 80, 81, 223, 224).
13. The carpenters employed under the MOU/NRCC CBA have received apprentice training in the carpentry trade. (TR. 192). Maintenance workers do not serve an apprenticeship (TR. 40)
14. The carpenters employed under the MOU/NRCC CBA spend 1% - 2% of their time performing simple maintenance tasks (TR. 81, 82, 195, 196). **Note**: In the Advice Memorandum 3-CA-17272 (*Wegman's Food Markets, Inc.*) the analysis included, "the fact that some Union represented employees also performed non-construction maintenance work for the Employer on existing facilities does not lead to a different result" [i.e., that Wegman's Food Markets was self-performing construction work, with a collective bargaining agreement covered by 29 USC §158(f)].
15. The carpenters employed under the MOU/NRCC CBA work with the same tools, and utilize the same procedures as carpenters employed in the outside construction market (TR. 72, 73, 74, 75, 80, 138, 139).

16. The Employer's maintenance bargaining unit employees "do not engage in renovations" and the maintenance units and the construction unit "are two different entities" (testimony of D. Crosen, the Employer's top construction official; TR. 93).

The claim that the Petitioner seeks a non-conforming unit (i.e., with the Health Care Rule) of maintenance carpenters has no vitality. No attempt is being made to expand the existing maintenance units or to replace those bargaining representatives (the SEIU and the Operating Engineers). The effort here is to replace the NRCC, the non-majority based and unelected representative for carpenters working under the MOU/NRCC CBA.

POINT VI

THE HISTORY OF EMPLOYER-BBT BARGAINING IS VIRTUALLY NON-EXISTENT. IN A MEANINGFUL SENSE, BARGAINING HAS OCCURRED ON A CRAFT BY CRAFT BASIS WITH MULTI-EMPLOYER GROUPS

The NRCC argues that the Petition is an attempt to "sever" the unit and that the Employer-BBT bargaining history militates against such action. This argument ignores the following:

1. The Petitioner is not seeking to "sever" or "fragment" the multi-craft nature of the unit(s). In the traditional "severance" attempt, a union attempts to divide a single unit into two (2) or more entities. *See, American Potash & Chemical Corp.*, 107 NLRB 1418 (1954); *Lear-Siegler, Inc.*, 170 NLRB 766 (1968); *ASG Industrial*, 190 NLRB 557 (1971). Here, the intent is to replace a bargaining representative, the NRCC, which has never been selected by the carpenters to represent them and which has apparently been unable to secure even a single authorization card of support, with a union that has demonstrated "a showing of interest." The bargaining representative might change but the unit will not be disturbed. In this regard, and as outlined in "Resolution 70" (Petitioner's Exhibit 1) the

plan is that Petitioner will be chartered by the AFL-CIO and its subordinate body, the Building and Construction Trades Department of the AFL-CIO "for the purpose of providing opportunities to workers in the carpentry trades to work in solidarity with the affiliates of the Building and Construction Trades Department." The BBT is an affiliate of the Building and Construction Trades Department (Petitioner's Exhibit 1). Thus, Petitioner anticipates replacing Carpenters Local 289 as the bargaining representative for carpenters employed under the MOU. The bargaining unit itself, however, will remain intact. (TR. 14, 15, 153, 154).

2. The bargaining history between the BBT and the Employer is minimal. The first MOU was a one-year deal to see if the direct hire of construction employees (as opposed to the direct hire of contractors who in turn employed those employees) was feasible. (TR. 33, 84, 85, 86). Only the President of the BBT, Paul, Brown, had any real interaction with the Employer and that was fleeting at most (TR. 33, 62, 63, 134). Thereafter, the MOU was revised in 2007 and again in 2011 with the only change in the MOU proper being the dates of its term. And again, only Paul Brown, President of the BBT, met with the Employer "for a few minutes" each time to insert new dates (TR. 63). But between the BBT and the Employer, no bargaining regarding substantive terms (i.e., wages/benefits/non-economic items) ever took place (TR. 135). As described below, that substantive bargaining took place outside the context of the Employer-BBT relationship.

3. The true bargaining, the bargaining that actually determined what employees get paid, their benefits and other conditions of employment took place completely independent of the Employer-BBT relationship: each craft, acting on its own and solely for the benefit of its members, negotiated terms and conditions with its respective craft contractors. It

was the result of those negotiations, once memorialized, that were simply presented to the Employer and adopted by it (TR. 64, 87, 88, 133). Thus, the bargaining history that matters, the one that actually determines the conditions applicable to carpenters, is found in the decades of bargaining between predecessors to the NRCC (i.e. Local 289) and the main contractor multi-employer association in Western New York, the Construction Industry Employers Association ("CIEA") (TR. 133). And that bargaining history is categorical: a carpenters union bargained solely for carpenters (TR. 133, 134, 135). And in the construction industry, bargaining on a craft basis has been the norm for over 150 years. There is really nothing new here.

4. Take a look at Jt. Exhibit 3, the MOU. It is clear who does the true and meaningful bargaining: "contractual terms of employment applicable to the trade in which such individually hired employees work, as modified by this Agreement, shall apply." Those contractual terms are contained, for carpenters, in the NRCC CBA (Jt. Exhibit 3). And for the other crafts, the applicable terms are negotiated by their respective bargaining representatives.

5. The BBT, through its officers, has played no role in the administration of the NRCC CBA, applicable to carpenters (TR. 172, 173)

6. Even if the Region were to conclude that the real and meaningful bargaining relative to carpenters took place not between the CIEA and the NRCC (and its predecessors) but between Paul Brown and the Employer, it remains that the Board has generally given little weight to bargaining history in 8(f) unit determinations. *See, Allen Drywall, Inc.*, 333 NLRB No. 132; *John Deklewa & Sons, Inc.*, 282 NLRB 1375 (1987); *Dezcon, Inc.*, 295 NLRB 109 (1989); *Baron Heating and Air Conditioning*, 343 NLRB No. 58 (2004).

The reason is obvious: in an 8(f) setting, the employees have had no choice in the selection of their representative. *Dezcon, Inc.*, 295 NLRB 109 at 112 "[the Act] should not be interpreted so as to rob construction industry employees of meaningful choice, simply because an employer has unilaterally decided to limit its relations with craft unions." *See also, R.C. Aluminum v. NLRB*, 326 F3d 235 (D.C. Cir., 2003) [bargaining history in an 8(f) relationship to be given little weight in construction industry unit determinations].

Here, any claim that the Petitioner seeks to disturb a long-lasting and stable bargaining history is simply false. The bargaining history between the BBT and the Employer is *de minimus*. The bargaining that counts, that actually affects carpenters, did not take place with the Employer but instead with the CIEA. And, in any event, the focus needs to be on providing the employees with a vote and not denying them such a quintessential Section 7 right as the NRCC would have it.

POINT VII

PETITIONER IS LED BY INDIVIDUALS WITH A LONG HISTORY OF REPRESENTING CARPENTERS

If the Region analyzes this Petition under *Mallinckrodt Chemical Works*, 168 NLRB 387 (1966) it must consider whether the Petitioner has any experience representing carpenters. The record here is clear and not disputed even by the NRCC: the leaders of the Petitioner have years of experience representing carpenters at the bargaining table, presenting grievances, engaging in the job site policing of contracts and in the administration of union affairs. In stark contrast, the NRCC representatives have little to no such experience (TR. 150, 151).

On this score—labor union experience representing carpenters—the NRCC is the party that woefully lacks experience.

CONCLUSION

As Nike exhorts: Just do it! Direct an election in the petitioned for unit and let the carpenters decide if they support the NRCC, Petitioner or no union. It is time to hear from the employees.

Dated: May 9, 2012

Respectfully submitted,

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AFFIDAVIT OF SERVICE BY E-MAIL

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

LYNN M. LOMBARD, being duly sworn, deposes and says; deponent is over 18 years of age and is not a party to the action.

On May 9, 2012, deponent served the within Post-Hearing Brief upon:

Catherine Creighton, Esq. (ccreighton@cpjglaborlaw.com)

and

Raymond G. Heineman, Esq. (rheineman@krollfirm.com)

and

Michael Connors, Esq. (mconnors@kaleidahealth.org)

by attaching a true copy of same to an email known to me to be proper.

/s/ Lynn Lombard
LYNN M. LOMBARD

Sworn to before me this
9th day of May 2012

/s/ Richard D. Furlong
Notary Public

EXHIBIT F

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

KALEIDA HEALTH

Employer

and

CONCERNED CARPENTERS FOR A DEMOCRATIC UNION

Petitioner **Case 3-RC-077821**

and

BUFFALO BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

Intervenor

and

NORTHEAST REGIONAL COUNCIL OF CARPENTERS

Intervenor

DECISION AND DIRECTION OF ELECTION

The Employer, Kaleida Health, is a not-for-profit corporation with offices and places of business located in the Western New York area where it is engaged in the operation of five acute-care hospitals and other health care institutions. Petitioner seeks to represent a unit of all journeymen and apprentice carpenters and millwrights[1] who are employed by the Employer and who perform work on building, construction and renovation projects within the Employer's existing facilities. These employees are currently covered by a Memorandum of Agreement ("MOA" herein) between the

[1] The record reveals that the Employer does not employ any millwrights.

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Employer and the Buffalo Building and Construction Trades Council ("BBCTC" herein)[2] and a collective-bargaining agreement (the Associations Agreement) between The Associations, consisting of several New York State construction employer associations and the Northeast Regional Council of Carpenters United Brotherhood of Carpenters and Joiners of America ("NRCC" herein).[3] In addition to the MOA and the Associations Agreement, the Employer has complied with the terms of the individual contracts of craft unions who are signatory to the MOA. The MOA, discussed in greater detail below, is an agreement that the Employer negotiated with the BBCTC, which contains some terms and conditions of employment applicable to all in-house renovation construction craft employees. These terms and conditions of employment are in addition to, and are not contained in, individual collective-bargaining agreements between the craft unions that are signatory to the MOA and the Employer. No party asserts that the MOA or the collective-bargaining agreements are a bar to an election.

The parties disagree as to whether the petitioned-for unit is an appropriate unit. The Petitioner contends that although the Employer is an acute-care hospital, it is primarily engaged in the building and construction industry as it relates to the petitioned-for unit, and that the current relationship between the Employer and the BBCTC and NRCC is governed by Section 8(f) of the National Labor Relations Act ("Act" herein). The Petitioner argues that the petitioned-for unit is a distinct and homogenous group of skilled journeypersons and apprentice carpenters who are construction workers and not

[2] The BBCTC is an organization consisting of local construction trade unions.

[3] The Employer also has several collective-bargaining relationships pursuant to Section 9(a) of the Act with various unions, including the Service Employees International Union and the International Union of Operating Engineers which represent two units of the Employer's skilled maintenance employees who troubleshoot, maintain and repair the equipment at the Employer's facilities.

maintenance employees. Further, the Petitioner argues that the MOA and the NRCC collective-bargaining agreement are pre-hire agreements which can only be entered into pursuant to an 8(f) relationship and that neither BBCTC nor NRCC ever established majority support pursuant to Section 9(a) of the Act. Therefore, according to the Petitioner, the Board's Health Care Rule (the "Rule" herein) does not apply and a unit consisting solely of carpenters and millwrights is appropriate.[4] The Petitioner states it is seeking to "replace" the NRCC as the representative of the petitioned-for unit and that the BBCTC could continue to bargain with the Employer on all the construction trades' behalf, including on the Petitioner's behalf. The Petitioner also objects to the NRCC's participation in the hearing.[5] Finally, the Petitioner asserts that the petitioned-for unit is an appropriate craft unit under the Board's established criteria set forth in Mallinckrodt Chemical Works, 162 NLRB 387 (1966).

The BBCTC and NRCC contend that the Rule applies because the Employer is a health-care institution engaged in the operation of acute-care hospitals and further, that the only appropriate unit is a residual unit of skilled maintenance employees, i.e., the existing non-conforming unit of all crafts currently covered by the MOA between the Employer and the BBCTC. They further contend that if it is determined that the Rule does not apply, the petitioned-for unit is inappropriate because the circumstances herein do not support craft severance.

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[4] The Petitioner also indicated, at the hearing, its willingness to proceed to an election if a unit other than the petitioned-for unit is found appropriate.

[5] The Petitioner contends that the NRCC should not have been allowed to participate in the hearing as an Intervenor inasmuch as it did not present any showing of interest. I find that the current MOA, which incorporates the collective-bargaining agreement between the Associations and NRCC, is sufficient to allow the NRCC to intervene in this proceeding. See Stockton Roofing Co., 304 NLRB 699 (1991) and NLRB Casehandling Manual, Part Two, Representation Proceedings Sec. 11022.1(d).

The Employer's position is that the petitioned-for unit is only appropriate if the Petitioner can simply "replace" the carpenters' current representative as a signatory to the MOA with the BBCTC. Thus, the Employer maintains that if the Petitioner can represent the petitioned-for unit under the same contractual relationship that the Employer currently has with the BBCTC and the NRCC, then it is not opposed to the petitioned-for unit.

As discussed below, based on the record and relevant Board law, I conclude that the Employer operates acute-care hospitals where the employees in the petitioned-for unit perform work and, therefore, the Rule applies. Further, I conclude that a unit of all full-time and regular part-time craft employees employed by the Employer who perform in-house construction renovation, is the only appropriate unit[6] and direct that an election be held in that unit. Finally, I conclude that the BBCTC and the unions that are signatory to the MOA are joint bargaining representatives and should appear on the ballot as such.

The Board's Health Care Rule

On April 21, 1989, the Board established eight appropriate bargaining units in acute-care hospitals in its Final Rule on Collective Bargaining Units in the Health Care Industry, 29 CFR Part 103.30(a). The Board's Rule states:

> Except in extraordinary circumstances and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units, for petitions filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B)

[6] Because the unit in which an election is directed herein is significantly larger than the unit petitioned for, I shall allow the Petitioner until the close of business **June 18, 2012,** to submit to the Buffalo office of Region 3 of the National Labor Relations Board, additional cards necessary to support a 30 percent showing of interest in the larger unit, unless a request for review by the Petitioner challenging my unit finding is timely filed, in which event the submission of the additional showing of interest will be due, if appropriate, 10 days from the date of the Board's action on the request for review. Should the Petitioner not wish to proceed to an election in the broader unit, it will be permitted, upon request, to withdraw its petition without prejudice.

> of the National Labor Relations Act, as amended, except that, if sought by labor organizations, various combinations of units may also be appropriate:
>
> (1) All registered nurses.
> (2) All physicians.
> (3) All professionals except for registered nurses and physicians.
> (4) All technical employees.
> (5) All skilled maintenance employees.
> (6) All business office clerical employees.
> (7) All guards.
> (8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

284 NLRB at 1586-1587.

The Rule seeks to avoid undue proliferation of bargaining units. While engaged in the 1984 rulemaking, the Board carefully considered the 1974 health care amendments as well as its own strongly-held view that the number of units found appropriate should not be so many as to lead to a splintering of the workforce by occupations and professions found within the industry. Specifically, the Board stated:

> We believe that Congressional and industry concern with proliferation was directed towards the fifteen to twenty plus units that had arisen in the health care and other industries prior to the amendments and the possibility of scores of units if each hospital classification were permitted to organize separately.
>
> As stated in Senator Taft's proposal, Congress feared that patterns such as developed in construction and newspaper industries – wherein units were permitted for each craft, resulting in 15-20 or more units—would result in separate units for the equally, if not more, numerous classifications in a hospital.

284 NLRB at 1575.

In response to particular concerns that a skilled maintenance unit would lead to proliferation of bargaining units in the health care industry, the Board stated that "the skilled maintenance employee unit may be viewed as a consolidation of specialized employees inasmuch as it combines such employees as carpenters, painters, plumbers, and electricians." 284 NLRB at 1559.

Non-Conforming and Residual Units Under the Rule

Section 103.30(c) of the Rule provides:

> Where there are existing non-conforming units in acute care hospitals, and a petition for additional units is filed pursuant to sec. 9(c)(1)(A)(i) or 9(c)(1)(B), the Board shall find appropriate only units which comport, insofar as practicable, with the appropriate unit set forth in paragraph (a) of this section.

284 NLRB at 1597.

At the time the Board promulgated the Rule, it anticipated that issues with regard to the representation of units that are residual to non-conforming units would arise. 284 NLRB at 1580-1597. Because the issue was not extensively addressed during the rulemaking process, the Board specifically deferred their resolution to the adjudication of particular cases presenting those issues. The Board, subsequent to the Rule, interpreted the phrase in Section 103.30(c) "insofar as practicable" with one of the enumerated units to mean that new units should conform as closely as possible to one of the eight units, given the preexistence of non-conforming units. See St. Mary's Duluth Clinic, 332 NLRB 1419, 1421 (2000).

In determining that Section 103.30(c) of the Rule is intended to apply only to petitions for a "new unit of previously unrepresented employees," the Board emphasizes the literal language of the Rule and its accompanying comments, as well as the Board's

longstanding policy of according deference to collective-bargaining history and the promotion of industrial and labor stability. See St. Mary's Duluth Clinic, supra; and Kaiser Foundation Hospitals, 312 NLRB 933 (1993). In Kaiser Foundation Hospitals, the Board concluded that Section 103.30(c) of the Rule does not apply to petitions that seek to carve out or sever a group of skilled maintenance employees from an existing non-conforming unit of all nonprofessional employees, even when the unit sought conforms to one of the Rule's enumerated units. 312 NLRB at 934-935.

The Board first addressed the issue of representation of units that are residual to non-conforming units in St. John's Hospital, 307 NLRB 767 (1992). In St. John's Hospital, an incumbent union that represented an existing non-conforming unit of plumbers and refrigeration employees at an acute-care hospital filed a petition seeking to represent a separate unit consisting of some, but not all, of the remaining skilled maintenance workers at the facility. The Board held that any election to determine a representative for unrepresented skilled maintenance workers would have to include all the remaining skilled maintenance workers residual to the existing unit or units.

The issue of whether the Board will process a petition filed by a nonincumbent labor organization for a non-conforming bargaining unit consisting of some, but not all, of the employees who would otherwise constitute an appropriate unit under the Rule, was addressed in St. Mary's Duluth Clinic, supra. The Board, in St. Mary's Duluth Clinic, concluded that a unit of all unrepresented technical employees employed by the employer, an acute-care hospital, petitioned-for by a non-incumbent labor organization, was an appropriate residual unit since it included all of the unrepresented technical employees who were residual to the existing unit of licensed practical nurses represented

by the incumbent union. The Board further concluded that the incumbent union was entitled to participate as an intervenor and was entitled to a place on the election ballot.

Section 103.30(d) of the Rule provides that nothing shall preclude Regional Directors from approving stipulated units that do not conform to those established by the Rule, as long as they are otherwise acceptable.

The parties stipulated, and I find, that the Employer operates acute-care hospitals. Therefore, I conclude it is proper to consider whether the unit sought is appropriate under the Rule. The record evidence discloses the following:

The Employer is the largest health care provider in Western New York. Its mission is to advance the health of the community. The Employer operates five acute-care hospitals (Buffalo General Hospital, Women and Children's Hospital, DeGraff Memorial Hospital, Millard Fillmore Suburban Hospital, and Gates Vascular Institute) where it services more than 1 million sick or injured patients annually. It employs over 10,000 employees.

The Petitioner argues that the Section 8(f) exemption applies to the Employer because it is engaged primarily in the building and construction industry as it relates to the petitioned-for unit and, therefore, this case should not be analyzed under the Rule. The record evidence discloses the following with regard to the Employer's in-house construction renovation work:

David Croston, Vice President and Chief Technology Officer for the Employer, testified that in 2006, the Employer applied for and received a general contractor's license from the City of Buffalo for purposes of performing in-house construction renovation. Croston testified that the Employer wanted to control the prompt production

and completion of its in-house renovation projects; therefore, he initiated discussions with Paul Brown, president of the BBCTC, for a pool of skilled labor to perform in-house construction renovation. Those discussions resulted in the parties agreeing to a one-year MOA. Two subsequent MOAs have been entered into by the parties, the most recent of which is effective from July 1, 2011 through July 30, 2016.

All of the MOAs since 2006 were negotiated by Croston and Brown. The MOA states that it will apply to "small construction projects" related to the Employer's renovations. Croston testified that small construction projects included renovation projects valued at under five million dollars. The MOA contains some terms and conditions of employment that were negotiated by the BBCTC and the Employer, such as hours of work, break times, the ratio of apprentices to journeypersons on the job, and the BBCTC and signatory local unions' agreement that there will be no work stoppages. The Employer and the BBCTC also agreed that the Employer would apply the terms of the respective signatory union's collective-bargaining agreement that governs the trade of the individual employee who is hired to perform in-house renovation, unless modified by the MOA. None of the signatory unions to the MOA attended negotiations for the MOA.

Joint Bargaining Representatives

The Petitioner questions which labor organization is the current collective-bargaining representative for the petitioned-for unit. In determining whether two unions were joint representatives of the bargaining unit employees, the Board, in Tree-Free Fiber Co., 328 NLRB 389, 398 (1999), found that the factual analysis by the administrative law judge of the relationship between an international and two local unions established that they were joint collective-bargaining representatives. The factors considered were the

parties bargaining history, including the administration of the collective-bargaining agreement and participation in contract negotiations.

The record reveals that the current MOA is signed by the following constituent local unions of the BBCTC: Asbestos Workers Local Union No. 4, Boilermakers Local Union No. 7, Bricklayers Local Union No. 3, Carpenters Local Union No. 289,[7] Cement Masons Local Union No. 111, Ironworkers Local Union No. 6, Laborers Local Union No. 210, Millwrights Local Union No. 1163, Operating Engineers Local Union No. 17, 17A, 17B, 17C & 17RA, Painters District Council No. 4, Plasterers Local Union No. 9, Plumbers and Steamfitters Local Union No. 22, Roofers Local Union No. 74, Road Sprinklerfitters Local Union No. 669, and Technical Engineers UIOE Local Union No. 17D.[8]

Brown provided the Employer with a copy of all of the signatory local unions' collective-bargaining agreements and the Employer has been applying their terms. In addition to hiring employees, the Employer hires individuals provided by each of the signatory crafts to be foremen and stewards. Foremen are responsible for oversight of the

[7] Although record testimony reveals that Local 289 ceased to exist as of April 4, 2011, it also reveals that pursuant to the terms of the MOA, the Employer recognizes the NRCC's Northwest Region collective-bargaining agreement and applies the current June 1, 2011 – May 13, 2016 agreement between the NRCC and "The Associations" to the former Local 289 carpenters it employs.

[8] The following local unions listed on the MOA did not sign the MOA: Electrical Workers Local Union No. 41, Elevator Constructors Local Union No. 14, and Teamsters Local Union No. 449. Record testimony establishes that the Electrical Workers refused to sign the MOA because one of the contractors with which it has a long-time collective-bargaining relationship performs substantial electrical work as a subcontractor for the Employer and the Electrical Workers did not want to interfere with that arrangement. Thus, some of the in-house construction renovations are performed by the Employer's direct hires that are referred by various labor organizations signatory to the MOA and some of the work is performed by employees of subcontractors. The record does not disclose why the Elevator Constructors and the Teamsters did not sign the MOA. There is nothing in the record that indicates that the Employer has employed employees represented by the Elevator Constructors or the Teamsters or whether the Employer has utilized subcontractors that have employed employees in these trades.

work being performed by the employees in their respective crafts. Stewards police their respective crafts' collective-bargaining agreements.

Based on the record evidence, including bargaining history and contract administration, as well as Board case law, I conclude that the BBCTC and the signatory local unions are joint collective-bargaining representatives of all craft employees performing in-house construction renovation. The BBCTC has bargained with the Employer for the past six years regarding a number of terms and conditions of employment, as set forth in the MOA. In addition, each signatory craft provided a copy of its collective-bargaining agreement which contain additional terms and conditions of employment, including wage rates, that the Employer has honored. Further, the record reveals that each trade union signatory to the MOA provides a steward, who is responsible for administering the collective-bargaining agreement at the Employer's facilities. See Tree-Free Fiber Co., supra. See also CBS Broadcasting, Inc., 343 NLRB 871 (2004), and cases cited therein.

Employer Operating as a General Contractor in the Construction Industry

The record testimony reveals that David Croston is also the head of the Division of Construction and Planning for the Employer. In this regard, he is responsible for facilities and construction. Croston testified that prior to 2006, the Employer used outside contractors to perform in-house construction renovations.[9] Since 2006, the Employer completed several in-house construction renovation projects at its five-acute care hospitals by using a labor pool of skilled employees from the signatory construction trade unions. Croston testified that during the period 2009 through 2011, the Employer

[9] Since 2006, the Employer has hired general contractors and continued to use outside contractors to build new facilities.

has employed "a very consistent group" of skilled labor from the signatory trade unions, approximately 20 of whom are carpenters. Since 2006, the Employer hired and laid off additional craft employees, on an as-needed basis. The Employer employed 145 craft employees, including carpenters, painters, plumbers, plasters, cement masons, laborers, and asbestos workers to perform in-house construction renovations from pay period 7, 2011 to pay period 7, 2012, 68 of whom were carpenters.[10] At no time since 2006, has the BBCTC or any other local union signatory to the MOA ever demonstrated majority status among this group of employees or subgroup thereof.

Section 8(f) of the National Labor Relations Act provides for an employer, which is engaged primarily in the building and construction industry, to make an agreement covering employees engaged in the building and construction industry with a labor organization of which building and construction employees are members without said labor organization having established majority status under the provisions of Section 9 of the Act prior to making such agreement. The Petitioner argues that the Employer is engaged primarily in the building and construction industry because it acts as its own general contractor, has entered into pre-hire agreements with the BBCTC and the signatory local unions, and the petitioned-for unit is performing construction work. The Petitioner relies solely on an Office of the General Counsel, Division of Advice Memorandum, in *Wegman's Food Markets, Inc.*, 3-CA-17272 (1992), for the premise that an employer, not generally known as being engaged in the construction industry, for purposes of the administration of the Act, can be deemed "primarily engaged in the building and construction industry." The *Wegman's* Advice Memo, however, is not binding on the Board. Such memoranda are, rather, the prosecutorial positions of the

[10] The record does not reveal the specific dates of the referenced pay periods.

General Counsel. See D.R. Horton, Inc., 357 NLRB No. 184 (Jan. 3, 2012), slip op. at 8, fn. 15. The *Wegman's* case was never litigated resulting in a Board decision; therefore, it has no precedential value in the instant case.

In Zidell Explorations, 175 NLRB 887 (1969), which is cited in the above-referenced Advice Memorandum, the Board found that an employer, whose primary operation was dismantling ships and buildings to obtain salvageable materials which it then used to build factories, warehouses, barges, ships and cranes, was also primarily engaged in the building and construction industry under Section 8(f), for purposes of a major construction project with the U.S. Department of Defense to dismantle a missile complex. The Board additionally found that Zidell frequently engaged in transitory on-site operations in the construction industry similar to those performed at the missile sites and employed skilled craftsmen and operators normally associated with the building and construction industry required to accomplish its objectives.

The Intervenors argue in their briefs that the Board's decision in Zidell Explorations, Inc., supra, is distinguishable from the facts of the instant case. The BBCTC argues that the Board determined that Zidell was engaged in two separate operations. The NRCC argues that, unlike the Employer in the instant case, Zidell was acting as a contractor to another owner for major construction. The NRCC further argues that the Employer herein is not even acting as its own general contractor for major new build construction that it simply is supplementing its own workforce with skilled craft employees in its existing facilities.

Zidell is distinguishable from the instant case. Zidell did not involve an acute-care hospital, which is subject to the Rule. Pursuant to Congressional concern

about undue proliferation in acute-care hospitals, in 1989, the Board developed a Rule specifically to be applied to them. The Rule cannot simply be ignored because an employer that is otherwise subject to the Rule, has chosen to perform its own in-house renovations. If the Rule is ignored and the petitioned-for unit is found appropriate, the very situation that Congress and the Board desired to avoid would present itself here. Accordingly, I reject the Petitioner's assertion that the Rule should not apply.

The Appropriate Unit

This case presents a novel issue, as the Employer is an acute-care hospital, to which the Rule is applicable, but which has voluntarily entered into pre-hire agreements allowed only under Section 8(f) for construction employers in the construction industry. Section 103.30(c) of the Rule is intended to apply only to petitions for a "new unit of previously unrepresented employees." Thus, the current collective-bargaining relationship between the Employer and the BBCTC and the signatory unions is not one that is clearly recognized by the Board under Section 103.30(c). I conclude, however, that, for purposes of determining an appropriate unit, the craft employees at issue herein are akin to a residual unit of unrepresented employees, as only a Section 8(f) relationship exists pursuant to the pre-hire agreement between the Employer and the BBCTC and the signatory unions.[11]

Section 103.30(c) does not authorize petitions to sever or carve out a group of employees from an existing nonconforming unit. If the Petitioner is seeking a non-

[11] Consistent with this approach, the record reveals no evidence that the BBCTC and the signatory unions ever established majority status as the Section 9(a) representatives of the employees at issue. I further note that the parties stipulated at the hearing that the pre-hire agreement between the Employer and the BBTCTC and the signatory unions is not a bar for purposes of an election herein. In any event, the Board, in John Deklewa & Sons, 282 NLRB 1375, 1377-78 (1987), held that a Section 8(f) agreement will not bar the processing of a valid petition filed pursuant to Section 9(c) of the Act.

conforming unit, it must seek to represent a residual unit of all unrepresented craft employees within the skilled maintenance unit or the preexisting recognized non-conforming craft unit. If the petitioned-for unit in an acute-care hospital is narrower in scope than either a residual or a non-conforming unit, the Board will refuse to direct an election in such a unit. See St. John's Hospital, 307 NLRB 767 (1992); Kaiser Foundation Hospitals, 210 NLRB 949 (1974). In either case, the appropriate unit can only consist of all full-time and regular part-time craft employees employed by the Employer who perform in-house construction renovations.

Section 103.30(c) also provides that when a petition for a new unit is filed, the Board shall find appropriate only units which comport, insofar as practicable, with one of the eight appropriate units. The Board, in acknowledging the preexistence of non-conforming units, clarified that units should conform as closely as possible to one of the eight appropriate units. St. Mary's Duluth Clinic, 332 NLRB 1419, 1421 (2000). In establishing the eight bargaining units set forth in the Rule, the Board considered Congress' specific concern that allowing separate units for each classification in an acute-care hospital setting, such as are permitted for each craft in the construction industry, would cause undue proliferation. 284 NLRB at 1575. Thus, the Board established a skilled maintenance unit as one of the eight appropriate bargaining units in an acute-care hospital. 284 NLRB at 1586-1587. In considering the skilled maintenance unit, the Board expressly contemplated that craft employees, such as carpenters, electricians, masons/bricklayers, painters, pipefitters, plumbers, sheetmetal fabricators, would be among the classifications that should generally be included in the skilled maintenance

unit. 284 NLRB at 1561. Based on the foregoing, I conclude that the craft employees covered by the instant petition are a residual unit of skilled maintenance employees.

In an acute-care hospital, the Board allows a non-incumbent union to petition for a unit of unrepresented employees residual to an existing unit, however, it must be for all such employees, not just some of them. St. Mary's Duluth Clinic, supra. The Board requires that all unrepresented employees residual to an existing unit be included in an election. St. John's Hospital, 307 NLRB 767 (1992). Thus, a unit limited to the residual journeymen and apprentice carpenters and millwrights would not be appropriate under the Rule. Based on the above, I conclude that the only appropriate unit under the Rule is a residual unit of all craft employees who perform in-house construction renovation. Accordingly, I conclude that the petitioned-for unit of carpenters and millwrights is not an appropriate unit and decline to direct an election solely for those classifications. The Petitioner, however, indicated at the hearing that it is willing to go forward if a unit other than the petitioned-for unit is found appropriate.

As noted above, the parties stipulated, and I find, that the contract is not a bar to an election. However, since the Employer, the BBCTC and the signatory local unions have maintained a stable six-year collective-bargaining relationship and have been abiding by a current MOA and collective-bargaining agreements, I conclude that the BBCTC and the signatory local unions should be entitled to a place on the ballot for an election in a unit of all craft employees. See Stockton Roofing Co., 304 NLRB 699, 700 (1991), in which the Board held that a union, pursuant to its current or recently-expired pre-hire agreement with the employer, had the right to proceed to an election under Section 9(c) of the Act, and could rely on the pre-hire agreement as the basis for an

adequate showing of interest, where, as here, there was an extensive bargaining history between the parties.

Alternative Appropriate Unit Analysis

As an alternative to the analysis above, which treats the craft employees who perform in-house construction renovation work as akin to an unrepresented unit, I conclude that the craft employees constitute a pre-existing non-conforming unit which is acceptable under the Rule. I base this conclusion on the fact that the BBCTC and the signatory local unions currently enjoy limited Section 9(a) representational status pursuant to Section 8(f) of the Act based on the current MOA and collective-bargaining agreements.

It is clear from the record that the Employer chose to recognize the BBCTC and the signatory local unions and has maintained a six-year stable collective-bargaining relationship with them. The Board is reluctant to disturb bargaining units established by mutual consent where there has been a long history of continuous bargaining, including in an acute-care hospital setting. See Kaiser Foundation Hospitals, 312 NLRB 933 (1993). The Board also allows an acute-care hospital to stipulate to units that do not conform to the established Rule. See Section 103.30(d) of the Rule. With Board approval, an employer is free to agree to collective-bargaining representation in a non-conforming unit. Further, it is clear that the Board accords great deference to collective-bargaining history. See Crittenton Hospital, 328 NLRB 879 (1999). Here, however, as noted above, carving out a portion of a non-conforming unit, as Petitioner seeks to do, is not appropriate. Kaiser Foundation, Hospitals, supra.

Thus, under this alternative analysis, because the BBCTC and the signatory local unions currently enjoy limited Section 9(a) representational status pursuant to Section 8(f) of the Act, based on the current MOA and the signatory unions' collective-bargaining agreements, they are entitled to a place on the ballot for an election as the incumbent joint collective-bargaining representative of a pre-existing nonconforming unit. See St. Mary's Duluth Clinic, 332 NLRB 1419 (2000).

Petitioner's Craft Severance Argument

The Petitioner is seeking to sever the crafts of carpenters and millwrights from the rest of the craft employees who perform the Employer's in-house renovations. I conclude that, regardless of whether the Rule is applied to the instant matter, the petitioned-for unit is not an appropriate unit under the criteria set forth in Mallinckrodt Chemical Works, 162 NLRB 387 (1966), which addresses the issue of whether historically-recognized craft employees may be severed from a larger unit on the basis of their craft.

Regardless of whether the instant case is governed by the Rule, the petitioned-for unit must be analyzed under the craft severance criteria established in Mallinckrodt Chemical Works, 162 NLRB 387 (1966). The Board has found that the application of *Mallinckrodt* craft-severance principles in the health-care setting is fully consistent with the Congressional directive to avoid undue proliferation of bargaining units, in light of the heavy burden which *Mallinckrodt* places on the party seeking severance. See Kaiser Foundation Hospitals, 312 NLRB 933, fn. 15 (1993). In *Mallinckrodt*, the Board recognized the need to balance the interest of the employer and the total employee compliment in maintaining industrial stability and the resulting benefits of an historical plantwide bargaining unit against the interest of a portion of such complement.

Therefore, the Board established the following relevant factors in considering craft severance: whether the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen or a functionally distinct department; the collective-bargaining history related to those employees; the extent to which the petitioned-for unit has established and maintained a separate identity during its inclusion in the overall unit; the degree of integration of the employer's production processes; the qualifications of the union seeking severance; and the pattern of collective bargaining in the industry.

In Kaiser Foundation Hospitals, supra, the Board dismissed a petition seeking to sever the skilled maintenance employees from a non-conforming unit of nonprofessional employees in an acute-care hospital setting. The Board found that Section 103.30(c) of the Rule did not apply where the existing unit is broader than those which the Rule envisions and the petition seeks to sever some of the represented employees from that unit. The Board considered the appropriateness of the petitioned-for unit under the craft-severance principals of *Mallinckrodt* and relied on the following criteria: The employer and the incumbent union had a substantial and long-term collective-bargaining history; the collective-bargaining relationship was predominantly stable; there was no evidence that the intervenor failed to give adequate representation to the employees; the evidence did not establish that the skilled maintenance employees maintained a separate identity or that the petitioner was particularly qualified to represent a traditional craft union. The Board also noted that although the skilled maintenance employees generally constitute a homogeneous craft, the Board has declined to sever a group of employees in the face of substantial bargaining history on a plantwide basis. Finally, the Board stated:

> The Board is reluctant, absent compelling circumstances, to disturb bargaining units established by mutual consent where there has been a long history of continuous bargaining, even in cases where the Board would not have found the unit to be appropriate if presented with the issue ab initio.

312 NLRB at 936.

In the instant case, the record discloses that the carpenters are an integral part of a larger complement of craft employees who work side-by-side to complete small in-house renovation projects. The carpenters have an intimate connection with the work of the overall craft unit. The project cannot be completed without each craft performing its particular function in conjunction with the other crafts. The role of the Employer's general foreman/supervisor is to coordinate those efforts. Each craft has maintained a separate identity, to some degree, by the terms and conditions of employment set forth in its respective collective-bargaining agreement. However, some of the terms and conditions of employment in the MOA were negotiated collectively by the BBCTC and the Employer.

The Employer, the BBCTC and the signatory local unions have a six-year history of collective bargaining on behalf of all craft employees employed by the Employer who perform in-house construction renovation. The carpenters' tools are stored in a common area with the rest of the skilled trades. Their hours of work, breaks, and the ratio of apprentices to journeypersons are the same, as set forth in the MOA. While the Employer hires foremen who direct the work of their respective trade, there is no evidence that the foremen have supervisory authority as defined in Section 2(11) of the Act. The record reveals, rather, that the carpenters have the same overall supervision as the rest of the trades.

The record establishes that the Petitioner is a newly-created independent union that is not currently affiliated with any international union, and, as of the date of the hearing, has not elected or appointed any officers. The Petitioner has not negotiated any collective-bargaining agreements with the "Associations," or any other entity, setting forth the industry standards that the Employer herein has routinely accepted as part of the MOA with the BBCTC.

I conclude that the petitioned-for unit which seeks to sever the carpenters and millwrights from the remaining crafts is not an appropriate unit under the Mallinckrodt criteria for the following reasons: The carpenters' duties are essential to the Employer's overall renovation process. The Employer, the BBCTC and the signatory local unions have a stable six-year collective-bargaining history in an overall craft unit.[12] The record reveals no evidence to the contrary. The record reveals no evidence that the joint collective-bargaining representatives failed to give adequate representation to the employees. See Beaunit Corp., 224 NLRB 1502 (1976), where the Board found that severance of a unit of electrical and instrument mechanics was inappropriate because the parties had a 7-1/2 year bargaining history in an overall production and maintenance unit, the employees' duties were essential to the overall production process, and the petitioner had no experience in representing a unit of electrical mechanics and instrument

[12] The Petitioner argues that no real bargaining occurs between the Employer and the BBCTC. Rather, the Petitioner contends, the bargaining occurs between the NRCC and the Associations, which resulting collective-bargaining agreement is simply adopted by the Employer in the MOA. The record discloses, however, that the MOA contains a number of terms and conditions of employment negotiated directly by the BBCTC and the Employer, including hours of work, break times, the ratio of apprentices to journeypersons on the job, and the BBCTC and signatory local unions' agreement that there will be no work stoppages. Moreover, the cases cited by the Petitioner in its post-hearing brief, Allen Drywall, Inc., 333 NLRB 1005 (2001); John Deklewa & Sons, Inc., 282 NLRB 1375 (1987); Dezcon, Inc., 295 NLRB 109 (1989); and Baron Heating and Air Conditioning, 343 NLRB 450 (2004), for the proposition that the Board gives little weight to bargaining history in 8(f) unit determinations, are inapposite because they concern situations that do not involve acute-care hospitals and non-conforming units.

mechanics. As noted above, the Petitioner is a recently-formed union with no history of collective-bargaining in this unit or any other unit representing employees in the carpenters' trade.

In addition, the pattern of bargaining in the acute-care hospital industry has been as established by the Rule, to include all crafts, such as carpenters, painters, plumbers and electricians, in a skilled maintenance unit. Further, the record in the instant case reveals no compelling circumstances which would warrant a disturbance of the bargaining unit established by mutual consent, where there has been a long history of continuous bargaining. See Kaiser Foundation Hospitals, 312 NLRB 933, 936 (1993). In *Kaiser*, the Board refused to sever a unit of skilled maintenance employees from an overall unit of nonprofessional employees where the employer and the incumbent union had a substantial and long-term collective-bargaining history; the collective-bargaining relationship was predominantly stable; there was no evidence that the intervenor failed to give adequate representation to the employees or that the petitioner was particularly qualified to represent a traditional craft union.

CONCLUSIONS AND FINDINGS

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

1. The hearing officer's rulings 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 herein.

3. The Petitioner, BBCTC and NRCC are labor organizations within the meaning of Section 2(5) of the Act and claim 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 unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

> A residual unit of all full-time and regular part-time craft employees employed by the Employer who perform in-house construction renovation; excluding all skilled maintenance employees represented by SEIU or IUOE, all other employees, professional employees, and guards and supervisors as defined in the Act.

There are approximately 145 employees in the unit found appropriate herein.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret 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:

CONCERNED CARPENTERS FOR A DEMOCRATIC UNION;

OR

BUFFALO BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO, AND THE FOLLOWING MEMBER LOCALS: ASBESTOS WORKERS LOCAL UNION NO. 4, BOILERMAKERS LOCAL UNION NO. 7, BRICKLAYERS LOCAL UNION NO. 3, NORTHEAST REGIONAL COUNCIL OF CARPENTERS, CEMENT MASONS LOCAL UNION NO. 111, IRONWORKERS LOCAL UNION NO. 6, LABORERS LOCAL UNION NO. 210, MILLWRIGHTS LOCAL UNION NO. 1163, OPERATING ENGINEERS

LOCAL UNION NO. 17, 17A, 17B, 17C & 17RA, PAINTERS DISTRICT COUNCIL NO. 4, PLASTERERS LOCAL UNION NO. 9, PLUMBERS AND STEAMFITTERS LOCAL UNION NO. 22, ROOFERS LOCAL UNION NO. 74, ROAD SPRINKLERFITTERS LOCAL UNION NO. 669, AND TECHNICAL ENGINEERS UIOE LOCAL UNION NO. 17D;

OR

NO UNION.

The date, time and place of the election, will be specified in the Notice of Election which will issue shortly.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any 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 which 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 if they appear in person at the polls. In addition to those employees in the unit who were employed during the payroll eligibility period, all employees who were employed by the Employer for a total of 30 working days or more within the period of 12 months, or who have had some employment within that period and who have been employed 45 or more working days within the period of 24 months, immediately preceding the election eligibility date for the election, shall also be eligible to vote. *Daniel Construction Co., Inc.*, 133 NLRB 264 (1961), as modified at 167 NLRB 1078 (1967).

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.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **June 14, 2012.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for

setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website www.nlrb.gov,[13] by mail, by hand or courier delivery, or by facsimile transmission at (716) 551-4972. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **four** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional office.

C. Notice of Posting Obligation

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

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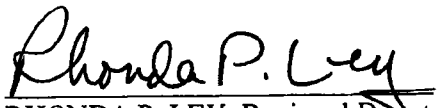
[13] To file the eligibility list electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlrb.gov.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by 5 p.m. EDT **June 21, 2012**. The request may be filed electronically through the Agency's web site, www.nlrb.gov,[14] but may not be filed by facsimile.

DATED at Buffalo, New York this 7th day of June, 2012.



RHONDA P. LEY, Regional Director
National Labor Relations Board
Niagara Center Building – Suite 630
130 S. Elmwood Avenue
Buffalo, New York 14202

[14] To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlrb.gov.

EXHIBIT G

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE EXECUTIVE SECRETARY
FACSIMILE TRANSMITTAL SHEET

TO: Richard D. Furlong, Esq. Catherine Creighton, Esq. Raymond G. Heineman, Esq. Michael Connors, Esp. Regional Director Region 3	**FROM:** HENRY S. BREITENEICHER ASSOCIATE EXECUTIVE SECRETARY
COMPANY: KALEIDA HEALTH 03-RC-077821	DATE: JUNE 15, 2012
FAX NUMBER: (716) 855-1580 (732) 491-2120 (716) 854-0004 (716) 859-8670 (716) 551-4972	TOTAL NO. OF PAGES INCLUDING COVER:
PHONE NUMBER:	OPERATORS NAME/NUMBER: **MARIA MADISON** **(202)-273-1942**
RE:	ALL CONFIRMATIONS:BLANK

NOTES/COMMENTS:

1099 14TH STREET N.W.
WASHINGTON, D.C. 20570
TELEPHONE (202) 273-1067
FAX (202) 273-4270

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
1099 14th Street, N.W.
Washington, D.C. 20570-0001

June 15, 2012

Re: Kaleida Health
Case 03-RC-077821

The due date for the receipt in Washington, D.C. of the Request for Review of the Regional Director's Decision and Direction of Election is extended to **June 29, 2012.**

Henry S. Breiteneicher
Associate Executive Secretary

cc: Parties

EXHIBIT H

In The Matter Of:

KALEIDA HEALTH, and

CONCERRNED CARPENTERS FOR A DEMOCRATIC UNION

April 30, 2012

Burke Court Reporting, LLC

1044 Route 23, Suite 316

Wayne, NJ 0747

(973) 692-0660

Original File Kaleida Health 3-RC-077821.prn

Min-U-Script® with Word Index

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of:

KALEIDA HEALTH,

Employer,

Case No. 3-RC-077821

And

CONCERNED CARPENTERS FOR A DEMOCRATIC UNION,

Petitioner,

And

BUFFALO BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO,

Intervenor.

The above-entitled matter came on for hearing pursuant to Notice, before RON SCOTT, Hearing Officer, at the Niagara Center Building, 130 S. Elmwood Avenue, Buffalo, New York, 14202, in Room 630, on Monday, April 30, 2012, 10:00 a.m.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 316
Wayne, New Jersey 07470

On Behalf of the Employer:

MICHAEL CONNORS, ESQ.
726 Exchange Street
Buffalo, NY 14210
(716) 859-8586

On Behalf of the Petitioner:

RICHARD D. FURLONG, ESQ.
Lipsitz, Green, Scime, & Cambria, LLP
43 Delaware Avenue
Buffalo, NY 14202
(716) 849-1333 X451

On Behalf of the Intervenor (BBCTC):

CATHERINE CREIGHTON, ESQ.
Creighton, Johnsen, & Giroux
295 Main Street, Suite 560
Buffalo, NY 14203
(716) 854-0007

On Behalf of the Intervenor (NRCC):

RAY HEINEMAN, ESQ.
Kroll, Heineman and Carton
99 Wood Avenue S, #307
Iselin, NJ 08830

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
DAVID CROSTON	28	32	71	90	--
	--	47	--	--	--
	--	48	--	--	--
JOHN MASSARO	100	108	111	112	--
	--	--	114	--	--
TONY CAPPOLA	116	124	--	--	--
THOMAS BURKE	128	155	168	--	--
ROBERT KULCZYK	181	201	--	--	--
	--	204	215	--	--
JAMES KILGER	217	226	--	--	--

E X H I B I T S

EXHIBIT NUMBER	IDENTIFIED	RECEIVED
BOARD'S		
B-1(a) to 1(f)	7	7
B-2 & B-3	7	8
JOINT		
J-1 to J-4	28	28
CARPENTERS(NRCC)		
C-1	55	56
C-2	57	57
C-3	58	58
C-4	58	60
C-5	230	231
C-6	231	231
C-7	231	231
PETITIONER'S		
P-1	152	154

1 PROCEEDINGS
2 (Time Noted: 10:00 a.m.)
3 **HEARING OFFICER SCOTT:** On the record.
4 Good morning. The hearing will be in order. This is a
5 formal hearing in the matter of Kaleida Health, Case
6 03-RC-077821, before the National Labor Relations Board. The
7 hearing officer appearing for the National Labor Relations Board
8 is Ron Scott.
9 All parties have been informed of the procedures at formal
10 hearings before the Board by service of a statement of standard
11 procedures with the notice of hearing. I have additional copies
12 of this statement for distribution, if any party wants more.
13 Will counsel please state their appearances for the
14 record? First for the Petitioner?
15 **MR. FURLONG:** For the Petitioner, Richard Furlong, with
16 the law firm Lipsitz, Green, Scime, Cambria, 42 Delaware Avenue,
17 Buffalo, 14202.
18 **HEARING OFFICER SCOTT:** And for the Employer?
19 **MR. CONNORS:** Michael Connors, C-O-N-N-O-R-S, associate
20 general counsel for Kaleida Health, 726 Exchange Street,
21 Buffalo, New York.
22 **HEARING OFFICER SCOTT:** For the Intervenor, the Building
23 Trades Council?
24 **MS. CREIGHTON:** Catherine Creighton; Creighton, Johnsen,
25 and Giroux, 560 Ellicott Square Building, 295 Main Street,

1 Buffalo, New York, 14203.
2 **HEARING OFFICER SCOTT:** And Mr. Heineman, I know you're
3 going to have a motion to intervene. Could you state your
4 appearance, please?
5 **MR. HEINEMAN:** For the Northeast Regional Council of
6 Carpenters, Ray Heineman from Kroll, Heineman and Carton,
7 99 Wood Avenue S, Iselin, New Jersey.
8 **HEARING OFFICER SCOTT:** Are there any other appearances?
9 (No response.)
10 **HEARING OFFICER SCOTT:** Let the record show no response.
11 Are there any other persons, parties, or labor
12 organizations in the hearing room who claim an interest in this
13 proceeding?
14 (No response.)
15 **HEARING OFFICER SCOTT:** I now propose to introduce the
16 formal papers. They have been marked for identification as
17 Board's Exhibit 1. Are they about? There were two copies.
18 I've got one. Has everyone had a chance to examine them?
19 **MS. CREIGHTON:** Yes.
20 **MR. FURLONG:** Petitioner has, has no objection.
21 **HEARING OFFICER SCOTT:** Let's go off the record.
22 (Discussion off the record.)
23 **HEARING OFFICER SCOTT:** I now propose to admit the formal
24 papers which have been marked for identification as Board's
25 Exhibit 1(a) through 1(f), inclusive, with Exhibit 1(f) being an

1 index and description of the entire exhibit.
2 (Board Exhibit 1(a) to 1(f) marked for identification.)
3 **HEARING OFFICER SCOTT:** The exhibit has been shown to all
4 parties. Are there any objections to the receipt of these
5 exhibits into the record of Board 1?
6 **MR. FURLONG:** No objection.
7 **MR. HEINEMAN:** No objection.
8 **MS. CREIGHTON:** No objection.
9 **HEARING OFFICER SCOTT:** Received.
10 (Board Exhibit 1(a) to 1(f) received into evidence.)
11 **HEARING OFFICER SCOTT:** I now propose to introduce Board
12 Exhibit 2, which is the stipulation that all parties have signed
13 and I have approved. This contains a series of stipulations
14 including among other items that Petitioner is a labor
15 organization within the meaning of the Act, and the Employer
16 meets the jurisdictional standards of the Board. It
17 incorporates by reference Board Exhibit 3, which is a
18 stipulation that counsel have all signed pertaining to
19 jurisdiction.
20 (Board Exhibits 2 and 3 marked for identification.)
21 **HEARING OFFICER SCOTT:** Is there any objection to the
22 admission of Board Exhibits 2 and 3?
23 **MR. FURLONG:** No objection.
24 **MS. CREIGHTON:** No objection.
25 **HEARING OFFICER SCOTT:** Admitted.

1 (Board Exhibits 2 and 3 received into evidence.)
2 **HEARING OFFICER SCOTT:** Are there any motions?
3 Mr. Heineman?
4 **MR. HEINEMAN:** Mr. Hearing Officer, the Northeast Regional
5 Council of Carpenters is part of Intervenor, Building Trades
6 Council. The collective bargaining agreement with the Northeast
7 Regional Council is part of that. I'd move to admit it as
8 Carpenter's Intervenor 1. Based on that collective bargaining
9 agreement, which covers part of the bargaining unit, we would
10 move for intervention.
11 Now the only thing we know thus far is this is an effort
12 to, quote "replace" the Carpenters, they are not seeking to
13 fragment the unit, they are seeking to replace the Carpenters on
14 the unit. Now this I think is properly analyzed as a joint
15 bargaining representative. If it's not, Building Trades is the
16 sole bargaining unit representative. I am unaware of any sort
17 of procedure before the National Labor Relations Board here one
18 removes part of a bargaining representative and replaces them
19 with somebody else. But assuming that's even cognizable under
20 the Act and its procedures, it would seem that the petition by
21 the Sheet Metal Workers is aimed at the representation of the
22 Carpenters as part of the overall building trades unit. So
23 intervention should be granted.
24 **HEARING OFFICER SCOTT:** You said Sheet Metal Workers
25 twice, I think once off the record, now once on. I'm curious

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1 why you say that.
2 **MR. HEINEMAN:** The Petitioner, as I understand it, is the
3 Sheet Metal Workers.
4 **MR. FURLONG:** Counsel is wrong. You should read the
5 petition. It's the Concerned Carpenters for a Democratic Union.
6 There's no mention of Sheet Metal Workers.
7 **HEARING OFFICER SCOTT:** That is what the petition says.
8 **MR. HEINEMAN:** My understanding is that's an affiliate of
9 the Sheet Metal Workers.
10 **HEARING OFFICER SCOTT:** Is that correct, Mr. Furlong?
11 **MR. FURLONG:** Well, no, it is not affiliated with Sheet
12 Metal Workers. Counsel is simply in error.
13 **HEARING OFFICER SCOTT:** Okay.
14 **MR. FURLONG:** The Petitioner is Concerned Carpenters for a
15 Democratic Union. There is mention of the Sheet Metal Workers
16 on the showing of interest cards, but the petition was brought
17 by the Concerned Carpenters for a Democratic Union.
18 **MR. HEINEMAN:** Perhaps the hearing officer then, if it is
19 not an affiliate of the Sheet Metal Workers and the Sheet Metal
20 Workers have, in fact, there's mention of that on the cards,
21 perhaps we should take a break and the Region should check the
22 showing of interest because perhaps the wrong labor organization
23 is sitting at Petitioner's table. But I would presume to --
24 **MR. FURLONG:** We would welcome you taking a look at the
25 showing of interest. We don't have any problem with that.

1 Obviously, counsel hasn't seen it. And the petition speaks for
2 itself, Concerned Carpenters for a Democratic Union.
3 **HEARING OFFICER SCOTT:** Well, we're certainly not going to
4 -- it's certainly not litigable, showing of interest, and I
5 think I can be pretty confident that the Region has already
6 checked it. But if the parties think it's worth my taking a
7 break and having the --
8 **MR. HEINEMAN:** So I'm clear, the only reason I raise it is
9 because apparently counsel has indicated that the cards were
10 solicited on behalf of the Sheet Metal Workers and Petitioner is
11 not affiliated with the Sheet Metal Workers. So I understand
12 there are very liberal rules, but you at least have to have the
13 correct international designated. You can't swap any name you
14 want once you have it designated. I'd just raise it, I'm kind
15 of surprised because I had understood that the Petitioner is an
16 affiliate of the Sheet Metal Workers Union.
17 **HEARING OFFICER SCOTT:** Well, that may or may not be. Mr.
18 Furlong says it is not. I'm sure the showing of interest
19 requirements have been satisfied as far as the region is
20 concerned. I'm inclined to move on, I mean, unless there is a
21 serious issue here. Is there?
22 **MR. HEINEMAN:** I don't know. I was baffled by my error,
23 frankly.
24 **MR. FURLONG:** We can distill this to its core.
25 **MR. HEINEMAN:** Please.

1 **MR. FURLONG:** The petition speaks and it names Concerned
2 Carpenters for a Democratic Union. That's the petition that you
3 have in front of you. It doesn't mention the Sheet Metal
4 Workers. You don't litigate showing of interest in these
5 proceedings here. So we should move on.
6 **HEARING OFFICER SCOTT:** If anyone wants to, I'm not
7 encouraging it, but if anyone feels the need to raise that issue
8 later on, please do. All right, have you concluded your
9 argument in favor of intervention?
10 **MR. HEINEMAN:** Yes, Your Honor.
11 **HEARING OFFICER SCOTT:** Mr. Furlong, do you have a
12 response?
13 **MR. FURLONG:** The Employer here is Kaleida Health. The
14 bargaining agent as I understand it is the Building Trades. And
15 on the MOU that you are about to see received into evidence, in
16 fact, the Building Trades is listed. And, of course, the
17 Petitioner is the Concerned Carpenters for a Democratic Union.
18 I would note that on the MOU that you will receive into
19 evidence shortly, even on the MOU there is no mention of the
20 Northeast Regional Council of Carpenters. There is merely
21 mention of the Carpenters Local 289. And I'm not even sure 289
22 still exists. So on no document is the Northeast Regional
23 Council of Carpenters listed, including the MOU that counsel
24 relies on for a claim of joint bargaining representative status.
25 Now if in fact you are going to establish that there is

1 joint representational status, that can only be done through the
2 taking of testimony. And so what I would propose that we do is
3 get on the record, start taking testimony. You can hold your
4 decision open. And after you hear the testimony of witnesses
5 with respect to the negotiation of these agreements, you can
6 then decide whether we are talking joint status or they should
7 be excluded and have no standing, at which case you can sua
8 sponte strike the record with respect to the testimony put on by
9 the Northeast Regional Council of Carpenters.
10 **HEARING OFFICER SCOTT:** In other words, then I shouldn't
11 tell Mr. Heineman that he needs to get back on his plane and go
12 home?
13 **MR. FURLONG:** That's correct.
14 **HEARING OFFICER SCOTT:** Then your motion for Intervenor
15 status is granted and the record will be what it is. Okay, Mr.
16 Furlong, the correct name of the Petitioner is Concerned
17 Carpenters --
18 **MR. FURLONG:** Concerned Carpenters for a Democratic Union.
19 **HEARING OFFICER SCOTT:** And, Mr. Heineman, I think you
20 corrected on the stipulation the correct name of the Intervenor.
21 **MR. HEINEMAN:** Yes.
22 **HEARING OFFICER SCOTT:** And, otherwise, what we have on
23 Board Exhibit 2 shows the correct names of the parties? I'm not
24 hearing any response.
25 **MS. CREIGHTON:** I'm sorry?

1 **HEARING OFFICER SCOTT:** Buffalo Building and Construction
2 Trades Council, AFL-CIO, is the correct name of the Intervenor?
3 **MS. CREIGHTON:** Yes.
4 **HEARING OFFICER SCOTT:** And Kaleida Health is Kaleida
5 Health?
6 **MR. CONNORS:** That's correct.
7 **HEARING OFFICER SCOTT:** Okay. Now I'd like to get at the
8 issues in the case. And I'd like to ask each of you to address
9 -- either by way of an opening statement or answering some
10 questions. Mr. Furlong, would you care to make an opening
11 statement?
12 **MR. FURLONG:** I would. Thank you, Mr. Hearing Officer.
13 Obviously, in an R-case hearing, you're sort of guessing at what
14 the issues are going to be. The position of the Petitioner is
15 that there is no question concerning representation, that the
16 petition should be processed. There was obviously inadequate
17 showing of interest. And there is really only defenses that
18 I've heard through the Region leading up to this hearing and the
19 run up. One of the defenses I heard and it appears to be the
20 chief defense of the, and I'm going to simply say the Northeast
21 Regional Council of Carpenters without waiving anything, is if
22 there is a contract bar, and that Kaleida Health, in fact, is
23 not an employer engaged in the construction industry.
24 Let me say that the contract bar issue must fall as a
25 matter of law because the contract with the Northeast Regional

1 Council of Carpenters is going to put into evidence contains a
2 union security clause that requires that employees join the
3 union on or after the eighth day of employment. That union
4 security clause would be illegal if Kaleida were not an employer
5 in the construction industry because as the hearing officer is
6 well aware you have to wait at least 30 days. So the case law
7 for the last 40 years has been that if you have a union security
8 clause that on its face is illegal, that contract cannot serve
9 as a bar to the processing of the petition.
10 On the other hand, if Kaleida, in fact, is an employer in
11 the construction industry, then what we are looking at is an
12 8(f) agreement. 8(f) agreements other than the Dekula,
13 Ironworkers 3 Dekula do not block the processing of a petition.
14 So either way that you frame it, the contract bar defense raised
15 in the run up to this hearing must fall as a matter of law.
16 And you will hear testimony from a variety of witnesses
17 including Mr. Croston for the Employer and Mr. Brown for the
18 Building Trades that there has never been any showing of
19 interest either on a craft by craft basis or on a Building
20 Trades-wide basis.
21 The second issue that I've heard, and this was brought up
22 by counsel for the Building Trades has to do with her perception
23 that we are attempting to fragment the unit. We are not
24 attempting to fragment the unit. By fragmenting the unit, you
25 create two different bargaining units. We are not looking to do

1 that We are simply looking to replace the Northeast Regional
2 Council of Carpenters as the putative bargaining representative
3 for those carpenters. And you will hear testimony, and it will
4 be extensive, that this is not a maintenance bargaining unit.
5 Indeed, Kaleida Health has a maintenance bargaining unit
6 represented by the Service Employees Union. You will have a
7 list of jobs that will be put into evidence which will show that
8 these construction workers perform renovation work anywhere from
9 $50 and $60,000 right up to $5 million.
10 You will see that this is an employer engaged in the
11 construction industry. You will see that there are specific job
12 duties, specific skills, specific work locations performed by
13 carpenters, all of whom hold books, hold union books in the
14 Carpenters' Union. You will also hear from other trades showing
15 that there has been jurisdictional disputes, which is
16 inconsistent with one big bargaining unit, with crafts vital to
17 the work. And there will be a myriad of testimony coming in
18 from a variety of different witnesses showing that this
19 particular unit is distinct, it is a craft unit, and under
20 existing case law is entitled to be represented, as it is
21 currently. We are ready to proceed.
22 **HEARING OFFICER SCOTT:** I take it from listening to your
23 statement that it is your position that the Northeast Regional
24 Council of Carpenters is the current collective bargaining
25 representative?

1 **MR. FURLONG:** No.
2 **HEARING OFFICER SCOTT:** What is your position on that?
3 **MR. FURLONG:** What we have on the MOU is Carpenters
4 Local 289. I don't see anything for the Northeast Regional
5 Council of Carpenters. That was signed by Mr. Daryl Bodewes.
6 And then we have the Millwrights also signed, which is part
7 generally of the UBC, and that's a separate local number. So
8 the Northeast Regional Council of Carpenters, to my knowledge,
9 is not signed to anything and has no standing in this hearing.
10 **HEARING OFFICER SCOTT:** Have you a position as to who the
11 current collective bargaining representative is?
12 **MR. FURLONG:** I think that it's the Building Trades that
13 is working off of a collective bargaining agreement, that has
14 been provided by the Northeast Regional Council of Carpenters.
15 **HEARING OFFICER SCOTT:** And, of course, I assume your
16 position as to the appropriate unit is as it is stated on the
17 petition?
18 **MR. FURLONG:** Correct.
19 **HEARING OFFICER SCOTT:** Anything further?
20 **MR. FURLONG:** Nothing further.
21 **HEARING OFFICER SCOTT:** All right. I don't suppose it
22 matters who goes next. Mr. Connors, do you have an opening
23 statement?
24 **MR. CONNORS:** I have no opening.
25 **HEARING OFFICER SCOTT:** Ms. Creighton?

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1 **MS. CREIGHTON:** Yes. The Building Trades' position is, as
2 Mr. Furlong said, we are the bargaining agent or at the very
3 least we are a joint bargaining agent with the trades who have
4 signed on. My understanding is, is that the Northeast Regional
5 Council is the successor to or the Regional Council that's part
6 of -- that encompasses Local 289. There is no Local 289
7 anymore. There have been different changes and supervision,
8 international supervision went into effect. I'm sure Mr.
9 Heineman knows more about that than I do.
10 In order to belong to the Buffalo Building Trades, an
11 individual trade who is an affiliate of the Buffalo Building
12 Trades must be a member of an international union. That's in
13 the bylaws. And if CCDU is not affiliated with an international
14 union, then it can't be a member of the Buffalo Building Trades.
15 It's hard for me to understand Mr. Furlong's position that the
16 unit, if the bargaining agent is the Buffalo Building Trades as
17 a whole, then I don't understand how he is going to pluck out
18 one group and put in another.
19 So it's our position that the unit should not be
20 fragmented. And we rely primarily on the fact that Kaleida is a
21 healthcare primarily engaged in the healthcare business and is
22 not an employer primarily engaged in the construction industry
23 under 8(f).
24 I do agree with what Mr. Furlong said insofar as the
25 memorandum of agreement has an improper union security clause.

1 All that that does is say that there is no contract bar, but it
2 doesn't change the healthcare rules insofar as what is an
3 appropriate unit. And the skilled maintenance I think unit is
4 the appropriate unit, which is the group as a whole.
5 So under the Board's rulemaking, they wanted to prevent
6 the undue proliferation of the bargaining unit. We think it's
7 appropriate that this unit stay together and not be severed out,
8 as it would have to be if the CCDU, the Concerned Carpenters,
9 replaced the unconcerned Carpenters. So that's our position.
10 **HEARING OFFICER SCOTT:** And any employees that would be
11 supplied to the Employer by the Carpenters or any other trade
12 that is signatory to the MOA, your position would be that they
13 would be part of the existing skilled maintenance unit at the
14 hospital?
15 **MS. CREIGHTON:** Correct.
16 **HEARING OFFICER SCOTT:** Okay. And I assume that your
17 position is that the contract, there is a contract bar to the
18 election?
19 **MS. CREIGHTON:** I believe that Mr. Furlong is correct that
20 because there is an improper union security clause that the case
21 law suggests that there is no contract bar. It doesn't mean
22 that there is no 8(f) relationship. It just means that there is
23 no contract bar. I understand.
24 **HEARING OFFICER SCOTT:** Anything further?
25 **MS. CREIGHTON:** No.

1 **HEARING OFFICER SCOTT:** Mr. Heineman?
2 **MR. HEINEMAN:** Yes, Mr. Hearing Officer. The Carpenters
3 position is that this is a non-conforming bargaining unit under
4 the healthcare rules, which is established by recognition. It
5 cannot be severed or fragmented further in keeping with the
6 Board's rules. Petitioner has two choices under those rules,
7 either take a residual unit of everything that's left, which
8 would be the entire non-conforming unit, or attempt to craft
9 severance, which would be contrary to the Board's healthcare
10 rules. So the Northeast Regional Council's position is that the
11 petition should fail, be dismissed.
12 **HEARING OFFICER SCOTT:** And let me go back to the question
13 of the bargaining unit. Do you have a position that is any
14 different from Ms. Creighton's as to what the appropriate unit
15 is?
16 **MR. HEINEMAN:** No. I think technically -- no, we agree on
17 the bargaining unit. It is the only bargaining unit which would
18 be appropriate would be the entire non-conforming bargaining
19 unit, which is the Building Trades.
20 **HEARING OFFICER SCOTT:** And what's your position on
21 whether there is a bar to the election? I mean is anyone
22 asserting a bar to the election?
23 **MR. HEINEMAN:** I don't believe so. I think it is probably
24 accurate that every appended agreement attached to the MOU
25 probably contains a seven-day clause.

1 **HEARING OFFICER SCOTT:** Okay. So what we anticipated
2 might be an issue is not. Am I understanding that?
3 **MR. FURLONG:** I was led to believe it was an issue from
4 speaking to Board personnel. And I brought to the Board
5 personnel's attention that we're dealing with a construction
6 industry clause. And perhaps that's the reason the issue no
7 longer exists.
8 **HEARING OFFICER SCOTT:** Well, if it doesn't, it doesn't.
9 **MR. FURLONG:** But if it doesn't exist, it doesn't exist.
10 But on behalf of Petitioner and given the position stated by the
11 Northeast Regional Council of Carpenters and the Building
12 Trades, we will stipulate that we are talking about a joint
13 employer, I'm sorry, joint bargaining representative with the
14 Building Trades in essence facilitating the negotiations with
15 the underlying collective bargaining agents that are parties to
16 the Buffalo Building Trades Council.
17 **HEARING OFFICER SCOTT:** Can that be stipulated?
18 **MS. CREIGHTON:** I'd have to think about that.
19 **MR. HEINEMAN:** I don't know what that means, facilitate.
20 It's either a joint bargaining representative or it's something
21 else. It is not -- the Buffalo Building Trades is the
22 bargaining agent. Is a joint bargaining agent the entire
23 membership it signs as part of the bargaining unit. It can't be
24 severed.
25 **HEARING OFFICER SCOTT:** Any --

1 **MR. FURLONG:** No, that's absolutely incorrect. I mean
2 every project labor agreement has as the signatory the Building
3 Trades, and the each individual craft signs on similar to this
4 MOU. And then each individual craft has an underlying
5 collective bargaining agreement. And I don't know why counsel
6 is confused by this. This is essentially what we are dealing
7 with here. So I'm willing to -- in essence, I'm willing to
8 stipulate that if they want this to be a joint bargaining
9 relationship, I'll stipulate it's a joint bargaining
10 relationship. Shouldn't have a problem with it.
11 **HEARING OFFICER SCOTT:** With the Northeast Regional
12 Council and the Building Trades being joint representatives?
13 **MR. FURLONG:** I don't know it is the -- I get back to I
14 don't know if it's the Northeast Regional Council only because
15 I'm looking at Local 289 on the MOU. You're going to have to
16 take some testimony, Mr. Hearing Officer.
17 **HEARING OFFICER SCOTT:** Well, maybe we will, but --
18 **MR. FURLONG:** You're going to have to take some testimony
19 on the nature of this relationship.
20 **HEARING OFFICER SCOTT:** But I wonder, I wonder if it
21 wouldn't be worth taking a five-minute recess to see if you
22 couldn't agree on something?
23 **MR. FURLONG:** I'm willing to take a recess.
24 **HEARING OFFICER SCOTT:** Let's go off the record five
25 minutes.

1 (Whereupon, a brief recess was taken.)
2 **HEARING OFFICER SCOTT:** I'd like to come back to Mr.
3 Connors. I know you didn't have an opening statement to make,
4 but I wonder if you have any position on any of the issues that
5 we have been discussing, for example what in the Employer's view
6 the appropriate unit is?
7 **MR. CONNORS:** The appropriate union in my view would be
8 the replacement for the existing unit of Carpenters. If that's
9 impossible, then I suppose -- as it is now and my understanding
10 is when this is all done, if Mr. Furlong is successful in an
11 election or whatever is utilized that they would become part of
12 the MOU that we have with the Building Trades. If that's
13 impossible, then I don't want whatever that is.
14 **HEARING OFFICER SCOTT:** And do you have a position as to
15 who the current collective bargaining representative is ?
16 **MR. CONNORS:** Well, I can only look at the, look at the
17 agreement which is signed off as Local 289. If it no longer
18 exists, somebody must have succeeded them or we won't call
19 anymore carpenters.
20 **HEARING OFFICER SCOTT:** And do you have any position on
21 whether there is a bar to an election? I guess not.
22 **MR. CONNORS:** I don't believe there is.
23 **HEARING OFFICER SCOTT:** No one has said so. And I asked
24 the question earlier. All right, I think just a couple more
25 questions. I understand the MOA was signed about July of last

1 year.
2 **MR. FURLONG:** Correct.
3 **HEARING OFFICER SCOTT:** Was there any collective
4 bargaining history? Was that an initial agreement? Was there a
5 prior agreement?
6 **MR. CONNORS:** There was a prior agreement from 2006.
7 **MR. FURLONG:** There were two prior agreements.
8 **MR. CONNORS:** Really? Which one did I miss?
9 **MR. FURLONG:** There was one that was one year, covered
10 January through December 2006. Then January 1, 2007, through
11 halfway through 2011, and then 2011 forward, 5 years.
12 **HEARING OFFICER SCOTT:** Okay. I assume we're going to
13 have testimony and evidence on those?
14 **MR. FURLONG:** I think we can probably stipulate in a whole
15 lot of these documents and shorten it up.
16 **HEARING OFFICER SCOTT:** Okay.
17 **MR. FURLONG:** Maybe, Mr. Hearing Officer, you would
18 consider some stipulations?
19 **HEARING OFFICER SCOTT:** I would always consider
20 stipulations if people can agree to shorten the record. But
21 let's hold off on that for just a moment. Are there any
22 petitions pending in other regional offices involving facilities
23 of this Employer? I wouldn't think so.
24 **MR. CONNORS:** I didn't hear?
25 **HEARING OFFICER SCOTT:** Are there any petitions pending in

1 other regional offices involving facilities of the Employer? I
2 don't think you have anything outside Region 3.
3 **MR. CONNORS:** No.
4 **HEARING OFFICER SCOTT:** All right. So I think, it can be
5 stipulated I think then there is no contract or other bar in
6 existence that would preclude an election?
7 **MR. FURLONG:** We would stipulate to that.
8 **MS. CREIGHTON:** I'm sorry, I missed that?
9 **HEARING OFFICER SCOTT:** Can it be stipulated that there is
10 no contract or other bar in existence that would preclude the
11 processing of this petition?
12 **MS. CREIGHTON:** We can agree.
13 **HEARING OFFICER SCOTT:** Okay. So that's so stipulated.
14 I'll receive that stipulation.
15 We can't stipulate on the appropriate unit. We are going
16 to hear evidence on that.
17 And I think we've had, I think we've had the issues fairly
18 well framed by the discussion that we just had. And so I'd ask
19 for Mr. Connors, call your witness.
20 **MR. CONNORS:** Are we going to stipulate any of those --
21 **MR. FURLONG:** Yeah. If you would entertain some --
22 **HEARING OFFICER SCOTT:** Do you want to have some time to
23 work that out?
24 **MR. CONNORS:** Well, do you have a copy of the --
25 **HEARING OFFICER SCOTT:** I have a copy of the most recent

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1 MOA in the file. If you need some time to work out a
2 stipulation as to other documents, I'll give you some time.
3 **MR. FURLONG:** Well, with respect to -- are we on the
4 record right now?
5 **HEARING OFFICER SCOTT:** Yeah.
6 **MR. FURLONG:** Do you want to go off the record while we
7 see if we can work these out?
8 **HEARING OFFICER SCOTT:** If it will save us some time,
9 let's go off the record.
10 (Discussion off the record.)
11 **HEARING OFFICER SCOTT:** Mr. Furlong, you have some
12 stipulations to offer?
13 **MR. FURLONG:** We do, Mr. Hearing Officer. The parties
14 have stipulated certain documents into evidence.
15 Beginning with a two-page document which was Joint
16 Exhibit 1, it lists 2009, 2010, 2011 jobs performed by the
17 Employer, Kaleida Health, by members of the various crafts who
18 are signatory to the MOU.
19 **HEARING OFFICER SCOTT:** That would include not only
20 Carpenters, but all trades?
21 **MR. FURLONG:** Yes, as I understand it. And this was put
22 together by Mr. Croston, who is a representative of Kaleida
23 Health.
24 **HEARING OFFICER SCOTT:** Okay.
25 **MR. FURLONG:** Stipulated Document 2 was also put together

1 by Kaleida Health. I don't know if it was Mr. Croston, but he
2 has indicated it accurately reflects the wages that were paid
3 from July 2011 to July 2012. I think I'm reading that --
4 **HEARING OFFICER SCOTT:** And that was an off the record
5 discussion.
6 **MR. FURLONG:** It was an off the record discussion. Of
7 course, we haven't reached July 2012, but it indicates wages
8 paid to Carpenters Local 289, together with other crafts, each
9 of whom has signed onto the MOU. Am I accurate there?
10 **MR. CONNORS:** One correction. It's pay period Number 7.
11 **MR. FURLONG:** Oh, it's pay period 7. Okay. So that's one
12 year of figures, okay.
13 Stipulated document for Joint Exhibit 3 was a cover sheet
14 showing the rates of pay and fringe benefits paid to carpenters
15 working under the MOU and that is joined as an exhibit with the
16 document which reads Northwest Region Agreement between the
17 associations and Northeast Regional Council of Carpenters,
18 United Brotherhood of Carpenters and Joiners of America, with a
19 term of June 1, 2011, through May 31, 2016. That's one
20 document.
21 **HEARING OFFICER SCOTT:** Can I ask is that a typo? It says
22 Northwest in one place and Northeast in another, is that correct
23 or is that a typo?
24 **MR. CONNORS:** Which?
25 **HEARING OFFICER SCOTT:** On the cover page of the

1 agreement?
2 **MR. CONNORS:** It's the Northwest Regional Agreement.
3 **HEARING OFFICER SCOTT:** Okay. It's not a typo.
4 **MR. CONNORS:** A little confusing, but it's correct.
5 **HEARING OFFICER SCOTT:** Okay.
6 **MR. CONNORS:** Covers the northwestern part of the state of
7 New York.
8 **HEARING OFFICER SCOTT:** Got it.
9 **MR. FURLONG:** And Joint Exhibit 4 is a memorandum of
10 agreement between the Buffalo Building Construction Trades
11 Council and Kaleida Health. It is signed by Mr. Croston on
12 behalf of Kaleida Health on July 1, 2011. It is not signed by
13 the Building Trades, but is signed by a variety of
14 representatives of other unions including representative of
15 Carpenters Local 289, Mr. Bodewes.
16 **HEARING OFFICER SCOTT:** Ms. Creighton, is it just that
17 this copy doesn't have a signature for the Building Trades or
18 was there never anyone who signed off for the Building Trades on
19 this MOA?
20 **MS. CREIGHTON:** I don't know.
21 **HEARING OFFICER SCOTT:** I just ask because if there is
22 another one that is signed, that's the one that should be in. I
23 mean I'm not saying it can't go in.
24 **MR. FURLONG:** This is the only one that we have.
25 **MS. CREIGHTON:** That's the only one we have as well. I

1 don't know.
2 **HEARING OFFICER SCOTT:** All right. So any objection to
3 the admission of Joint Exhibits 1, 2, 3, and 4?
4 (Joint Exhibits 1 through 4 marked for identification.)
5 **HEARING OFFICER SCOTT:** Hearing no objection, they are
6 received.
7 (Joint Exhibits 1 through 4 received into evidence.)
8 **HEARING OFFICER SCOTT:** Okay. Mr. Connors, would you like
9 to call your witness? Would you raise your right hand, please?
10 (Whereupon,
11 DAVID CROSTON,
12 was called as a witness by and on behalf of the Employer and,
13 after having been duly sworn, was examined and testified as
14 follows:)
15 **HEARING OFFICER SCOTT:** Thank you. You may be seated.
16 And Mr. Connors, you may go ahead.
17 **DIRECT EXAMINATION**
18 **BY MR. CONNORS:**
19 **Q Mr. Croston, where are you employed, sir?**
20 A Kaleida Health.
21 **Q And how long have you been employed by Kaleida Health?**
22 A Approximately 23 years.
23 **Q And what is your current title?**
24 A I'm the vice president and chief technology officer for
25 Kaleida Health. I have responsibilities for facilities

Page 29

1 construction, clinical engineering, security -- could of extras.
2 **Q And how long have you held that title?**
3 A I've held the title of vice president and chief technology
4 officer for about seven years.
5 **Q So was that your title in 2006?**
6 A Yes.
7 **Q Can I ask you prior to 2006, how Kaleida handled**
8 **renovations and in-house construction?**
9 A We really had no in-house construction. We primarily
10 handled it through contracting, non-union and union contracting
11 agreements.
12 **Q Okay. And so you would hire a contractor for each**
13 **project?**
14 A That's correct.
15 **Q And did that change in 2006?**
16 A Yes, it did.
17 **Q And how did it change in 2006?**
18 A In 2006, we needed to come to production a lot faster, so
19 we became our own general contracting entity and we reached out
20 to the market, if you will, to look at what our opportunities
21 were to self-employ or reach some kind of an arrangement with a
22 group to perform in-house construction renovation.
23 **Q And were you successful in reaching out to a group?**
24 A Yes, we were.
25 **Q And who was that group?**

Page 30

1 A The Buffalo Building and Construction Trades Council.
2 **Q And was there a formal agreement entered into?**
3 A We did enter into a memorandum of agreement.
4 **Q And how long was that agreement?**
5 A The agreement started, you know, around the 2006 area and
6 we have continued that to date.
7 **Q Well, there were separate -- there has been some**
8 **statements here that there were three successive agreements.**
9 A Right. We wanted to establish the success, to see or
10 test, see the success we might have, so we did enter, as I
11 recall, like a one-year type agreement to see how it went. Then
12 very successful, so we continued with another I want to say it
13 was a five-year agreement, three or five-year agreement. And
14 then to date this most current agreement that we have.
15 **Q Okay. And the most current agreement has been entered**
16 **into evidence as Joint Exhibit 4, is that correct?**
17 A Correct.
18 **Q Are you a signatory to that agreement?**
19 A Yes, sir.
20 **Q Okay. So you signed on behalf of Kaleida Health?**
21 A That's correct.
22 **Q All right. Now would you please explain exactly how does**
23 **the agreement work? If you have -- starting with you determine**
24 **a project, what comes next?**
25 A All right. The projects are established through our

Page 31

1 capital process. We assign a total project cost dollar, which
2 would include materials, estimated materials, labor, equipment.
3 For example, in our healthcare business, the CTMR, that's the
4 level of equipment that could be included in this total project
5 cost. We assign an architect. We pull building permits. We do
6 everything that's normal process within a general contracting
7 establishment.
8 The agreement provides us a vast opportunity to bring
9 skilled employment to our facility through the Building Trades
10 system. So we pull from those members who are signed up. And
11 we adjust the quantities of people that we need based on the
12 skill base trade and multiple projects. We do parallel process
13 these projects, so there's multiple projects going on
14 simultaneously, and we move that skilled labor between those
15 projects.
16 **Q All right. Let's assume, as I am sure is the case, that**
17 **this project has a need for a certain number of carpenters.**
18 **Could that number increase or decrease during the term of the**
19 **project?**
20 A Absolutely, yes.
21 **Q Okay. What's the process by which you obtain the**
22 **carpenters that you need?**
23 A We simply look to the trades group to provide us the
24 quantity and we'll say the ranking, you know, apprentice,
25 journeyman, that skill base that we need. And they go out and

Page 32

1 choose and provide that for us.
2 **Q Who do you actually contact?**
3 A The actual trade union hall. I believe they have some
4 kind of a mechanism that deals with that.
5 **Q All right. And that's for each one of the trades that are**
6 **signatory to this agreement?**
7 A That's correct.
8 **MR. CONNORS:** I have no further questions.
9 **HEARING OFFICER SCOTT:** Mr. Furlong, any questions?
10 **MR. FURLONG:** I do.
11 **CROSS-EXAMINATION**
12 **BY MR. FURLONG:**
13 **Q Good morning, Mr. Croston.**
14 A Good morning.
15 **Q Just for the record, we've never met before today, have**
16 **we?**
17 A We have not.
18 **Q And we did not have an opportunity in any way to discuss**
19 **your testimony here today, is that correct?**
20 A Correct.
21 **Q All right. Now, Mr. Croston, were you involved in the**
22 **initial negotiation of the 2006 MOU?**
23 A Yes.
24 **Q Do you recall who you met with, with respect to that MOU**
25 **in terms of getting it together, negotiating it?**

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1 A Yes, Paul Brown.
2 Q Okay. And did you meet with any other representatives of
3 the Building Trades or was it merely Mr. Brown?
4 A It was merely Mr. Brown.
5 MR. FURLONG: For the record, can we get a stipulation Mr.
6 Brown in 2006 and currently is the president of the Buffalo
7 Building Trades Council?
8 MS. CREIGHTON: I can stipulate to that.
9 MR. FURLONG: Okay.
10 BY MR. FURLONG:
11 Q And at the time that you met with Mr. Brown -- and
12 although we do have a stipulation with respect to no showing of
13 interest, I do want to establish a record. Did Mr. Brown ever
14 indicate to you that he had signed authorization cards showing
15 that employees wanted to be represented by the Building Trades?
16 A No, sir.
17 Q And did any craft thereafter ever come to you with signed
18 authorization cards indicating that they enjoyed a majority
19 status among the people performing that work?
20 A No, sir.
21 Q All right. So that has never happened since 2006 up till
22 the present?
23 A Correct.
24 Q Now you have indicated and you've given us a document
25 marked Joint Exhibit 1 --

1 MR. FURLONG: Can we show the witness this document?
2 BY MR. FURLONG:
3 Q I'd like to ask you a couple of questions with respect to
4 the nature of the jobs that are on this document. I see a
5 number of jobs off the top of my head, maybe 15 that are in the
6 3 to 4, $2, $3, $4 million category, is that correct?
7 A Correct.
8 Q And that would include both materials as well as labor?
9 A It's materials, labor, any element of the job in which,
10 you know, Building Trades couldn't perform, so structural steel
11 perhaps or, you know, some HVAC work, etc., that would be
12 contracted out to typically a union contractor. As well as the
13 medical equipment element. Some of them are embedded and some
14 of them are not. Predominantly, they are. So as an example if
15 I were to buy a CT scanner or an MRI, I just happened to notice
16 the one here about $4 million, that does include the CT scanners
17 themselves, which go for $1 million.
18 Q Okay. So to make sure that we're correct on this, some of
19 these jobs would include some equipment, some jobs wouldn't, but
20 generally they're the cost of the project?
21 A Generally, it's the total cost of the project including
22 architecture.
23 Q Which would include the labor?
24 A And including architectural fees, etc. Full, total
25 complement of the project.

1 Q All right. So I want to take just by way of example,
2 let's take the second entry, ICU\CCU renovation, do you have any
3 recollection of that project?
4 A I do.
5 Q It's $3,457,000 was your total cost?
6 A Yes.
7 Q Now if that had not been done by the Carpenters and other
8 Building Trades workers, is that a job you typically would have
9 put out for bid --
10 A Yes, sir.
11 Q -- with regular construction industry employers to
12 perform?
13 A Yes, sir.
14 Q And then go down this list. Let me take a couple of other
15 examples. The ICU\CCU renovation at Buffalo General, 2010,
16 $4,543,000, do you recall that job?
17 A I do.
18 Q And is that the nature, the nature of that job, is that
19 something that would have been put out to bid in the market for
20 contractors to bid on had you not had this MOU?
21 A Yes, sir.
22 Q And as I look down these various jobs, and I'm looking at
23 $1,800,000, $1,600,000, I'm looking at one as little as $65,000,
24 but is this the type of work, these jobs, these projects, these
25 renovations that would have been put out to bid prior to 2006?

1 A Yes, sir.
2 Q And that's true of virtually all the jobs that you have on
3 here. It would have been performed by construction industry
4 employers but for your agreement with the Building Trades, am I
5 correct on that?
6 A You're correct.
7 Q Now, Mr. Croston, Kaleida Health, does it employ
8 maintenance workers?
9 A It does.
10 Q Okay. And how many maintenance workers are employed at
11 Kaleida Health?
12 A I don't have the accurate number, but maybe throughout the
13 system, maybe 40.
14 Q Do they have a bargaining representative?
15 A They do. There's two different ones.
16 Q And would you tell us who those bargaining representatives
17 are?
18 A The SEIU for a subset of our hospital, the children's
19 hospital, and then Northshore Suburban Hospital (ph.). The IEOU
20 (sic) for Buffalo General and DeGraff.
21 Q And do you have currently collective bargaining agreements
22 with those bargaining representatives?
23 A Yes, sir.
24 Q Now do those agreements, we don't have them here, but do
25 those agreements describe the type of work that the maintenance

1 **workers perform?**
2 A Yes, sir.
3 **Q Do you have a working familiarity with those agreements?**
4 A Yes, I do.
5 **Q Would you tell us the type of work that maintenance**
6 **workers perform? And then I'm going to contrast it, if there is**
7 **a contrast, with the type of work that we have in front of us.**
8 A Yes.
9 **Q What do maintenance workers do?**
10 A Maintenance workers, they keep the building going from a
11 sense of small break fix, the out of alignment, the calibration,
12 you know, the locks element of things, the things that typically
13 tend to have wear and tear on them. They maintain those
14 existing structures and mechanisms within the building. They
15 also provide a preventative element possibly by changing filters
16 and doing that type of work.
17 **Q Okay. So they do routine maintenance of the type,**
18 **everything from changing filters, changing light bulbs, making**
19 **sure small type of projects, am I correct on that?**
20 A We don't even call them projects, but, yes, they're small,
21 I think everybody is familiar, you know, just that small break
22 fix of existing structures, existing equipment, existing
23 appliance, that type of thing.
24 **Q And you've got about 40 or 50 throughout the facility --**
25 **throughout the system, I should say?**

1 A Yeah, multiple disciplines.
2 **Q Now just in terms of assigning maintenance workers to**
3 **their daily tasks, how does that work? Are they issued a ticket**
4 **or something similar to a ticket?**
5 A Yes, sir.
6 **Q Would you tell me about it?**
7 A Yes. We have a ticket system. We have an electronic
8 ticket system that when items come up for both routine
9 maintenance, preventative maintenance, as well as a break fix,
10 you know, on-demand break fix scenario, tickets are put in by
11 our staff through an electronic system. And those tickets are
12 looked at on a daily, sometimes weekly basis. And those tickets
13 are assigned to our maintenance group to take care of.
14 **Q They take the ticket, and they go out and they perform the**
15 **task, come back and get another ticket. Am I correct on that?**
16 A You are correct.
17 **Q All right. When you're dealing with members of the craft**
18 **covered by the MOU, do you hand out tickets similar to how you**
19 **would do it with the maintenance worker?**
20 A No, sir.
21 **Q Would you describe for us the difference between what a**
22 **maintenance worker, how they get assigned jobs and how members**
23 **of the crafts under the MOU get assigned jobs?**
24 A The maintenance workers use the ticket system. The
25 project group, the renovation group, they have an active group

1 that comes together through a multi-disciplinary meeting that we
2 have to go through plans and architectural prints. And those
3 jobs get laid out by trade, you know, based on some timing that
4 would happen, first things first, you know, kind of timing to
5 make sure that that project comes together.
6 **Q To the best of your knowledge, Mr. Croston, would you say**
7 **that there is a difference between the skill levels of crafts**
8 **people employed under the MOU and the skill levels of your**
9 **maintenance workers?**
10 A Yes, sir.
11 **Q Would you tell me in as much description as you can how**
12 **they differ?**
13 A A maintenance worker is taught and their trade is to take
14 something that already exists and be able to understand how it
15 was put together and to -- and how it works, and to be able to
16 correct that. So their skills are more troubleshooting, you
17 know, more taking something that is existing and do that break
18 fix element.
19 The trades group or the construction group is taking
20 something that doesn't exist, that exists on a piece of paper,
21 through architectural drawings, constructural drawings, and
22 actually creating and building something new, using new
23 materials, first-time use of materials to create that, you know,
24 that structure, if you will.
25 **Q Do your maintenance workers have state certified or**

1 **federal certified apprentice programs?**
2 A Repeat the question?
3 **Q Yeah. Do your maintenance workers, do they go through**
4 **state or federal certified apprentice programs to learn their**
5 **craft?**
6 A I don't know that completely.
7 **Q Do you know whether or not the individuals employed under**
8 **the MOU go through programs, apprentice programs?**
9 A I do believe they do, yes, sir.
10 **Q Is it fair to say, would you agree with me, that the**
11 **workers who are working under the MOU are construction workers**
12 **performing large work, multi-million dollar jobs in many**
13 **instances?**
14 A Yes.
15 **Q All right. And would your maintenance workers have the**
16 **skills and capabilities to perform those types of jobs?**
17 A No, they would not.
18 **Q Now you used the phrase in the lead-up to describing what**
19 **happened in 2006, you said basically you wanted to replace**
20 **contractors and do this work in-house. And I don't know if**
21 **those were your exact words, but was that what your motivation**
22 **was, was to get rid of contractors and do this work in-house?**
23 A It's not so much to replace them. It's the ability to
24 control healthcare costs is our number one concern. Our second
25 concern is to come to projects very quickly, cost effectively,

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Page 41

1 and in a very timely manner. We have done a lot of projects,
2 you know, over the last six years. And to be efficient to do
3 these projects, we really needed to have a different model to be
4 able to work in.
5 Q Okay. I think you used the phrase, in fact, I know you
6 used the phrase wanted to become our own general contractor. Do
7 you recall testifying to that on direct?
8 A Yes.
9 Q And would you explain for me in some detail what you meant
10 by that statement, you wanted to become your own general
11 contractor?
12 A Yes. We knew in order to have a group work with us, we
13 needed to have a general contracting license. We needed to
14 become, you know, that entity under --
15 Q Do you have -- does Kaleida have a general contracting
16 license?
17 A Yes, sir, we do.
18 Q And did it get it pursuant to putting this MOU into
19 operation?
20 A Pursuant?
21 Q Let me rephrase it. That was poor phrasing on my part.
22 In order to implement the MOU and this new arrangement with the
23 Building Trades, did Kaleida go out and secure a general
24 contracting license?
25 A Yes, we did.

Page 42

1 Q And does it maintain that license in effect today?
2 A Yes, it does.
3 Q Where do you apply for that license?
4 A City of Buffalo.
5 Q All right. Had you ever had a license like that prior to
6 2006?
7 A Yes, we did.
8 Q You did have a license. Were you in the general
9 contracting business?
10 A We were in the general contracting business based on our
11 first agreement way back in 2000 --
12 Q In 2000?
13 A No, I'm sorry, 2006, yes, that's when we did it. I'm
14 sorry.
15 Q I think -- that's all right. And I apologize. I've been
16 asking the questions very quickly. Back in 2006, was that the
17 first time you secured your general contracting license?
18 A Yes, sir.
19 Q From the City of Buffalo?
20 A Yes, sir.
21 Q All right. Now with respect to the compensation and the
22 hiring of Carpenters, the terms and conditions that apply, do
23 you look towards or look to Joint Exhibit 3?
24 MR. FURLONG: If we can show the witness Joint Exhibit 3?
25 BY MR. FURLONG:

Page 43

1 Q Take a moment. And if you need more time -- and is it
2 your understanding that Joint Exhibit 3 is the collective
3 bargaining agreement that would apply to individuals performing
4 carpentry work?
5 A Yes.
6 Q All right. And take a moment to go through the document.
7 Does Joint Exhibit 3 have its own -- let me withdraw that.
8 Would Joint Exhibit 3 have any applicability to plumbers? Would
9 it have any -- I'm sorry, what was your answer?
10 A No.
11 Q Would it have any applicability to roofers?
12 A No.
13 Q Any applicability to plasterers?
14 A No.
15 Q Any applicability to operating engineers?
16 A No, sir.
17 Q The terms and conditions set forth in Joint Exhibit 3
18 would only apply to carpenters, am I correct?
19 A You are correct.
20 Q In fact, there is a separate grievance procedure that
21 carpenters can utilize in that agreement that's separate and
22 apart from any other grievance procedure, am I correct on that?
23 A Yes, correct.
24 Q And I think you testified in response to questions from
25 Mr. Connors that if you need carpenters or Kaleida needs

Page 44

1 carpenters, I don't mean you specifically, you'll call the
2 carpenter hall and they'll send out some carpenters pursuant to
3 your request?
4 A Correct.
5 Q All right. Now to your knowledge, do the carpenter
6 employees who Kaleida employs have skillsets that are different
7 than, say, the plumbers, the roofers, or the laborers, or
8 anybody else?
9 A Yes, sir.
10 Q Tell us about that, how do the carpenters differ?
11 A Carpenters have a clear understanding of how walls go up,
12 how different structures must be built and supported. They have
13 the skillsets to use the tools involved to do that, the screw
14 guns and the, you know, the saws, and the miters, and, you know,
15 all their tool trade, highly trained in that. They know how to
16 protect our environment as well with regards to put up a lot of
17 plastic and we have a lot of infection control issues. They are
18 trained to know how to deal with that as well.
19 Q Do they have their own gang boxes?
20 A They do.
21 Q They have their own keys to their own gang boxes?
22 A Yes, sir.
23 Q And other crafts wouldn't have access to those gang boxes,
24 am I correct?
25 A In a general way, yes, that would be correct.

1 Q In fact, that would be true of every craft has its own
2 storage facilities for their tools and things of that nature?
3 A Yeah, there is some group storage on-hand. But in general
4 their tools are specific to their trade.
5 Q I want to ask you about the electrician. I noticed on the
6 MOU which has been received into evidence as Joint Exhibit 4,
7 the IBEW, the International Brotherhood of Electrical Workers,
8 is not a party. Are you aware of that?
9 A Yes.
10 Q Have you ever heard of a firm called Ferguson Electric?
11 A Yes, sir.
12 Q Okay. And does Ferguson Electric have any relationship
13 with Kaleida?
14 A Yes, they do.
15 Q Would you describe it for the record, please?
16 A We use Ferguson Electric for on-demand -- we use them for
17 a variety of skillsets, on-demand and contract. They have a low
18 voltage, a medium voltage, and high voltage division, and we use
19 their skills across that entire, you know, multiple division
20 system. We do contracts with them and we do on-demand labor
21 with them.
22 Q Fair to say Ferguson Electric has a pretty permanent,
23 pretty permanent presence in the Kaleida facilities?
24 A They do. They are not the only electrical contractor we
25 have and use, but they are -- they have done very well with

1 their bidding.
2 Q And when we go back to Joint Exhibit 1, which is the list
3 of the jobs performed by the Buffalo Building Trades represented
4 employees, on those various jobs if I look down, if there was
5 electricity -- if there was electrical work to be done, would it
6 be likely that Ferguson Electric would be, their employees would
7 be working side by side with the carpenters, the plumbers, and
8 others?
9 A Yes, sir.
10 Q All right. Do you have any experience outside of Kaleida
11 with respect to construction work? Have you ever worked for any
12 contractors or anything of that nature?
13 A Me, personally?
14 Q Yes.
15 A As a young, as a young man, yes, I did. I actually have
16 some certification of carpentry and masonry vocational training.
17 And, yes, as a young, many, many, many years ago, did trade
18 work, non-union trade work.
19 Q As part of your statement that you wanted to basically --
20 Kaleida went into the general contracting business, got a
21 permit, got a certification, and then did this MOU, do you have
22 an estimating or budgeting procedure that you utilize to cost
23 out your projects or is that something that you contract out to
24 architects and others?
25 A We do have our own estimation system. We also challenge

1 that system often or sometimes with an architecture's estimation
2 as well.
3 MR. FURLONG: I have nothing further for Mr. Croston.
4 Thank you very much.
5 HEARING OFFICER SCOTT: Ms. Creighton?
6 MS. CREIGHTON: I have just a few questions.
7 CROSS-EXAMINATION
8 BY MS. CREIGHTON:
9 Q The employees that you have that primarily they stay with
10 Kaleida for long periods of time, if you have, like let's take
11 the plasterer, for example. Are you familiar with who the
12 plasterer is? There is one on the sheet that's Joint Exhibit 2.
13 A Um-hum.
14 Q And has that person been employed by Kaleida now since
15 2006, if you're aware?
16 A Yes. To answer the question, in general we do try to
17 retain good folks that we have and skill levels that we have,
18 and I think mutually those gentlemen often like to stay with us
19 as well. So we have had a good history of a lot of consistency
20 with regards to the individuals who have been working with us.
21 Q And do they share the same supervision?
22 A Yes.
23 Q All of the construction workers?
24 A Yes.
25 Q And do they work in composite crews, where crews work

1 together?
2 A Yes.
3 Q And the supervisors are various foremen that work on these
4 jobs?
5 A That's right, typically union foremen that work on the
6 job.
7 Q And one foreman will work with one particular group, on a
8 particular project?
9 A That's right.
10 MS. CREIGHTON: I don't have anything further.
11 HEARING OFFICER SCOTT: Mr. Heineman?
12 CROSS-EXAMINATION
13 BY MR. HEINEMAN:
14 Q So each of your projects has a foreman?
15 A Yes.
16 Q And that foreman is responsible for the supervision of all
17 the crafts working on a particular project, itself?
18 A Correct. I suppose there can be multiple foremen, you
19 know. We do like to make sure the skillset is high enough that
20 the work is getting done, you know, say for instance carpenter
21 and plumber.
22 Q Who is, in the chain of hierarchy at Kaleida, who is your
23 supervisor?
24 A Currently, I report to the chief operating officer, Cheryl
25 Class. Previously -- that's a relatively new move. Previously,

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1 I reported to the chief financial officer.
2 **Q And who is directly under you?**
3 A I have about six direct reports. Who might be applicable
4 in this case are the facilities directors, Peter Murphy and Jim
5 Bortz, are our two --
6 **Q Your facilities directors, are they responsible for both**
7 **the maintenance and craft operations?**
8 A Yes, they have both responsibilities.
9 **Q And below them, what types of individuals do you have?**
10 A Then there are some managers and then there are
11 supervisors.
12 **Q And do the managers and supervisors have supervisory**
13 **responsibility for both craft and maintenance employees?**
14 A Typically not. The manager may crossover into some
15 oversight. Supervisors not so much.
16 **Q Now you were asked about certain projects. Let's start**
17 **with the first one. In 2009, Day 1, what is that inpatient**
18 **renovation?**
19 A Right. We wanted to renovate the Buffalo General tower,
20 the patient care floors. And we had an opportunity to do this
21 when we were, I'll say it a little bit slower. We had an
22 opportunity to shut some floors down and we wanted to do it
23 prior to the Gates Vascular Institute move, the Gates Hospital
24 move which just recently happened. So we actually went through
25 each floor and did small job renovations of those floors. We

1 tend to move patients around to get to the towers so that we
2 could have a clear environment that we could shut down to do
3 renovations like that, so this would have been one of them.
4 **Q And what would that have been? What would be involved in**
5 **one of these small job renovations?**
6 A That would be new nurses' stations, changing some walls,
7 new flooring, painting, ceiling tile.
8 **Q So changing walls, painting, ceiling tiles, correct?**
9 A Yeah. Some plumbing work was done, some lighting upgrades
10 could be in there as well.
11 **Q And those types of things would certainly be within the**
12 **capability of your in-house maintenance staff, correct?**
13 A Be in the capability of them?
14 **Q Yes.**
15 A No, sir.
16 **Q No, not at all?**
17 A Not at all.
18 **Q How about if there is a hole in one of your walls, what**
19 **occurs?**
20 A If the hole is a small hole, then it could be done through
21 maintenance. If the hole is large, there is structure integrity
22 compromised, that kind of thing, then it becomes more of a
23 project or a renovation.
24 **Q Okay. Let's talk about the small hole. You said it could**
25 **be done by maintenance, correct?**

1 A It could be.
2 **Q And it could also then be done by craft employees,**
3 **correct?**
4 A It could be.
5 **Q So I take it that depends on when it has to be done, how**
6 **quick, what staff is available?**
7 A That could be, yes. I will say in general we do try to
8 differentiate, to the best of our ability in maintenance,
9 problem versus construction or renovation type work. And that's
10 interpretive, you know, it can be interpretive. Small holes,
11 you know, that can be done quickly and easily through our
12 maintenance crew, we try to do that.
13 **Q Small hole could also be done by a craft, that's what I'm**
14 **trying to figure out here.**
15 A It could be, yes, sir.
16 **Q Okay. So depending on the needs of the institution, it'll**
17 **be assigned to either group?**
18 A That's right. And it was that way as well when we
19 contracted work, too. We had our choices to bring an outside
20 contractor in to fix something or not of that nature.
21 **Q Right. And you could also do it with your in-house staff**
22 **or a subcontractor.**
23 A Yes, sir.
24 **Q And if we're talking about a doctor's room looks a little**
25 **shabby, it could be painted either by in-house maintenance or a**

1 **craft group, correct?**
2 A Yes, sir.
3 **Q What other types of jobs could be done by either group?**
4 A I would guess if we had a door that was, you know, hit,
5 damaged, we get a lot of damaged doors, you know, that would be
6 something that's similar that could be done depending on the
7 damage level and the timing and the need. We could pull from
8 our maintenance group, our in-house group, or a contractor.
9 **Q Broken windows?**
10 A Typically, that's a contract job.
11 **Q How about changing window blinds, window shades, broken,**
12 **need to be changed?**
13 A That could be predominantly maintenance.
14 **Q Could it be done by the crafts?**
15 A Could be done by the crafts.
16 **Q Crafts have done that, correct?**
17 A Yes, they have, especially in a renovation or some kind of
18 a new build.
19 **Q Do your maintenance workers ever work in the same area as**
20 **the construction crafts are working?**
21 A It's possible but not so likely. Very unlikely, but it's
22 possible.
23 **Q Under what circumstances does that occur?**
24 A I suppose if they are putting up, you know, a hand soap
25 fixture or not to say that the in-house group doesn't do that as

Page 53

1 well, but there might be times in which they might be hanging
2 something or, you know, doing something that they can manage
3 from a maintenance perspective.
4 **Q Go down to 2010, go down to the BGH B8 office renovation.**
5 **What job was that? What is that?**
6 A I think that was predominantly B8 was some, and I'm trying
7 to recall, there's a lot of things here, but as I recall there
8 was some flooring and carpeting, perhaps some painting. It was
9 a $4,000 job. It was pretty small.
10 **Q And who would do the kind of work, a hole in the carpet,**
11 **things like that, who does that work?**
12 A If the carpet, depending on the gluing element of the
13 carpeting, carpeting can be as simple as just pulling it up,
14 taking the glue off. It can be as complicated as there is
15 asbestos in the glue and we need to bring in other talent to
16 handle the asbestos remediation, and the removal and replacement
17 of the carpet, or carpet with tile.
18 **Q Assume a simpler carpeting job, would that be done by**
19 **either --**
20 A It could be.
21 **Q -- craft employees --**
22 A If it's simplistic, yes, sir.
23 **Q Would it be accurate that almost any maintenance or**
24 **construction job -- let me try it again. Would it be accurate**
25 **that almost any repair, depending on its complexity, could be**

Page 54

1 **done by either smaller maintenance or construction?**
2 A If it's a small repair, it could be done by either. I
3 mean you have to get a little bit more specific, but --
4 **Q For example, replacing of a hand soap fixture could be**
5 **done by either a Building Trades craft person or a maintenance**
6 **worker, correct?**
7 A Yes, sir, correct.
8 **Q That's pretty small.**
9 A It's pretty small.
10 **Q I think I've changed a hand soap dispenser. Stair rails,**
11 **problems with stair rails, again either group?**
12 A If it's the repair of a stair rail, yes, I would say
13 either group. The installation of a stair rail, that tends to
14 be a little higher level for us.
15 **Q Okay. But just so I'm clear then you are using crafts**
16 **people to supplement your maintenance workforce on repairs of**
17 **the hospital premises? Is that an accurate --**
18 A That's not what we attempt to do, or try to do, or want to
19 do.
20 **Q I didn't ask you if you attempt to. Is that what's**
21 **actually happening?**
22 **MR. FURLONG:** He answered the question. Counsel may not
23 have liked the response, but he answered the question.
24 **HEARING OFFICER SCOTT:** Let's have the question again and
25 the answer again.

Page 55

1 **MR. HEINEMAN:** I can try.
2 **BY MR. HEINEMAN:**
3 **Q Is it accurate that repairs on the hospital facilities can**
4 **be done by either group?**
5 A Correct. I'd say could be done by either group.
6 **Q And are done by either group?**
7 A Rarely done by -- rarely done by maintenance.
8 **Q Then we get to the rare. Who normally does holes in the**
9 **walls?**
10 A Maintenance would do a small hole in the wall. So
11 something that a door has hit, so a doorknob size hole,
12 maintenance can do that and has done it. I would also suggest
13 that the in-house group has also done that, too. And they've
14 wrapped, you know, in a construction, you know, the doors often
15 get hit and sometimes they don't get the stops put in, and they
16 get wrapped. They're repaired those, as well.
17 **Q Now Kaleida still does a fair amount of subcontracting of**
18 **construction work, correct?**
19 A Yes, sir, correct.
20 **MR. HEINEMAN:** I'd ask this be marked as Carpenter's 1.
21 **HEARING OFFICER SCOTT:** Sure.
22 (Carpenters Exhibit 1 marked for identification.)
23 **BY MR. HEINEMAN:**
24 **Q Can you identify Carpenter's 1 for me?**
25 A This is the new Gates Vascular Institute building.

Page 56

1 **Q And this was a new construction project?**
2 A Yes, sir.
3 **Q And the tab on it says general contractor, Turner**
4 **Construction.**
5 A That's incorrect. Turner Construction was the
6 construction manager.
7 **Q And the subs were various subcontractors, are they**
8 **accurate, the ones that are listed?**
9 A Yes. It looks accurate.
10 **Q And none of this work on the new construction building was**
11 **done by the crafts, in-house craft group, correct?**
12 A That's correct.
13 **MR. HEINEMAN:** Move the admission of C-1.
14 **MS. CREIGHTON:** No objection.
15 **MR. FURLONG:** No objection.
16 **HEARING OFFICER SCOTT:** Before I admit this, let me see if
17 we can -- how we're going to mark these. You called it
18 Carpenter's one. Can we say that Petitioner's exhibits will be
19 Petitioner's, Carpenter's, Trades, Employer, does that work?
20 **MS. CREIGHTON:** Yes.
21 **MR. FURLONG:** Fine.
22 **HEARING OFFICER SCOTT:** Okay. So Carpenter's 1, hearing
23 no objection, C-1, admitted.
24 (Carpenters Exhibit 1 received into evidence.)
25 **MR. HEINEMAN:** This will be marked Carpenter's 2.

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1 (Carpenters Exhibit 2 marked for identification.)
2 **BY MR. HEINEMAN:**
3 **Q Can you identify this, please?**
4 A Yes. This is the new skilled nursery facility that we put
5 up called Highpoint Nursing.
6 **Q And was this done by your in-house construction crew?**
7 A No, it was not.
8 **Q And this has construction manager, L.M. Ciminelli. Is**
9 **that accurate?**
10 A That's accurate.
11 **Q And these are your various subs?**
12 A Yes.
13 **Q What as the cost of this project, roughly? I apologize**
14 **for taxing you.**
15 A Sorry.
16 **Q That's quite all right.**
17 A I've got a lot of numbers in my head.
18 **MR. HEINEMAN:** Move the admission of C-2.
19 **HEARING OFFICER SCOTT:** Any objection?
20 **MS. CREIGHTON:** No objection.
21 **MR. FURLONG:** No objection.
22 (Carpenters Exhibit 2 received into evidence.)
23 **BY MR. HEINEMAN:**
24 **Q And this was done completely subcontracted out by, through**
25 **your construction manager?**

1 A Yes, correct.
2 **MR. HEINEMAN:** I'd ask this be marked as C-3.
3 (Carpenters Exhibit 3 marked for identification.)
4 **BY MR. HEINEMAN:**
5 **Q Can you identify that for me, please?**
6 A Yes. This is the new adjacent parking ramp that was just
7 recently put up and opened.
8 **Q And was this done by your in-house construction group?**
9 A No, sir.
10 **Q And this is what has been the general contractor, L.P.**
11 **Ciminelli, is that accurate?**
12 A That's correct. This is not a Kaleida facility. They
13 were not employed by Kaleida in any way.
14 **Q What type of a facility is this?**
15 A This is an owned facility by the Buffalo Niagara Medical
16 Campus. It happens to sit on some land that Kaleida had, but it
17 is not a Kaleida project.
18 **MR. HEINEMAN:** Move for its admission.
19 **MR. FURLONG:** No objection.
20 **HEARING OFFICER SCOTT:** No objection, received.
21 (Carpenters Exhibit 3 received into evidence.)
22 **MR. HEINEMAN:** Mark this Carpenter's 4.
23 (Carpenters Exhibit 4 marked for identification.)
24 **BY MR. HEINEMAN:**
25 **Q I'm showing you Carpenter's 4. I assume you are familiar**

1 **with Kaleida's website?**
2 A Yes, somewhat.
3 **Q Is that basically a download of the section of the Kaleida**
4 **website describing its operations, and facilities, and**
5 **personnel?**
6 A It certainly looks like it.
7 **Q And would you agree with me that it is a -- if one were to**
8 **go to look for a place to find out about Kaleida, this would be**
9 **an excellent source, that being an accurate picture of Kaleida's**
10 **operation and what it is?**
11 A Yes, sir.
12 **MR. HEINEMAN:** Move for the admission of C-4 as well.
13 **MR. FURLONG:** What's the relevance?
14 **HEARING OFFICER SCOTT:** I think there is an objection to
15 relevance.
16 **MR. HEINEMAN:** I think it very clearly demonstrates that
17 Kaleida is an acute healthcare hospital and an employer in the
18 hospital industry. Frankly, it also doesn't reflect anywhere in
19 the website that it is engaged as a general contractor. The
20 purpose it is coming in is to show its acute healthcare
21 operations, which I think are relevant to the petition.
22 **MR. FURLONG:** We'll stipulate that Kaleida, which of
23 course is not one hospital but multiple hospitals, has acute
24 healthcare facilities. It has clinics. It is in the hospital
25 business, but it also a construction industry employer for

1 purposes of the law.
2 **HEARING OFFICER SCOTT:** Would that do it for you, Mr.
3 Heineman?
4 **MR. HEINEMAN:** I would just as soon put the exhibit in.
5 **MR. FURLONG:** It's an utterly irrelevant exhibit, a copy
6 of the website.
7 **HEARING OFFICER SCOTT:** Well, I don't think it is
8 irrelevant that it is a healthcare employer, although no one
9 seems to disagree with that. But beyond that, what is -- this
10 is a pretty lengthy document.
11 **MR. HEINEMAN:** It's coming in for the scope of Kaleida's
12 operations and what Kaleida tells us and the public about its
13 operations and the extent of those operations. I think it is an
14 important part of the record to demonstrate to the Board exactly
15 what Kaleida is.
16 **MS. CREIGHTON:** It goes to the crux of his argument, too.
17 **HEARING OFFICER SCOTT:** All right, overruled. I'll admit
18 it. It's lengthy, but not that lengthy.
19 (Carpenters Exhibit 4 received into evidence.)
20 **MR. HEINEMAN:** I didn't think it was too big.
21 **BY MR. HEINEMAN:**
22 **Q Mr. Croston, does Kaleida do any business in the**
23 **construction industry outside of its own facility?**
24 A No, it does not.
25 **Q So you don't like compete with Turner, or L.P. Ciminelli,**

Page 61

1 or anyone else for work in the construction business, correct?
2 A We do not.
3 Q So when you're talking about you're acting as a general
4 contractor, you mean you're bringing in-house that function,
5 correct?
6 A Correct.
7 Q You are not in the construction business?
8 MR. FURLONG: Well, objection. The objection is
9 ultimately the regional director will make that decision as to
10 whether they are a construction industry employer.
11 HEARING OFFICER SCOTT: I think he can ask the question
12 and get the witness' answer on that. You're right, it is the
13 regional director's decision.
14 MR. HEINEMAN: Well, the regional director's decision is
15 whether Kaleida is primarily an employer in the building trades,
16 sorry, in the building construction industry under 8(f). I
17 didn't ask him that. I asked him a very specific question, if
18 he is a construction -- if they are in the business of
19 construction. I think it's a different question.
20 HEARING OFFICER SCOTT: It is a different question.
21 Overruled. You can answer.
22 THE WITNESS: Repeat the question?
23 BY MR. HEINEMAN:
24 Q Is Kaleida in the business of construction?
25 A As a general company, no, it is not. I will say that we

Page 62

1 have a lot of construction. We have dietary. We are not in the
2 business of dietary or housekeeping or other things as well, you
3 know, electronics. We maintain our own equipment. So it's a
4 multi-faceted -- hospitals are a multi-faceted business. But as
5 a competitive, you know, as a competitive nature of any of
6 these, we are not in that business.
7 Q You are not competing with McDonald's or anything.
8 A We are not.
9 Q Now take a look at J-2.
10 A J-2.
11 Q It's wages by union. It lists six crafts. Do you employ
12 more than these six crafts or is this all you use?
13 A I believe this is all that we are employing at this time
14 period from the Trades Council.
15 Q And so I'm clear, Joint 4, the memorandum of agreement,
16 you met with Mr. Miller in 2006.
17 A Mr. who?
18 Q I'm sorry.
19 MS. CREIGHTON: Mr. Brown.
20 BY MR. HEINEMAN:
21 Q Mr. Brown. I apologize.
22 A Yes sir.
23 Q You met with Mr. Brown in 2006. Was anybody else present
24 when you negotiated the MOU?
25 A Not that I recall.

Page 63

1 Q So you negotiated it singly with him. He didn't have 10
2 or 15 other people behind him, correct?
3 A Correct.
4 Q And he represented to you that he could fulfill whatever
5 needs you needed as far as the provision of labor, correct?
6 A Correct.
7 Q And he agreed that he would provide the employees based on
8 the MOU?
9 A Correct.
10 Q And 2007, you sat with Mr. Brown again and you negotiated
11 it a second time, correct? I'm sorry, correct?
12 A Yes.
13 Q Okay.
14 MS. CREIGHTON: You have to speak verbal for the record.
15 BY MR. HEINEMAN:
16 Q Was anybody else present when you did that?
17 A Not that I recall.
18 Q And did you ever ask Mr. Brown to meet with the
19 Carpenters, with the Laborers, with the Plumbers?
20 A I have attended I believe twice their council meeting, I
21 think it's called, so I have, I have presented and met many of
22 the membership, leadership within their council. But the
23 negotiation or signing, they were not present during that time.
24 Q And again in 2011, you dealt solely with Mr. Brown.
25 A Correct.

Page 64

1 Q And did Mr. Brown give you copies of the base documents?
2 For J-3, we have the Northwest Region Agreement of the
3 Carpenters. Had he given you all these?
4 A Yes. Myself and our human resources and payroll divisions
5 to review.
6 Q So Mr. Brown gave you the complete set of those, of all
7 the signatory unions, correct?
8 A Yes.
9 Q And you didn't ask to sit with any of them and negotiate,
10 correct?
11 A I did not.
12 Q Have any of the trades individually reached out to you to
13 renegotiate the MOU?
14 A No, they have not.
15 Q Have any of the individual trades ever reached out to you
16 as far as grievances or anything of that nature?
17 A Not to me, personally, they have not.
18 Q Are you aware of any other competitors in the area,
19 hospitals that have similar programs to this?
20 A Not at this exact design. I do know some regional
21 hospitals who do have large in-house construction groups.
22 Q They have in-house construction groups, correct?
23 A Correct.
24 Q And are they part of an outside agreement with the
25 Building Trades?

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1 A That I don't know that they do or do not.
2 **Q But to your knowledge, Kaleida would be the only regional**
3 **hospital in the area that has directly contracted through an MOU**
4 **with Building Trades that provide in-house construction staff,**
5 **correct?**
6 A To my knowledge, yes.
7 **Q And to your knowledge would those other regional hospitals**
8 **who have construction staff be part of their skilled maintenance**
9 **workforce?**
10 **MR. FURLONG:** Objection. He is employed by Kaleida.
11 There should at least be a foundation laid as to what he knows
12 about other hospitals outside of Kaleida and how they work their
13 maintenance versus construction crews. We should have some
14 foundation.
15 **HEARING OFFICER SCOTT:** Well, the way you phrased the
16 question was to your knowledge?
17 **MR. HEINEMAN:** I thought it was. I always assume every
18 question I ask a witness is to their knowledge.
19 **HEARING OFFICER SCOTT:** Well, if you know. If you know,
20 you can answer. If you don't know, that of course is your
21 answer.
22 **THE WITNESS:** Yeah, I don't know specifically.
23 **HEARING OFFICER SCOTT:** The best testimony is that which
24 comes from personal knowledge. And if you don't know, it's okay
25 to just say so.

1 **BY MR. HEINEMAN:**
2 **Q Mr. Croston, you department is responsible for the**
3 **scheduling of all the trades and the jobs, correct**
4 A Correct.
5 **Q And you work to schedule all of them together, correct?**
6 A Correct.
7 **Q So if you are doing a renovation of a building you want to**
8 **make sure your electrical workers, your plumbers, your**
9 **carpenters are all integrated and working together and not cross**
10 **purposes?**
11 A That's correct.
12 **Q And your department controls that scheduling process?**
13 A If we have oversight on it we do -- it's a team effort so
14 there's a lot of input as to how something is scheduled and
15 done. So we -- it's a coordinated effort between our
16 supervision, the foreman and the labor force.
17 **Q Prior to this petition have there been any prior issues**
18 **where the carpenters were contending that they were not being**
19 **properly represented by the Building Trades Council?**
20 A Not to my knowledge.
21 **Q Have there been any grievances from either the SEIU or the**
22 **IUOE contending that the construction employees were trampling**
23 **on their work?**
24 A I'm not aware of any grievances.
25 **Q Have there been any issues or complaints raised by either**

1 **the SEIU or the IUOE concerning the work being done by the**
2 **construction craft group?**
3 A We had some discussion about it in the last union
4 negotiations, so there was, you know, mention of it, but --
5 **Q What was the mention, what was the issues?**
6 A Just to make sure that they had a relative understanding of
7 delineation between maintenance and in-house construction work,
8 just discussion; and we settled the contract.
9 **Q Would it be accurate that there are -- I'm trying --**
10 **MR. HEINEMAN:** Nothing further, Mr. Hearing Officer.
11 **HEARING OFFICER SCOTT:** Mr. Connors, have you any redirect?
12 **MR. CONNORS:** I do not.
13 **HEARING OFFICER SCOTT:** I have a few questions, not that
14 many.
15 The MOA refers to small construction projects, and looking
16 at one of the exhibits, I think it's Joint Exhibit 1, the
17 amounts of total price are -- they vary quite a bit. Was there
18 any discussion between Mr. Brown and yourself when this
19 memorandum was negotiated, or prior ones, as to what that means?
20 What you consider small and not small?
21 **THE WITNESS:** Yeah, we kind of suggested that a $5 million,
22 you know, cap on -- I'll say, you know, kind of a labors and
23 materials, not necessarily a total project cost, but the
24 constructional side of it would be considered small project,
25 above $5 million became -- you know, considered a much larger

1 project.
2 **HEARING OFFICER SCOTT:** It would be nice if I had a bank
3 account that small.
4 **THE WITNESS:** Me. Too.
5 **HEARING OFFICER SCOTT:** And as far as the scope of the
6 projects I think it's probably self-evident in the exhibit, but
7 they're all over the Kaleida system and Women and Childrens
8 Hospital, Buffalo General --
9 **THE WITNESS:** Suburban.
10 **HEARING OFFICER SCOTT:** Etcetera.
11 **THE WITNESS:** They're at all -- in all facilities.
12 **HEARING OFFICER SCOTT:** Are you -- when you -- you
13 testified, I believe, that you contact the hiring of each of the
14 various trades in the labor, are you required to do that, or is
15 that something that just, you know, it's just the way it works?
16 **THE WITNESS:** It's just the way it works. There's no
17 formal written documents that's -- you know, so they'd like to
18 have two more or three more, but it can be done verbally.
19 **HEARING OFFICER SCOTT:** Except as the individual
20 collective-bargaining agreements might require it. I think you
21 probably have it memorized.
22 **THE WITNESS:** Yeah, there's some balance in the staffing.
23 **HEARING OFFICER SCOTT:** Okay. One of the exhibits, I
24 believe it's -- can I see the wages paid by -- yes, Joint
25 Exhibit 2 shows the wages paid by Kaleida to each of the trades

Page 69

1 over a period to time. And during the time period, pay period
2 7, 2011, 7, 2012, for the carpenters there's an employee count
3 of 68, and I wonder if you could tell us whether those 68
4 employees, or to what extent those 68 employees remained
5 employed steadily throughout their period, or was there -- or
6 had there been layoffs and recalls as required by the project?
7 **THE WITNESS:** Yeah, during that particular pay period there
8 probably were not a lot of layoffs. We have had a variety of
9 layoffs, the coming and going of staff, but we have, as you can
10 see the project list is long, so we've had a very consistent
11 group working with this, so very good men of skilled labor that
12 have stayed with us.
13 **HEARING OFFICER SCOTT:** As far as the carpenters go at any
14 given time how many would you say are on your -- actively
15 working for you?
16 **THE WITNESS:** I'd say there was a good solid 20 that are
17 pretty consistent.
18 **HEARING OFFICER SCOTT:** And the other 48 may come and go?
19 **THE WITNESS:** They may.
20 **THE WITNESS:** Depending on the -- okay.
21 **THE WITNESS:** Yes.
22 **HEARING OFFICER SCOTT:** Okay. The MOA, which is Joint
23 Exhibit 4, provides that the employer can use its own
24 superintendent or have the union supply one, what has the
25 experience been in that regard? Has the -- has Kaleida

Page 70

1 generally furnished the superintendent, or has the
2 superintendent come from the Trades?
3 **THE WITNESS:** I know the Trades have provided the foremen,
4 the superintendent I don't -- I'd have to go see if we pay the
5 superintendent rate or not, I don't believe so.
6 **HEARING OFFICER SCOTT:** Okay. If you know the answer to
7 this, is there anyone on -- in Kaleida's management who has that
8 function or assumes that function?
9 **THE WITNESS:** Yes, predominately the director of the
10 facility would have that overall superintendent function.
11 **HEARING OFFICER SCOTT:** Administratively speaking does
12 Kaleida have a construction department or division?
13 **THE WITNESS:** We do have a division of construction and
14 planning, it's a separate cross center, so we have management
15 people and clerical people in that division.
16 **HEARING OFFICER SCOTT:** Who's in charge of that?
17 **THE WITNESS:** I am.
18 **HEARING OFFICER SCOTT:** You are.
19 **THE WITNESS:** Overall.
20 **HEARING OFFICER SCOTT:** I have no other questions. Does
21 anyone have questions based on my examination?
22 **MR. FURLONG:** I have some questions based on questions that
23 were asked by other counsel, and I'd like it fill the record --
24 **HEARING OFFICER SCOTT:** All right.
25 **MR. FURLONG:** -- to complete the record.

Page 71

1 **HEARING OFFICER SCOTT:** We'll go around once more.
2 **REDIRECT EXAMINATION**
3 **BY MR. FURLONG:**
4 **Q Mr. Croston, looking at Joint Exhibit 4, which is the MOU,**
5 **would you agree with me that nowhere in that document does it**
6 **mention any maintenance work being covered by the MOU?**
7 A It does not mention any maintenance work, right.
8 **Q And although we don't have the collective-bargaining**
9 **agreements for the SEIU and the Operating Engineers for the**
10 **maintenance workers do those -- are you familiar with those**
11 **contracts?**
12 A Yes, I am.
13 **Q And do they describe the nature of the maintenance work?**
14 A In general they do.
15 **Q Okay. Now, to the best of your recollection how do they**
16 **describe it?**
17 A Well, we do have job descriptions and they do reference the
18 job descriptions for those maintenance workers, but it's -- and
19 I do believe it clearly states, you know, maintenance type work.
20 **Q Okay. And did you have those collective-bargaining**
21 **agreement arrangements and agreements prior to 2006?**
22 A Yes, sir.
23 **Q Okay. So is it fair to say that when you entered into this**
24 **with the Building Trades you decided not to simply supplement**
25 **your maintenance crews with more workers, but to actually go in**

Page 72

1 **a different direction with construction workers?**
2 A That's correct.
3 **Q Now, counsel has shown you, and I will show you again, do**
4 **you have copies?**
5 A Yes.
6 **Q Carpenter's Exhibit 1. Yes, that's correct, which is a**
7 **GCI, are you familiar with that facility?**
8 A Yes, sir.
9 **Q And that's a new build?**
10 A Yes, sir.
11 **Q All right. Were there carpenters employed on that facility**
12 **working?**
13 A Yes.
14 **Q Okay. And carpenters in fact from the same North East**
15 **Regional Council of Carpenters?**
16 A I believe so, Maynard was -- I believe the predominate sub
17 for carpenters.
18 **Q All right. Did you have an opportunity to walk through**
19 **that facility as it was being built?**
20 A Yes, sir.
21 **Q Okay. And did the carpenters who were working on that**
22 **facility, from what you could see, did they use the same tools**
23 **and so forth that the carpenters who work under the Building**
24 **Trades Agreement?**
25 A Yes, they do.

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Page 73

1 Q All right. And were they doing the same type of work as
2 the carpenters who build -- who work under your Building Trades
3 Agreement?
4 A Yes, sir.
5 Q And what type of work did you see with Carpenters Local 1
6 that you see with your Building Trades guys? I'm just talking
7 about the carpenters, what were they doing that you saw that's
8 the same as they would do for the renovations?
9 A Construction walls, building ceilings.
10 Q Would you make -- let me stop you right there. Would your
11 maintenance guys construct walls and build ceilings?
12 A No, sir.
13 Q But your construction renovation guys under the BO -- under
14 the Building Trades Agreement would?
15 A Yes, sir.
16 Q And they were doing in on Carpenter's Local -- in the
17 document marked Carpenter's 1, right?
18 A They were doing it, not in this building, our in-house was
19 not doing anything --
20 Q No, no, I misspoke.
21 A Okay.
22 Q I understand your in-house wasn't doing it, but were the
23 carpenters who were employed, were they building walls and
24 ceilings and so forth?
25 A Yes, sir.

Page 74

1 Q And is that the same type of work that's done in-house by
2 the Building Trades carpenters?
3 A Yes.
4 Q All right. And they had the same types of tools?
5 A Yes.
6 Q All right. Now, going to Carpenter's Number 2, did you
7 have an opportunity to walk through that facility when it was
8 being built?
9 A Yes.
10 Q Was it a new building?
11 A Yes.
12 Q Did you have an opportunity to see the carpenters working
13 in that facility?
14 A Yes.
15 Q And were they using the same type of tools that your
16 carpenters under the Building Trades Agreement would use?
17 A Yes, sir.
18 Q Okay. And are those tools different than your maintenance
19 workers?
20 A Yes.
21 Q All right. And going to Carpenter's Number 3, is it a new
22 build, the parking ramp?
23 A Yes, sir.
24 Q Did you have an opportunity to walk -- do a walk-through
25 while that was being built?

Page 75

1 A Yes, sir.
2 Q And did you see carpenters working on that facility?
3 A Yes, sir.
4 Q All right. And were they utilizing the same types of tools
5 and doing the same types of work that your in-house carpenters
6 do?
7 A Yes, sir.
8 Q Now, do you personally know some of the in-house carpenters
9 who work for Kaleida?
10 A I do.
11 Q All right.
12 A Not incidentally personal, but, yes.
13 Q I'm not asking about intimate.
14 A In a professional way.
15 Q But are you familiar, for instance, with a gentleman named
16 Jim Kilger?
17 A Yes, sir.
18 Q All right. Do you know whether Mr. Kilger worked for 40
19 years at an outside contractors, Huber Construction before he
20 came in to work for you?
21 A I did not know that.
22 Q You don't know that, all right. Are you aware of the
23 background of any of your Kaleida workers with respect to
24 working for outside contractors before they go to work for
25 Kaleida?

Page 76

1 A No.
2 Q You're not familiar with that?
3 A No.
4 Q All right. Now, Counsel for the carpenters --
5 Correct Was that --
6 THE WITNESS: That was a "no", yeah. No, I'm not, I don't
7 know who they worked for before.
8 HEARING OFFICER SCOTT: Yeah, if you could just try to keep
9 your voice up.
10 THE WITNESS: Keep it up.
11 HEARING OFFICER SCOTT: You don't have to -- it doesn't
12 amplify so it will pick you up if you keep your voice up so
13 everyone in the room can hear you.
14 THE WITNESS: Okay.
15 BY MR. FURLONG:
16 Q Counsel for the Carpenters asked whether or not you
17 utilized composite crews, do you recall that question?
18 A I recall the question.
19 Q All right. And by composite crews I'm going to suggest it
20 means carpenters, electricians, masons, plasterers, painters,
21 tapers, am I correct on that?
22 A That's my understanding of the term "composite".
23 Q All right. And these crews will work side-by-side doing a
24 renovation is that correct?
25 A Correct.

Page 77

1 Q And if I look at Carpenter's 1,2 and 3, these new builds,
2 built by outside construction employers, will crafts also be
3 working side-by-side to build -- to bring the building to
4 fruition?
5 A Yes.
6 Q And have you witnessed that personally?
7 A Yes.
8 Q And so it's no different with respect to your inside
9 Kaleida carpenters working and the outside construction industry
10 employers that built 1,2 and 3?
11 A Correct.
12 Q Now, you spoke about the Trades provide the foreman, you
13 made that statement, that generally the Trades provide the
14 foremen, right? And what's the duty of a foreman typically on a
15 construction crew?
16 A The foreman is responsible of somewhat of the ways and
17 means in which are being done and the manner in which they are
18 being done. It is an oversight type position.
19 Q They have supervisory capacities and so they direct work,
20 am I correct?
21 A That's correct.
22 Q All right. Do you know a gentleman named Jim Kwitowski who
23 is a taping foreman? If you know, and if you don't that fine.
24 A I really don't know Jim.
25 Q Okay. Do you know a gentleman named Bart Sumbrum?

Page 78

1 A I do know Bart.
2 Q Okay. And is he a plumber?
3 A He's a plumber.
4 Q And is he a foreman?
5 A He's a foreman.
6 Q All right. And does he direct carpenters or does he direct
7 plumbers?
8 A He directs plumbers.
9 Q All right. And if I get a carpenter is he going to direct
10 plumbers or is he going to direct carpenters?
11 A He would direct carpenters.
12 Q Okay. Would you agree with me, Mr. Croston, that each
13 trades send out its foremen and that foreman directs only that
14 trade with respect to completing the work?
15 A I would agree.
16 Q All right. Now, are you aware that the crafts also send
17 out stewards?
18 A Yes.
19 Q And each craft sends stewards out based upon its underlying
20 collective-bargaining agreement am I correct?
21 A Correct.
22 Q Now, would you agree with me that the labor steward has no
23 jurisdiction over a carpenter and a carpenter steward has no
24 jurisdiction over a laborer or any other craft, would you agree
25 with me?

Page 79

1 A The stewards are responsible for policing their own
2 collective-bargaining agreement would you agree with me?
3 A I agree.
4 Q On a craft by craft basis?
5 A I agree.
6 Q And the foremen are responsible for directing the work on a
7 craft by craft basis?
8 A I agree.
9 Q Getting back to Carpenter's 1, 2 and 3, which were new
10 builds. You indicated that the work that your carpenters do
11 inside for your in-house crew is the same as you saw them doing
12 with -- working for construction industry employers, right?
13 A Correct.
14 Q Could your maintenance employees have built -- which were
15 marked Carpenter 1, could they have built that building?
16 A No, sir.
17 Q Why not?
18 A They do not have the skillset to build such a building.
19 Q All right. How about Carpenter 2 and 3? Same conclusion,
20 your maintenance people no way could build these facilities --
21 A That's correct.
22 Q -- am I correct?
23 A Correct.
24 Q Because we're talking about a very different skillset
25 between your maintenance employees and carpenters, whether they

Page 80

1 be working for an independent contractor or in-house?
2 A Correct.
3 Q So when Counsel for the Carpenter says can a union
4 carpenter patch a small hole in the wall you would agree, yes,
5 he can patch a small hole in the wall but he could also do a
6 whole lot more than the maintenance person cannot and will not
7 do?
8 A That's correct.
9 Q Now, you pay your carpenters under the collective-
10 bargaining agreement, I'm going to pull a rough number here, the
11 total package is probably in the area of $40, I'm going to say
12 $40, all right? What's your total package for your maintenance
13 employees? Say for the operating engineers.
14 A There's a variable rate, the operating engineers, you know,
15 have -- you're asking specifically the carpenter rate?
16 Q No, no, no.
17 A Oh.
18 Q For the operating engineer, Operating Engineers represent
19 the maintenance workers, right?
20 A Yes.
21 Q And the SEIU does as well?
22 A Yes.
23 Q All right. Under those agreements are the wage rates and
24 benefit rates more or less than you're paying your carpenters
25 under Joint Exhibit 3?

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Page 81

1 A I would say they're less.
2 Q Substantially less are they not?
3 A Substantially less --
4 Q That's a relative term.
5 A Yeah.
6 Q I'll withdraw it. But it is less.
7 A Kaleida does pay good wages.
8 HEARING OFFICER SCOTT: Got your commercial in there.
9 THE WITNESS: That's right. That's true.
10 HEARING OFFICER SCOTT: Okay.
11 MR. FURLONG: We do appreciate that.
12 BY MR. FURLONG:
13 Q Now, with respect to your carpenters you indicated "yes"
14 and I'm speaking about your in-house carpenters. You said,
15 "Yes, they can patch a hole" and Mr. Heineman went on about them
16 patching a hole, and your maintenance people can patch a hole,
17 depending on whether or not there's structural damage or it's
18 just merely a hole, right?
19 A Right.
20 Q All right. Would you agree with me that with respect to
21 carpenters, in-house carpenters, doing maintenance work that for
22 your steady-Eddie skilled in-house carpenters you're probably
23 looking at one or two percent of their time is ever done doing
24 maintenance?
25 A That's correct.

Page 82

1 Q And 98 percent of their time is working on the types of
2 projects that you've listed as Joint Exhibit 1?
3 A Yes, sir.
4 Q So any inference that they do maintenance work is flat out
5 wrong when you start looking at the percentages, isn't that
6 correct?
7 MR. CONNORS: I'm going to object.
8 MR. FURLONG: I'll withdraw it.
9 BY MR. FURLONG:
10 Q We're left with about 98 percent of their time is spent
11 performing work that's no different than what the outside
12 contractors do in Carpenter's 1, 2 and 3, is that correct?
13 A That's correct.
14 (Pause)
15 BY MR. FURLONG:
16 Q Are you aware that at Kaleida -- well, let me withdraw it.
17 Do you know Mr. Peter Murphy?
18 A Yes, I do.
19 Q What's his position?
20 A He's director of facilities.
21 Q Okay. And are you aware that Mr. Peter Murphy has had, on
22 several occasions, attempted to resolve jurisdictional disputes
23 between the various crafts who are assigned to the Buffalo
24 Building Trades Agreement?
25 A I'll say yes.

Page 83

1 Q Okay. Have there been jurisdictional disputes on the job
2 sites?
3 A None that have reached my level, but I have heard of them.
4 Q Okay. And are you aware, so that we're talking the same
5 language, what a jurisdictional dispute is, one craft saying
6 "That's my work", another craft saying, "No that's my work"?
7 A That's right.
8 Q Okay.
9 A Yes.
10 Q And within a single integrated bargaining unit, say your
11 maintenance bargaining unit, do you have the union arguing with
12 itself over the work?
13 A No.
14 Q All right. So here in this situation you have multiple
15 unions, or at least two unions, with conflicting claims for the
16 work within the bargaining unit?
17 A Yes.
18 Q Mr. Heineman asked you whether or not you're in the
19 construction business, and whether or not -- in other words you
20 perform work outside of Kaleida, and you said no you don't, I
21 perform work inside Kaleida, do you recall that?
22 A Yes, I do.
23 Q All right. But just to reaffirm what I thought came out
24 earlier, when you began this Memorandum of Understanding with
25 the Buffalo Building Trades in 2006 you displaced contractors

Page 84

1 who otherwise would have done the types of jobs that are listed
2 on Joint Exhibit 1?
3 A I don't like the term "displaced" but we did not engage
4 contracts with outside contractors at the level that we were
5 doing prior to this agreement.
6 Q Because now you had 40 and 50 carpenters and multiple
7 others from other crafts while you did it, am I correct?
8 A Yes.
9 Q Now, there has been fluctuations in the work -- the work
10 levels from craft to craft have there not?
11 A Yes, there has.
12 Q In fact recently you laid off about 30 of your carpenters?
13 A Yes.
14 Q And since 2006 you've had occasion where you've had to lay
15 off and hire crafts depending upon your needs, correct?
16 A Yes.
17 Q Now, as I look at the agreement that has been put in the
18 MOU, Joint Exhibit 4, and although we don't have the 2006 or
19 2006 to 2011 I'll ask you just to base -- based on your memory,
20 the language here didn't change at all, the only thing that
21 changed was the dates?
22 A That's pretty much true.
23 Q All right.
24 A Yes.
25 Q And so when you sat down with Mr. Brown there was no

Page 85

1 negotiations to speak of other than to talk about the new term
2 of this agreement, is that correct?
3 A That's correct.
4 Q And how many times on this agreement, Joint Exhibit 4, did
5 you actually have to meet with Mr. Brown?
6 A On this agreement?
7 Q On this agreement, yes.
8 A Just once.
9 Q Just once.
10 A Just once.
11 Q For how long? A few minutes, half hour?
12 A Maybe a half hour.
13 Q All right. So the only thing that was -- the real
14 negotiations with respect to what you pay and who you pay it to,
15 trust funds and everything, that's done outside of your presence
16 with each trade and its set of contractors, am I correct?
17 A You are correct.
18 Q So the history of bargaining here has been really to take
19 what others have negotiated and bring it together and put some
20 dates on it and do your direct hiring?
21 A Correct.
22 Q Now, do you engage in any bargaining with your maintenance
23 units?
24 A Yes, I do.
25 Q And is that face-to-face bargaining?

Page 86

1 A Yes, it is.
2 Q And when you negotiation with your maintenance units do you
3 sit down and exchange proposals back and forth and set new
4 meeting dates and work on language of this nature?
5 A Yes, we do.
6 Q And the fruition of that, what results from that is a
7 collective-bargaining agreement that you have with your
8 maintenance units, correct?
9 A That's correct.
10 Q You didn't do any of that with Mr. Brown, either in 2006,
11 2007 or 2011, you just put the new dates into the underlying
12 collective-bargaining agreement?
13 A Correct.
14 Q So for our purposes there is no real history of bargaining
15 wage rates, benefits, health care or anything, you just took
16 what others already bargaining and put in into the MOU?
17 MR. CONNORS: I'm going to object. I think the history of
18 collective bargaining is for the regional director.
19 MR. FURLONG: Well, the regional director can't make a
20 decision unless the record is complete. So this question
21 certainly pertinent.
22 HEARING OFFICER SCOTT: I think we all understand what
23 we're looking at. The testimony reflects that has been not the
24 traditional bargaining that you often would experience with
25 people sitting around the table for multiple sessions. I think

Page 87

1 the facts speak for themselves, and I don't think we need to
2 characterize it, and the regional director can find --
3 MR. FURLONG: It's being raised because when one reads the
4 cases, if we have to argue the fragmentation issue, they look at
5 is there a long history of bargaining. So that's why this
6 record has to be developed.
7 JUDGE BAUMERICH: The history is what it is.
8 MR. FURLONG: And that's what we're trying to make clear on
9 the record.
10 HEARING OFFICER SCOTT: Okay.
11 MR. FURLONG: I'm wrapping up in a moment.
12 HEARING OFFICER SCOTT: Yeah. Is there still an objection?
13 MR. CONNORS: You answered it.
14 HEARING OFFICER SCOTT: Okay.
15 MR. CONNORS: I think you handled it.
16 HEARING OFFICER SCOTT: Okay.
17 BY MR. FURLONG:
18 Q All of the collective-bargaining agreements that you deal
19 with for the various trades on the MOU they're all different are
20 they not, different rates, wage --
21 A Yes, sir.
22 Q Okay. And again you had nothing to do with actually
23 putting those rates together, ours did?
24 A Correct.
25 Q All right. Now, Mr. Heineman asked you whether or not, to

Page 88

1 your knowledge, the carpenters who were working at Kaleida were
2 properly represented by the Carpenters Union, do you recall that
3 question?
4 A Yes.
5 Q All right. Do you know who Mr. Bodewes (ph)?
6 A No, I do not.
7 Q All right. If I pointed him in this room over here, with
8 the blue shirt, do you recognize him?
9 A No, sir.
10 Q Have you ever seen him on a Kaleida job site?
11 A No, sir.
12 Q Have you ever seen any carpenter representative on -- at a
13 job site, not a steward, not a foreman, somebody from the union
14 hall at the job site monitoring the work?
15 A No, sir.
16 Q And this agreement has been in existence for six years?
17 A Yes.
18 HEARING OFFICER SCOTT: Could the gentleman in the blue
19 shirt identify himself for the record, please?
20 MR. BODEWES: Daryl Bodewes.
21 HEARING OFFICER SCOTT: Thank you.
22 BY MR. FURLONG:
23 Q Do you know Mr. Cappelli sitting in this room?
24 A No.
25 Q The gentleman in the yellow shirt in the back, do you

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1 recognize him as Mr. Cappelli?
2 A No, sir.
3 Q Have you ever seen Mr. Cappelli on any Kaleida job site?
4 A No.
5 HEARING OFFICER SCOTT: The gentleman in the yellow shirt
6 could you identify yourself for the record, please?
7 MR. CAPPELLI: Michael Cappelli.
8 HEARING OFFICER SCOTT: Thank you.
9 BY MR. FURLONG:
10 Q You may or may not know the answer to this, it's my last
11 series of questions, but indicated you had worked in
12 construction as a young man?
13 A Yes.
14 Q Briefly? All right. And in construction would you agree
15 with that it's common that you'll have a job site superintendent
16 who will coordinate all crafts, electricians, masons, whatever,
17 that superintendent is usually the highest ranking person --
18 A Yes.
19 Q -- on the job site?
20 A Correct.
21 Q Okay. So even in the construction industry you have job
22 site superintendents who coordinate the work otherwise each
23 craft would be on its own spinning without any coordination, and
24 are you structured -- you have to answer the question. Is that
25 your understanding?

1 MS. CLEIGHTON: He's not answering the question.
2 THE WITNESS: Yes.
3 BY MR. FURLONG:
4 Q Was that your understanding?
5 A Yes, that's my understanding.
6 Q All right. And is Kaleida's structure, from stewards,
7 foremen and then those who oversee it, similar to what you
8 understand to be the practice in the construction industry on a
9 large construction job?
10 A Yes.
11 MR. FURLONG: Nothing further.
12 HEARING OFFICER SCOTT: Did you understand the question?
13 THE WITNESS: I believe I did.
14 HEARING OFFICER SCOTT: Okay.
15 MR. FURLONG: Thank you.
16 HEARING OFFICER SCOTT: Ms. Creighton?
17 MS. CLEIGHTON: I have no questions.
18 HEARING OFFICER SCOTT: Mr. Heineman?
19 MR. HEINEMAN: Just a few.
20 HEARING OFFICER SCOTT: Okay.
21 RECROSS-EXAMINATION
22 BY MR. HEINEMAN:
23 Q The tools your maintenance carpenters use what are those
24 tools?
25 A Predominantly drills, screwdrivers, you know, small hand

1 tools, table saw.
2 Q And I take it would those also be some of the same tools
3 that I would find in the gang boxes of the construction
4 carpenters?
5 A Yes, they are.
6 Q And the other trades, painters, plumbers, plasterers,
7 laborers, asbestos workers, are those workers also been more or
8 less -- some of them have been continuously employed --
9 A Yes.
10 Q -- by Kaleida?
11 A Yes, sir.
12 Q Okay. So the comments you made about the consistency of
13 employment by the carpenters also applies to the other trades as
14 well?
15 A That's correct.
16 Q And I found this amazing. Your -- IUOE representing
17 carpenters don't complain that an IUOE electrical worker, an
18 electrician is doing something they should be doing? Let me try
19 it again. What trades are in your skill maintenance bargaining
20 unit?
21 A In the IOUE we have carpenters, plumbers, electricians, you
22 know, stationary engineer.
23 Q And none of them ever complained that somebody else is
24 doing work they should be doing?
25 A There is -- there's an occasional question about it, you

1 know, just be -- you know, certain human nature, but there is
2 not a lot of complaining nor grievement of it, formal
3 grievements.
4 Q It would be, from my experience, it would be amazing if you
5 didn't have that going --
6 MR. FURLONG: Does counsel want to become a witness?
7 MS. CLEIGHTON: Consider you're good neighbors.
8 MR. FURLONG: And that's testimony.
9 MS. CLEIGHTON: Right.
10 MR. HEINEMAN: I appreciate that.
11 MS. CLEIGHTON: Yeah.
12 BY MR. HEINEMAN:
13 Q Stationary engineers under your collective-bargaining
14 agreement how do they compare with rates at JX-3? Stationary
15 engineers are paid more, correct?
16 A I don't know that accurately. I don't have their wages
17 memorized, I'm sorry.
18 Q Okay. So am I accurate that you really couldn't compare
19 any of the folks in the IUOE represented maintenance unit with
20 the various rates in the construction crew?
21 A Not in my head.
22 Q Okay. And the 2 percent maintenance, 98 percent, have you
23 ever done a study of that?
24 A No.
25 Q Have any clue as to what the actual percentage is? Do you

Page 93

1 **have any --**
2 A I know that our maintenance group does not engage in
3 renovation --
4 **Q Okay.**
5 A -- and new build, you know, type work.
6 **Q Okay.**
7 A Could there be a small, you know, percentage of -- where
8 someone might subjectively suggest that somebody did something,
9 I suppose.
10 **Q Okay.**
11 A But as a general rule they are two different entities.
12 **Q Okay. So you -- so your maintenance group is not doing new**
13 **builds and renovation --**
14 A That's right.
15 **Q -- my question is both groups do repair on your facilities,**
16 **correct?**
17 **MR. FURLONG:** Objection to the form of the question.
18 Repair of the facility, it could mean anything.
19 **HEARING OFFICER SCOTT:** I think I understand what it means.
20 **MR. HEINEMAN:** I thought I did.
21 **MR. FURLONG:** Well, I don't.
22 **HEARING OFFICER SCOTT:** Can you narrow it at all?
23 **MR. FURLONG:** That's why I made the objection.
24 **BY MR. HEINEMAN:**
25 **Q Mr. Croston, you've been around for awhile, can you -- do**

Page 94

1 **you understand my question? Repair of the facility?**
2 A The -- yeah, I have to break repair to a large repair or a
3 small repair. There are degrees of repair, and I -- you know, I
4 live it and see it --
5 **Q Absolutely.**
6 A -- and I think everyone understands that.
7 **Q Both groups do repairs, correct?**
8 **MR. FURLONG:** Objection, same -- again, the Witness has
9 answered there's different types of repairs.
10 **MR. HEINEMAN:** And I'm trying to get to that --
11 **HEARING OFFICER SCOTT:** Well --
12 **MR. HEINEMAN:** Mr. Hearing officer. Unsuccessfully but I'm
13 trying. If the counsel is afraid --
14 **HEARING OFFICER SCOTT:** You gave a --
15 **MR. HEINEMAN:** -- of the answer maybe he shouldn't have
16 filed the petition.
17 **HEARING OFFICER SCOTT:** Let me see if I can help here. You
18 earlier testified about a hole in the wall, you said one that
19 might be caused by a doorknob, is that -- does that illustrate
20 what you mean by "repair"?
21 **THE WITNESS:** That illustrates what I mean by a small
22 repair.
23 **HEARING OFFICER SCOTT:** Okay. And earlier – even earlier
24 in your testimony I think you characterized the work that the
25 maintenance people do as -- there was a phrase you used, "fix

Page 95

1 break" --
2 **THE WITNESS:** Yeah, break fix.
3 **HEARING OFFICER SCOTT:** Break fix. Is that what you would
4 consider to be a repair as opposed to construction?
5 **THE WITNESS:** That is a repair.
6 **HEARING OFFICER SCOTT:** Okay. And can you give us some
7 examples of what would fall into that category?
8 **THE WITNESS:** The -- let's say the -- we have a lot of
9 doors in hospitals, door become ajar, they become misaligned,
10 the hardware of the door fails, so the door is preexisting it
11 just needs to repaired or fixed so a maintenance individual has
12 the skillset to repair the lockset, reshim the hinge, you know,
13 push the doorframe back into position, that's what I mean by a
14 repair, a maintenance repair.
15 **HEARING OFFICER SCOTT:** And is part of the distinction also
16 that which is existing but perhaps broken as opposed to that
17 which does not yet exist?
18 **THE WITNESS:** Yes.
19 **HEARING OFFICER SCOTT:** Okay. And is it your -- and the
20 percentages you testified about earlier, are those your -- are
21 those simply your best estimates?
22 **THE WITNESS:** They're strictly my best, you know, estimate.
23 **HEARING OFFICER SCOTT:** Okay.
24 **THE WITNESS:** There has not been a study about it.
25 **HEARING OFFICER SCOTT:** Okay. Now, based on what we just -

Page 96

1 - what I just asked you and what you just testified about are
2 you able to answer Mr. Heineman's question as to whether the --
3 if you could go ahead with the question again?
4 **BY MR. HEINEMAN:**
5 **Q Do both groups do repairs on your facility?**
6 **HEARING OFFICER SCOTT:** Before – and before you answer –
7 I'm sorry, go ahead.
8 **BY MR. HEINEMAN:**
9 **Q Do both groups do repairs on your facility?**
10 **HEARING OFFICER SCOTT:** Are you able to answer the
11 question?
12 **THE WITNESS:** It's difficult with the broad definition of
13 repair.
14 **BY MR. HEINEMAN:**
15 **Q I guess what I'm trying to get to, is I understand you're**
16 **not doing renovations and rebuild, major structural problems**
17 **with your maintenance crew, correct?**
18 A Correct.
19 **Q Okay. But you will occasionally use construction employees**
20 **at the smaller repair level to supplement your maintenance crew,**
21 **correct?**
22 A Typically not on a small repair.
23 **Q Okay.**
24 A Possibly on a large repair that might involve a structural
25 damage.

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1 Q An hole in the wall doesn't generally involve structural
2 damage, correct?
3 A It often doesn't. Sometimes the support in there has been
4 compromised so the --
5 Q Assuming the support is not compromised construction
6 personnel will sometimes --
7 A Yes.
8 Q -- those repairs?
9 A Yes, sir.
10 Q Okay. And they will sometimes change a blind, correct?
11 A Yes, sir.
12 Q And they will sometimes fix the carpet?
13 A Yes, sir.
14 Q Okay. Now, you referenced job descriptions to your
15 maintenance workers, what's the job description of a carpenters
16 in your maintenance bargaining unit?
17 A Well, the job descriptions can certainly be provided, but
18 in general it has to do with the maintenance of building type,
19 fixtures, doors, windows, the small repair, and, you know,
20 functional calibration of those moving parts.
21 MR. HEINEMAN: I have nothing further.
22 HEARING OFFICER SCOTT: All right. Thank you for, you're
23 excused.
24 (Whereupon, the witness was excused.)
25 HEARING OFFICER SCOTT: Mr. Connor, is – I know you are

1 going to be leaving us. Before you do though is anything that
2 you've heard here this morning changed your position as to what
3 the appropriate unit is?
4 MR. CONNORS: No, my position of what the appropriate unit
5 is, is what's described by the Petitioner, and that is we would
6 be replacing carpenters with carpenters and they would still be
7 part of this agreement with the Building Trades. That's not
8 what it's going to end up and I suppose I wouldn't want that
9 bargaining unit.
10 HEARING OFFICER SCOTT: I'm sorry, I didn't hear the last -
11 -
12 MR. CONNORS: I suppose if it wasn't going to end up as I
13 described it, which is different bargaining unit, same work,
14 same way it works for the Building Trades, that's fine. If it
15 isn't going to be that way then I guess I wouldn't want that
16 bargaining unit, but I don't know how it's not going to be that
17 way. Because the agreement isn't going to work without it.
18 HEARING OFFICER SCOTT: Understood, I think. Okay. So
19 you're position hasn't changed basically from --
20 MR. CONNORS: No, it hasn't.
21 HEARING OFFICER SCOTT: Okay, that's all I needed to really
22 know.
23 MR. CONNORS: Thank you.
24 HEARING OFFICER SCOTT: Thank you for being here.
25 MR. CONNORS: Anybody have any questions for me on the way

1 out?
2 (No response.)
3 HEARING OFFICER SCOTT: All right. I think this is a good
4 time to break for lunch. How much time do you want to have?
5 MR. FURLONG: Half hour.
6 HEARING OFFICER SCOTT: Anybody want more than that? Half
7 hour fine?
8 (No response.)
9 HEARING OFFICER SCOTT: Okay. We'll resume at 1:15. Off
10 the record.
11 (Whereupon, a brief recess was taken.)
12

1
2 AFTERNOON SESSION
3 HEARING OFFICER SCOTT: Back on the record.
4 Mr. Furlong, the Petitioner is going next.
5 MR. FURLONG: The Petitioner calls John Massaro.
6 (Pause)
7 HEARING OFFICER SCOTT: Raise your right hand, please?
8 Whereupon,
9 JOHN MASSARO,
10 Having first been duly sworn, was called as a witness and
11 testified as follows:
12 HEARING OFFICER SCOTT: Could you, for the record, state
13 your name and spell it for the reporter, please?
14 THE WITNESS: My name is John Massaro, M-A-S-S-A-R-O.
15 HEARING OFFICER SCOTT: Mr. Furlong, go ahead.
16 MR. FURLONG: Good afternoon, Mr. Massaro.
17 THE WITNESS: Good afternoon.
18 DIRECT EXAMINATION
19 BY MR. FURLONG:
20 Q Mr. Massaro, are you employed?
21 A Yes, I am.
22 Q Where are you employed?
23 A I work for Laborers Local 210.
24 Q And in what capacity are you employed?
25 A Business agent.

1 Q And for how long have you been a business agent for Local
2 210?
3 A About four years.
4 Q Would you describe for us, generally speaking, what your
5 duties are as a business agent?
6 A Generally I'll patrol the Erie County, identify some of the
7 work that goes on, visit the job sites, monitor a nonunion
8 companies, contractors rather, handle job site disputes,
9 grievances, check on the -- check on my membership, really.
10 Q So you police your contracts as well as look at nonunion
11 contracts?
12 A Yes.
13 Q Okay. Do you know an individual named Sam Capitano?
14 A I do.
15 Q Who's Same Capitano?
16 A Sam is then business manager for Local 210.
17 Q And are you familiar with Mr. Capitano's signature?
18 A Yes.
19 MR. FURLONG: May I approach the Witness?
20 JUDGE BAUMERICH: Sure. You don't need to ask to approach
21 the witnesses, I assume everybody is going to behave themselves.
22 MR. FURLONG: Well, we put you on the same pedestal as a
23 federal judge, so --
24 HEARING OFFICER SCOTT: Oh, well in that case.
25 (laughter)

1 BY MR. FURLONG:
2 Q I'm directing your attention to a signature, I'm going to
3 ask you; is that Mr. Capitano's signature?
4 A Yes.
5 Q All right.
6 MR. FURLONG: And I have, for the record, shown the Witness
7 Joint Exhibit 4, it is the MOU.
8 BY MR. FURLONG:
9 Q And he indicated he's the business manager?
10 A Yes.
11 Q And to your knowledge, Mr. Massaro, is Laborers Local 210 a
12 party to the Memorandum of Agreement between Kaleida and the
13 Building Trades?
14 A Yes.
15 Q And is there an underlying collective-bargaining agreement
16 that governs the terms and conditions of laborers working for
17 Kaleida?
18 A Yes.
19 Q Does that collective-bargaining agreement have a title?
20 A Does it have a title?
21 Q Is it a heavy highway independent building?
22 A It's the Independent Building Agreement.
23 Q All right. Is it fair to say that Local 210 has a variety
24 of agreements?
25 A Yes.

1 Q And it's the Independent Building Agreement?
2 A Correct, yes.
3 Q And is it -- does that agreement just apply to laborers
4 working on the Kaleida --
5 A Just the laborers, yes.
6 Q As a craft the laborer is a distinct craft, would you agree
7 with that?
8 A Yes.
9 Q Okay. And when -- with respect to your workforce working
10 under the MOU with Kaleida does the hall appoint a steward?
11 A Yes.
12 Q And who does that steward report to?
13 A He'll report to Sam.
14 Q Capitano?
15 A Sam Capitano.
16 Q Business manager?
17 A Yes.
18 Q All right. And is his job simply to protect and police the
19 work with respect to laborers?
20 A Yes.
21 Q All right. Does he have any duties with respect to other
22 crafts or just laborers?
23 A Just the laborers, correct.
24 Q Okay. Do you have foremen on that -- working for Kaleida?
25 A We do.

1 Q Okay. And are those foremen sent out by the hall to your
2 knowledge?
3 A They're either sent out or appointed from the group by Sam.
4 Q All right. Now, what's the job of a laborer foreman on the
5 project working for Kaleida?
6 A Generally to direct the laborers work force as far as their
7 tasks for the different projects they go on within Kaleida.
8 Q Okay. Would that foreman have jurisdiction over any other
9 crafts or just the laborers?
10 A Just the laborers.
11 (Pause)
12 MR. FURLONG: I'm showing the Witness Joint Exhibit 3,
13 which is the accounting of employees in sums of wages.
14 BY MR. FURLONG:
15 Q You haven't seen that document before, Mr. Massaro, but I
16 direct your attention to the inscription for Laborers Local 210,
17 do you see it?
18 A Yes.
19 Q Do you see where it says you have roughly 24 employees
20 working during that period?
21 A Yes.
22 Q To the best of your independent knowledge would that be
23 accurate, that that's roughly the number of people you have
24 working out there?
25 A Yes.

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1 Q Okay. And does that number fluctuate up and down or is it
2 pretty steady?
3 A It's pretty steady. There have been times where they've
4 had planned layoffs, and they're usually -- the laborers are
5 usually called back once they get going with the next project.
6 Q Okay. You were in the room when Mr. Croston was testifying
7 were you not?
8 A Yes.
9 Q And you heard the -- I'll use the word banter back and
10 forth with respect to maintenance worker versus construction
11 worker?
12 A Yes.
13 Q Did you hear that?
14 A Yes.
15 Q All right. Have you ever had occasion to visit the Kaleida
16 job sites?
17 A On occasion, yes.
18 Q And did you have occasion to witness your laborers working?
19 A Yes.
20 Q All right. Now, the laborers who were working when you
21 were there were they performing tasks that were any different
22 than laborers performed on an outside construction project?
23 A No different.
24 Q All right. And what are some of those tasks?
25 A Some of the tasks were demolition, cleanup, material

1 handling, things of that nature.
2 Q All right. And that's --
3 HEARING OFFICER SCOTT: Is your question – I'm sorry, Mr.
4 Furlong, does your question pertain to new builds, existing
5 facilities or what?
6 MR. FURLONG: I'm not sure I understand your question.
7 HEARING OFFICER SCOTT: You said – when the Witness has
8 visited job -- Kaleida's job sites, do you mean new builds --
9 MR. FURLONG: I -- okay.
10 MS. CLEIGHTON: I assume he means any work under those
11 agreements.
12 MR. FURLONG: That's what I did mean.
13 HEARING OFFICER SCOTT: Okay.
14 MR. FURLONG: But let me ask that.
15 HEARING OFFICER SCOTT: Okay.
16 BY MR. FURLONG:
17 Q With respect to work under the MOU, when your 24 guys are
18 working, have you visited those job sites where those
19 individuals were working?
20 A Yes.
21 Q All right. And does your answer change at all, and you saw
22 them doing demolition and other types of things right?
23 A Yes.
24 Q All right. And is that laborer work?
25 A Yes.

1 Q And is that laborer work covered under you collective-
2 bargaining agreement?
3 A Yes.
4 Q All right. And do your laborers -- let me withdraw that.
5 Are you familiar with the work done by construction
6 industry employers such as Mater Construction or Huber
7 Construction or any of these other --
8 A Yes.
9 Q All right. And do you have contracts with Huber and Mater
10 and Dommer(ph)?
11 A We do.
12 Q All right. And are they also assigned to your independent
13 building agreement, those firms?
14 A Yes.
15 Q All right. And do those firms utilize laborers in the same
16 fashion that you know laborers to be utilized by Kaleida?
17 A Yes.
18 Q Now, in -- you indicated you've been a business agent for
19 four years?
20 A Four years, correct.
21 Q During the course of those four years, Mr. Massaro, have
22 you ever been told by Kaleida or Mr. Capitano, or anybody whose
23 come across your paths, that your laborers up there are merely
24 maintenance workers working for Kaleida?
25 A No.

1 Q Where do the laborer's dues get sent?
2 A To the local.
3 Q And do you ever get dues from the UA or the carpenter or
4 the -- any other craft?
5 A No, just the laborers.
6 Q All right. Is it your understanding that the dues that are
7 collected from Kaleida go to the respective craft based upon the
8 work hours for those members?
9 A Yes.
10 (Pause)
11 MR. FURLONG: Nothing further. Thank you, Ms. Massaro.
12 HEARING OFFICER SCOTT: Okay. Ms. Creighton?
13 MS. CLEIGHTON: No questions.
14 HEARING OFFICER SCOTT: Mr. Heineman?
15 MR. HEINEMAN: Yes, thank you.
16 CROSS-EXAMINATION
17 BY MR. HEINEMAN:
18 Q Mr. Massaro, the dues the laborers get are from the workers
19 at Kaleida who are designated the laborers as their
20 representative for purposes of due, correct?
21 A Correct.
22 Q They sign a card and you get the dues, correct?
23 A Correct.
24 Q So if somebody signs the plumbers the plumbers get the
25 dues, correct?

1 A I would imagine so, yes.
2 Q Okay. Same with all the other trades?
3 A Correct.
4 Q Does Laborers Local 210 represent employees at any other
5 hospital other than Kaleida?
6 A Not to my knowledge, no.
7 Q So you have no bargaining unit, no laborers bargaining
8 units at any hospital?
9 A No.
10 Q Am I accurate that you -- your local did not have any role
11 in the negotiation of Joint 4, correct?
12 A Not to my knowledge, no.
13 Q Okay. So it was negotiated by the Building Trades
14 president and Mr. Capitano signed it, correct?
15 A Correct.
16 Q Okay. And the collective-bargaining agreement that's
17 appended to it is your independent building agreement --
18 A Yes.
19 Q -- correct?
20 A Yes.
21 Q Okay. And who do you negotiate the independent building
22 agreement with?
23 A It's between the local and the employer.
24 Q Which employer?
25 A Various employers that choose that agreement to sign.

1 Q Okay. So you say "choose that agreement to sign" so you
2 have an independent agreement in the construction industry, or
3 just an independent agreement which you show to an employer and
4 request them to sign it, correct?
5 A Correct.
6 Q And then if they want to employ people in your craft they
7 sign it, correct?
8 A Yes.
9 Q Okay. So it takes about a half hour or less for you to
10 have a negotiation session with an employer?
11 A Well, I don't negotiate the contract, Sam does.
12 Q When you sign up an employer it takes less than a half
13 hour?
14 A Well, it depends --
15 MR. FURLONG: Objection. I mean, there has to be some
16 framing of this. What -- there's hundreds of employers with the
17 local.
18 HEARING OFFICER SCOTT: Let me see if I can help here.
19 MR. HEINEMAN: Well, let me -- I'll try.
20 HEARING OFFICER SCOTT: You want to rephrase? Go ahead.
21 MR. HEINEMAN: Okay.
22 BY MR. HEINEMAN:
23 Q The employers you sign up with. The independent employers
24 that choose to sign, how long does it take for you to sign them
25 up? About five minutes, ten minutes?

1 A Well, it depends if they read through the contract, or they
2 refer the contract to their attorney to go through, so I'm sure
3 it varies.
4 Q Okay. But there's not a lot of back and forth between your
5 local --
6 A Generally, no.
7 Q No. Okay. So if the employer wants to hire your craft and
8 wants to pay your labor it's a very short process, correct?
9 A Correct.
10 Q You're not going through the contract word by word, there's
11 not a lot of negotiations back and forth, it's --
12 A It is what it is.
13 Q You present the independent agreement --
14 A Right.
15 Q -- and if they choose to sign it they sign it, correct?
16 A Correct.
17 Q And that's collective bargaining in -- with respect to
18 Local 210, that's how you do your collective bargaining,
19 correct?
20 A Correct.
21 Q Okay.
22 MR. HEINEMAN: Nothing further.
23 HEARING OFFICER SCOTT: Mr. Furlong, any redirect?
24 MR. FURLONG: Just quickly.
25 REDIRECT EXAMINATION

1 BY MR. FURLONG:
2 Q How many contractors are signed to collective-bargaining
3 agreements with Local 210, roughly?
4 A We have over 200.
5 Q Okay. And is there an association knows as the CIA
6 Construction Industry Employers Association?
7 A Yes.
8 Q Those negotiations take 10 minutes?
9 A No.
10 Q Did you just negotiate an agreement with the CIA in 2011?
11 A Yes.
12 Q And how many sessions were held to the best of your
13 knowledge?
14 A To the best of my knowledge at least four to five.
15 Q And how long did the sessions last?
16 A Several hours each.
17 MR. FURLONG: Nothing further.
18 HEARING OFFICER SCOTT: Ms. Creighton?
19 MS. CLEIGHTON: No questions.
20 HEARING OFFICER SCOTT: Mr. Heineman?
21 RECROSS-EXAMINATION
22 BY MR. HEINEMAN:
23 Q The Kaleida isn't part of the CEIA, correct or CIEA,
24 correct? They're not part of it?
25 A To the CIEA --

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1 **Q Yes, correct?**
2 A I can't answer that, I don't know.
3 **Q You told us they're a party to the independent agreement**
4 **as what's attached to J-4.**
5 A Correct.
6 **Q And that's the one where you have your agreement and you**
7 **ask the employer to sign it?**
8 A Correct.
9 **Q Okay. That's what I thought.**
10 **MR. HEINEMAN:** Thank you, nothing further.
11 **HEARING OFFICER SCOTT:** The CIEA, if we don't have it
12 already, that stands for Construction Industry Employers
13 Association, correct?
14 **THE WITNESS:** Correct.
15 **HEARING OFFICER SCOTT:** Right about that?
16 **THE WITNESS:** Yes.
17 **HEARING OFFICER SCOTT:** And not to beat this to death, but
18 the terms of that agreement are negotiated by representatives of
19 the association and the union?
20 **THE WITNESS:** Correct.
21 **HEARING OFFICER SCOTT:** And when you refer to independent
22 employers do you mean to say those who are not members of the
23 association but ones who might have approach or who might
24 approach you?
25 **THE WITNESS:** Yes.

1 **HEARING OFFICER SCOTT:** And that process can take anywhere
2 from two minutes to hours depending on how much is involved?
3 **THE WITNESS:** Correct.
4 **HEARING OFFICER SCOTT:** Okay. Anything else anyone?
5 **MR. FURLONG:** I do have one question.
6 **HEARING OFFICER SCOTT:** Okay.
7 FURTHER REDIRECT EXAMINATION
8 **BY MR. FURLONG:**
9 **Q Mr. Massaro, with respect to your dealings with Kaleida**
10 **Health have you ever had occasion to learn about jurisdictional**
11 **disputes between the various trades working under the MOU?**
12 A There was an issue a couple of years ago, yes.
13 **Q What was the issue do you recall?**
14 A It was between the laborer and the carpenter. The
15 carpenter was performing cleanup work after a demolition
16 project.
17 **Q And the laborers claimed that that was their work?**
18 A Yes.
19 **Q All right. And did the two crafts contest over that work?**
20 A I believe so, yes.
21 **MR. FURLONG:** Nothing further.
22 **HEARING OFFICER SCOTT:** By contest what do you mean?
23 **THE WITNESS:** I believe the conversation -- it wasn't -- I
24 don't believe it was formal jurisdictional dispute, I think at
25 the time it was a converse between Sam and possibly Tom, if not

1 Tom it was conversed with -- I believe it was Pete Murphy at the
2 time.
3 **HEARING OFFICER SCOTT:** So resolved informally would that
4 be correct?
5 **THE WITNESS:** Yes.
6 **HEARING OFFICER SCOTT:** Okay.
7 **MR. FURLONG:** We should make it clear, Tom Burke?
8 **THE WITNESS:** Yes.
9 **HEARING OFFICER SCOTT:** And Tom Burke is, for the record?
10 **THE WITNESS:** At time he was the business manager for the
11 Carpenter's Local 276.
12 **HEARING OFFICER SCOTT:** Okay. Thank you. Nothing else?
13 **MR. FURLONG:** Nothing else from me.
14 **HEARING OFFICER SCOTT:** You're excused.
15 (Whereupon, the witness was excused.)
16 **HEARING OFFICER SCOTT:** Do you have another witness?
17 **MR. FURLONG:** We do, Tony Coppola.
18 (Pause)
19 **HEARING OFFICER SCOTT:** Mr. Coppola, could you raise your
20 right hand?
21 Whereupon,
22 TONY COPPOLA,
23 Having first been duly sworn, was called as a witness and
24 testified as follows:
25 **HEARING OFFICER SCOTT:** Thank you, and if you would also

1 spell your name for the record, please?
2 **THE WITNESS:** Coppola, C-O-P-P-O-L-A.
3 **MR. FURLONG:** Good afternoon, Mr. Coppola.
4 **DIRECT EXAMINATION**
5 **BY MR. FURLONG:**
6 **Q Mr. Coppola, are you employed currently?**
7 A I'm currently retired.
8 **Q And from where did you retire?**
9 A Local 41, IBEW.
10 **Q And where is Local 41 located?**
11 A California Road, Orchard Park.
12 **Q Okay. And just so that we're clear on that Orchard Park is**
13 **suburb of Buffalo?**
14 A Yes, it is.
15 **Q And in what capacity were you employed by IBEW Local 41?**
16 A I was an electrician from 1975 until I retired, and in 2005
17 I was elected business manager and I served as business manager
18 from 2005 to November of -- November 1 of 2010.
19 **Q And briefly what are the basic job duties of a business**
20 **manager position of IBEW Local 41?**
21 A The business manager is the principle officer of the local,
22 negotiate all contracts, enforcement of contracts, labor
23 disputes.
24 **Q So basically you're the boss for lack of a better term?**
25 A Correct.

1 Q Okay.
2 A At that time I was, yes.
3 Q Okay. Now, does Local 41 have jurisdiction geographically
4 over the Kaleida facilities?
5 A They're in Erie County, yes.
6 Q And did there come a time when you were asked to sign --
7 what I'm handing the Witness to be Joint Exhibit 4, which is the
8 MOU we've been referring to?
9 A I do remember, this probably is the contract, but -- yes, I
10 was asked to sign this, participate in this agreement.
11 Q All right. Let me just make sure that we're clear on this.
12 This Joint Exhibit 4 has a commencement date of July, 2011, but
13 you were already retired, am I correct?
14 A Right. But I think we have it in the record that this
15 hasn't changes other than the dates. Do you recognize this
16 document from 2006, other than the dates?
17 A Other than the dates, yes, this is the working agreement
18 that they wanted to do at Kaleida.
19 Q Okay. And when you say "they" who is they?
20 A The Building Trades.
21 Q All right. And did Mr. Brown have any role in that to your
22 knowledge?
23 A Yes.
24 Q Okay. And you know Mr. Brown, do you not?
25 A Yes, I do.

1 Q In 2006 what was his position with the Building Trades?
2 A President of the Building Trades, Buffalo Building Council.
3 Q Okay. And IBW was a participating --
4 A A member.
5 Q -- craft member of the Building Trades?
6 A Yes.
7 Q All right. And did there come a time when you were asked,
8 or the IBW Local 41 was asked to sign on to this MOU?
9 A Yes.
10 Q All right. And I see the signature line, there is a
11 signature line for Local 41, but on this document no one signed,
12 is that also the case if we were to look at the 2006 and 2007
13 documents?
14 A That would be correct.
15 Q And did you make a decision not to enter into this MOU with
16 the other crafts on the Building Trades?
17 A Yes, I did.
18 Q Would you tell us for the record why Local 41 took that
19 position?
20 A At the time when the Building Trades were negotiating this
21 Ferguson Electric (ph), which is one of our largest contractors
22 --
23 Q Union contractors?
24 A Union contractor, been in business for over 75 years plus,
25 has been doing work in all the Kaleida buildings. I mean they

1 have many buildings from what I understand. And our contractors
2 were already doing the work under a contractor, I says I
3 couldn't hurt my contractor.
4 Q By that --
5 A I couldn't hurt work -- in other words, they wanted to do a
6 direct hire, I could not take work from a contractor.
7 Q Okay. So you opted on behalf of Local 41 not to sign on to
8 this agreement?
9 A Correct.
10 Q Now, is it your understanding that in 2006, 2007,
11 continuing up to the present day, that Ferguson Electric has
12 continued its relationship with Kaleida Health?
13 A Oh, yes.
14 Q All right.
15 A Yes. At the time when I left, yes, they were doing it and
16 to my knowledge they still are doing it.
17 Q All right. And I'm going to show you a document -- oh, let
18 me withdraw that.
19 With respect to Ferguson Electric are they -- they're in
20 the construction industry, they're a contractor in the
21 construction industry?
22 A Correct.
23 Q And up at Kaleida do the IBW 41 members work side-by-side
24 with the other crafts, including the carpenters?
25 A Yes.

1 Q All right. And you have personal knowledge of that am I
2 correct?
3 A Yes.
4 Q Did you ever have occasion to visit any of the Kaleida work
5 going on and see Ferguson, or have any of your business agent's
6 visit?
7 A Yes.
8 Q Now, I'm going to show you a document that's been marked
9 for identification -- or actually received into evidence as
10 Joint Exhibit 1, I don't think you've ever seen that document,
11 but it purports to be a list of projects performed by the Union
12 Building Trades members for Kaleida going back to 2009. Would
13 your electricians from Ferguson have worked on those projects?
14 A Yes.
15 Q Okay. And what agreement would they have worked under for
16 Ferguson Electric?
17 A Local 41's construction agreement.
18 Q Well, you have multiple agreements did you not?
19 A Correct.
20 Q Is this an inside wireman's agreement?
21 A Yes, it is.
22 Q Now, you indicated, Mr. Coppola, that before you took the
23 position as business manager with the union you worked in the
24 field with tools.
25 A Yes, I did.

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Page 121

1 Q How many years did you work with the tools?
2 A Thirty.
3 Q Okay.
4 A Thirty plus.
5 Q Okay. Can you name some of the contractors that you worked
6 with?
7 A Ferguson Electric, Fry Electric, LaTere (ph) Electric, CIR
8 Electric, IPL Electric.
9 Q These are all Buffalo area contractors?
10 A They're all contractors signed to the inside agreement, but
11 LaTere is a primary Rochester contractor.
12 Q Okay, all right. And during the course of your employment
13 by those contractors, I'm taking it that you had occasional work
14 for general contractors? Let me rephrase that. Your contractor
15 --
16 A Our contractors, yes.
17 Q Worked for general contractors?
18 A Correct.
19 Q And did you ever work on job sites outside, not inside, not
20 Kaleida but general contractors, did you ever work where you
21 worked with other trades?
22 A Yes.
23 Q And you worked side-by-side with other trades?
24 A Yes.
25 Q Okay. Ever work on a job site where there's neutral gates

Page 122

1 set up and primary gates set up in you had a nonunion contractor
2 on the site?
3 A Yes.
4 Q All right. So is it fair to say that trades work side-by-
5 side and integrate their work to some extent in the construction
6 industry?
7 A Definitely, yes.
8 Q Okay. And on these job sites that you worked, Mr. Coppola,
9 is there a method that you plan -- you know, that somebody is
10 actually coordinating the work on the construction site? Who
11 coordinates the work?
12 A If there's a general contractor the general contractor will
13 coordinate the work. If it's an owner the owner will
14 coordination the work. I worked as foreman on many jobs, went
15 to job meetings -- weekly job meetings, everybody had to be on
16 the same page to, you know, know where we're going so we didn't
17 interfere with each other. You don't want to do it twice if you
18 don't have to, you know, so there has to be job coordination.
19 Every trade is represented at a meeting, a job meeting, once a
20 week, that was the usual procedure.
21 Q Okay. Now, the foreman that you referred to, were you ever
22 a foreman?
23 A Plenty of times.
24 Q And when you were a foreman did you have jurisdiction over
25 other crafts or just your own craft?

Page 123

1 A Just my own.
2 Q Okay. And with respect to Ferguson Electric do they have
3 foreman working over at Kaleida?
4 A Yes, they do.
5 Q And do they have -- and do those foremen have jurisdiction
6 just over the electrical workers, the IBW electrical workers?
7 A That's all they have jurisdiction over.
8 Q All right.
9 (Pause)
10 BY MR. FURLONG:
11 Q To your knowledge does Ferguson Electric have stewards
12 working over at Kaleida?
13 A I'm not sure whether they're working at Kaleida or not, but
14 probably yes they do.
15 Q Did 41 have a method of dispatching stewards or naming
16 stewards?
17 A Business manager named stewards.
18 Q All right. Did you ever you occasion to name a steward for
19 Ferguson Electric while they were working over at Kaleida?
20 A At the time I was business manager I did have a steward at
21 Kaleida because they had so much work and they had so many guys
22 working.
23 Q All right.
24 A If it's a small job I don't normally have a steward, but
25 there was quite a bit of work going on at Kaleida so I had to

Page 124

1 name a steward.
2 Q All right. Just a couple of more questions, Mr. Coppola.
3 I think you may have heard some of the dialog earlier about
4 maintenance workers versus construction workers --
5 A Okay.
6 Q I'll ask the question we'll see if you can answer it then.
7 Do your electricians for Ferguson Electric over at Kaleida are
8 they doing maintenance work or construction work?
9 A Mainly construction work. I would say construction work,
10 yes.
11 Q Okay.
12 MR. FURLONG: I have nothing further.
13 HEARING OFFICER SCOTT: Ms. Creighton?
14 MS. CLEIGHTON: No questions.
15 HEARING OFFICER SCOTT: Mr. Heineman?
16 MR. HEINEMAN: Sure.
17 CROSS-EXAMINATION
18 BY MR. HEINEMAN:
19 Q Mr. Coppola, you said mainly construction work.
20 A I would --
21 Q Are those smaller jobs that you do over there?
22 A If we're there working, which they do have -- I know they
23 have a set crew that just does whatever -- I believe his name is
24 Mr. Murphy, asks them to do. They might go and change a
25 ballast, they might go and fix a broken receptacle, something

1 like that. I know they do a lot of work there and there is a
2 crew that Ferguson has there, that works under Mr. Murphy's
3 direction.
4 **Q So whatever Mr. Murphy tells the Ferguson workers --**
5 **Ferguson electricians to do they do it?**
6 A I believe either he works through there, not so much the
7 foreman, but he works through the office.
8 **Q Okay. So he'll --**
9 A He contacts Ferguson --
10 **Q Okay.**
11 A -- and says he wants this job done. Ferguson would pass it
12 down to the men.
13 **Q Okay. And that would include changing ballast,**
14 **receptacles, things like that, it can?**
15 A Whatever, yes.
16 **Q Whatever it is --**
17 A Whatever that want to do --
18 **Q They do it?**
19 A -- Ferguson Electric will do it.
20 (Pause)
21 **BY MR. HEINEMAN:**
22 **Q Now, you -- Local 41 is a member of the Buffalo Building**
23 **Trades Council?**
24 A Yes, it is.
25 **Q Are the sheet metal workers a member of the Buffalo**

1 **Building Trades Council?**
2 A Yes, they are.
3 **Q Are the Concerned Carpenters for Democratic Union a member**
4 **of the Buffalo Building Trades Council?**
5 A I've never heard of them.
6 **Q Okay. So you've never heard of the Concerned Carpenters**
7 **for Democratic Union?**
8 A No.
9 (Pause)
10 **MR. HEINEMAN:** Can the Witness be shown J-4, the MOU,
11 please?
12 (Pause)
13 **BY MR. HEINEMAN:**
14 **Q Can you tell me if the sheet metal workers affiliate of the**
15 **Building Trades is on that page?**
16 A Under the signatures?
17 **Q Yeah, if it's listed on the signature pages at all.**
18 A I do not see the sheet metal workers listed.
19 **Q Do you know what the local affiliate of the sheet metal**
20 **workers is, please? Do you know what the number is?**
21 A No, I don't.
22 **Q Do you know what the local number is?**
23 A No, Sheet Metal International Brotherhood -- sheet metal
24 workers I'm not sure what their title is.
25 **Q Okay. Do you know why they're not listed on this?**

1 A No, I do not.
2 **Q Okay.**
3 **(Pause)**
4 **BY MR. HEINEMAN:**
5 **Q And am I accurate that only unions that are members of the**
6 **Buffalo Building Trades Council were asked at -- to sign this**
7 **MOU, J-4?**
8 A I'm not of that, I couldn't tell you who was asked to sign
9 it.
10 **Q Okay. Does Local 41 represent electricians at any other**
11 **hospital, at any hospital?**
12 A Represent electrician workers?
13 **Q Who work for any hospitals.**
14 A We represent electricians that work for our contractors.
15 **Q Correct. Here's my question; do you represent any**
16 **electricians who work directly for hospitals in Erie County?**
17 A Not that I know of, no.
18 **Q Great.**
19 **MR. HEINEMAN:** Nothing further. Thank you.
20 **HEARING OFFICER SCOTT:** Mr. Furlong, anything further?
21 **MR. FURLONG:** Nothing further.
22 **HEARING OFFICER SCOTT:** You're excused. Thank you.
23 (Whereupon, the witness was excused.)
24 **HEARING OFFICER SCOTT:** He'll make it to the elevator okay.
25 You know, I don't think -- oh, I'm sorry, let's go off the

1 record.
2 (Whereupon, a brief recess was taken.)
3 **HEARING OFFICER SCOTT:** Back on the record.
4 Call your next witness, please?
5 **MR. FURLONG:** Thomas Burke, please?
6 **HEARING OFFICER SCOTT:** Raise your right hand, Mr. Burke,
7 please?
8 Whereupon,
9 THOMAS BURKE,
10 Having first been duly sworn, was called as a witness and
11 testified as follows:
12 **HEARING OFFICER SCOTT:** Thank you. Be seated, please? And
13 is your name spelled just like it sounds, B-U-R-K-E?
14 **THE WITNESS:** Yes.
15 **HEARING OFFICER SCOTT:** Okay, thanks. Go ahead, please.
16 **MR. FURLONG:** Good afternoon, Mr. Burke.
17 **THE WITNESS:** Good afternoon.
18 **DIRECT EXAMINATION**
19 **BY MR. FURLONG:**
20 **Q Mr. Burke, were you employed by the United Brotherhood of**
21 **Carpenters and Jointers of America at any time?**
22 A Yes, I was.
23 **Q Would you tell us when that was?**
24 A From latter part of 1998 until early 2011.
25 **Q And in what capacity were you employed?**

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Page 129

1 A I was the representative for the carpenters in the Buffalo
2 area and then later on in my time Buffalo and Niagara Falls.
3 **Q And what local number would that have been at the time?**
4 A It started out as Local 9 and then they combined them and
5 made it into Local 289, and then about five days before they
6 terminated me they moved everything into Local 276.
7 **Q Okay. And when you say "they terminated you" who**
8 **terminated you?**
9 A The Brotherhood.
10 **Q Now, in what capacity were you employed by the United**
11 **Brotherhood of Carpenters?**
12 A I was a representative in the Buffalo and Niagara area.
13 **Q Okay. And what were the general duties of a representative**
14 **of the Buffalo, Niagara area?**
15 A To basically do what a business agent did, to administer
16 the collective-bargaining agreements and negotiation some
17 process. I was president of the local so run meetings, pretty
18 much everything. I was involved with the funds, the trust
19 funds, pretty much everything that went on in the area.
20 **Q Okay. And were you charged with being familiar with your**
21 **collective-bargaining agreement and was trying to get new**
22 **collective-bargaining agreements?**
23 A Yes, I was.
24 **Q And was part of your -- any part of your duties include**
25 **securing work and trying to organize work opportunities for your**

Page 130

1 **membership?**
2 A Yes.
3 **Q Did there come a time in 2005 when you learned that Kaleida**
4 **was utilizing nonunion contractors to perform carpentry work?**
5 A It actually did come about, just in 2005 it was kind or
6 ramping up and there were continuous nonunion contractors,
7 specifically Telco working in the Kaleida sites. So --
8 **Q Is Telco a Buffalo area contractor?**
9 A They actually -- I think their office is in East Aurora at
10 this time, yes.
11 **Q And they're non-signatory?**
12 A Yes, correct.
13 **Q And they were up at Kaleida?**
14 A Correct, in many Kaleida buildings.
15 **Q I'm sorry, what?**
16 A In many Kaleida buildings.
17 **Q Okay. So obviously union carpenters were not being**
18 **utilized by Telco?**
19 A Correct.
20 **Q And with respect to your position with the local did you**
21 **have a reaction to that?**
22 A We wanted the work to go to our members, and so as a result
23 it would be in our best interest to see Telco exit the
24 employment with Kaleida, and hopefully have our people employed
25 at Kaleida.

Page 131

1 **Q Doing the work Telco had done?**
2 A Absolutely.
3 **Q And did you make any representation or I'll use the use**
4 **threats to engage in any protected concerted activity with**
5 **respect to Telco?**
6 A I don't think we ever -- I ever made threats, but we -- I
7 had a couple of meetings with some people with Kaleida, I
8 couldn't tell you their names at this point, but met with them,
9 there were some offices on -- I believe it was Ellicott (ph)
10 Street around the Trico building, and basically said that, you
11 know, we were losing more and more work in the Kaleida
12 facilities. At that time I was told that, you know, we got all
13 the big stuff, and my response was that I'll trade all the 35
14 and $45 jobs that they've going on for the big ones that we
15 have, which is relative to everything in the industry quite
16 honestly.
17 So basically what was happening was the bigger projects
18 were going to the union contractors, but anything that was small
19 was going to nonunion, and specifically generally Telco, and
20 there was a pouring contractor, and I can't remember the name of
21 them, that was doing all the pouring also.
22 **Q Okay. And to put it bluntly you wanted that work, right?**
23 A Absolutely.
24 **Q And did you bring any of your concerns to Mr. Brown,**
25 **president of the building Trades Council?**

Page 132

1 A I talked to Paul and said that I had met with Kaleida and
2 that we told Kaleida, you know, we were going to have to start
3 picking the hospital because it was a situation that, you know,
4 we couldn't just let go.
5 **Q And after you made this -- and did you make these comments**
6 **to Mr. Brown at a Building Trades meetings, or privately, over**
7 **the phone, do you recall?**
8 A I would imagine that we spoke probably before or after a
9 Building Trades meeting, Your Honor that type of thing, couldn't
10 say specifically.
11 **Q Did you generally, on behalf of the carpenters union attend**
12 **a Building Trades meeting?**
13 A Yes.
14 **Q Were you the rep?**
15 A Yes.
16 **Q And those meetings were once a month, once a week?**
17 A Every week on Wednesday morning at that time at 10:30 and
18 later on I think 10:00.
19 **Q Okay. Now, I'm going to show you a document, which again I**
20 **apologize, found it incorrect but I think we have agreement**
21 **between the parties, it is the same as that which was negotiated**
22 **in 2006, and ask you if you recognize the document?**
23 A It pretty much looks like the first one-year agreement that
24 was signed with Kaleida, pretty much it's called the Memorandum
25 of Agreement, whether it a MOU, MOA, or PLA, pretty much the

1 same thing to me what it was really.
2 **Q All right. If you take a look at that document and I**
3 **apologize for looking over your shoulder, but the document**
4 **references the collective-bargaining agreement, "Contractual in**
5 **the third paragraph, contractual terms of employment applicable**
6 **to the trade in which such individually hired work as modified**
7 **by this agreement shall apply" what collective-bargaining**
8 **agreement would that have been in 2006 with respect to the**
9 **carpenters?**
10 A It would have been the regular collective-bargaining
11 agreement that was in place, and if I recall all the trades were
12 going to be involved had to get a couple of copies of the
13 collective-bargaining agreement to the Building Trades who would
14 in effect forward it to Kaleida so that they would have copies
15 of the CBAs that would be in place and would govern this
16 particular memorandum of agreement.
17 **Q All right. And at that time the carpenters local was not**
18 **part of the North East Regional Council of Carpenters was it**
19 **not?**
20 A It was not.
21 **Q All right. It was a stand-alone local?**
22 A No, it was part of the Empire State Carpenters, the
23 collective-bargaining agreement was -- the agreement said "This
24 agreement on behalf of the members of Local 289 would be with
25 the Empire State Carpenters" --

1 **Q All right. And was that agreement negotiated with the**
2 **local multi-employer bargaining group, the CIEA or the AGC or**
3 **anything like that?**
4 A The one at that time was negotiated with the CIEA but there
5 were independents also that did not get bargaining rights with
6 the CIEA.
7 **Q That I understand, but the contract -- what I'm getting at**
8 **is the contract that you sent to Mr. Brown to submit to Kaleida**
9 **would that have been your CIEA agreement?**
10 A Absolutely.
11 **Q All right. And does that agreement cover just the work of**
12 **carpenters?**
13 A It had reference, I believe, so some mill right work and
14 floor covering in there also.
15 **Q Okay. But carpentry work --**
16 A By virtue of that agreement that anyone that signed to it
17 would sign to pile driving and all of the subsections of the --
18 **Q I think we can agree that Kaleida is not doing much pile**
19 **driving.**
20 A No.
21 **Q But in terms of the basic carpentry work that would have**
22 **been covered by that agreement?**
23 A Absolutely.
24 **Q All right. And that agreement was on 8(f) agreement?**
25 A Correct.

1 **Q And the carpenters never made any showing, a majority**
2 **status with Kaleida, never handed authorization cards and**
3 **anything of that nature, am I correct?**
4 A Correct, to my knowledge there were no 9(a) agreements when
5 I was at the Carpenters at all.
6 **Q Now, that agreement we do not have a copy of it, but that**
7 **agreement would have been limited simply to the performance of**
8 **carpentry work am I correct?**
9 A Correct.
10 **Q And did it have a dues check-off provision?**
11 A It did.
12 **Q And did the local carpentry -- did the local carpenters**
13 **union collect the dues for those performing carpentry work?**
14 A The dues were typically sent to the Empire State funds and
15 then sent back to the locals, yes.
16 **Q But they ended up in your hands?**
17 A Absolutely.
18 **Q And based on work hours performed by carpenters am I**
19 **correct?**
20 A Correct.
21 **Q Not plumbers, not sheet metal workers, not -- anybody else**
22 **but carpenters?**
23 A Correct.
24 **Q All right. And the contributions made to your Taft-**
25 **Hartley Funds would have been contributions spelled out in your**

1 **agreement with the CIEA am I correct on that?**
2 A Correct.
3 **Q Okay. Now, that was in 2006. Did anybody go in with Mr.**
4 **Brown and sign the agreement in 2006, or negotiate the agreement**
5 **with Mr. Brown and Kaleida?**
6 A I think Mr. Brown took care of it himself, but I can't say
7 for sure because I was not there.
8 **Q But let me ask you, you weren't there?**
9 A No.
10 **Q Was -- and to your knowledge was there any representative**
11 **of the Carpenters with Mr. Brown or was he along?**
12 A No, there was nobody from the Carpenters.
13 **Q In 2007, when the one-year agreement -- well, let me**
14 **backtrack. The first agreement was only for a year, and**
15 **subsequent to that there was a five-year agreement and then a**
16 **second five-year agreement that's currently in effect, do you**
17 **agree with me on that?**
18 A Yes.
19 **Q Now, why was the first agreement only for a year if you**
20 **recall?**
21 A It was to see how it was going to work out because there
22 was some concerns early on. I remember talking to Mark Kerch
23 (ph) from the Operating Engineers, because they represented some
24 people that were in in-house maintenance at Kaleida, and, you
25 know, there was concerns that (a) it was going to work out for

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1 Kaleida, and (b) some of the trades were worried, or
2 specifically the operators were worried, was there going to be
3 any trampling on of their jurisdiction that they carried as part
4 of the maintenance folks.
5 Q Right.
6 A Okay?
7 Q And did the Operating Engineers sign the agreement?
8 A Yes, they did.
9 Q Okay. Now, did you ever have occasion during your tenure
10 as the carpenter representative to go over to Kaleida?
11 A Many times.
12 Q Okay. And did you see carpenters working?
13 A Yes, I did.
14 Q Okay. And did you see the types of tools that they were
15 utilizing over at Kaleida?
16 A Yes.
17 Q Would you just for the record, not to be exhaustive, but
18 give me the types of tools that were being utilized by your
19 carpenters over there? And then I'm going to follow-up that up
20 and compare it with outside contractors.
21 COURT REPORTER: I need to change the tape.
22 HEARING OFFICER SCOTT: Off the record.
23 (Whereupon, a brief recess was taken.)
24 HEARING OFFICER SCOTT: Back on the record.
25 MR. FURLONG: Mr. Hearing Officer, may I proceed?

1 HEARING OFFICER SCOTT: Yes.
2 BY MR. FURLONG:
3 Q So, Mr. Burke, during your many trips over to Kaleida did
4 you have an opportunity to observe members of your local
5 working?
6 A Absolutely, yes.
7 Q And did you see the type of work that they were doing?
8 A Yes, I did.
9 Q Would you describe the type of work that you observed your
10 members doing?
11 A They did anything from footers to finish work, so they did
12 concrete, poured and placed concrete work, that was more later
13 on in the process, they did metal, stud, drywall, doors,
14 hardware, ceilings, acoustical ceilings, you know, pretty much
15 anything under the cover of work, and if they -- you would see
16 inside the of hospital any type of medical complex.
17 Q And this was all covered by your agreement with the CIEA?
18 A Correct.
19 Q And by the way the CIEA, is that signed with Construction
20 Industry Employers?
21 A Yes, CIEA stands for Construction Industry Employers
22 Association, yes.
23 Q Now, what types of tools do they utilize when you say them
24 over there at Kaleida?
25 A Well, everybody -- the carpenters had their regular

1 carpenter hand tools, then there were chop saws, there were
2 circular saws, miter saw boxes, screw guns, you know, typical
3 work -- all the tools that were necessary.
4 Q All right. I'm going to show you some exhibits and bear
5 with me.
6 (Pause)
7 MR. FURLONG: You know what, forget the exhibits for a
8 moment.
9 BY MR. FURLONG:
10 Q And you worked in the field for awhile did you not, Mr.
11 Burke?
12 A Twenty-one years.
13 Q Who were some of the contractors you worked for?
14 A For Bauling (ph), Nater (ph), Huber Box, Pole, I mean a
15 multitude of contractors.
16 Q And the types of tools that you described your carpenters
17 over at Kaleida utilizes are those the types of tools that you
18 utilized when you were working in the field?
19 MR. HEINEMAN: I'm going to object to the use of the word
20 "your carpenters", I find that offensive.
21 MR. FURLONG: I really don't care if he finds it offensive,
22 is there a legal objection to it?
23 HEARING OFFICER SCOTT: Well, what was --
24 MR. HEINEMAN: Mr. Hearing Officer, so we're clear --
25 HEARING OFFICER SCOTT: Hold on everyone. Can you repeat

1 the question? Just for me. Don't answer.
2 MR. FURLONG: Yeah. When you were working out in the field
3 the tools that you were utilizing were they any different than
4 the tools you saw your carpenters utilizing over at Kaleida?
5 MR. HEINEMAN: Mr. Hearing Officer, my problem is they are
6 not his carpenters.
7 MR. FURLONG: I think he's testified he was --
8 MR. HEINEMAN: The local that he the business manager of,
9 and I have no objection to that.
10 HEARING OFFICER SCOTT: Is that what you mean?
11 MR. FURLONG: That is what I mean. I don't know if that's
12 a legal objection being raised by counsel or simply he's
13 offended by it.
14 MR. HEINEMAN: I'm offended by it.
15 MR. FURLONG: All right, well that's not a legal objection.
16 MR. HEINEMAN: I thought it was.
17 MR. FURLONG: In any event.
18 BY MR. FURLONG:
19 Q Do you understand that question --
20 MR. HEINEMAN: It was covered by the 14th Amendment.
21 THE WITNESS: Could you --
22 HEARING OFFICER SCOTT: Hold on. You understand --
23 THE WITNESS: I totally understand, yes.
24 HEARING OFFICER SCOTT: You understand the question?
25 THE WITNESS: Yes.

Page 141

1 **HEARING OFFICER SCOTT:** All right. When Mr. Furlong says
2 "your carpenters" he means as represented by your local.
3 **THE WITNESS:** Let me be crystal clear I understand it, I
4 don't own anybody, nor should anybody own the carpenters or
5 anybody else.
6 **MR. FURLONG:** And for the record --
7 **THE WITNESS:** Whether it be International or anybody else,
8 nobody should own them.
9 **HEARING OFFICER SCOTT:** Okay, all right.
10 **THE WITNESS:** They should be free.
11 **HEARING OFFICER SCOTT:** All right. That's all the time we
12 have for speeches.
13 **MR. FURLONG:** All right.
14 **HEARING OFFICER SCOTT:** Let's move on.
15 **MR. FURLONG:** So back to the questioning of the Witness.
16 **HEARING OFFICER SCOTT:** Okay.
17 **BY MR. FURLONG:**
18 **Q With respect to the tools that you utilized during your**
19 **over two decades in the field, were these the same types of**
20 **tools that the carpenters employed at Kaleida were utilizing?**
21 A Other than tools that had come along that were more modern,
22 yes, absolutely.
23 **Q Okay. And with respect to those tools that came along that**
24 **were more modern because you were now out of the field --**
25 A Correct.

Page 142

1 **Q -- were those tools the same as being utilized by your**
2 **carpenters working for Mater, Huber and other --**
3 A Yes, they were.
4 **HEARING OFFICER SCOTT:** Your objection to the choice of
5 words is noted.
6 **MR. FURLONG:** Yeah, I know.
7 **HEARING OFFICER SCOTT:** Thank you.
8 **BY MR. FURLONG:**
9 **Q I'd like to ask you some questions with respect to**
10 **jurisdictional disputes. During your tenure as a carpenter**
11 **representative did there arise any jurisdictional disputes on**
12 **Kaleida job sites?**
13 A Yes, there were.
14 **Q By -- between the crafts that are party to the MOU?**
15 A Yes.
16 **Q Would you describe some of these disputes and your**
17 **involvement with them?**
18 A There was issues between the laborers and carpenters and
19 there was issues between the painters union and the carpenters
20 on several occasions, and I would say more so -- probably in the
21 earlier stages, occasionally something would come up later, but
22 generally in the earlier stages I think there were some issues,
23 yes.
24 **Q And when I say "disputes" are we talking about two crafts,**
25 **maybe three crafts claiming that certain work belongs to them**

Page 143

1 **under their trade jurisdiction?**
2 A Yes.
3 (Pause)
4 **BY MR. FURLONG:**
5 **Q Now, with respect to the CCDU have you had a role in**
6 **helping the CCDU organize and get going?**
7 A Yes, I have.
8 **Q Would you describe that role?**
9 A Just one of the many people who is involved in trying to
10 give the carpenters the democratic role in the union, a role
11 that would allow them to have a say in what their collective-
12 bargaining agreement says, and not be dictated to what is going
13 to be given up, a role that would say who their representative
14 would be and not be dictated as to who their representative
15 would be, a role that would ensure total democracy and not total
16 dictatorship, kind of much like I think any homeowner would want
17 to be able to pay their own bills and not have someone else to
18 tell them how to spend their money. And so, yes, they're
19 involved in that process.
20 **Q And would you expect to remain involved with the CCDU were**
21 **it to become a bargaining representative?**
22 A I'll do anything that I can for the organization to help
23 them through --
24 **Q Have you had occasion to negotiate collective-bargaining**
25 **agreement --**

Page 144

1 **HEARING OFFICER SCOTT:** Hold on for a second. I don't
2 think he finished his answer. And I think this has been
3 happening a few times, sometimes it's the witness, sometimes
4 it's the questioner.
5 **MR. FURLONG:** All right.
6 **HEARING OFFICER SCOTT:** Well, let's let the witnesses
7 finish and let the attorneys --
8 **THE WITNESS:** Okay.
9 **HEARING OFFICER SCOTT:** -- finish their questions before
10 the answer, okay?
11 **THE WITNESS:** Okay.
12 **HEARING OFFICER SCOTT:** Sorry, go ahead.
13 **BY MR. FURLONG:**
14 **Q As a union representative, when you were a union**
15 **representative, did you have occasion to negotiate collective-**
16 **bargaining agreement?**
17 A Yes, I did.
18 **Q And did you have occasion to administer collective-**
19 **bargaining agreement?**
20 A Yes, I did.
21 **Q Do you know Mr. Jim Kilger?**
22 A I do.
23 **Q Has he been involved with the CCDU?**
24 A Yes, he has.
25 **Q And does he have any experience with respect to**

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Page 145

1 **administering or policing carpenter collective-bargaining**
2 **agreement?**
3 A Jim has always been involved in -- he's been a steward in
4 the past, and he's always been an outspoken advocate for the
5 members, and trying to make sure that the collective-bargaining
6 agreement are followed to the letter.
7 **Q And he was a steward?**
8 A He had been a steward at some point, both generally
9 probably through most of his career, he was always a foreman or
10 general foreman to be honest with you. Probably generally just
11 a foreman.
12 **Q Okay. Do you know an individual named Bob Kulczyk?**
13 A I do.
14 **Q And has Mr. Kulczyk a carpenter?**
15 A He is.
16 **Q And is he sitting in this room?**
17 A He is.
18 **Q Can you point him out?**
19 A He was sitting next to you right there with his arm folded
20 with the lighter shirt on.
21 **MR. FURLONG:** The record should reflect that. Mr.
22 Kulczyk's in the room.
23 **BY MR. FURLONG:**
24 **Q Did Mr. Kulczyk have any positions with the Carpenters**
25 **Union?**

Page 146

1 A He negotiated all the collective-bargaining agreements, he
2 was at the table for most all the collective-bargaining
3 agreements from probably 1999 on until the International
4 abolished the Buffalo, Niagara local, and I believe they did
5 some sort -- I don't know the agreement exactly, but when they
6 did the concessionary agreement I don't know, we were not
7 involved.
8 **Q Did Mr. Kulczyk have any role with any of your trust funds?**
9 A Bob was a trustee on the Buffalo Pension Fund.
10 **Q And did he have any role with respect to administration of**
11 **the carpenters apprenticeship program?**
12 A Bob was a teacher and he was --
13 **Q Let's be clear on that, a teacher of what?**
14 A Of the apprentice program, some of the apprentice program
15 classes. And if I'm not mistaken back in the earlier times of
16 1999ish area I believe he was kind of a lead person in Buffalo
17 before the Buffalo Pension -- or I's sorry, the Buffalo
18 apprenticeship program merged with the Empire apprenticeship
19 program. First it was Dick Cole and then Bob after him. So Bob
20 is really been intimately involved with the apprenticeship, and
21 knows it well and is actually a teacher by trade, theoretically.
22 Schooling wise I should say.
23 **Q Is Mr. Kulczyk involved with the organizing committee for**
24 **the CCDU?**
25 A Yes, he is.

Page 147

1 **Q Do you know a Mr. Tim McCormick (ph)?**
2 A I do.
3 **Q Mr. McCormick a carpenter?**
4 A Yes, he is.
5 **Q Is he involved with the organizing committee for the CCDU?**
6 A Yes, he is.
7 **Q And did he have any role with the Carpenters Union with**
8 **respect to either the formation or administration of collective-**
9 **bargaining agreement?**
10 A He didn't negotiate in the collective-bargaining agreement
11 but he was a financial secretary and an officer for probably the
12 better part of at least 10 years, and probably a little longer I
13 would suspect.
14 **Q Okay. Mr. Russ Barrone? Are you familiar with Mr.**
15 **Barrone?**
16 A I am.
17 **Q Does he have a role with the CCDU?**
18 A He does.
19 **Q And is he part of the organizing committee for the CCDU?**
20 A He is.
21 **Q Had he worked at Kaleida?**
22 A Yes, he did.
23 **Q And did Mr. Barrone ever act as a steward or any other --**
24 **or hold any other union office or title while he was -- while**
25 **you were head of the union?**

Page 148

1 A Mr. Barrone was an officer in the old Local 289, he was a
2 steward for -- on and off for many years, he was a steward at
3 Kaleida, he was as steward at several road jobs, very large road
4 jobs. So he was a very passionate union person.
5 **Q Okay.**
6 **HEARING OFFICER SCOTT:** Can I interject? I don't hear
7 anyone objecting, and maybe I'm just thick, but why are we going
8 into this?
9 **MR. FURLONG:** Well, first we -- I'm hearing some inference
10 over here that the CCDU may not be able to represent people
11 under this agreement. But secondly if you look at one of the
12 lead cases, Mr. Hearing Officer --
13 **MS. CLEIGHTON:** I just want to clarify this.
14 **MR. FURLONG:** -- which is 9 -- that's what I thought I
15 understood, but let me get to that in a moment.
16 **MS. CLEIGHTON:** You mean that they were incompetent to --
17 **MR. FURLONG:** No, that they're not going to be allowed
18 under the MOU, they're not going to be allowed to participate
19 under the MOU, that's what I --
20 **MS. CLEIGHTON:** Well, what I -- yeah, but what does that
21 have to do --
22 **MR. FURLONG:** Are we off the record?
23 **HEARING OFFICER SCOTT:** No, we're on the record.
24 **MS. CLEIGHTON:** I'm not sure what --
25 **MR. FURLONG:** Well, let me get to something else, all

1 right?
2 **HEARING OFFICER SCOTT:** So let's -- okay.
3 **MR. FURLONG:** Under one of the lead cases, Mallinckrodt
4 Chemical Workers, and I'll give you the cite, 162 NLBR 387, it
5 lists different factors that the regional director is going to
6 have to consider in resolving this -- our petition, resolving
7 this case.
8 One of those factors is; does the new union, for lack of a
9 better phrase, have the ability and the experience to represent
10 these workers.
11 **HEARING OFFICER SCOTT:** Okay.
12 **MR. FURLONG:** And that's why I'm going through it.
13 **HEARING OFFICER SCOTT:** Do you have a lot more?
14 **MR. FURLONG:** No.
15 **HEARING OFFICER SCOTT:** Okay. Go ahead.
16 **MS. CLEIGHTON:** I just want to be clear that we didn't
17 take a position on that. We took a position on whether a local
18 had to be affiliated with an international union.
19 **HEARING OFFICER SCOTT:** Okay.
20 **MR. FURLONG:** Which I'll get to that in a moment.
21 **HEARING OFFICER SCOTT:** Okay.
22 **MR. FURLONG:** Back to Mr. Barrone.
23 **BY MR. FURLONG:**
24 **Q Did you finish your answer where he was a steward on**
25 **several jobs?**

1 A Yes, he was.
2 **Q Now, I want to ask you about with respect to the carpenters**
3 **local that signed this agreement, Local 289, is that local still**
4 **in effect?**
5 A No, it is not, but that would have been signed
6 theoretically by Empire State Carpenters, it may have said 289
7 on there but it should have been on behalf of 289.
8 **Q Let me show you. Do you have a signature there for Mr.**
9 **Bodewes? Do you recognize his signature?**
10 A I would say, yes, that's his signature.
11 **Q Do you know Darryl Bodewes?**
12 A I do.
13 **Q Does Mr. Bodewes have any experience at all negotiating**
14 **collective-bargaining agreement?**
15 A To my knowledge, no.
16 **Q Can you name me a single agreement that he's ever**
17 **negotiated?**
18 A I cannot.
19 **Q Do you know a Pete Woodard?**
20 A I do.
21 **Q Who's Mr. Woodard?**
22 A He's the fellow sitting there with his hand in his mouth.
23 **Q And does he hold a position with Local 289 or its**
24 **successor?**
25 A I believe he was appointed president by the international,

1 I don't believe -- that's as far as I know.
2 **Q Right. And with respect to Mr. Woodard does he have any**
3 **experience at all negotiating collective-bargaining agreements?**
4 A Not to my knowledge.
5 **Q All right. And one last individual, Carl Nasker? (ph)?**
6 A I do.
7 **Q Who's Mr. Nasker?**
8 A He is the director of apprenticeship and training in the
9 Rochester site, and he is a member of the former Local 85 out of
10 Rochester. Currently I believe he's ascended to the vice
11 president seat of the Local 276, and I want to correct something
12 I said a moment ago. I believe Mr. Woodard was appointed vice
13 president of Local 276 by Doing McKerin (ph) in Washington, and
14 then as subsequently many people resigned and quit they've moved
15 up, so Mr. Woodard, I don't believe when I stated he was
16 appointed president, I don't believe he was appointed vice
17 president. Mr. Nasker was appointed some other position in the
18 local, I believe he resigned that position, and through a
19 multitude of resignations I believe that executive board decided
20 they were going to make him vice president, is what Mr. Nasker
21 is now I believe.
22 **Q And does Mr. Nasker, to your knowledge, have any experience**
23 **at all negotiating collective-bargaining agreements?**
24 A Not to my knowledge.
25 **Q Okay.**

1 **MR. FURLONG:** I'm going to have to get copies of this --
2 what are we at, Petitioner's 1 I think, right?
3 **HEARING OFFICER SCOTT:** This will be your first exhibit.
4 While you're marking that, Mr. Woodard, is that you in the black
5 suit sitting in the back row?
6 **MR. WOODARD:** It is.
7 **HEARING OFFICER SCOTT:** Okay. Strike the testimony about
8 him having his hand in his mouth, I don't care about that, and
9 let's not have any more of it, please.
10 (Petitioner Exhibit 1 marked for identification.)
11 **MR. FURLONG:** I'm going to show the document and I will
12 make copies of it.
13 (Pause)
14 **MR. FURLONG:** It may be worthwhile to get copies of this
15 now, Mr. Hearing Officer. Can we do that?
16 **HEARING OFFICER SCOTT:** All right, yeah. Let's go off the
17 record.
18 (Whereupon, a brief recess was taken.)
19 **HEARING OFFICER SCOTT:** Back on the record.
20 I'll say it again on the record, but let me say I don't
21 know whether that was intended as a jab, maybe it wasn't.
22 **THE WITNESS:** It was not.
23 **HEARING OFFICER SCOTT:** Okay. Fine.
24 **THE WITNESS:** Certainly not.
25 **HEARING OFFICER SCOTT:** Okay, fine. Okay, Mr. Furlong, do

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1 you have something?
2 **MR. FURLONG:** Yes. The Petitioner's subpoenaed Peter
3 Woodard and the record should reflect that Mr. Woodard has
4 honored the subpoena, is here.
5 **HEARING OFFICER SCOTT:** Okay. And in regard to the
6 testimony that I've struck, I'm going to reverse my ruling on
7 that. In an off-the-record discussion I told the Witness that I
8 had taken him at his word that his identification of Mr. Woodard
9 as the guy in the back with his hand in his mouth was not meant
10 in any disparaging way, simply that's how he identified him
11 based on what he saw at the moment. So we're good.
12 (Pause)
13 **BY MR. FURLONG:**
14 **Q Mr. Burke, I've put before you for identification**
15 **Petitioner's Exhibit 1, which it titled "Resolution 70,**
16 **carpenters organizing committee" are you familiar with**
17 **Resolution 70?**
18 A In a limited capacity at best.
19 **Q All right. Have you had an opportunity to review this**
20 **document?**
21 A I have.
22 **Q And to your knowledge is this a full and complete copy of**
23 **Resolution 70?**
24 A I believe it is.
25 **MR. FURLONG:** I move that it be received and then I'll

1 question him about some of the contents of it.
2 **HEARING OFFICER SCOTT:** Any objection?
3 **MS. CLEIGHTON:** No objection.
4 **MR. HEINEMAN:** No objection.
5 **HEARING OFFICER SCOTT:** Received.
6 (Petitioner Exhibit 1 received in evidence.)
7 **BY MR. FURLONG:**
8 **Q Pursuant to Resolution 70, Mr. Burke, is it your**
9 **understanding that any independent labor organization that**
10 **replaces the UBC as a bargaining representative will be**
11 **chartered by the Building Trades?**
12 A That's my understanding.
13 **Q As well as by the AFL-CIO?**
14 A Yes.
15 **Q And they well then be able to sit at all Building Trades**
16 **meetings having been chartered by the Building Trades?**
17 A That would be my understanding because currently, as far as
18 I understand it, for some years the UBC does not sit at the
19 Building Trades, only as a guest.
20 **Q By the way, if the North East Regional Council of**
21 **Carpenters a member of the AFL-CIO?**
22 A To my knowledge they're not.
23 **Q Are they a member of the Building Trades?**
24 A I don't believe they can be because the International is
25 not a part of the AFL-CIO, so subsequently they're not a part of

1 anything, they may sit but I don't believe they can be a part of
2 anything, from a legal standpoint, I don't believe.
3 **MR. FURLONG:** Nothing further, thank you.
4 **HEARING OFFICER SCOTT:** Ms. Creighton?
5 **MS. CLEIGHTON:** No questions.
6 **HEARING OFFICER SCOTT:** Mr. Heineman?
7 **MR. HEINEMAN:** A few.
8 **CROSS-EXAMINATION**
9 **BY MR. HEINEMAN:**
10 **Q Do you have an elected position with the CCDU?**
11 A No.
12 **Q Do you have any position with the CCDU?**
13 A Just on the steering committee.
14 **Q Does the CCDU have any elected officers?**
15 A Not at this point.
16 **Q has it held any elections?**
17 A Has not.
18 **Q Is it affiliated with any AFL-CIO organization?**
19 A No.
20 **Q Is it affiliated with Sheet Metal Workers Union?**
21 A Absolutely not.
22 **Q Being funded by the Sheet Metal Workers International**
23 **Union?**
24 A There's funding coming from the Sheet Metal Workers, yes.
25 **Q What other entities are funded with CCDU, other than the**

1 **Sheet Metal Workers?**
2 A There are other trades that are helping with paid staff.
3 **Q Can you identify those, please?**
4 A Either the Plasterers Union, the Electricians Union, Sheet
5 Metal Workers Union, I'm not sure who else to be very candid
6 with you.
7 **Q Did the Sheet Metal Workers -- is the Sheet Metal Workers**
8 **International represent carpenters anywhere in the country?**
9 A I would have no knowledge of that.
10 **Q Do they represent carpenters in New York?**
11 A I don't believe so.
12 **Q Do the Electricians represent any carpenters in New York?**
13 A I don't believe so.
14 **Q Do the Plasterers Union represent any carpenters in New**
15 **York?**
16 A I really don't think so.
17 **Q Does CCDU represent any carpenters in collective bargaining**
18 **arrangements currently?**
19 A Not at this time, no.
20 **Q There are no contracts between the CCDU and any employers**
21 **in the carpentry industry, correct?**
22 A Correct.
23 **Q Does the CCDU have an apprentice school?**
24 A No, they don't.
25 **Q Does it have a pension fund?**

1 A Not at this time, no.
2 **Q Does the CCDU have a health and welfare fund?**
3 A Not at this time.
4 **Q Has it ever represented carpenters in any capacity**
5 **anywhere?**
6 A No. Well, it has in that it has had meetings and it has
7 outlined an agenda and so on, but as far as a formal with dues
8 paying, no.
9 **Q Has it dealt with any employers concerning terms and**
10 **conditions of employment?**
11 A It has dealt with employers as far as what the agenda is,
12 but as far as terms of employment under a collective-bargaining
13 agreement, no.
14 **Q So it hasn't even started negotiations with any employer?**
15 A That's correct.
16 **MR. FURLONG:** Objection, I mean, I think that counsel is
17 well aware that until you get certified you can't engage in
18 negotiations.
19 **HEARING OFFICER SCOTT:** Well, at least with respect to the
20 petitioned for unit. Do you have a question?
21 **MR. HEINEMAN:** Actually I thought there was 8(f) and I
22 thought there was voluntary recognition under -- sorry.
23 **HEARING OFFICER SCOTT:** Well, wasn't your question a bit
24 broader than that?
25 **MR. HEINEMAN:** It was, I was trying to encompass

1 everything.
2 **HEARING OFFICER SCOTT:** Okay. Overruled. Did you answer?
3 **THE WITNESS:** I did.
4 **HEARING OFFICER SCOTT:** Okay. If there's an objection in
5 the future though just wait. Okay?
6 **THE WITNESS:** I answered him because I didn't hear the
7 guys.
8 **MR. FURLONG:** And I appreciated the answer too.
9 **BY MR. HEINEMAN:**
10 **Q The -- you told us when you went to job sites, or you went**
11 **to Kaleida you saw the carpenters using hand tools, correct? A**
12 **variety of hand tools, screw guns, drills, etcetera?**
13 A Correct.
14 **Q When you were business manager did you -- did you ever**
15 **visit job sites in -- on which carpenters were engage in**
16 **maintenance work?**
17 A When I was a representative I would say that when I went to
18 sites they were doing what carpenters do, and that was what I
19 had outlined, okay?
20 **Q Well, let me ask it a different way. Did Local 276 have**
21 **any maintenance bargaining units anywhere?**
22 A Well, first of all Local 276, the agreements were with the
23 Empire State Carpenters, not the local, they were on behalf of
24 the local by the Empire State Carpenters. So, no, the answer to
25 that would be, no, Local 276 didn't have any collective-

1 bargaining agreements with anybody.
2 **Q And Local 276 is part of the Empire State Council, not**
3 **collective-bargaining agreements in any maintenance collective-**
4 **bargaining agreements?**
5 A Not that I can recall.
6 **Q Did Local 276 and the Empire State Council represent any**
7 **hospital personnel?**
8 A The only people that would have been in a hospital that the
9 Empire State would have represented were people under the MOU
10 from Kaleida.
11 **Q Okay.**
12 A Okay? But that was just typical construction workers.
13 **Q Okay. And you'll grant me that the Kaleida agreement is**
14 **between the Building Trades and Kaleida, correct?**
15 A My interpretation is the agreement with Kaleida is the same
16 as any other MOU that is with the Seneca Nation, with the
17 Buffalo schools project or any PLA, so I guess, yes, they
18 generate between the Building Trades and the entity, or the
19 owner, so to speak, and actually not the owner because it's
20 illegal to have the owner, it's the construction folks, and
21 that's where they are.
22 **Q Okay. And so does -- other than Kaleida, to your**
23 **knowledge, does the Empire State Council represent any**
24 **carpenters only bargaining units of employees employed by**
25 **hospitals?**

1 A By hospitals?
2 **Q Yes.**
3 A No.
4 **Q Okay.**
5 **(Pause)**
6 **BY MR. HEINEMAN:**
7 **Q And there -- Have here been employees continuously**
8 **employed, members of the carpenters continuously employed at**
9 **Kaleida since the inception of the primary * in 2006?**
10 A I would say there are employees continuing employed by
11 probably all or our signatories since they started with various
12 signatories. So the answer with -- yes, just like every other
13 employer.
14 **Q Okay. I'm just really focusing on Kaleida.**
15 A I apologize.
16 **Q You never negotiated a separate agreement with Kaleida,**
17 **correct?**
18 A I think as we determined earlier the Kaleida MOU, PLA,
19 whatever you chose to call it, was negotiated by Mr. Paul Brown
20 and Mr. Croston or the folks at Kaleida.
21 **Q Okay.**
22 A Okay? So I did not negotiate that at all, no, sir.
23 **Q Okay. So the Building Trades would negotiate it and the**
24 **various agreements of the Trades were merely appended for that**
25 **negotiated agreement, correct?**

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1 A You mean in the Kaleida case?
2 **Q Yeah.**
3 A Yes.
4 **Q And PLA, have you ever negotiated with PLA?**
5 A I've had negotiation with PLA, yes.
6 **Q And who did you negotiate the PLA with?**
7 A Usually it's with the construction manager or the --
8 **Q Well, tell me about the one you negotiated?**
9 A Duke Energy and the Blue Cross and Blue Shield.
10 **Q And how many pages was it?**
11 A I couldn't tell you.
12 **Q Was it two pages?**
13 A No, it was not two pages.
14 **Q Okay. And it covered a particular construction project,**
15 **correct?**
16 A Generally --
17 **MR. FURLONG:** Can I ask what the relevance of any of this
18 is?
19 **HEARING OFFICER SCOTT:** Do you have an objection?
20 **MR. FURLONG:** Objection.
21 **MR. HEINEMAN:** The problem I have is that Petitioner seems
22 to be mushing, and I've heard it in argument and now this
23 Witness, the concept of a PLA and this MOU, which is a very
24 different, completely different animal, actually. And I just
25 want to try to clarify the record so that the reader of the

1 record is not misled into this morass.
2 **HEARING OFFICER SCOTT:** You can go into that. Overruled.
3 **BY MR. HEINEMAN:**
4 **Q You negotiated the PLA with Duke Energy, and Duke Energy is**
5 **the owner of the facility?**
6 A No, they're not.
7 **Q Who is Duke Energy?**
8 A Duke Energy was the builder of the building.
9 **Q Okay.**
10 A And, you know, now that I think about it I think they are
11 the owner of the building.
12 **Q Okay.**
13 A As a matter of fact.
14 **Q Were they the owner or the builder or both?**
15 A I believe they were the owner of the building and they were
16 the construction manager of the building.
17 **Q Now, when Duke Energy built its power plant --**
18 A No, it was a --
19 **Q Go ahead.**
20 A It was a Blue Cross and Blue Shield Building.
21 **Q Great. When Duke Energy built the Blue Cross and Blue**
22 **Shield building who employed the members of the various trades?**
23 A The various contractors.
24 **Q Okay. Were any of them employed by Duke Energy?**
25 A Not that I recall.

1 **Q Were any of them employed by Blue Cross?**
2 A Not that I can recall.
3 **Q Okay. So you would agree with me that the PLA governed the**
4 **employment of the construction workers employed by the various**
5 **construction contractors on the job site, correct?**
6 A I'm not sure I understand your question, but I'm going to
7 try and answer it as I understand it.
8 **Q Sure.**
9 A The paperwork in both cases goes back to the collective-
10 bargaining agreement, okay? And that's what governs what's done
11 on the site, unless something is specifically changes in the
12 paperwork. In all honesty Mr. Brown has a --probably history of
13 being brief, to say the least, and more than likely if someone
14 else had negotiated it wouldn't have been two pages. No offense
15 to Mr. Brown, he did a wonderful job, and we've got tons of man
16 hours out of it, but that simply is the case, from my
17 perspective.
18 **Q I once had a PLA on a napkin, it's wonderful. But the --**
19 A You and Paul would be tremendous together then.
20 **Q The PLA though, getting back to it, governed -- does not --**
21 **did not govern the employees of Duke Energy, it governed the**
22 **relationship between the contractors and the contractor's**
23 **employees, correct?**
24 A It governed the relationship of the workers on the site.
25 **Q Right.**

1 A And the contractors performing the work.
2 **Q Correct. And the contractors performing the work were the**
3 **employers of the employees on the site, correct? Not Duke**
4 **Energy?**
5 A That's correct.
6 **Q Okay. And the PLA was limited to the construction of a**
7 **single building, correct?**
8 A Yes.
9 **Q Okay. Do you have any recollection of how long the PLA**
10 **was? I haven't seen a good napkin in about 10 years but I'm**
11 **open to it, so about how long was the PLA?**
12 **MR. FURLONG:** I have to objection at that. We're so far
13 afield here, I mean, there's no possible relevance to this line
14 of questioning to the issue that's been phrased?
15 **HEARING OFFICER SCOTT:** This particular question or the --
16 **MR. FURLONG:** The whole Duke Energy PLA thing.
17 **HEARING OFFICER SCOTT:** No, I think it was appropriate to
18 go into that, I mean, do you have much more on this?
19 **MR. HEINEMAN:** No, I was trying to get him --
20 **HEARING OFFICER SCOTT:** Is your question how lengthy the
21 PLA was or how determinative?
22 **MR. HEINEMAN:** Well, I was trying to get to its
23 comprehensiveness.
24 **HEARING OFFICER SCOTT:** Okay.
25 **MR. HEINEMAN:** But --

Page 165

1 HEARING OFFICER SCOTT: Go ahead.
2 BY MR. HEINEMAN:
3 Q Do you recall how lengthy it was at all?
4 A How lengthy the job was or --
5 Q The PLA.
6 A -- the document?
7 Q The PLA.
8 A It would be speculative, I don't know.
9 Q Okay, that's fine.
10 A I mean it certainly wasn't two pages.
11 Q Okay. And the MOU here Kaleida's" governs the direct
12 employment by Kaleida of employees that by in large it regularly
13 employees over a lengthy periods of time, correct?
14 A I think that's open for interpretation because what's a
15 lengthy period of time? There's people that are employed there
16 for, you know, a month, four weeks, two months, six months,
17 they're in and out.
18 Q How long, to your knowledge, are the longest people there?
19 A Some are --
20 Q I'm talking about carpenters.
21 A There's probably people there that are there for -- as I
22 said, as I've answered earlier, there's people that are there
23 since the beginning and there's people that are with all of our
24 employers since the beginning.
25 Q There have been people --

Page 166

1 A You know, from the beginning of their time, if you will.
2 Q There have been people there since 2006 then?
3 A Sure.
4 Q Okay. And of the 69 carpenters employed there how many
5 have been there since 2006?
6 A I don't believe there's 69 employed there at this point.
7 Q Okay.
8 A I believe it's substantially less, maybe around 20.
9 Q Okay. And they're all --
10 A And --
11 Q Go ahead.
12 A If I based on that twenty I can't even imagine there's more
13 than four, I don't know, I'm guessing.
14 Q Okay.
15 A And so I have no scientific knowledge of that, so that's
16 just a guess on my part.
17 Q Not being a scientist I'm okay with that. But from your
18 knowledge did Kaleida attempt to keep basically the same crew
19 throughout the period, based on its needs?
20 A I'm not sure I understand your question because I mean the
21 same crew, there's been many people in and out of there, and so,
22 you know, the faces have changed the names have changed
23 immensely, so --
24 Q I think Kaleida is moving its workforce around from project
25 to project, job to job, correct?

Page 167

1 A Yes.
2 Q And the size and scope of the carpentry work at least meet
3 the size and scope of the carpenter's jurisdiction within their
4 agreement, correct?
5 A Well, it would be scope, I don't know that there was any
6 size that's called out in a collective-bargaining agreement as
7 far as work. Okay, and what I mean by size, I mean, you can go
8 not for less than a day --
9 Q Okay.
10 A -- I think is the collective-bargaining agreement. But
11 beyond that if you're referring to size, I mean --
12 Q The former IBW business manager indicated that his people
13 were doing -- changing out balusters and fairly minor
14 assignments. You would have no -- you had no object when you
15 were a business manager to carpenters doing the most minor or
16 carpentry tasks, correct?
17 A When I was a representative?
18 Q Correct.
19 A I --
20 MR. FURLONG: Objection, the foundation has to be first did
21 they do the most minor before you ask did you have an objection
22 to it. It assumes a fact not in evidence with respect to this
23 Witness.
24 HEARING OFFICER SCOTT: It does, it does. Maybe you could
25 ask him --

Page 168

1 BY MR. HEINEMAN:
2 Q Did they do patching holes in walls, fixing doors, changing
3 out doors, things of that nature?
4 A I can only assume.
5 Q Okay.
6 A I can only assume.
7 MR. FURLONG: Objection and -- witnesses can't assume, and
8 it should be directed by the hearing officer.
9 HEARING OFFICER SCOTT: Well, you can testify to what you
10 see and what you've heard, what you've been told, what you know
11 from your own personal knowledge. You don't want to guess. If
12 you don't know you don't know.
13 THE WITNESS: I know they put up walls, I know they put in
14 doors and doorframes and things like that. As far as patching a
15 hole in a wall, first of all the taper would do the compounding
16 on the walls, so if it's like, you know, -- beyond that I don't
17 know.
18 (Pause)
19 MR. HEINEMAN: Nothing further.
20 HEARING OFFICER SCOTT: Mr. Furlong, any redirect?
21 MR. FURLONG: I do.
22 REDIRECT EXAMINATION
23 BY MR. FURLONG:
24 Q Mr. Burke, the rates of pay, the rates of contributions to
25 the carpenters annuity fund, the rates of contributions to the

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1 pension fund, so on and so forth, those were set in your
2 underlying CIEA Agreement were they not?
3 A That's correct.
4 Q And you had a role in negotiating those benefits and rates
5 of pay and so forth?
6 A Up until the last agreement that I believe --
7 Q When you were --
8 A -- Mr. Haynes (ph) and Garrison (ph) --
9 HEARING OFFICER SCOTT: Whoa, whoa.
10 MR. FURLONG: I apologize.
11 HEARING OFFICER SCOTT: Let him answer, please.
12 MR. FURLONG: Go ahead.
13 THE WITNESS: I was involved up until the last agreement
14 which I believe Mr. Haynes and Mr. Garrison negotiated, Mr. Bant
15 (ph), the three of them, I had nothing to do with that one. But
16 prior to that from my time in '98 on I did.
17 BY MR. FURLONG:
18 Q And those terms and conditions only apply to carpenters,
19 not to plumbers or any other craft, right?
20 A Correct.
21 Q And is it true that every craft bring its own negotiated
22 agreement to the table with respect to affixing it to the MOU?
23 A Correct.
24 MR. HEINEMAN: Objection. Mr. Hearing Officer, there's no
25 evidence whatsoever that any craft ever brought anything to the

1 table with Kaleida. Assumes a fact not in evidence. Actually
2 it may be taking one out a --
3 MR. FURLONG: No, actually it's not. Perhaps the phrase
4 "bringing it to the table" was a wrong phrase to use. I didn't
5 mean to negotiating table, I meant appending it to the MOU.
6 HEARING OFFICER SCOTT: It's a turn of phrase.
7 MR. FURLONG: Right.
8 HEARING OFFICER SCOTT: Maybe you could rephrase it.
9 MS. CLEIGHTON: He crossed and testified that he doesn't
10 know.
11 MR. FURLONG: He got two copies from each is what I
12 understood cross and testify, but I'll rephrase it, okay?
13 HEARING OFFICER SCOTT: Okay, just so the record is clear.
14 BY MR. FURLONG:
15 Q So that the record is clear, plumbers worked under an
16 agreement negotiated by Local 22 did they not?
17 A Correct.
18 Q And the bricklayers, under an agreement by the Bricklayers
19 Local 3, correct?
20 A Yes.
21 Q And the carpenters under a Carpenter agreement negotiated
22 with its outside contractors, correct?
23 A Yes.
24 Q And the plasterers with an agreement negotiated with its
25 contractors, and the painters and tapers with agreements

1 negotiated with their contractors, am I correct on that?
2 A Yes.
3 Q And so each craft was separate with respect to the wages
4 and benefits that it received based upon its own collective-
5 bargaining agreement?
6 A Yes.
7 Q And the terms and conditions that governed, other than
8 those that were common, listed on the MOU, and I think the only
9 one was a window of starting time, other than that the terms and
10 conditions for each craft were determined by the specific craft
11 in its collective-bargaining agreement negotiated away from
12 Kaleida with their outside contractors?
13 A That's correct.
14 Q Is that correct, is that your understanding?
15 A Yes, it is.
16 Q Right. Now, Mr. Heineman asked you about the stability of
17 the workforce over at Kaleida and how long they've maintained
18 their employment there, so on and so forth, are you aware with
19 contractors out in the field that a contractor -- let's take an
20 example, Huber Construction, are you familiar with Huber?
21 A I am.
22 Q All right. And is it true that they maintain a very steady
23 workforce in terms of the same guys coming back year in and year
24 out?
25 Q Virtually all of the contractors do, in fact Jim Kilger

1 worked for Box Line (ph) probably for 35 years, maybe more, so,
2 yes.
3 Q And contractors will tend to call the same guys back year
4 in and year out if they like their skills, is that correct?
5 A Yes, if they have the work, yes.
6 Q So that's very typical of a construction industry employer,
7 at least in your experience?
8 A Yes, it is.
9 Q Now, I want to get into, for a moment, the role of Mr.
10 Brown and the Carpenter agreement. Mr. Brown was president of
11 the Building Trades at the time these negotiations took place
12 and these MOUs were signed?
13 A To my knowledge, yes he was.
14 Q Did Mr. Brown have any role whatsoever in the negotiating
15 the terms and conditions that were set forth in the Carpenter's
16 agreement with the CIEA?
17 A No.
18 Q While you were a carpenter rep did Mr. Brown ever intercede
19 and seek to adjust a grievance on behalf of the carpenters?
20 A No.
21 Q Did Mr. Brown ever attempt to mediate or take a position
22 with respect to a jurisdictional dispute having to do with the
23 carpenters?
24 A No.
25 Q So when it came down to protecting or establishing terms

Page 173

1 and conditions of employment for the carpenters the Building
2 Trades, through its president, had no role whatsoever?
3 A That's correct.
4 Q And that would include any Building Trades official, not
5 just Mr. Brown, that would include the vice president, the
6 secretary/treasurer as well, am I correct?
7 A That's correct.
8 MR. FURLONG: Nothing further.
9 HEARING OFFICER SCOTT: Any recross, Ms. Creighton, Mr.
10 Heineman?
11 RECROSS-EXAMINATION
12 BY MR. HEINEMAN:
13 Q Were there any grievances between the Carpenters Union and
14 Kaleida?
15 A As I stated earlier in my testimony, yes there are, there
16 were.
17 Q At Kaleida?
18 A Yes.
19 Q What were they?
20 A Jurisdictional, I mean there was not a formal grievance.
21 If you mean that it went to like the plant or anything, no, but
22 there were --
23 Q Jurisdictional issues?
24 A -- jurisdictional issues.
25 Q Were there any grievances?

Page 174

1 A Not that I can recall.
2 Q The counsel has shared that Mr. Brown wasn't involved in
3 any grievances and there were none, correct?
4 A As far as the carpenters goes?
5 Q The carpenters.
6 A To my knowledge, no.
7 Q Okay. And the jurisdictional disputes were resolved
8 between the two trades, correct?
9 A Generally if they could be, yes.
10 Q Okay. And did Mr. Brown get involved in them at all?
11 A No.
12 Q So it was a successful grievance procedure was involved at
13 its lower level within the trades, correct?
14 A I don't know if it was successful or not but it was --
15 Q It was resolved?
16 A -- usually it was resolved in some fashion.
17 Q Okay. That's fine. When you were the business manager for
18 the Carpenters you had independent contractors, correct?
19 A When I was the representative there there were independent
20 -- yes.
21 Q And when you negotiated a contract with the independents
22 you would present them with the CIEA Agreement, and if they were
23 interested in signing they would sign a -- either the agreement
24 itself or an agreement to agree to it, correct?
25 A They would not stipulate their bargaining rights to the

Page 175

1 CIEA --
2 Q Correct.
3 A -- and they would sign the same agreement probably with the
4 exception with the University of Buffalo there was workers
5 employed at UB direct for UB, and I don't believe we ever had
6 anything, nor that it exists today I don't believe, in that
7 particular case.
8 Q You don't have a collective-bargaining agreement with the
9 University of Buffalo?
10 A No.
11 Q Okay. Aside from the University of Buffalo though the --
12 HEARING OFFICER SCOTT: Your answer --
13 THE WITNESS: Oh, I'm sorry, no, I answered "No."
14 BY MR. HEINEMAN:
15 Q Aside from the University of Buffalo though, with respect
16 to independence, they would be given the agreement and they
17 would either accept it, they would sign it or sign something
18 adopting it, but they would agree to its terms, correct?
19 A There was a Favorite Nations clause, so you can't change
20 and give on group a more favorable option or favorable
21 conditions, terms and conditions than we can another. So the
22 agreement would be the same for all, and that would be it.
23 Q Okay. And the negotiations that would take place with
24 these independents would be -- could take five minutes, a half
25 hour, two hours? Generally they either accept the terms or they

Page 176

1 don't.
2 A Or three months.
3 Q Okay. But it can be a very short process?
4 A It could and it may not be.
5 Q And so what Mr. Brown did here was provided the MOU, the
6 appended agreements, and that's what was accepted by Kaleida,
7 correct?
8 A Well, I believe he first negotiated the MOU.
9 Q Right. And given the appended agreements.
10 A We gave every -- everyone gave two copies of the
11 collective-bargaining agreement.
12 Q And Kaleida signed on?
13 A And then Kaleida, to my recollection, signed on.
14 Q Okay.
15 A Some trades did not.
16 Q Okay.
17 A I believe there were two or three trades that did not.
18 Q And are you aware of why the sheet metals workers did not
19 sign on?
20 A To my recollection the couple of trades that did not sign
21 on --
22 Q Well, just asking about the sheet metal workers. I've
23 already heard it from the IBW so I'm trying to save time. Just
24 the sheet metal workers.
25 A It would be a carbon copy.

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1 Q Okay.
2 MR. HEINEMAN: Nothing further.
3 HEARING OFFICER SCOTT: I have a couple of questions. Was
4 Local 289 in existence at the time the MOA was signed in 2011?
5 THE WITNESS: No.
6 HEARING OFFICER SCOTT: How about the previous ones?
7 THE WITNESS: Yes.
8 HEARING OFFICER SCOTT: When did Local 289 -- you may have
9 already testified about this, forgive me if you did but when did
10 they go out of existence?
11 THE WITNESS: Around April the 4th of 2011.
12 HEARING OFFICER SCOTT: Okay. You mentioned millwrights,
13 and for the record could you explain to us what a millwright
14 does?
15 THE WITNESS: Well, it would set the machinery -- typically
16 set the machinery in plant settings. Okay? Conveyors and
17 things of that nature, so heavy industrialized machinery in like
18 auto plants and cereal plants and all kinds of manufacturing
19 settings.
20 HEARING OFFICER SCOTT: If you know without looking at it,
21 do you know whether millwrights are covered by the contract that
22 has been -- the collective-bargaining agreement that's been
23 appended to the MOA?
24 THE WITNESS: You mean for the Kaleida one you're talking
25 about?

1 **HEARING OFFICER SCOTT:** Right.
2 **THE WITNESS:** I couldn't tell you, I don't know.
3 **HEARING OFFICER SCOTT:** In your experience, are millwrights
4 typically covered in collective-bargaining agreements between
5 the Carpenters and the employers?
6 **THE WITNESS:** Yes.
7 **HEARING OFFICER SCOTT:** Okay.
8 **THE WITNESS:** Typically what you see like on an MOU or
9 whatever the line for the floor layer, the line for the
10 millwrights, a line for the carpenter, even though they are all
11 subdivisions, if you will, of the United Brotherhood of
12 Carpenters, okay? And even though many times one of them is not
13 involved, you know, many times you won't see the mill right
14 involved in a project where you see the floor layer or the
15 carpenter involved.
16 **HEARING OFFICER SCOTT:** If you know has Kaleida employed
17 any millwrights during any of the terms of these MOAs, successor
18 of the MOAs?
19 **THE WITNESS:** I'm quite certain they have never employed a
20 mill right.
21 **HEARING OFFICER SCOTT:** Okay. Any questions based on that?
22 **MR. HEINEMAN:** Well, I would ask what the CCDU's position
23 is on millwrights. Are they given millwrights because I've
24 never heard of that.
25 **HEARING OFFICER SCOTT:** I – well, they're excluded in the

1 Petition, that's why I asked, and I think this is something that
2 I may ask you to think about taking a position on in your final
3 statements, and perhaps in your briefs. The Petition would
4 exclude the millwrights, if there are any, and I don't -- that's
5 why I was exploring that with the Witness, I don't know if there
6 are any.
7 **MR. FURLONG:** I'm informed there are no millwrights there,
8 therefore there's no need to petition for them.
9 **HEARING OFFICER SCOTT:** I know, but you specifically
10 excluded them in you Petition, and I -- and there may be a
11 contrary position from the other parties, that's why I raised
12 it. It's just something for you to think about before the
13 hearing closes, and perhaps to just agree whether first of all
14 there are any millwrights and whether there should be -- whether
15 they should be excluded as the Petition does exclude them.
16 **MR. HEINEMAN:** Millwrights are including in the overall
17 bargaining.
18 **HEARING OFFICER SCOTT:** I -- yeah.
19 **MR. HEINEMAN:** Part of -- it is part of the bargaining.
20 **HEARING OFFICER SCOTT:** Right.
21 **MR. HEINEMAN:** They are.
22 **HEARING OFFICER SCOTT:** I'm aware that Article 38 I think
23 of the agreement and that's why I raised it because they're
24 excluded in the Petition but they're covered by the agreement,
25 so that may be something that has to be resolved, I don't know.

1 But I just wanted to bring it to everybody's attention.
2 **MR. FURLONG:** Well, we can resolve it right now. We'll
3 move to amend the Petition to include millwrights, which we
4 understand don't work there anyway.
5 **HEARING OFFICER SCOTT:** Any objection?
6 **MR. HEINEMAN:** It's a little late in the game, the
7 millwrights haven't been notified that there have bargaining
8 rights will be petitioned for.
9 **MR. FURLONG:** Well, it's not late in the game if nobody is
10 working there. How do you notify them?
11 **HEARING OFFICER SCOTT:** I would tend to agree with that.
12 In any case would there be a sufficient number that it would
13 affect the showing of interest? I doubt it very much. Well,
14 let's just hold that thought until the end of the hearing.
15 Okay?
16 Mr. Burke, thank you, you're excused.
17 (Whereupon, the witness was excused.)
18 **HEARING OFFICER SCOTT:** Why don't we break for -- until
19 five after three. Off the record.
20 (Whereupon, a brief recess was taken.)
21 **HEARING OFFICER SCOTT:** Back on the record.
22 Mr. Furlong, your next witness.
23 **MR. FURLONG:** CCDU calls Bob Kulczyk to the stand.
24 (Pause)
25 **HEARING OFFICER SCOTT:** Mr. Kulczyk, I'll swear you in.

1 Whereupon,
2 ROBERT KULCZYK,
3 having first been duly sworn, was called as a witness and
4 testified as follows:
5 **HEARING OFFICER SCOTT:** I'm going to have you spell your
6 name for the reporter, please?
7 **THE WITNESS:** K-U-L-C-Z-Y-K.
8 **MR. FURLONG:** Good afternoon, Mr. Kulczyk.
9 **THE WITNESS:** Good afternoon.
10 **DIRECT EXAMINATION**
11 **BY MR. FURLONG:**
12 **Q Mr. Kulczyk, were you at any time a member of the**
13 **Carpenters Union?**
14 A Yes, I am -- was.
15 **Q Okay. And when were you a member of the Carpenters Union?**
16 A Since 1978 up until I was dismissed in the end of March.
17 **Q Of 2012?**
18 A Of 12, right.
19 **Q You were expelled?**
20 A Expelled.
21 **Q And were you expelled by virtue of your activities on**
22 **behalf of the CCDU?**
23 A Yes, I was.
24 **Q Okay. Mr. Kulczyk, do you have any role with the CCDU?**
25 A Yes, I'm part of the steering committee.

1 Q Have you been involved with the CCDU since its inception?
2 A Yes, I have.
3 Q Now, you're employed at Kaleida Health are you not?
4 A Yes, I am.
5 Q Before we get to that I want to talk a little bit about
6 your experience working with the tools. How long have you been
7 a carpenter?
8 A Almost 34 years, commercial, before that I did residential
9 to put myself through college.
10 Q And how long have you been a member of the UBC or any of
11 its successor --
12 A Almost 34 years.
13 Q Okay. Now, when did you begin working at Kaleida Health?
14 A April 16th of 2006.
15 Q And prior to April 16th of 2006 did you work for area
16 contractors?
17 A Yes, I did.
18 Q And where these union contractors?
19 A Absolutely, all of them.
20 Q And would you name some of them for me, please?
21 A I started my career with Balling Brothers Construction
22 (ph), I then went to work for Mater Construction and over my
23 course of the years I worked for several general contractors,
24 such as Scafari, I worked -- I actually spent a couple of years
25 in a mill shop at Forest Materials for over two years, worked

1 for a couple of out of town contractors, RW Dig and most of my
2 career has been with the interior with Mater Construction, but I
3 have -- Ciminelli I spent some time with doing foundation work,
4 so I've had a broad spectrum of employment.
5 **Q Now, when you were working with the tools for these outside**
6 **contractors did you ever have occasion to act as a foreman or**
7 **general foreman?**
8 A Yes, I was.
9 **Q And would you be appointed to that position by the**
10 **contractor or would you be appointed by the union?**
11 A I was always -- my foreman, I was always appointed by the
12 contractor.
13 **Q Okay. And as a foreman general -- excuse me, as a foreman,**
14 **not a general foreman -- is there a distinction between a**
15 **foreman and general foreman?**
16 A Yeah, usually in terms of the scope of the work, how big
17 the job is, and the foreman usually controls the job in that
18 vicinity. General foreman will usually encompass the whole job,
19 say a large job that he has multiple floors to take care of so
20 he'll usually oversee that.
21 **Q Oh, so from a layman's standpoint the general foreman is a**
22 **higher position than the foreman?**
23 A That is correct.
24 **Q Okay. And is the foreman, a carpenter's foreman that you**
25 **worked -- when you worked as a carpenter's foreman would you**

1 have jurisdiction over carpenters?
2 A Absolutely.
3 Q Would you have jurisdiction over other trades or just the
4 carpenters?
5 A Just the carpenters.
6 Q Okay. Now, did there come a time, Mr. Kulczyk, when you
7 were hired by Kaleida Health?
8 A Yes, there was.
9 Q And when was that?
10 A That was in April 16th of 2006.
11 Q And in what capacity were you hired? Were you hired into a
12 particular job or as a certain trade or whatever?
13 A I was hired as a carpenter, I was brought in as a foreman,
14 one of the two foremen that was appointed at the time to give us
15 a short to see how this would transpire with Kaleida.
16 Q And what was your previous employer just before you went to
17 Kaleida?
18 A I left Buffalo Life Science; I was with Mater Construction
19 at the time.
20 Q Okay. And you went in as a carpenter, correct?
21 A Right.
22 Q And generally speaking how many carpenters worked at
23 Kaleida Health?
24 A On average anywheres (sic) from 20, 25, up to as many as
25 60. I've had under my crew generally -- it fluctuates, I had --

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Page 185

1 When I was at Childrens for the last four years I've had an many
2 as twenty, and I've had as few as six.
3 Q Well, let's be clear Childrens Hospital being a --
4 A Kaleida facility.
5 Q Kaleida facility?
6 A Uh-huh.
7 Q All right. And have you worked for outside contractors,
8 Mater, Dake (ph) and everything, where they had similar numbers,
9 anywhere from twenty or to six?
10 A Oh, absolutely, depending on the type of project it was,
11 whether it be the airport, whether it be a university job, a
12 hospital, it always would fluctuate on the time, you know, at
13 the job, how many -- you know, when was the day for completion,
14 how big the job was, the expanse of it, you know, how many man
15 hours were planned on it, that's how a contractor would send out
16 his men.
17 Q Okay. I want to talk a little bit about the nature of the
18 work that you do at Kaleida, and then I'm going to make a
19 comparison toward two things, one, maintenance work and then the
20 other is work that you performed prior to going to Kaleida. On
21 a daily basis is there a typical day at Kaleida? Is there
22 something that you're going to be doing day-in and day-out, or
23 is it just varied depending on the job?
24 A It -- on the job we always had specific projects we were
25 responsible for. For instance, when I was --

Page 186

1 Q When you say "we" you're talking about at Kaleida or the
2 different --
3 A At Kaleida.
4 Q Okay.
5 A At Kaleida.
6 Q All right, just so we're clear.
7 A Okay?
8 Q Yeah.
9 A The last floor I did that Childrens Hospital was we
10 completed in November of last year, of 2011, that was a total
11 gut, and that was a postpartum unit the 7th floor of the Variety
12 Tower (ph), and that job we had to have abatement done,
13 obviously, before we could proceed with the work. And then we
14 started to rebuild the entire floor from start to finish, from
15 HVAC, plumbing, new walls, everything, the whole nine yards was
16 installed, new flooring, new ceilings, new lighting, everything
17 had to be redone for that floor.
18 Q All right. Let's use that floor as an illustration.
19 A Okay.
20 Q What did the carpenters do on that floor? What did you
21 guys do?
22 A We did all the doors, all the walls and studs, metal studs,
23 drywall, acoustical ceiling, we did the flooring as well.
24 Q When you say you did the flooring what did you do with it?
25 What did you do with the flooring?

Page 187

1 A The flooring was built up --
2 Q Built up the joists or --
3 A No, the flooring is -- pertains to applying a produce to
4 the floor.
5 Q Okay.
6 A Okay?
7 Q Yeah.
8 A Whether it be carpeting, DCG, vinyl, vinyl composition
9 tile, epoxy flooring, things of that nature for the flooring
10 type work that was done on the facility.
11 Q All right. So you did that as well?
12 A Uh-huh.
13 Q And you mentioned that you worked with other trades on that
14 project?
15 A Yes.
16 Q And you said the HVAC, right?
17 A Right, that was Dan Forth's project.
18 Q And for -- is that an outside contractor?
19 A That's an outside contractor along with the sprinkler that
20 were an outside contractor.
21 Q All right. And those sheet metal workers worked side-by-
22 side with you?
23 A Absolutely, we had no choice. In order for a job to be
24 successful you have to coordinate with those trades.
25 Q Right. And you mentioned, I think the plumber?

Page 188

1 A The plumber, yes --
2 Q Those guys being --
3 A -- that was quite involved.
4 Q -- from UA Local 22?
5 A Yes.
6 Q To your knowledge is UA Local 22 a member of the Building
7 Trades?
8 A Yes, they are, as far as I know.
9 Q So you do this work. What types of tools are you using
10 when you're doing this work?
11 A Oh, I use a whole variety of tools. First of all every
12 member has their own hand tools, but then when it comes to the
13 specific tools you have your gas shooters, you have line laser,
14 you have pocket lasers, you have rotating laser, hammer drill,
15 saws, cutoff saws, skill saw, miter saws, power miter saws and
16 things of that nature.
17 Q Okay. And you just mentioned a whole bunch of tools, some
18 of which I recognize, many of which I don't, but just to bring
19 it down to the stone to its core, are those the tools that you
20 used when you were working out in the field for construction
21 industry employers, such as Mater, Ciminelli and the others?
22 A Always, yes.
23 Q Okay.
24 A They haven't changed, other than coming up to more modern
25 specs, in terms of the improvement of some of the devices that

1 are out there now.
2 Q And with respect to other crafts you worked side-by-side
3 with these other crafts?
4 A Yes, we do.
5 Q Okay. And was there a general supervision of the entire
6 project where the -- somebody was overseeing the whole project?
7 A That was usually my position, I was in charge of overseeing
8 the jobs, making sure there were coordinations being done,
9 having job meetings with the various trades on a weekly basis so
10 that we would get the project done in a timely and efficient
11 manner.
12 Q Okay. And with respect to your work at Mater and Ciminelli
13 and Dig and so forth, would you work side-by-side with the sheet
14 metal, the plumber --
15 A Oh, yes, yes.
16 Q And would you have weekly meetings and so on?
17 A Yeah, if I was working for say Mater and I was not a
18 foreman, just a carpenter, they would have their meetings and we
19 were directed to proceed with the work as our foreman directed
20 us at the time.
21 Q All right. Now, you observe got paid, you got some
22 benefits when you were out there, am I correct?
23 A That is correct.
24 Q To your knowledge were those paying benefits the same as
25 for other crafts, or where they negotiated on a craft by craft

1 basis?
2 A They were negotiated on a craft by craft basis.
3 Q And carpenters got paid the rates and benefits set forth in
4 the CIEA Agreement?
5 A That is correct.
6 Q Okay. And did you have a role in negotiating that
7 agreement?
8 A I used to sit on a negotiating committee when we'd
9 negotiate the contracts back since '99, I sat on three separate
10 negotiations as a committee, as a negotiating committee.
11 Q Okay. Talk to me for a moment, we spoke briefly about
12 tools, again, it's your understanding, your observation the
13 tools you're using at Kaleida are the same as the tools you used
14 outside?
15 A That is correct.
16 Q Okay. What about gang boxes, do you guys maintain your own
17 gang boxes as carpenters?
18 A Yes, we have our own gang box.
19 Q What is a gang box?
20 A A gang box is just -- is a metal box with double locks on
21 it, usually you can put all your power equipment and your own
22 personal tools in, so in the event if someone breaks in on job
23 site and, you know, in the hospital work you have a lot of
24 people walking through there, through the facility, that it
25 could disappear, so you lock them up in a box, which usually is

1 about 4 foot by 4 foot high, maybe 3 foot wide with a lid on it,
2 metal lid, and with double -- like I said multiple locks to lock
3 the equipment in.
4 Q Okay. And do you maintain keys for those gang boxes?
5 A For the carpenters, yes.
6 Q All right. And do you maintain keys for other trades?
7 A No, I don't.
8 Q Do they maintain their own keys?
9 A They maintain their own keys, yes.
10 Q So is it safe to say that each trade is a distinct entity,
11 while they may work together, a distinct entity in terms of
12 their tools and --
13 A Yes.
14 Q -- things of that nature?
15 A Uh-huh.
16 Q And in terms of their conditions of employment under the
17 collective-bargaining agreement?
18 A That's correct.
19 Q Okay. Now, did you have any role with the apprentice
20 program when you were with the UBC?
21 A Yes, I was a --
22 Q Would you tell us about that?
23 A Well, I initially got involved with the apprentice program
24 back in '99, Dick Cole was the coordinator, this is when we were
25 still Local 9. Dick ran it for a year or two and then he

1 retired, he wanted out of it so I stepped in his shoes, and it
2 was more as a voluntary job at the time, and then we had our
3 training center in Almar (ph) New York on Blossom Road, and we
4 used that for a time as our area where we would train our
5 candidates.
6 Then later on as time went on we merged with the Empire
7 Funds and the Empire apprenticeship and I was a coordinator
8 through Local 9, so we merged with Local 289, with Local 280 and
9 9, and I become the coordinator on the 289 up until 2006.
10 Q And to your knowledge are there some graduates of that
11 apprentice program over at Kaleida now?
12 A Yes, there are.
13 Q Under Kaleida's --
14 A Yes, there are.
15 Q -- program?
16 A Uh-huh.
17 Q And do other trades have their own independent apprentice
18 programs --
19 A Yes, they do.
20 Q -- reflective of their skills?
21 A As far as I know they do.
22 Q And do they work -- do they have some apprentices at
23 Kaleida working --
24 A They do too.
25 Q -- there as part of --

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Page 193

1 A Yes, they do.
2 Q I want to talk to you for a little bit about supervision.
3 You indicated when you were a foreman you would supervisor or
4 direct the work of the carpenters?
5 A Correct.
6 Q Do you now a gentleman named Jim Kwitowski? And I don't
7 know if I'm pronouncing it correctly.
8 A Yeah, that's correct, he's a taper foreman at Buffalo
9 General.
10 Q Right. And taper foreman would belong to what labor
11 organization?
12 A The Painters.
13 Q Okay. And is there a gentleman named Carl Markowiak?
14 A Carl Markowiak, yes.
15 Q Markowiak.
16 A Uh-huh.
17 Q My butchering of these names.
18 A Okay.
19 Q Right? But do you know -- do you know Mr. Markowiak?
20 A I know Mr. Carl, yeah. Markowiak.
21 Q All right. And is he employed at Kaleida?
22 A Yes, he is.
23 Q And does he have any role with any labor organization other
24 than the Carpenters?
25 A No, he's with the Painters, he's a painter foreman there.

Page 194

1 Q All right. And does he direct carpenters or painters?
2 A Just painters.
3 Q And Mr. Kwitowski direct tapers or carpenters or anybody
4 else?
5 A He just directs the tapers.
6 Q All right. And do you know a gentleman named Bart Sumbrum?
7 A Yes, I do.
8 Q And does Mr. Sumbrum work at Kaleida?
9 A Yes, he does.
10 Q And what is his craft?
11 A He is a plumber by trade.
12 Q And does he have any supervisory duties?
13 A Yes, he is, he's the general superintendent for the
14 plumbers at Kaleida.
15 Q All right. So is it safe to say that each craft has its
16 own supervision up to a certain point, at which point it becomes
17 a more general supervision?
18 A Yes, it is.
19 Q All right. And is that similar to what you see on
20 construction job sites when you worked out in the field?
21 A That's that way since the time I got in, yes.
22 Q So is there any difference at all between what you're doing
23 now and what you were doing when you were working out in the
24 field?
25 A Other than where my paycheck is cut through, that's all,

Page 195

1 there's no --
2 Q You're getting --
3 A -- difference at all.
4 Q -- paid the same am I correct?
5 A I'm paid the same.
6 Q You're working with the same tools?
7 A Same tools.
8 Q You're doing the same type of work?
9 A Right.
10 Q You're working with crafts just like you worked with them
11 out in the field, am I correct?
12 A Correct.
13 Q All right. And supervision is at the lower levels within
14 your craft and then it becomes a more general supervision?
15 A That is correct.
16 Q You heard some testimony when Mr. Croston was on the stand
17 about the amount, if any, of maintenance work that the Buffalo
18 Building Trades represented employees performed. Do you
19 remember that testimony?
20 A Yes, I do.
21 Q All right. Now, you've been at Kaleida for how long?
22 A Six years.
23 Q Six years. To the best of your knowledge how much
24 maintenance work, maintenance work, would you say you do? Five
25 percent, ten percent, two percent, fifty percent, what is it?

Page 196

1 A It was one or two percent, that's all we do, and only when
2 we're asked to intervene on behalf of Peter Murphy. For
3 instance, if they know that --
4 Q Who's Peter Murphy?
5 A Peter Murphy is director of facilities for Childrens
6 Hospital, Gates Hospital and Buffalo General. And usually what
7 he'll direct us to help in if they're short of manpower, or
8 there's an emergency we would usually jump in and correct a
9 default, particular if there was an inspection due from -- say a
10 JCO inspection.
11 Q What's a JCO inspection?
12 A It's a Joint Commission that comes in and certifies the
13 facilities, any health care facility.
14 Q Okay. So is it fair to say that you've -- maybe one to two
15 percent of you time might help a maintenance worker because you
16 can do their work, is that correct?
17 A That is correct.
18 Q All right. Can they do your construction work, skill wise?
19 A I think not because of the -- first of all they don't have
20 the skill level to carry it to the next level that we do.
21 Q Okay.
22 A Okay? There is -- over my career with the last six years
23 there there's been in-house people that have been great to work
24 with, but they always tell us "We can never do what you do", all
25 right? "Because we just aren't into that mode or work."

1 Q I'm going to show you -- I was going to go through a whole
2 list of jobs that you gave me prior to arriving here today, but
3 I just want to show you what's been received into evidence
4 Employer Exhibit 1, which purports to be a list of jobs
5 performed by bargaining unit members, union members under the
6 MOU. Do you recognize any of those jobs?
7 A Yes, I do.
8 Q All right. I want you to just randomly pick one or two of
9 the jobs and tell me what you did on that job if you worked on
10 it?
11 A All right.
12 (Witness reviews the document.)
13 THE WITNESS: I'd like to go to the second page on Women
14 and Childrens Hospital because I'm most familiar with that.
15 BY MR. FURLONG:
16 Q By the way, I should have asked that to begin with. What
17 facilities within the Kaleida family of hospitals and clinics do
18 you work at, primarily?
19 A Well, I started at Buffalo General originally, and then I -
20 - after we got the first MRIs in place, the first two MRIs, then
21 I was stationed at Millard Fillmore Gates where we put in
22 different -- the 4th floor surgery areas we worked on over
23 there.
24 Q Okay.
25 A And then from -- after a year or so at Millard Fillmore

1 Gates I was shifted over to Childrens Hospital and I'd work
2 between the two facilities. We had work at Gates, I would be
3 called over there and oversee that as well.
4 Q All right. So basically it's been between Gates and
5 Childrens for you?
6 A Yes.
7 Q And nothing really out of Millard Suburban?
8 A No, Jimmy usually handled that, they tried to do that, it
9 got to be too much for me to travel back and forth so --
10 Q Okay.
11 A -- that's when I put Jim there.
12 Q All right. So back to the job, and I apologize for
13 interrupting you --
14 A No problem.
15 Q Just pick any job that you worked on and I'd like you to
16 describe how the job went, what you did, the tools that were
17 used and so on.
18 A The first -- I'll go the -- let's -- the most recent one
19 was the postpartum job, the one that's listed there for
20 $2,690,000.
21 Q Did you work on that job?
22 A Yes, I did.
23 Q And just describe the nature of the job, what you did and
24 so on.
25 A Well, that was a total rehab of the entire 7th floor, at

1 the Variety Tower at Childrens.
2 **Q What do you mean by rehab? Do you mean a gutting of it?**
3 A They gutted the entire floor, the abatement had to proceed
4 because of the fireproofing that was -- and the pipe covering
5 was considered asbestos and it had to be remediated.
6 **HEARING OFFICER SCOTT:** Have we heard this already?
7 **THE WITNESS:** Not on this job, no.
8 **HEARING OFFICER SCOTT:** Okay. Sorry, go ahead.
9 **THE WITNESS:** I don't believe so.
10 **MR. HEINEMAN:** I thought it was the first job he talked
11 about.
12 **THE WITNESS:** Just recently, yeah, I mean --
13 **MS. CLEIGHTON:** Yeah, yeah.
14 **MR. FURLONG:** All right.
15 **MR. HEINEMAN:** That was the $5 million job on the third
16 page.
17 **MR. FURLONG:** Pick another job.
18 **THE WITNESS:** Fine, the Fisher Price lobby.
19 **MR. FURLONG:** I just want to really do an illustration of
20 how --
21 **THE WITNESS:** The Fisher Price lobby renovation. I was
22 involved with that, and that was kind of a tricky one because we
23 had several entities involved with it, we had Fisher Price
24 people, they were one of the sponsors, and also the Kaleida
25 Foundation, the group from Elisi Doft (ph) the foundation that

1 raises funds.
2 We collaborated with that and they came up with a scope of
3 work for us to perform the work, and that included retaining new
4 mill work, new flooring, in fact we used a type of flooring that
5 never was used in the area up until they did the new courthouse.
6 So -- and then we had new security stations and volunteer
7 stations put in that lobby. And it was just an upgrade of what
8 it looked like before to give it a fresher look. We did a lot
9 of -- we had to do a -- perform a lot of that work at night
10 because it was a main through fair.
11 **BY MR. FURLONG:**
12 **Q Did you work side-by-side with other crafts?**
13 A Yes, we did.
14 **Q What were the other crafts that you work with?**
15 A We had painters, electricians, tapers, basically there was
16 no other trades involved other than what I just mentioned.
17 **Q Okay. And I don't want to be more redundant than I've**
18 **already been, but your tools were basically the same tools you**
19 **used when you're working outside?**
20 A Yes, they were.
21 **Q All right.**
22 **MR. FURLONG:** Can we go off the record for a minute?
23 **HEARING OFFICER SCOTT:** Off the record.
24 (Whereupon, a brief recess was taken.)
25 **HEARING OFFICER SCOTT:** Back on the record.

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Page 201

1 MR. FURLONG: I'll wrap it up with a few final questions.
2 BY MR. FURLONG:
3 Q Mr. Mr. Kulczyk, looking at that list of projects that is
4 on Joint Exhibit, did you work on the majority of those
5 projects?
6 A Quite a few of them.
7 Q At least with respect to Childrens Hospital and Gates?
8 A Yes.
9 Q Okay. And again your testimony with respect to the nature
10 and type of the work wouldn't change regardless of the project?
11 A No, it would not.
12 Q Okay.
13 MR. FURLONG: Nothing further.
14 HEARING OFFICER SCOTT: Ms. Creighton?
15 MS. CLEIGHTON: I just have a few questions.
16 THE WITNESS: Sure.
17 CROSS-EXAMINATION
18 BY MS. CREIGHTON:
19 Q You talked about the crews, you were the foreman, the
20 carpenter foreman on some of these jobs?
21 A I was the general foreman.
22 Q For all of them, the general foreman?
23 A Uh-huh.
24 Q Okay. And it was my understanding that part of what
25 Was --

Page 202

1 COURT REPORTER: Can you move the microphone.
2 MS. CLEIGHTON: Sorry.
3 BY MS. CREIGHTON:
4 Q Part of what was appealing about this MOU was that the
5 trades worked more together in the composite kind of crew, this
6 is my understanding, that they worked more together in a
7 composite crew sort of glorying the craft lines a little bit,
8 and -- which created less jurisdictional problems and maybe some
9 more efficiencies, which is what Kaleida liked about this
10 agreement rather than how things were before. Is that your
11 understanding?
12 A Yes.
13 Q Okay.
14 A Uh-huh.
15 Q And so whereas if you're working for a different
16 contractors people are more uptight about their craft
17 jurisdictional lines, a Kaleida those are more blurred, is that
18 accurate?
19 A Somewhat but not necessarily, you know.
20 Q And did you supervise, like sometimes -- I noticed on Joint
21 Exhibit 1 there's only one -- Joint Exhibit 2, excuse me,
22 there's only one plasterer, did you supervise the plasterer at
23 times?
24 A He worked for me.
25 Q He worked --

Page 203

1 A For us.
2 Q Okay. And he's been there --
3 A For quite a few years, almost -- over five years.
4 Q Okay. And are you his supervisor or --
5 A When he was with us at Childrens he worked for us over
6 there, but I was kind of -- you know, he was doing the taping as
7 directed by the taper foreman there, you know.
8 Q Oh, he was working under a different foreman?
9 A Yes. But I oversaw the job.
10 Q Okay. So you were the general?
11 A Uh-huh.
12 Q All right. So -- just so we're clear, is that correct that
13 there is some blurring of the jurisdictional lines at Kaleida?
14 It's not a free-for-all, I'm not suggesting it's a free-for-all.
15 A No, there's a respect for each other's performance, what
16 each craft is supposed to do. I don't tell our guys to go paint
17 walls or install plumbing fixtures.
18 Q Right.
19 A All right? Now, the plasterer is in a unique situation
20 because there's not a whole lot of plaster work for him, but
21 he's a good -- when it does come to running in walls, where you
22 want a level 5 area, this is where he -- his craft really shows
23 because the time he's done you can't tell if there was a
24 penetration in a wall, if there was a doorway in there at one
25 time.

Page 204

1 Q Okay.
2 A Okay?
3 Q All right.
4 MR. CONNORS: I have no other questions.
5 HEARING OFFICER SCOTT: Mr. Heineman?
6 MR. HEINEMAN: Sure.
7 CROSS-EXAMINATION
8 BY MR. HEINEMAN:
9 Q You were the general foreman on this -- I just want to make
10 sure I get it right, the postpartum renovation?
11 A Yes.
12 Q Okay. And looking at the list that looks like it's one of
13 the larger projects in 2010 and 11, correct?
14 A It was.
15 Q Okay. And --
16 A But I had more jobs than that going on at the same time
17 too.
18 Q Okay. And as general foreman were you also responsible for
19 the foreman of the various crafts?
20 A No. My job was just to make sure things were done with the
21 foremen's meeting, that we know which job -- which way the job
22 will proceed. The foremen always directed their own people.
23 Q Okay.
24 A If I had an issue, say with a plumbing line being in the
25 wrong location I'd go to the plumber foreman and say "We cannot

Page 205

1 fit this in this area, we have to rethink this out."
2 Q Okay. So the line of progression would be as general
3 foreman you were overseeing the work of the various foremen for
4 the craft?
5 A Correct.
6 Q Okay. And we already talked about the plasterer was
7 assigned to the taping foreman, correct?
8 A Correct.
9 Q And how many foremen were there working for you? Just on
10 the postpartum project.
11 A I had an electrical foreman, a plumbing foreman, taper
12 foreman, painter foreman and actually a flooring foreman because
13 the flooring was subbed out to Heritage Flooring.
14 Q Okay. So --
15 A And a sprinkler foreman, I'm sorry, and an HVAC foreman.
16 All mechanicals were subbed out to foremen.
17 Q Okay.
18 A Different contractors.
19 Q So the Kaleida employees -- I think you told us before, the
20 plumbing, sprinkler and HVAC was subbed, correct?
21 A The plumbing wasn't, the sprinkler and HVAC and electrical
22 were subbed.
23 Q All right. So Kaleida employees performed, under you, you
24 had a carpentry foreman?
25 A Right.

Page 206

1 Q There was a plumbing foreman?
2 A Correct.
3 Q And there was a sprinkling foreman?
4 A Right.
5 Q Three? Okay.
6 A There was actually more.
7 Q And taping. That's what I'm asking, I'm trying to figure
8 out --
9 A There was a painter foreman, okay? And Leo was my painter
10 foreman, I had a taper foreman.
11 Q Okay.
12 A Okay? I had electrical foreman.
13 Q I thought that was subbed?
14 A That was -- yeah, but we'd always had to work together in
15 order for the job to proceed.
16 Q Understood.
17 A Okay.
18 Q But just tell me about Kaleida.
19 A Kaleida.
20 Q Kaleida foremen, electrical, plumbing, painting, taping,
21 sprinkler, correct?
22 A Correct.
23 Q The plasterer was assigned to the taping foreman?
24 A Correct.
25 Q How about laborers, how did they work?

Page 207

1 A Oh, laborers, we had a laborer foreman there as well, I'm
2 sorry.
3 Q That's fine. Were there any other crafts people that
4 worked under a foreman that was not of their craft, other than
5 the plasterer?
6 A None that I can think of.
7 Q Okay. And you directed the work of the foremen for each of
8 the crafts, correct?
9 A That's correct.
10 Q And then who was above you?
11 A Above me I had a person by the name of Joe Sherman.
12 Q And what was Mr. Sherman's position?
13 A He was in charge of construction at that facility.
14 Q And he worked for Kaleida?
15 A Yes, he does.
16 Q And was he assigned -- was he from a various craft?
17 A No.
18 Q Okay. And above Mr. Sherman?
19 A Pete Murphy.
20 Q Okay. And that was -- the postpartum was a total gut,
21 everything?
22 A Uh-huh.
23 Q Okay. Now, I'm looking at Women and Childrens, let's go
24 down to 2010, the V9 Parent Lounge renovation, are you familiar
25 with that job?

Page 208

1 A It's $3,000, yes.
2 Q Got it. What was that?
3 A Yeah, that was just an upgrade of the mill work and the
4 flooring in that unit.
5 Q All right. And tell us about that? What -- when you say
6 "an upgrade" what do you mean?
7 A Well, what we did is it's a Kaleida standard that any sink
8 area that has a plastic laminate on the top be removed if it's
9 damaged, and this one was well worn out, and they go with a
10 Corian top now with an inter-grill sink, and so we removed the
11 old countertop and sink and we had our shop make a new Corian
12 top, and then we also proceeded to rework the flooring there.
13 Q And when you say rework it you reworked it to build around
14 the new --
15 A Right, the new --
16 Q Go ahead.
17 A -- reconfiguration.
18 Q So you found a damaged sink top and you replaced it?
19 A Correct.
20 Q Got it.
21 A Well, it wasn't -- we didn't find it, we were just directed
22 there.
23 Q I understand.
24 A Yeah.
25 Q I apologize.

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1 A Yes.
2 Q I didn't mean that, I mean you were directed to it. Who
3 directed you to do that job?
4 A That came from Peter Murphy I believe.
5 Q Up a little bit further there's the Fuhrman office/lab
6 consolidation.
7 A That was Dr. Fuhrman, he was in charge of the pediatric
8 intensive care unit, and that was -- that job really enticed --
9 there was a lot more involved with that than it shows there. In
10 order to do the step down here, which you see up above there for
11 $1,489,000, we had to relocate personnel that was in that area
12 previous to that renovation. And Dr. Fuhrman's staff and his
13 office were all in that area. So we had to move them to the 4th
14 floor off the 2nd floor and give them new office areas.
15 Q And when you say that what did you have to do physically in
16 the new office?
17 A Physically we built them new offices on the 4th floor.
18 Q You say "built" what do you mean?
19 A We put up walls, new ceilings, flooring, doors to
20 facilitate a new office area for their staff.
21 Q Okay. And up above the pharmaceutical waste room
22 renovation, do you know what is?
23 A Yes. That was an area for a biological waste hazards.
24 Kaleida was not -- had to conform to the new walls that were --
25 and they had to be segregated off the other medical wastes. So

1 those were small rooms we built so they can have the biohazard
2 wastes separate.
3 Q And when you say you build a small room --
4 A It was a small room --
5 Q -- describe that? What do you mean?
6 A It was 10 by 12 with a door where they could do their
7 biological medical waste separately from the other wastes.
8 Q Okay. So you put that up in an existing space --
9 A Correct.
10 Q -- in a 10 by 12?
11 A Correct.
12 Q And you put up walls and doors?
13 A Uh-huh.
14 Q Okay. About going down the V6 OB/GYN nursing unit upgrade,
15 what is that?
16 A That was part of the -- actually it was part of the V7
17 project which was the postpartum. In order to do the job on 7
18 we took an area that had 28 room -- patient rooms, and we
19 brought it down to 14. And when you do that kind of work you're
20 encroaching a lot of square footage, which changed all the
21 plumbing. The corridors became areas that were previously
22 patient rooms, and when we did that we had to go and do a lot of
23 work on the six floors prior to that. There were areas that
24 were totally reconfigured on the floor below.
25 Q Okay. And I'm seeing a variety of small jobs throughout in

1 the under $25 range, say on -- would these be similar to the
2 jobs you just talked about? The V9 job and --
3 A Yes.
4 Q You mentioned in your testimony that some of the in-house
5 maintenance staff -- I just want to make sure, were great to
6 work with, can you tell us the circumstances that you would be
7 working with the --
8 A Well, we weren't working --
9 Q -- in-house maintenance staff?
10 A -- with them, and I probably regret saying it in that way,
11 but this staff we would get, we got to know each other over the
12 years, especially in-between Childrens and Gates.
13 Q Okay.
14 A And consequently you always had intervention with those
15 folks. Now, say for instance you had a load of material coming
16 in and you didn't have a cart to bring the material in, you'd go
17 to the in-house staff and you say "Can I borrow your flat cart
18 for a few minutes, I want to bring in some buckets of drywall
19 cement." They say "Go right ahead, just bring it back." That
20 kind of relationship we had.
21 Q Okay.
22 A Okay?
23 HEARING OFFICER SCOTT: Off the record.
24 (Whereupon, a brief recess was taken.)
25 HEARING OFFICER SCOTT: Back on the record.

1 BY MR. HEINEMAN:
2 Q So other than borrowing their carts any other time that
3 you've worked with them?
4 A No.
5 Q Did they ever work alongside of you doing simpler tasks?
6 A They may have worked down the hall, perhaps, adjusting --
7 it was a common practice for the facility, every facility, that
8 they would have to do six months checkups on a lot of -- how the
9 doors were working. I know the one guy at Gates he's have a
10 chart with him and he'd go and check the functions of all the
11 doors, it was a common practice for the facility. Same thing at
12 Childrens.
13 Q And what would happen if the hall doors were -- there was a
14 problem with them in the course of his inspection?
15 A They would make the adjustments as they saw fit.
16 Q Okay.
17 A They have to fill out their paperwork.
18 Q And if the adjustment couldn't be made what would happen
19 then?
20 A Generally they did all adjustments if they had to, for
21 their own benefit.
22 Q Do you know what any of the carpenters there were on the
23 maintenance staff what their background is?
24 A Not really, no.
25 (Pause)

1 **BY MR. HEINEMAN:**
2 **Q Do you know what the maintenance staff's facilities were**
3 **with respect to gang boxes and tools?**
4 A Their equipment?
5 **Q Yes.**
6 A They always had their own separate equipment. They always
7 had their own storage areas, we didn't have nothing to do with
8 them.
9 **Q And their storage areas how were they different than yours?**
10 A At Childrens that had -- each trade, whether it be a
11 plumber, electrician, painters, they all had separate areas,
12 they weren't even in the same group locations.
13 **Q Okay.**
14 A Where we would have a central area, usually on the first
15 floor.
16 **Q When you say "we" who do you mean?**
17 A The carpenters and laborers and painters, we --
18 **Q So the construction trades had one central area --**
19 A Correct.
20 **Q -- correct? And then the in-house maintenance trades each**
21 **had their own separate areas?**
22 A Their own little niche.
23 **Q Okay. But the construction trades had a general area**
24 **together?**
25 A Right.

1 **Q Okay.**
2 A Uh-huh.
3 (Pause)
4 **BY MR. HEINEMAN:**
5 **Q Do you know what tools the general maintenance employees**
6 **used at Kaleida?**
7 A They typically had their own tool carts.
8 **Q Okay. And they had drills --**
9 A Yeah.
10 **Q -- saws --**
11 A They would have -- yes.
12 **Q All right.**
13 A Things of that nature to perform their craft.
14 **Q All right. And a carpenter's maintenance worker would have**
15 **similar tools to what you would be using?**
16 A Yes.
17 **Q Okay.**
18 A Not necessarily, he wouldn't have some of the tools, he
19 wouldn't have lasers, he wouldn't have potter actuated tools, he
20 wouldn't have gas fired tools.
21 **Q But he would have some of the same tools you have?**
22 A He didn't have lasers, I know that for a fact.
23 **Q That's fine.**
24 A Yeah.
25 **Q So other than lasers he would have the same tools as you?**

1 A He didn't have potter actuated tools either.
2 **Q Other than those two he would have the same tools?**
3 A Yes, he would.
4 **Q Okay.**
5 **(Pause)**
6 **BY MR. HEINEMAN:**
7 **Q And in the midst of these construction projects if, for**
8 **sake of argument, the carpenters walked out, what would happen**
9 **to the construction project?**
10 A It wouldn't be completed at all if we walked out.
11 (Pause)
12 **MR. HEINEMAN:** Nothing further.
13 **HEARING OFFICER SCOTT:** Redirect?
14 **REDIRECT EXAMINATION**
15 **BY MR. FURLONG:**
16 **Q The last question asked to you by Mr. Heineman was if the**
17 **carpenters walked out what would happen, you said nothing would**
18 **get done, you wouldn't complete the job, do you recall that?**
19 A Yeah.
20 **Q And that's because the other trades aren't capable of doing**
21 **the carpentry work that you guys are isn't that correct?**
22 A That's correct.
23 **MR. FURLONG:** Nothing further.
24 **HEARING OFFICER SCOTT:** Anything else?
25 **MS. CLEIGHTON:** No.

1 **HEARING OFFICER SCOTT:** Mr. Heineman?
2 **MR. HEINEMAN:** No.
3 **HEARING OFFICER SCOTT:** Mr. Sherman, who you mentioned
4 earlier in your testimony --
5 **THE WITNESS:** Right.
6 **HEARING OFFICER SCOTT:** -- were his responsibilities just
7 confined to Women and Childrens Hospital or are they beyond?
8 **THE WITNESS:** No, he was actually plant manager over at
9 Gates as well.
10 **HEARING OFFICER SCOTT:** Okay. And Mr. Murphy, he's for the
11 whole Kaleida system?
12 **THE WITNESS:** Pretty much for all with the exception of
13 Suburban and De Graff.
14 **HEARING OFFICER SCOTT:** Okay. Thank you, you're excused.
15 (Whereupon, the witness was excused.)
16 **HEARING OFFICER SCOTT:** Can I see that? This is your copy?
17 **MR. FURLONG:** It is my copy. Just so that we can plan
18 things, I've got one more short witness.
19 **HEARING OFFICER SCOTT:** Okay. While we're between
20 witnesses for the record, on Joint Exhibit 1 there -- I think
21 everyone in the room knows what these symbols mean, but can we
22 agree that BGH is Buffalo General Hospital, WCHLB is Women and
23 Childrens Hospital in Buffalo, MFS is Millard Fillmore Suburban,
24 DMH is De Graff Memorial Hospital, MFG is Millard Fillmore
25 Gates, although I believe that facility is closed now, and

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1 that's it. Will that be accurate?
2 **MS. CLEIGHTON:** Yes.
3 **HEARING OFFICER SCOTT:** So stipulated?
4 **MR. FURLONG:** Yes.
5 **HEARING OFFICER SCOTT:** Okay.
6 **MR. FURLONG:** Take a two minute break and we'll finish up
7 with my case.
8 **HEARING OFFICER SCOTT:** Yeah. Let's come back at –
9 **MR. FURLONG:** Five minutes.
10 **HEARING OFFICER SCOTT:** 4:00. Off the record.
11 (Whereupon, a brief recess was taken.)
12 **MR. FURLONG:** The Petitioner calls Jim Kilger to the stand,
13 please?
14 **HEARING OFFICER SCOTT:** Raise your right hand, please?
15 Whereupon,
16 JAMES KILGER,
17 having first been duly sworn, was called as a witness and
18 testified as follows:
19 **HEARING OFFICER SCOTT:** Please be seated, and if you would
20 please spell your name for the reporter, please?
21 **THE WITNESS:** Kilger, K-I-L-G-E-R.
22 **HEARING OFFICER SCOTT:** Proceed.
23 **MR. FURLONG:** Yes, I'm sorry. Good afternoon Mr. Kilger.
24 **THE WITNESS:** Good afternoon.
25 **DIRECT EXAMINATION**

1 **BY MR. FURLONG:**
2 **Q Mr. Kilger, are you a carpenter?**
3 A Not anymore. I am a carpenter but not a union carpenter.
4 **Q Not a union carpenter, we'll get to that in a moment. But**
5 **how long have you been a carpenter?**
6 A Thirty-seven years.
7 **Q And you remain a carpenter up through today, right?**
8 A Yes.
9 **Q And did you at any time joint the union, Carpenters Union?**
10 A Did I joint the Carpenters Union? Yes, back in 1974.
11 **Q All right.**
12 A I was lather for nine years before that.
13 **Q Prior to joining the Carpenters?**
14 A Prior to joining the Carpenters.
15 **Q Did there come a time when your membership with Carpenters**
16 **Union terminated?**
17 A Yes.
18 **Q And when was that?**
19 A The end of March, this year.
20 **Q Of this year? And was that as a result of aiding the CCDU?**
21 A Yes, it was.
22 **Q With respect to your work with the tools did you work for**
23 **any particular contractors that you can name today?**
24 A I worked for Box Horn Division, Huber for 42 years before
25 joining Kaleida.

1 **Q Okay. So you were basically a one contractor employee for**
2 **42 years?**
3 A Yes.
4 **Q And Box Horn Huber is it a signatory contractor to the UBC?**
5 A Yes.
6 **Q Okay. Is it a member of the CIEA to your knowledge?**
7 A Yes, I think so.
8 **Q All right. And when you were working for Box Horn Huber**
9 **did you work with the tools? Did you run work, take us through**
10 **that?**
11 A Well, basically I started running work when I was a second
12 year apprentice, so I actually ran work from 1968 until I went
13 to Kaleida.
14 **Q All right.**
15 A I was a foreman.
16 **Q Were you -- we've heard the words foreman, general foreman,**
17 **everything else, just describe for the record, you know, your**
18 **understanding of how hierarchy works in construction in terms**
19 **of, you know, whose got more stripes on their shoulder than the**
20 **next person? Describe that.**
21 A Well, generally I worked as a carpenter foreman for Huber
22 and ran the construction jobs and most of their bigger jobs, the
23 arena, you know, the stadium, those kinds of jobs. We really
24 didn't have general foreman at Box Horn at all, foreman was the
25 highest you got, and actually I was their lead person for

1 probably almost 25 years that I did their bigger jobs.
2 **Q All right. And is Huber signed to other crafts other than**
3 **the Carpenters?**
4 A Yes.
5 **Q Are they signed to the Painters, to the Tapers?**
6 A Yes.
7 **Q And are they signed with Laborers?**
8 A Yes, they are.
9 **Q And are they signed with the Plasterers?**
10 A Yes.
11 **Q They're not signed with any of the mechanics?**
12 A No.
13 **Q All right. And when you were acting as a foreman for Huber**
14 **did you have authority to direct the work of these other crafts**
15 **in addition to the carpenters?**
16 A At Box Horn I directed -- I usually directed the tapers, I
17 mean, they had their own foreman but I would still direct them
18 and show them the area they were going to -- no electricians or
19 anything like that.
20 **Q No, I mean in terms of not work that was subbed out, I mean**
21 **work that was being performed directly by Huber Box Horn by its**
22 **employees?**
23 A Yes.
24 **Q Would you direct other crafts?**
25 A No.

1 Q Well, tapers are --
2 A Tape --
3 Q -- part of the Painters Union?
4 A Tape is part of the Painters Union, yes.
5 Q So in that instance you directed the -- another craft?
6 A Yes.
7 Q Most of your authority was simply to direct carpenters
8 working for Huber?
9 A Right. Well, and laborers, I mean, for the most part they
10 had their own foreman, but the carpenters always directed the
11 laborers and the tapers on the job for Box Horn.
12 Q You've been in the room, and I don't want to go back over
13 it in terms of the tools and everything like that, but just very
14 briefly would you agree that the tools that you used out in the
15 field with Huber are the same tools that you used in Kaleida?
16 A Identical.
17 Q All right. Now, did there come a time when actually you
18 did get hired at Kaleida?
19 A Yes, in March of 2009.
20 Q Briefly what were the circumstances regarding your hiring?
21 Who contacted you and how did that work?
22 A Actually Dave Kramer called me, he had been trying to get
23 me to come over, and I was just finishing up the Health Now
24 Building downtown, and when I finished up I took a three month
25 leave and he called me just at the end of three months and

1 wanted to know if I'd come over, and I went and talked to him
2 and actually took the job.
3 Q Did you know Kramer from any of your previous employers?
4 A Yeah, Dave worked for me actually for Box Horn for 20
5 years, 25 years.
6 Q Okay. So you're familiar with Kramer?
7 A Yes.
8 Q He invited you over to Kaleida?
9 A Yes.
10 Q Okay. With respect to Kaleida, I think you heard the
11 testimony from Mr. Kulczyk, he worked principally at Childrens
12 Hospital and Buffalo General, did you work at any particular
13 facilities or do you work at any particular facilities?
14 A Yes, I have Millard Fillmore Suburban, De Graff Memorial
15 Hospital, Flint Road Laboratories and Kline Road Surgery Center.
16 Q Okay. So you don't get over to the same facilities that
17 Mr. Kulczyk does?
18 A No.
19 Q Now, I'm going to show you what's been received into
20 evidence as Joint Exhibit 1, and based on some of the short
21 descriptions if you go to the work that's covered by De Graff
22 and the hospitals that you work at, talk about some of those
23 jobs.
24 A Okay.
25 Q Do you see it? Do you see it?

1 A Oh, yeah.
2 Q Yeah, okay. Do you recognize any of those jobs?
3 A Oh, yeah, I recognize them all.
4 Q All right. Why don't you take one with a very small dollar
5 amount, I think that as we preparing your testimony you saw one
6 for $4,000?
7 A I see a --
8 Q Pick any small --
9 A -- lobby reception desk for $1,000.
10 Q I'm sorry, what?
11 A I see a lobby reception desk flooring for $1,000.
12 Q All right.
13 A And then --
14 Q All right. Pick any one. Let's take that one for the
15 $1,000. What was involved with that?
16 A It was just putting a new VCT floor down in the front desk
17 area that's all.
18 Q All right. Very simple work for a carpenter?
19 A Very simple, very easy.
20 Q All right. Is that something that a maintenance worker
21 would do?
22 A No.
23 Q All right.
24 A They don't do that at our hospital.
25 Q All right. And is there any of those jobs, including the

1 low budget, low dollar jobs, simple jobs, are there any jobs on
2 list that Kaleida's maintenance bargaining unit employees will
3 perform?
4 A No, they don't do any drywall, they don't do any studs,
5 they don't do any ceilings.
6 Q Is that the type of work that you typically do?
7 A Yeah, they don't do any cabinet work, countertops, they
8 don't do any of these projects. They didn't work on any of
9 these project at all.
10 Q You were in the room when --
11 MR. FURLONG: Well, no longer ask to approach the Witness
12 but I will.
13 BY MR. FURLONG:
14 Q You were in the room when Mr. Kulczyk was responding to
15 some questions by Ms. Creighton regarding craft jurisdiction and
16 so forth, do you recall those questions?
17 A I remember, yes.
18 Q Right. And I think the sum and substance of Ms.
19 Creighton's questions were that maybe craft jurisdictions are
20 not as sharply or as respected as it may be out in the field,
21 and that's why Kaleida is in favor of this agreement, do you
22 recall that?
23 A Yeah, but that's not really true. They don't get involved
24 in our work at all, I mean, you know, just electricians and
25 plumber, you know, in-house people.

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1 Q All right. Now, with respect to craft jurisdictions do you
2 find that the respect for those craft jurisdictions are the same
3 as it is out in the field?
4 A Identical.
5 Q All right. And does it happen that sometimes two crafts
6 may battle over work and claim that it's their work?
7 A I really haven't had any problems over where I am right
8 now, I mean, that the guy in charge of the maintenance crew he
9 keeps them pretty much separate from us.
10 Q I wasn't talking so much the maintenance crew --
11 A Okay.
12 Q -- I'm talking about two crafts within the Building Trades.
13 A Oh, you mean the electrician and plumbers and painters --
14 Q Yes.
15 A -- and everything?
16 Q Yeah. Do other crafts -- do you have jurisdictional
17 disputes or are the craft lines very sharply defined or how does
18 that work?
19 A It's just known that's all, I mean, we do our work, they do
20 their work, and that's it, I mean, it's no different that when I
21 was with Box Horn, it's identical, it's what we did.
22 Q Now, I believe that when you were working for Box Horn you
23 did an OR -- you did an OR at one of the hospitals? I may be
24 getting this mixed up with --
25 A Yeah. No, it's not me.

1 Q All right. Did you work in any hospitals with Box when you
2 were --
3 A Not since Box Horn.
4 Q Okay. And what type of work did you do when you worked
5 with Box Horn?
6 A Generally just walls, drywalls, studs, acoustic ceilings.
7 Q And is that the type of work that you're doing now working
8 directly for Kaleida?
9 A Oh, yes, yes.
10 Q Same tools and everything else?
11 A Same tools.
12 MR. FURLONG: Nothing further. Thank you.
13 HEARING OFFICER SCOTT: Ms. Creighton?
14 MS. CLEIGHTON: No questions.
15 HEARING OFFICER SCOTT: Mr. Heineman?
16 MR. HEINEMAN: Yes.
17 CROSS-EXAMINATION
18 BY MR. HEINEMAN:
19 Q Mr. Kramer, who is he?
20 A Dave Kramer is my supervisor.
21 Q And what is his position?
22 A He's -- I would probably say a carpenter superintendent.
23 Q And he works for Kaleida?
24 A He works for Kaleida.
25 Q And does he call -- is he the carpenter superintendent for

1 the facilities that you had mentioned, Millard Fillmore De
2 Graff?
3 A All of them.
4 Q You said "all of them" --
5 A All the Kaleida -- well, for the general -- Childrens, the
6 whole thing. Yeah, he's who I would call if I wanted men.
7 Q And is he also who the other trades call when they want
8 men?
9 A The other trades, no.
10 Q No. Who do they call?
11 A I guess they would probably call -- my boss is Jim Boritz
12 (ph), if there was a mechanical or something like that.
13 Q And who is Jim Boritz?
14 A He's my superintendent or supervisor at Millard Fillmore
15 Suburban. He's the Pete Murphy of Suburban in general, Pete
16 Murphy takes care of Buffalo General Childrens Hospital, Jim
17 Boritz takes care of the hospitals I mentioned, De Graff,
18 Suburban --
19 Q Do you know what his position is?
20 A He's in charge of building.
21 HEARING OFFICER SCOTT: Do you know how to spell his name?
22 THE WITNESS: B-O-R-I-T-Z I think it is.
23 HEARING OFFICER SCOTT: Okay.
24 BY MR. HEINEMAN:
25 Q And he's responsible for both maintenance and construction,

1 correct?
2 A Yes. He's who sets up the jobs.
3 Q So he decides who does what work to send to construction
4 and what work to send to maintenance?
5 A I believe you could probably put it that way, there's
6 another gentleman that's in charge of maintenance that's under
7 Jim.
8 Q Okay. Who is that?
9 A Tom Underwood. Maintenance guys get sheet every morning
10 that they do their maintenance jobs.
11 (Pause)
12 BY MR. HEINEMAN:
13 Q Now, there was mention made of a broken countertop or
14 damaged countertop, that's also the work that you would do I n
15 your facility? Repair a broken countertops, replacements?
16 A If I was asked to do it, I mean, generally you'd have -- I
17 have projects that I do. But if somebody would come up and say
18 "Listen, we need a new countertop" I would have one made.
19 Q Okay.
20 A And install it.
21 Q And then holes in the wall?
22 A Holes in the wall?
23 Q There's a hole in the wall, a patient --
24 A If we made it we would probably fix it, if not the in-house
25 people would probably fix it, they would get sheets on that

1 every day.
2 Q Okay. And so when you heard the testimony, large hole,
3 small holes, holes in the wall are done by maintenance staff not
4 by construction?
5 A If it was done by like an in-house person with a card or
6 something like that maintenance people would probably fix it.
7 Q Okay.
8 A I mean, unless we were asked. If my boss come and say
9 "Listen, could you throw somebody over there and patch the
10 drywall up and then have the taper go over and fix it?" well,
11 then we would do that.
12 Q Okay. So you're doing the work that's directed to you by
13 Mr. Boritz and Mr. Kramer?
14 A That's right.
15 (Pause)
16 BY MR. HEINEMAN:
17 Q And --
18 MR. HEINEMAN: Nothing further.
19 HEARING OFFICER SCOTT: Redirect?
20 MR. FURLONG: Nothing.
21 HEARING OFFICER SCOTT: I have no questions.
22 THE WITNESS: Thank you.
23 HEARING OFFICER SCOTT: Thank you, you're excused.
24 (Whereupon, the witness was excused.)
25 HEARING OFFICER SCOTT: Any other witness, Mr. Furlong?

1 MR. FURLONG: The Petitioner has no further witnesses.
2 HEARING OFFICER SCOTT: And you rest at this point?
3 MR. FURLONG: We do.
4 HEARING OFFICER SCOTT: All right, Ms. Creighton, do you
5 have any witnesses?
6 MS. CLEIGHTON: No.
7 HEARING OFFICER SCOTT: You indicted before you didn't.
8 Mr. Heineman, do you have any?
9 MR. HEINEMAN: The only thing I would offer, which may
10 help, is I do have the contribution reports for the carpenters
11 that were employed in Kaleida from the period March 1st to April
12 of 2012, and I may assist so I offer them as evidence.
13 HEARING OFFICER SCOTT: And would show what the workforce
14 has been. Maybe those can be stipulated in?
15 MR. FURLONG: I would let them, I'll stipulate. Well, let
16 me just see it first.
17 HEARING OFFICER SCOTT: Let's go off the record.
18 (Whereupon, a brief recess was taken.)
19 HEARING OFFICER SCOTT: Back on the record.
20 Okay, Mr. Heineman, you have some exhibits to offer?
21 MR. HEINEMAN: Carpenters 5 is a report of the funds
22 contributions from Kaleida for the carpenters for the period
23 March 1, 2010 to March 31, 2010.
24 (Carpenter Exhibit 5 marked for identification.)
25 MR. HEINEMAN: Very simply it's showing the hours worked

1 where you see a quantity, and then on the end the "from" and
2 "through" is the particular pay period at issue. So we already,
3 for our purposes what's important is the Employer named Kaleida,
4 member name, then the quantity, and then the "from" and
5 "through" so that will show you the hours worked by carpenters
6 for whom contributions were made.
7 MS. CLEIGHTON: I just -- I'm not sure if you said March
8 1st through March 31st?
9 HEARING OFFICER SCOTT: I'm sorry, December.
10 MS. CLEIGHTON: You meant December.
11 HEARING OFFICER SCOTT: December 31 '2010.
12 MS. CLEIGHTON: Okay.
13 HEARING OFFICER SCOTT: C-6 is the similar report for all
14 2011.
15 (Carpenter Exhibit 6 marked for identification.)
16 MR. HEINEMAN: And C-7 is the report for January, 2012 to
17 April, 2012.
18 (Carpenter Exhibit 7 marked for identification.)
19 HEARING OFFICER SCOTT: All right. Carpenters 5, 6 and 7
20 have been offered. Any objection?
21 MR. FURLONG: No objection.
22 MS. CLEIGHTON: No objection.
23 HEARING OFFICER SCOTT: No objection having been heard they
24 are received.
25 (Carpenter Exhibits 5, 6 and 7 received in evidence.)

1 HEARING OFFICER SCOTT: Off the record for a moment,
2 please?
3 (Whereupon, a brief recess was taken.)
4 HEARING OFFICER SCOTT: Back on the record.
5 I understand there are no more witnesses to be called
6 today, and I'd like to ask for -- well, we've heard the
7 Employer's position regarding the unit before Mr. Connors left.
8 Mr. Furlong, your position regarding the unit is unchanged?
9 MR. FURLONG: Yeah. May I see the copy of the Petition?
10 MS. CLEIGHTON: I have one here.
11 (Pause)
12 MR. FURLONG: We would move to amend the Petition to
13 include the millwrights, although again it's for reasons that we
14 had the earlier discussion to not working there, and I'm not
15 sure that it's particularly pertinent, but we would move to
16 amend that Petition.
17 HEARING OFFICER SCOTT: Any objection to the amendment?
18 MS. CLEIGHTON: No objection.
19 MR. HEINEMAN: Yes, the millwrights happen to be
20 represented by a separate organization, they were not notified,
21 they're not here, they haven't had the change to weight in, so I
22 would object. I think it's improper.
23 HEARING OFFICER SCOTT: I think --
24 MR. HEINEMAN: I mean, you're going to take the work away
25 from somebody, take their representation rights away you should

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1 at least let them know.
2 **HEARING OFFICER SCOTT:** I think I have the same contract as
3 the carpenters.
4 **MR. HEINEMAN:** No, they're a member of the same
5 international union, but there is a separate millwright's
6 organization, there's a millwrights district council, they're
7 separate and apart from the North East Regional Council. So
8 it's a separate --
9 **MS. CLEIGHTON:** I thought that Mr. Furlong amended to put
10 them in because you said that they should be --
11 **HEARING OFFICER SCOTT:** Well, why don't we have that
12 discussion off the record, okay? Let's go off the record.
13 (Whereupon, a brief recess was taken.)
14 **HEARING OFFICER SCOTT:** Back on the record.
15 All right, we have a motion to amend the Petition to
16 include millwrights who were excluded when the Petition was
17 initially filed. The Building Trades Council does not object,
18 the North East Regional Council of Carpenters does. Has
19 everybody had a chance to look at Article 38?
20 **MR. CONNORS:** Yes. Page 17.
21 **HEARING OFFICER SCOTT:** Yes. All right. What I'd like to
22 do is have Mr. Heineman state an offer of proof as to why -- and
23 make your argument as to why the millwrights should not be
24 included, and I'm going to rule on that. If my ruling is wrong
25 the regional director can reverse it, but if it has to be

1 something in the record that she can make that decision based
2 on. So if you can restate your reasons for closing?
3 **MR. HEINEMAN:** Sure. Thanks, Mr. Hearing Officer. Mr.
4 Hearing Officer, the mill right jurisdiction, while they are
5 members of the Carpenters, is held by the Eastern Mill Right
6 District Council, which has jurisdiction. The collective-
7 bargaining agreement is shared, however, the jurisdiction is
8 separate, the representation rights are separate.
9 So our position is that the -- that this is a Building
10 Trades bargaining unit, the millwrights have signed separately
11 as part of the MOU, they exist separately as part of the MOU,
12 they have their own trade and jurisdiction within the MOU, and
13 they should not be deprived of it without being notified and
14 being present.
15 **HEARING OFFICER SCOTT:** I'm sorry, are --
16 **MR. HEINEMAN:** I was done.
17 **HEARING OFFICER SCOTT:** That's it? Okay.
18 The millwrights have signed the MOU, that's something I had
19 may have overlooked. And that is -- yes, Local 1163. And what
20 I'm going to do is I'm going to allow the amendment, but the
21 regional director may decide otherwise when she writes her
22 decision. If I'm wrong she'll tell me so, or she'll tell you.
23 Okay, other than that is that your final position regarding
24 the unit, Mr. Furlong?
25 **MR. FURLONG:** It is, but Mr. Heineman made a comment, we

1 went through the -- we're on the record now, right?
2 **HEARING OFFICER SCOTT:** Yes.
3 **MR. FURLONG:** Midway through the proceeding, which he
4 wasn't sure about our position in terms of the bargaining agent
5 or the scope of the bargaining unit. But let me clarify, and
6 certainly what I'm doing is reporting what I believe to be the
7 proofs, which is I don't really know who the bargaining agent
8 is. It seems to be somewhere in a grey area, you've got the
9 Buffalo Building Trades that have signed the MOU, but then
10 you've got underlying CBAs that define the actual terms and
11 conditions per craft.
12 I -- what I do know is it's not going to matter for
13 purposes of questions concerning representation; it's simply not
14 going to matter. So I suppose we would take the position that
15 the Buffalo Building Trades signed as an agent of the crafts who
16 actually went and negotiated their own collective-bargaining
17 agreements and incorporating them into the MOU. That would be
18 our position. And I think that the testimonies reflect that.
19 **HEARING OFFICER SCOTT:** Is the Petitioner prepared to
20 proceed to an election in any unit that's found appropriate by
21 the regional director?
22 **MR. FURLONG:** Yes.
23 **HEARING OFFICER SCOTT:** For the Employer?
24 **MR. HEINEMAN:** Yes.
25 **HEARING OFFICER SCOTT:** Okay. Ms. Creighton, what is your

1 position regarding the appropriate unit?
2 **MS. CLEIGHTON:** Well, I think -- I thought the testimony
3 showed pretty clearly that the Building Trades was the
4 bargaining agent for three successive collective-bargaining
5 agreements, and it's our position that the unit, under one
6 collective-bargaining agreement, which is the Memorandum of
7 Agreement, should not be fragmented.
8 **HEARING OFFICER SCOTT:** In other words the unit consists of
9 not only the carpenters but the other trades who are signed onto
10 the Building Trades Agreement, or am I misunderstanding?
11 **MS. CLEIGHTON:** That's correct.
12 **HEARING OFFICER SCOTT:** I should say the MOA.
13 **MS. CLEIGHTON:** Yes.
14 **HEARING OFFICER SCOTT:** Okay. And would the Intervener
15 appear on the ballot in any unit found appropriate by the
16 regional director?
17 **MS. CLEIGHTON:** As of the regional director?
18 **HEARING OFFICER SCOTT:** Mr. Heineman, your position on the
19 bargaining unit?
20 **MR. HEINEMAN:** The position of the Intervener Carpenters is
21 that the only appropriate unit is a unit of all construction,
22 crafts consistent with the MOU, and that this is a petition for
23 a nonconforming unit, and it appears to be seeking crafts
24 severance and is improper under the Board's rules.
25 **HEARING OFFICER SCOTT:** Thank you. At this time I'm going

1 to receive any outstanding stipulations that the parties have
2 agreed to during the hearing that I may have neglected to
3 receive.
4 Do the parties want to file briefs, or --
5 MR. FURLONG: We would like to file a brief.
6 HEARING OFFICER SCOTT: All right. Briefs will be due by
7 the close of business on May 7th. Any motion for an extension
8 of time needs to be addressed to the regional director. Parties
9 are reminded that they should request an expedited copy of the
10 transcript from the court reporter. Late receipt of the
11 transcript will not be grounds for an extension of time to file
12 briefs if you fail to do so.
13 Is there anything further?
14 (No response.)
15 HEARING OFFICER SCOTT: If not the hearing will be closed.
16 (Whereupon, the hearing in the above-entitled matter came to a
17 close at 4:45 p.m.)
18

1
2 C E R T I F I C A T E
3
4 This is to certify that the attached proceedings done before the
5 NATIONAL LABOR RELATIONS BOARD REGION THREE
In the Matter of:
KALEIDA HEALTH,
Employer,
And
CONCERNED CARPENTERS FOR A DEMOCRATIC UNION,
Petitioner,
And
BUFFALO BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO,
Intervenor.

6 Case No. 3-RC-077821
7
8 Date: April 30, 2012
9
10 Place: Buffalo, New York
11
12 Were held as therein appears, and that this is the original
13 transcript thereof for the files of the Board
14
15 _____
16 Official Reporter

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$1 (1)
34:17
$1,000 (3)
223:9,11,15
$1,600,000 (1)
35:23
$1,800,000 (1)
35:23
$2 (1)
34:6
$25 (1)
211:1
$3 (1)
34:6
$3,000 (1)
208:1
$3,457,000 (1)
35:5
$4 (2)
34:6,16
$4,000 (2)
53:9;223:6
$4,543,000 (1)
35:16
$40 (2)
80:11,12
$45 (1)
131:14
$5 (4)
15:9;67:21,25;
199:15
$50 (1)
15:9
$60,000 (1)
15:9
$65,000 (1)
35:23

0

03-RC-077821 (1)
5:6

1

1 (36)
6:17;7:5;8:8;23:10;
25:16;26:19;27:12;
28:3,4,7;33:25;46:2;
49:17;55:20,22,24;
56:22,24;67:16;72:6;
73:5,17;79:9,15;82:2,
12;84:2;116:18;
120:10;152:2,10;
153:15;154:6;202:21;
216:20;222:20
1,2 (2)
77:1,10
1:15 (1)
99:9
10 (6)
63:1;112:8;147:12;
164:10;210:6,10
10:00 (2)
5:2;132:18
10:30 (1)
132:17
11 (1)
204:13
1163 (1)
234:19
12 (3)
181:18;210:6,10
14 (1)
210:19
14202 (1)
5:17
14203 (1)
6:1
15 (2)
34:5;63:2
162 (1)
149:4
17 (1)
233:20
1968 (1)
219:12
1974 (1)
218:10
1975 (1)
116:16
1978 (1)
181:16
1998 (1)
128:24
1999 (1)
146:3
1999ish (1)
146:16
1a (3)
6:25;7:2,10
1f (4)
6:25,25;7:2,10

2

2 (18)
7:12,20,22;8:1;
12:23;25:25;28:3;
47:12;56:25;57:1,22;
68:25;74:6;79:9,19;
82:12;92:22;202:21
20 (3)
69:16;166:8;222:4
200 (1)
112:4
2000 (2)
42:11,12
2005 (4)
116:16,18;130:3,5
2006 (37)
23:6,10;29:5,7,15,17,
18;30:5;32:22;33:6,21;
35:25;40:19;42:6,13,
16;47:15;62:16,23;
71:21;83:25;84:14,18,
19;86:10;117:16;
118:1,12;119:10;
132:22;133:8;136:3,4;
160:9;166:2,5;192:9
2007 (6)
23:10;63:10;86:11;
118:12;119:10;136:13
2009 (4)
25:16;49:17;120:12;
221:19
2010 (6)
25:16;35:15;53:4;
116:18;204:13;207:24
2011 (13)
23:11,11;25:16;26:3,
19;27:12;63:24;69:2;
84:19;86:11;112:10;
117:12;128:24
2012 (4)
26:3,7;69:2;181:17
2016 (1)
26:19
210 (9)
100:23;101:2,16;
102:11,23;104:16;
109:4;111:18;112:3
22 (3)
170:16;188:4,6
23 (1)
28:22
24 (2)
104:19;106:17
25 (2)
220:1;222:5
276 (9)
115:11;129:6;
151:11,13;158:20,22,
25;159:2,6
28 (1)
210:18
280 (1)
192:8
289 (18)
11:21,21;16:4;17:6,
6;21:15;22:17;26:8;
27:15;129:5;133:24;
148:1;150:3,6,7,23;
192:8,9
295 (1)
5:25

3

3 (27)
7:17,20,22;8:1;
14:13;24:2;26:13;28:3;
34:6;42:23,24;43:2,7,8,
17;58:3,21;74:21;77:1,
10;79:9,19;80:25;
82:12;104:12;170:19;
191:1
30 (2)
14:6;84:12
31 (1)
26:19
35 (2)
131:13;172:1
38 (2)
179:22;233:19
387 (1)
149:4

4

4 (22)
27:9;28:3,4,7;30:16;
34:6;45:6;58:22,23,25;
60:19;62:15;69:23;
71:4;84:18;85:4;102:7;
109:11;117:7,12;
191:1,1
4:00 (1)
217:10
40 (5)
14:7;36:13;37:24;
75:18;84:6
41 (13)
116:9,10,15,20;
117:3;118:8,11,18;
119:7,23;123:15;
125:22;127:10
41's (1)
120:17
42 (3)
5:16;218:24;219:2
48 (1)
69:18

5

5 (2)
23:11;203:22
50 (2)
37:24;84:6
560 (1)
5:25

6

68 (3)
69:3,3,4
69 (2)
166:4,6

7

7 (5)
26:10,11;69:2,2;
210:17
70 (4)
153:15,17,23;154:8
726 (1)
5:20
75 (1)
118:24

8

85 (1)
151:9
8f (7)
14:12,12;17:23;
18:22;61:16;134:24;
157:21

9

9 (5)
129:4;148:14;
191:25;192:8,9
98 (4)
82:1,10;92:22;
169:16
99 (3)
6:7;190:9;191:24
9a (1)
135:4

A

abatement (1)
199:3
ability (3)
40:23;51:8;149:9
able (8)
39:14,15;41:4;96:2,
10;143:17;148:10;
154:15
abolished (1)
146:4
above (4)
67:25;207:10,11,18
absolutely (13)
21:1;31:20;94:5;
131:2,23;134:10,23;
135:17;138:6;141:22;
155:21;185:10;187:23
accept (2)
175:17,25
accepted (1)
176:6
access (1)
44:23
account (1)
68:3
accounting (1)
104:13
accurate (20)
19:24;26:9;36:12;
53:23,24;54:17;55:3;
56:8,9;57:9,10;58:11;
59:9;67:9;92:18;
104:23;109:10;127:5;
202:18;217:1
accurately (2)
26:2;92:16

acoustic (1)
226:6
acoustical (1)
138:14
across (2)
45:19;107:23
Act (4)
7:15;8:20;147:23;
183:6
acting (2)
61:3;220:13
active (1)
38:25
actively (1)
69:14
activities (1)
181:21
activity (1)
131:4
actual (3)
32:3;92:25;235:10
actually (29)
32:2;39:22;46:15;
49:24;54:21;71:25;
85:5;87:22;120:9;
122:10;130:5,9;
146:21;157:21;159:19;
161:24;170:1,3;
205:12;206:6;210:16;
216:8;219:12,25;
221:17,22;222:2,4;
235:16
actuated (2)
214:19;215:1
acute (3)
59:17,20,23
addition (1)
220:15
additional (1)
5:11
address (1)
13:8
adjacent (1)
58:6
adjust (2)
31:11;172:19
adjusting (1)
212:6
adjustment (1)
212:18
adjustments (2)
212:15,20
administer (2)
129:15;144:18
administering (1)
145:1
administration (2)
146:10;147:8
Administratively (1)
70:11
admission (6)
7:22;28:3;56:13;
57:18;58:18;59:12
admit (4)
6:23;8:7;56:16;
60:17
Admitted (2)
7:25;56:23
adopting (1)
175:18
advocate (1)
145:4
affect (1)
180:13
affiliate (6)
9:8,19;10:16;17:11;
126:14,19
affiliated (6)
9:11;10:11;17:13;
149:18;155:18,20
affixing (1)
169:22
afield (1)
164:13
AFL-CIO (5)
13:2;154:13,21,25;
155:18
afraid (1)
94:13
afternoon (9)
100:16,17;116:3;
128:16,17;181:8,9;
217:23,24
again (16)
53:24;54:11,24,25;
63:10,24;72:3;87:22;
91:19;94:8;96:3;
132:19;152:20;190:12;
201:9;232:13
AGC (1)
134:2
agenda (2)
157:7,11
agent (15)
11:14;17:2,3,16;
20:22,22;100:25;
101:1,5;107:18;
129:15;235:4,7,15;
236:4
agent's (1)
120:5
agents (1)
20:15
ago (3)
46:17;114:12;151:12
agree (29)
17:24;19:16;21:22;
23:20;24:12;40:10;
59:7;71:5;78:12,15,22,
24;79:2,3,5,8;80:4;
81:20;89:14;103:6;
134:18;136:17;163:3;
174:24;175:18;179:13;
180:11;216:22;221:14
agreed (1)
63:7
agreement (170)
8:6,9;14:12;16:13;
17:25;19:24;21:2,5;
22:17;23:4,5,6;26:16;
27:1,2,10;30:2,3,4,5,
11,13,13,14,15,18,23;
31:8;32:6;36:4;42:11;
43:3,21;62:15;64:2,24;
71:21;72:24;73:3,14;
74:16;78:20;79:2;
80:10;82:24;84:5,17;
85:2,4,6,7;86:7,12;
88:16;92:14;98:7,17;
102:12,15,19,22;103:1,
3;107:2,13;109:16,17,
22,25;110:1,2,3;
111:13;112:10;113:3,
6,18;117:10,17;119:8;
120:15,17,20;121:10;
129:21;132:20,23,25;
133:4,7,8,11,13,16,23,
23,24;134:1,9,11,16,
22,24,24;135:6,7;
136:1,4,4,13,14,15,16,
19;137:7;138:17;
143:12,25;144:16,19;
145:2,6;146:5,6;147:9,
10;148:11;150:3,14,
16;157:13;159:13,15;
160:16,25;163:10;
167:4,6,10;169:2,6,13,
22;170:16,18,21,24;
171:5,11;172:10,16;
174:22,23,24;175:3,8,
16,22;176:11;179:23,
24;190:4,7;191:17;
202:10;224:21;234:7;
236:6,7,10
agreements (36)
12:5;14:12;23:7;
29:11;30:8;36:21,24,
25;37:3;68:20;71:9,21;
80:23;87:18;102:24;
106:11;112:3;120:18;
129:16,22;135:4;
146:1,3;151:3,23;
158:22;159:1,3,4;
160:24;170:25;176:6,
9;178:4;235:17;236:5
ahead (15)
28:16;96:3,7;100:15;
110:20;128:15;144:12;
149:15;162:19;165:1;
166:11;169:12;199:8;
208:16;211:19
aiding (1)
218:20
aimed (1)
8:21
airport (1)
185:11
ajar (1)
95:9
alignment (1)
37:11
allow (2)
143:11;234:20
allowed (2)
148:17,18
Almar (1)
192:3
almost (4)
53:23,25;203:3;
220:1
along (4)
136:11;141:21,23;
187:19
alongside (1)
212:5
although (6)
33:12;60:8;71:8;
84:18;216:25;232:13
always (17)
23:19;65:17;145:3,4,
9;183:11,11;185:12,
24;188:22;196:24;
204:22;206:14;211:14;
213:6,6;221:10
amazing (2)
91:16;92:4
amend (4)
180:3;232:12,16;
233:15
amended (1)
233:9
amendment (2)
232:17;234:20
America (2)
26:18;128:21
among (2)
7:14;33:19
amount (3)
55:17;195:17;223:5
amounts (1)
67:17
amplify (1)
76:12
analyzed (1)
8:14
animal (1)
161:24
annuity (1)
168:25
answered (7)
54:22,23;87:13;94:9;
158:6;165:22;175:13
anticipated (1)
20:1
anymore (3)
17:7;22:19;218:3
apart (2)
43:22;233:7
apologize (8)
42:15;57:13;62:21;
132:20;133:3;160:15;
169:10;208:25
apparently (1)
10:9
appealing (1)
202:4
appear (1)
236:15
appearance (1)
6:4
appearances (2)
5:13;6:8
appearing (1)
5:7
appears (2)
13:19;236:23
appended (5)
19:24;109:17;
160:24;176:6,9
appending (1)
170:5
appliance (1)
37:23
applicability (4)
43:8,11,13,15
applicable (2)
49:3;133:5
applies (1)
91:13
apply (7)
42:3,22;43:3,18;
103:3;133:7;169:18
applying (1)
187:3
appoint (1)
103:10
appointed (9)
104:3;150:25;
151:12,16,16,17;183:9,
10,11
appreciate (2)
81:11;92:10
appreciated (1)
158:8
apprentice (12)
31:24;40:1,4,8;
146:14,14;156:23;
191:19,23;192:11,17;
219:12
apprentices (1)
192:22
apprenticeship (6)
146:11,18,18,20;
151:8;192:7
approach (5)
101:19,20;113:23,
24;224:11
appropriate (16)
16:16;18:3,4,7;
19:14,18;22:6,7;24:15;
98:3,4;164:17;235:20;
236:1,15,21
approved (1)
7:13
Approximately (1)

28:22
architect (1)
31:5
architects (1)
46:24
architectural (3)
34:24;39:2,21
architecture (1)
34:22
architecture's (1)
47:1
area (24)
30:5;52:19;64:18;65:3;80:11;121:9;129:2,12,14,19;130:8;146:16;192:4;200:5;203:22;205:1;208:8;210:18;213:14,18,23;220:18;223:17;235:8
areas (6)
210:21,23;213:7,9,11,21
aren't (2)
196:25;215:20
arena (1)
219:23
argue (1)
87:4
arguing (1)
83:11
argument (5)
11:9;60:16;161:22;215:8;233:23
arise (1)
142:11
arm (1)
145:19
around (9)
30:5;50:1;71:1;86:25;93:25;131:10;166:8,24;208:13
arrangement (2)
29:21;41:22
arrangements (2)
71:21;156:18
Article (2)
179:22;233:19
asbestos (4)
53:15,16;91:7;199:5
ascended (1)
151:10
Aside (2)
175:11,15
asserting (1)
19:22
assign (2)
31:1,5
assigned (9)
38:13,22,23;51:17;82:23;107:12;205:7;206:23;207:16
assigning (1)
38:2
assignments (1)
167:14
associate (1)
5:19
association (6)
112:5,6;113:13,19,23;138:22
associations (1)
26:17
assume (12)
16:15;18:16;23:12;31:16;53:18;58:25;65:17;101:21;106:10;168:4,6,7
assumes (3)
70:8;167:22;170:1
assuming (2)
8:19;97:5
attached (2)
19:24;113:4
attempt (5)
19:8;54:18,20;166:18;172:21
attempted (1)
82:22
attempting (2)
14:23,24
attend (1)
132:11
attended (1)
63:20
attention (4)
20:5;102:2;104:16;180:1
attorney (1)
111:2
attorneys (1)
144:7
Aurora (1)
130:9
authority (2)
220:14;221:7
authorization (3)
33:14,18;135:2
available (1)
51:6
Avenue (2)
5:16;6:7
aware (14)
14:6;45:8;47:15;64:18;66:24;75:22;78:16;82:16,21;83:4;157:17;171:18;176:18;179:22
away (3)
171:11;232:24,25
awhile (2)
93:25;139:10

B

B8 (2)
53:4,6
back (42)
12:11;19:12;21:13;22:2;38:15;42:11,16;46:2;79:9;86:3;88:25;95:13;100:3;105:5,9;111:4,11;120:12;128:3;135:15;137:24;141:15;146:15;149:22;152:5,19;153:9;163:9,20;171:23;172:3;180:21;190:9;191:24;200:25;211:19,25;217:8;218:10;221:12;232:4;233:14
background (2)
75:23;212:23
backtrack (1)
136:14
baffled (1)
10:22
balance (1)
68:22
ballast (2)
124:25;125:13
ballot (1)
236:15
balusters (1)
167:13
bank (1)
68:2
Bant (1)
169:14
banter (1)
105:9
bar (13)
13:22,24;14:9,14;18:1,17,21,23;19:21,22;22:21;24:5,10
bargaining (90)
8:6,8,9,15,16,18;11:14,24;14:25;15:2,4,5,16,24;16:11,13;17:2,3,16;18:6;19:3,13,17,17,18;20:13,15,20,22,22,23;21:5,8,9;22:15;23:4;36:14,16,21,22;43:3;80:10;83:10,11,16;85:18,22,25;86:14,16,18,24;87:5;91:19;97:16;98:9,13,16;107:2;109:7,7;111:17,18;134:2,5;143:12,21;144:16,19;147:9;154:10;156:17;158:21;159:1,4,24;163:10;171:5;174:25;179:17,19;180:7;224:2;234:7,10;235:4,5,7;236:4,19
Barrone (5)
147:14,15,23;148:1;149:22
Bart (3)
77:25;78:1;194:6
base (4)
31:12,25;64:1;84:19
Based (19)
8:8;31:11;39:3;42:10;63:7;70:21,22;78:19;84:19;95:25;108:7;135:18;153:11;166:12,19;171:4;178:21;222:20;234:1
basic (2)
116:19;134:21
basically (13)
40:19;46:19;59:3;98:19;116:24;129:15;131:10,17;166:18;200:15,18;219:1,11
basis (9)
14:19,20;38:12;79:4,7;185:21;189:9;190:1,2
battle (1)
225:6
Bauling (1)
139:14
BAUMERICH (2)
87:7;101:20
bear (1)
139:4
beat (1)
113:17
became (3)
29:19;67:25;210:21
become (9)
22:11;41:6,10,14;92:6;95:9,9;143:21;192:9
becomes (3)
50:22;194:16;195:14
began (1)
83:24
Beginning (4)
25:15;165:23,24;166:1
behalf (13)
10:10;20:10;27:12;28:12;30:20;119:7;132:11;133:24;150:7;158:23;172:19;181:22;196:2
behave (1)
101:21
behind (1)
63:2
belong (2)
17:10;193:10
belongs (1)
142:25
below (2)
49:9;210:24
benefit (2)
80:24;212:21
benefits (7)
26:14;86:15;169:4;171:4;189:22,24;190:3
best (12)
39:6;51:8;65:23;71:15;95:21,22;104:22;112:12,14;130:23;153:18;195:23
better (3)
116:24;147:12;149:9
beyond (4)
60:9;167:11;168:16;216:7
BGH (2)
53:4;216:22
bid (4)
35:9,19,20,25
bidding (1)
46:1
big (6)
15:16;60:20;131:13,14;183:16;185:14
bigger (3)
131:17;219:22;220:1
bills (1)
143:17
biohazard (1)
210:1
biological (1)
210:7
bit (8)
49:21;54:3;67:17;123:25;157:23;185:17;193:2;202:7
black (1)
152:4
blind (1)
97:10
blinds (1)
52:11
block (1)
14:13
Blossom (1)
192:3
blue (9)
88:8,18;161:9,9;162:20,20,21,21;163:1
bluntly (1)
131:22
blurred (1)
202:17
blurring (1)
203:13
BO (1)
73:13
Board (18)
5:6,7,10;7:2,5,10,11,16,17,20,22;8:1,17;12:23;20:4,4;60:14;151:19
Board's (1)
236:24
Board's (5)
6:17,24;18:5;19:6,9
Bob (6)

145:12;146:9,12,19,19;180:23
Bodewes (8) 16:5;27:15;88:5,20,20;150:9,11,13
books (2) 15:13,13
Boritz (4) 227:11,13,17;229:13
B-O-R-I-T-Z (1) 227:22
borrow (1) 211:17
borrowing (1) 212:2
Bortz (1) 49:5
boss (3) 116:24;227:11;229:8
both (13) 34:8;38:8;49:6,8,13;93:15;94:7;96:5,9;145:8;162:14;163:9;227:25
Box (20) 139:14;172:1;190:18,19,20,20,25;218:24;219:4,8,24;220:16,21;221:11;222:4;225:21,22;226:1,3,5
boxes (9) 44:19,21,23;91:3;139:2;190:16,17;191:4;213:3
break (14) 9:21;10:7;37:11,21;38:9,10;39:17;94:2;95:1,2,3;99:4;180:18;217:6
breaks (1) 190:22
Bricklayers (2) 170:18,18
brief (12) 22:1;99:11;128:2;137:23;152:18;163:13;180:20;200:24;211:24;217:11;232:3;233:13
Briefly (5) 89:14;116:19;190:11;221:14,20
briefs (1) 179:3
bring (12) 31:8;51:19;53:15;77:3;85:19;131:24;169:21;180:1;188:18;211:16,18,19
bringing (2) 61:4;170:4
broad (2) 96:12;183:4
broader (1) 157:24
Broken (6) 52:9,11;95:16;124:25;228:13,15
Brotherhood (7) 26:18;45:7;126:23;128:20;129:9,11;178:11
brought (5) 9:16;14:21;20:4;169:25;210:19
Brown (40) 14:17;33:1,3,4,6,11,13;62:19,21,23;63:10,18,24;64:1,6;67:18;84:25;85:5;86:10;117:21,24;131:24;132:6;134:8;136:4,5,6,11;160:19;163:12,15;172:10,10,14,18,21;173:5;174:2,10;176:5
buckets (1) 211:18
budget (1) 224:1
budgeting (1) 46:22
Buffalo (54) 5:17,21;6:1;13:1;17:10,11,14,16;20:16,21;27:10;30:1;33:6;35:15;36:20;42:4,19;46:3;49:19;58:15;68:8;82:23;83:25;116:13;118:2;121:9;125:22,25;126:4;127:6;129:1,2,12,14;130:8;146:4,9,16,17,17;159:17;175:4,9,11,15;193:8;195:17;196:6;216:22,23;222:12;227:16;235:9,15
build (11) 52:18;72:9;73:2,11;74:22;77:3;79:18,20;93:5;208:13;210:3
builder (2) 162:8,14
Building (127) 5:22,25;8:5,15,22;11:14,16;13:1;14:18,19,22;16:12;17:1,10,11,14,16;19:19;20:11,14,16,21;21:2,12;22:12;27:10,13,17,18;30:1;31:5,9;33:3,7,15;34:10;35:8;36:4;37:10,14;39:22;41:23;46:3;54:5;55:25;56:10;61:15,16;64:25;65:4;66:7,19;71:24;72:23;73:2,6,9,14,18,23;74:2,10,16;77:3;79:15,18;82:24;83:25;97:18;98:7,14;102:13,21,22;103:1;107:13;109:13,17,21;117:20;118:1,2,2,5,16,20;120:12;125:22;126:1,4,15;127:6;131:10,25;132:6,9,12;133:13;154:11,15,16,19,23;159:14,18;160:23;162:8,11,15,16,20,22;164:7;172:11;173:1,4;188:6;195:18;221:24;225:12;227:20;233:17;234:9;235:9,15;236:3,10
buildings (4) 118:25;119:1;130:14,16
builds (5) 77:1;79:10;93:13;106:4,8
built (13) 44:12;72:19;74:8,25;77:2,10;79:14,15;162:17,21;187:1,2;210:1
bulbs (1) 37:18
bunch (1) 188:17
Burke (13) 115:7,9;128:5,6,9,16,20;138:3;139:11;153:14;154:8;168:24;180:16
B-U-R-K-E (1) 128:13
business (37) 17:21;31:3;42:9,10;46:20;59:25;60:22;61:1,7,18,24;62:2,4,6;83:19;100:25;101:1,5,16;102:9;103:16;107:18;115:10;116:17,17,19,21;118:24;120:5,23;123:17,20;129:15;158:14;167:12,15;174:17
butchering (1) 193:17
buy (1) 34:15
bylaws (1) 17:13

C

C-1 (2) 56:13,23
C-2 (1) 57:18
C-3 (1) 58:2
C-4 (1) 59:12
cabinet (1) 224:7
calibration (2) 37:11;97:20
California (1) 116:11
call (13) 22:18;24:19;28:9;37:20;44:1;128:4;160:19;172:3;226:25;227:6,7,10,11
called (16) 28:12;45:10;56:17;57:5;63:21;100:10;105:5;115:23;128:10;132:24;167:6;181:3;217:17;221:22,25;232:5
calls (3) 100:5;180:23;217:12
Cambria (1) 5:16
came (5) 75:20;83:23;141:23;172:25;200:2
Campus (1) 58:16
can (100) 10:5,24;12:1,3,5,7;20:17;22:16;23:14,20;24:4,9,12;25:7;26:21;29:7;33:5,8;34:1;39:11;42:24;43:21;48:18;51:10,11;53:2,13,14;55:1,3,12,24;56:17,18;57:3;58:5;61:11,21;65:20;68:18,24;69:9,23;76:13;80:3,5;81:15,16;87:2;93:22,25;94:17;95:6;97:17;110:18;114:1;121:5;124:6;125:14;126:10,14;134:18;139:25;143:22;145:18;148:6;150:16;152:15;154:24;155:1;156:3;159:5;161:17;162:2;163:2;167:7;168:4,6,9;174:1;175:21;176:3;180:2;190:21;196:16,18,24;200:22;202:1;207:6;210:1;211:6,17;216:16,17,21;218:23;233:25;234:1,2
can't (9) 86:19;113:2;131:20;136:6;157:17;166:12;168:7;175:19;203:23
candid (1) 156:5
candidates (1) 192:5
cap (1) 67:22
capabilities (1) 40:16
capability (2) 50:12,13
capable (1) 215:20
capacities (1) 77:19
capacity (6) 100:24;116:15;128:25;129:10;153:18;157:4
capital (1) 31:1
Capitano (6) 101:13,15;103:14,15;107:22;109:14
Capitano's (2) 101:17;102:3
Cappelli (5) 88:23;89:1,3,7,7
carbon (1) 176:25
card (2) 108:22;229:5
cards (6) 9:16,20;10:9;33:14,18;135:2
care (11) 13:10;38:13;49:20;86:15;136:6;139:21;152:8;183:19;196:13;227:16,17
career (3) 145:9;183:2;196:22
Carl (4) 151:5;193:13,14,20
carpenter (38) 44:2,5;48:20;78:9,23,23;79:15,19;80:3,4,15;88:12;108:3;114:14,15;137:10;139:1;142:10;145:1,14;147:3;170:21;172:10,18;178:10,15;189:18;201:20;218:2,3,3,4,5,7;219:21;223:18;226:22,25
Carpenter's (14) 72:6;73:16,17;74:6,21;77:1;79:9;82:12;115:11;167:3;172:15;183:24,25;214:14
Carpenters (205) 6:6;8:5,12,13,22;9:5,14,17;10:2;11:2,17,20,21,23;12:9,17,18;13:21;14:1;15:2,3,13,

24;16:3,5,8,14;18:8,9,11;19:2;20:11;22:8,19;25:20;26:8,14,17,18;27:15;31:17,22;35:7;42:22;43:18,21,25;44:1,2,10,11;46:7;55:22;56:24;57:1,22;58:3,21,23;60:19;63:19;64:3;66:9,18;69:2,13;72:11,14,15,17,21,23;73:2,5,7,23;74:2,12,16;75:2,5,8;76:4,16,20;77:9;78:6,10,11;79:10,25;80:9,24;81:13,14,21,21,22;84:6,12;88:1,2;90:23;91:4,13,17,21;97:15;98:6,6;119:24;126:3,6;128:21;129:1,11;130:17;132:11;133:9,17,18,22,25;134:12;135:1,5,12,18,22;136:11,12;137:12,19;138:25;139:16,20;141:2,4,20;142:2,18,19;143:10;145:24;146:11;147:7;150:2,6;153:16;154:21;156:8,10,12,14,17;157:4;158:11,15,18,23,24;159:24;160:8;165:20;166:4;167:15;168:25;169:18;170:21;172:19,23;173:1,13;174:4,5,18;178:5,12;181:13,15;190:3,17;191:5;193:4,24;194:1,3;212:22;213:17;215:8,17;218:9,10,13,14,15;220:3,15;221:7,10;233:3,18;234:5;236:9,20
Carpenters' (1)
15:14
Carpenter's (9)
8:8;55:20,24;56:18,19,22,25;58:22,25
carpentry (13)
43:4;46:16;130:4;134:15,21;135:8,12,13;156:21;167:2,16;205:24;215:21
carpet (5)
53:10,12,17,17;97:12
carpeting (5)
53:8,13,13,18;187:8
carried (1)
137:3
carry (1)
196:20
cart (2)
211:16,17
Carton (1)
6:6
carts (2)
212:2;214:7
Case (16)
5:5;12:7;13:8;14:6;15:20;18:20;31:16;49:4;101:24;118:12;149:7;161:1;163:16;175:7;180:12;217:7
cases (4)
87:4;148:12;149:3;163:9
category (2)
34:6;95:7
Catherine (1)
5:24
caused (1)
94:19
CBAs (2)
133:15;235:10
CCDU (23)
17:13;18:8;143:5,6,20;144:23;146:24;147:5,17,19;148:10;155:10,12,14,25;156:17,20,23;157:2;180:23;181:22,24;218:20
CCDU's (1)
178:22
CEIA (1)
112:23
ceiling (2)
50:7,8
ceilings (7)
73:9,11,24;138:14,14;224:5;226:6
cement (1)
211:19
center (3)
70:14;192:3;222:15
central (2)
213:14,18
certain (7)
25:14;31:17;49:16;92:1;142:25;178:19;194:16
certainly (9)
10:3,4;50:11;59:6;86:21;97:17;152:24;165:10;235:6
certification (2)
46:16,21
certified (4)
39:25;40:1,4;157:17
certifies (1)
196:12
chain (1)
48:22
challenge (1)
46:25
chance (2)
6:18;233:19
change (11)
18:2;29:15,17;84:20;97:10;106:21;124:24;137:21;175:19;201:10;232:21
changed (9)
52:12;54:10;84:21;98:2,19;166:22,22;188:24;210:20
changes (3)
17:7;117:15;163:11
changing (9)
37:15,18,18;50:6,8;52:11;125:13;167:13;168:2
characterize (1)
87:2
characterized (1)
94:24
charge (6)
70:16;189:7;207:13;225:8;227:20;228:6
charged (1)
129:20
chart (1)
212:10
chartered (2)
154:11,16
check (4)
9:21;101:9,9;212:10
checked (1)
10:6
check-off (1)
135:10
checkups (1)
212:8
Chemical (1)
149:4
Cheryl (1)
48:24
chief (5)
13:20;28:24;29:3;48:24;49:1
Childrens (16)
68:7;185:1,3;196:5;199:1;201:7;203:5;207:23;211:12;212:12;213:10;216:7,23;222:11;227:5,16
children's (1)
36:18
choice (2)
142:4;187:23
choices (2)
19:6;51:19
choose (5)
32:1;109:25;110:1,24;111:15
chop (1)
139:1
chose (1)
160:19
CIA (2)
112:5,10
CIEA (17)
112:23,25;113:11;134:2,4,6,9;136:1;138:17,19,21;169:2;172:16;174:22;175:1;190:4;219:6
Ciminelli (6)
57:8;58:11;60:25;183:3;188:21;189:12
CIR (1)
121:7
circular (1)
139:2
circumstances (3)
52:23;211:6;221:20
cite (1)
149:4
City (2)
42:4,19
claim (3)
6:12;11:24;225:6
claimed (1)
114:17
claiming (1)
142:25
claims (1)
83:15
clarify (3)
148:13;161:25;235:5
Class (1)
48:25
classes (1)
146:15
clause (8)
14:2,4,8;17:25;18:20;19:25;20:6;175:19
cleanup (2)
105:25;114:15
clear (17)
10:8;44:11;50:2;54:15;62:15;87:8;115:7;116:12;117:11;139:24;141:3;146:13;149:16;170:13,15;185:3;203:12
clearly (3)
59:16;71:19;236:3
CLEIGHTON (30)
90:1,17;92:7,9,11;106:10;108:13;112:19;124:14;148:13,16,20,24;149:16;154:3;155:5;170:9;199:13;201:15;202:2;215:25;217:2;226:14;232:10,18;233:9;236:2,11,13,17
clerical (1)
70:15
clinical (1)
29:1
clinics (1)
59:24
closed (1)
216:25
closes (1)
179:13
closing (1)
234:2
clue (1)
92:25
cognizable (1)
8:19
Cole (2)
146:19;191:24
collaborated (1)
200:2
collect (1)
135:13
collected (1)
108:7
collective (15)
8:6,8;15:24;16:11,13;20:15;21:5;22:15;23:3;36:21;43:2;86:18;111:17,18;156:17
collective- (11)
80:9;107:1;143:11;144:15,18;147:8;158:25;159:3;163:9;171:4;234:6
collective-bargaining (42)
68:20;71:8,20;78:20;79:2;86:7,12;87:18;92:13;102:15,19;109:16;112:2;129:16,21,22;133:4,7,10,13,23;143:24;145:1,5;146:1,2;147:10;150:14;151:3,23;157:12;159:3;167:6,10;171:11;175:8;176:11;178:4;191:17;235:16;236:4,6
combined (1)
129:4
coming (8)
15:17;59:20;60:11;69:9;155:24;171:23;188:24;211:15
commencement (1)
117:12
comment (1)
234:25
comments (2)
91:12;132:5
commercial (1)
81:8
Commission (1)
196:12
committee (9)
146:23;147:5,19;153:16;155:13;181:25;

190:8,10,10
common (4)
89:15;171:8;212:7,11
companies (1)
101:8
company (1)
61:25
compare (3)
92:14,18;137:20
comparison (1)
185:19
compensation (1)
42:21
compete (1)
60:25
competing (1)
62:7
competitive (2)
62:5,5
competitors (1)
64:18
complain (1)
91:17
complained (1)
91:23
complaining (1)
92:2
complaints (1)
66:25
complement (1)
34:25
complete (5)
64:6;70:25;86:20;153:22;215:18
completed (1)
215:10
completely (3)
40:6;57:24;161:24
completing (1)
78:14
completion (1)
185:13
complex (1)
138:16
complexity (1)
53:25
complicated (1)
53:14
composite (6)
47:25;76:17,19,22;202:5,7
composition (1)
187:8
compounding (1)
168:15
comprehensiveness (1)
164:23
compromised (3)
50:22;97:4,5
concept (1)
161:23
concern (2)
40:24,25
Concerned (12)
9:5,14,17;10:2,20;11:1,17;12:16,18;18:8;126:3,6
concerning (4)
13:15;67:1;157:9;235:13
concerns (3)
131:24;136:22,25
concerted (1)
131:4
concessionary (1)
146:6
concluded (1)
11:8
conclusion (1)
79:19
concrete (2)
138:12,12
conditions (13)
42:22;43:17;102:16;157:10;169:18;171:7,10;172:15;173:1;175:21,21;191:16;235:11
confident (1)
10:5
confined (1)
216:7
conflicting (1)
83:15
confused (1)
21:6
confusing (1)
27:4
Connor (1)
97:25
Connors (40)
5:19,19;13:6;16:22,24;22:3,7,16,22;23:6,8,24;24:3,19,20,24;26:10,24;27:2,4,6;28:8,16,18;32:8;43:25;67:11,12;82:7;86:17;87:13,15;98:4,12,20,23,25;204:4;232:7;233:20
C-O-N-N-O-R-S (1)
5:19
consequently (1)
211:14
consider (6)
23:18,19;67:20;92:7;95:4;149:6
considered (3)
67:24,25;199:5
consistency (2)
47:19;91:12
consistent (3)
69:10,17;236:22
consists (1)
236:8
construct (1)
73:11
Construction (120)
13:1,23;14:5,11;15:8,11;17:22;20:5;27:10;29:1,8,9,22;30:1;35:11;36:3;39:19;40:11;46:11;47:23;51:9;52:20;53:24;54:1;55:14,18;56:1,4,5,6,10;57:6,8,25;58:8;59:25;60:23;61:1,7,10,16,18,19,24;62:1;64:21,22;65:4,8,13;66:22;67:2,7,15;70:12,13;72:1;73:9,13;75:19;77:2,9,15;79:12;83:19;89:12,14,21;90:8,9;91:3;92:20;95:4;96:19;97:5;105:10,22;107:5,6,7;110:2;112:6;113:12;119:20,21;120:17;122:5,10;124:4,8,9,9,19;138:19,21;159:12,20;161:7,14;162:16;163:4,5;164:6;171:20;172:6;183:2;188:20;194:20;196:18;207:13;213:18,23;215:7,9;219:18,22;227:25;228:3;229:4;236:21
constructional (1)
67:24
constructural (1)
39:21
contact (2)
32:2;68:13
contacted (1)
221:21
contacts (1)
125:9
contains (3)
7:13;14:1;19:25
contending (2)
66:18,22
contents (1)
154:1
contest (2)
114:19,22
continued (3)
30:6,12;119:12
continuing (2)
119:11;160:10
continuous (1)
130:6
continuously (3)
91:8;160:7,8
contract (25)
13:22,24,25;14:8,14;18:1,17,17,21,23;24:5,10;45:17;46:23;52:10;67:8;110:11;111:1,2,10;117:9;134:7,8;174:21;233:2
contracted (3)
34:12;51:19;65:3
contracting (11)
29:10,10,19;31:6;41:13,15,24;42:9,10,17;46:20
contractor (33)
29:12;34:12;41:6,11;45:24;51:20;52:8;56:3;58:10;59:19;61:4;80:1;118:24;119:2,3,6,20;121:11,14;122:1,12,12;130:8;131:20;171:19;183:10,12;185:15;187:18,19,20;219:1,4
contractor's (1)
163:22
contractors (49)
35:20;40:20,22;46:12;75:19,24;82:12;83:25;84:4;85:16;101:8;112:2;118:21,23;119:1;121:5,9,10,13,14,16,17,20;127:14;130:4,6;131:18;137:20;139:13,15;162:23;163:5,22;164:1,2;170:22,25;171:1,12,19,25;172:3;174:18;183:1,6;185:7;202:16;205:18;218:23
contracts (10)
45:20;71:11;84:4;101:10,11;107:9;116:22,22;156:20;190:9
Contractual (2)
133:4,5
contrary (2)
19:9;179:11
contrast (2)
37:6,7
contributions (4)
135:24,25;168:24,25
control (2)
40:24;44:17
controls (2)
66:12;183:17
conversation (1)
114:23
converse (1)
114:25
conversed (1)
115:1
coordinate (4)
89:16,22;122:13;187:24
coordinated (1)
66:15
coordinates (1)
122:11
coordinating (1)
122:10
coordination (3)
89:23;122:14,18
coordinations (1)
189:8
coordinator (3)
191:24;192:7,9
copies (11)
5:11;6:17;64:1;72:4;133:12,14;152:1,12,14;170:11;176:10
Coppola (10)
115:17,19,22;116:2,3,6;120:22;122:8;124:2,19
C-O-P-P-O-L-A (1)
116:2
copy (10)
24:24,25;27:17;60:5;135:6;153:22;176:25;216:16,17;232:9
core (2)
10:24;188:19
Corian (2)
208:10,11
corrected (1)
12:20
correction (1)
26:10
correctly (1)
193:7
corridors (1)
210:21
cost (9)
31:1,5;34:20,21;35:5;40:25;46:22;57:13;67:23
costs (1)
40:24
couldn't (12)
21:22;34:10;92:18;119:3,5;127:8;131:8;132:4,9;161:11;178:2;212:18
Council (47)
5:23;6:5;8:5,6,7;11:20,23;12:9;13:2,21;14:1;15:2,24;16:5,8,14;17:5,5;20:11,16;21:12,14;26:17;27:11;30:1;33:7;62:14;63:20,22;66:19;72:15;118:2;125:23;126:1,4;127:6;131:25;133:18;154:20;159:2,6,23;233:6,7,17,18;234:6
Council's (1)
19:10
counsel (20)
5:13,20;7:18;9:4,12;10:1,9;11:23;14:22;21:5;54:22;70:23;72:3;76:4,16;80:3;92:6;

94:13;157:16;174:2
count (1)
69:2
countertop (4)
208:11;228:13,14,18
countertops (2)
224:7;228:15
country (1)
156:8
County (3)
101:6;117:5;127:16
couple (9)
22:24;34:3;35:14;
114:12;124:2;131:7;
133:12;176:20;183:1
course (8)
11:16;16:15;26:7;
59:23;65:20;107:21;
121:12;212:14
COURT (2)
137:21;202:1
courthouse (1)
200:5
cover (4)
26:13,25;134:11;
138:15
covered (10)
23:9;38:18;71:6;
107:1;134:22;138:17;
161:14;178:4;179:24;
222:21
covering (2)
134:14;199:4
covers (2)
8:9;27:6
craft (66)
14:19,19;15:19;19:8;
21:3,4;33:17;38:17;
40:5;45:1;49:7,13;
51:2,13;52:1;53:21;
54:5;56:11;67:2;78:19,
24;79:4,4,7,7;83:5,6;
84:10,10;89:23;103:6,
6;108:4,7;110:6;111:7;
118:5;122:25;169:19,
21,25;171:3,10,10;
189:25,25;190:2,2;
194:10,15;195:14;
202:7,16;203:16,22;
205:4;207:4,16;
214:13;221:5;224:15,
19;225:1,2,17;235:11
crafts (48)
15:16;25:17;26:8;
38:23;39:7;44:23;
48:17;52:14,15,16,20;
54:15;56:11;62:11,12;
77:2;78:16;82:23;84:7,
15;89:16;103:22;
104:9;114:19;118:16;
119:24;122:25;142:14,
24,25;189:2,3,25;
195:10;200:12,14;
204:19;207:3,8;220:2,
14,24;225:5,12,16;
235:15;236:22,23
create (2)
14:25;39:23
created (1)
202:8
creating (1)
39:22
CREIGHTON (42)
5:24,24,24;6:19;7:8,
24;12:25;13:3;16:25;
17:1;18:15,19,25;
20:18;24:8,12;27:16,
20,25;33:8;47:5,6,8;
48:10;56:14,20;57:20;
60:16;62:19;63:14;
90:16;108:12;112:18;
124:13;155:4;173:9;
201:14,18;202:3;
224:15;226:13;235:25
Creighton's (1)
224:19
Creighton's (1)
19:14
crew (15)
51:12;57:6;77:15;
79:11;92:20;96:17,20;
124:23;125:2;166:18,
21;202:5,7;225:8,10
crews (8)
47:25,25;65:13;
71:25;76:17,19,23;
201:19
cross (7)
66:9;70:14;161:9;
162:20,21;163:1;
170:12
crossed (1)
170:9
CROSS-EXAMINATION (9)
32:11;47:7;48:12;
108:16;124:17;155:8;
201:17;204:7;226:17
crossover (1)
49:14
Croston (19)
14:17;25:22;26:1;
27:11;28:11,19;32:13,
21;36:7;39:6;47:3;
60:22;66:2;71:4;78:12;
93:25;105:6;160:20;
195:16
crux (1)
60:16
crystal (1)
141:3
CT (2)
34:15,16
CTMR (1)
31:3
curious (1)
8:25
current (6)
15:24;16:11;22:15;
28:23;30:14,15
currently (10)
15:21;33:6;36:21;
48:24;116:6,7;136:16;
151:10;154:17;156:18
cut (1)
194:25
cutoff (1)
188:15

D

daily (3)
38:3,12;185:21
Dake (1)
185:8
damage (4)
52:7;81:17;96:25;
97:2
damaged (5)
52:5,5;208:9,18;
228:14
Dan (1)
187:17
Darryl (1)
150:11
Daryl (2)
16:5;88:20
date (3)
30:6,14;117:12
dates (7)
84:21;85:20;86:4,11;
117:15,16,17
Dave (3)
221:22;222:4;226:20
DAVID (1)
28:11
day (7)
14:3;49:17;119:11;
167:8;185:13,21;229:1
day-in (1)
185:22
day-out (1)
185:22
days (2)
14:6;129:5
DCG (1)
187:8
De (6)
216:13,24;222:14,
21;227:1,17
deal (2)
44:18;87:18
dealing (3)
20:5;21:6;38:17
dealings (1)
114:9
deals (1)
32:4
dealt (3)
63:24;157:9,11
death (1)
113:17
decades (1)
141:19
December (1)
23:10
decide (2)
12:6;234:21
decided (2)
71:24;151:19
decides (1)
228:3
decision (8)
12:4;61:9,13,14;
86:20;118:15;234:1,22
decrease (1)
31:18
default (1)
196:9
defense (2)
13:20;14:14
defenses (2)
13:17,19
define (1)
235:10
defined (1)
225:17
Definitely (1)
122:7
definition (1)
96:12
DeGraff (1)
36:20
degrees (1)
94:3
Dekula (2)
14:12,13
Delaware (1)
5:16
delineation (1)
67:7
democracy (1)
143:15
Democratic (10)
9:5,15,17;10:2;11:2,
17;12:18;126:3,7;
143:10
demolition (3)
105:25;106:22;
114:15
demonstrate (1)
60:14
demonstrates (1)
59:16
department (3)
66:2,12;70:12
depending (10)
51:16;52:6;53:12,25;
69:20;81:17;84:15;
114:2;185:10,23
depends (3)
51:5;110:14;111:1
deprived (1)
234:13
describe (12)
36:25;38:21;45:15;
71:13,16;101:4;138:9;
142:16;143:8;210:5;
219:17,20
described (3)
98:5,13;139:16
describing (2)
40:18;59:4
description (3)
7:1;39:11;97:15
descriptions (5)
71:17,18;97:14,17;
222:21
design (1)
64:20
designated (3)
10:13,14;108:19
desk (3)
223:9,11,16
detail (1)
41:9
determinative (1)
164:21
determine (1)
30:23
determined (2)
160:18;171:10
developed (1)
87:6
devices (1)
188:25
dialog (1)
124:3
Dick (3)
146:19;191:24,25
dictated (2)
143:12,14
dictatorship (1)
143:16
didn't (17)
84:20;86:10;92:5;
98:10;122:16;147:10;
149:16;158:6,25;
170:4;208:21;211:16;
213:7;214:22;215:1;
219:24;224:8
dietary (2)
62:1,2
differ (2)
39:12;44:10
difference (4)
38:21;39:7;194:22;
195:3
different (32)
14:25;15:18;17:7;
19:14;36:15;41:3;44:6,
12;61:19,20;72:1;
74:18;77:8;79:24;
82:11;87:19,20;93:11;
94:9;98:13;104:7;
105:21,23;149:5;

158:20;161:24,24;
202:15;203:8;205:18;
213:9;225:20
differentiate (1)
51:8
difficult (1)
96:12
Dig (2)
183:1;189:13
DIRECT (28)
28:17;41:7;49:3;
77:19;78:6,6,9,10,11;
85:20;100:18;104:6,
16;116:4;119:6;
128:18;165:11;175:5;
181:10;193:4;194:1,3;
196:7;217:25;220:14,
17,24;221:7
directed (12)
168:8;189:19,19;
203:7;204:22;207:7;
208:21;220:16,16;
221:5,10;229:12
directing (2)
79:6;102:2
direction (2)
72:1;125:3
directly (5)
49:2;65:3;127:16;
220:21;226:8
director (14)
61:9;70:9;82:20;
86:18,19;87:2;149:5;
151:8;196:5;233:25;
234:21;235:21;236:16,
17
directors (2)
49:4,6
director's (2)
61:13,14
directs (3)
78:8,13;194:5
disagree (1)
60:9
disappear (1)
190:25
disciplines (1)
38:1
discuss (1)
32:18
discussing (1)
22:5
Discussion (11)
6:22;24:18;25:10;
26:5,6;67:3,8,18;
153:7;232:14;233:12
dismissed (2)
19:11;181:16
disparaging (1)
153:10
dispatching (1)
123:15
dispenser (1)
54:10
displaced (2)
83:25;84:3
dispute (3)
83:5;114:24;172:22
disputes (12)
15:15;82:22;83:1;
101:8;114:11;116:23;
142:10,11,16,24;174:7;
225:17
distill (1)
10:24
distinct (4)
15:19;103:6;191:10,
11
distinction (2)
95:15;183:14
distribution (1)
5:12
district (2)
233:6;234:6
division (6)
45:18,19;70:12,13,
15;218:24
divisions (1)
64:4
DMH (1)
216:24
doctor's (1)
51:24
document (26)
11:22;25:15,25;
26:13,16,20;33:24;
34:1,4;43:6;60:10;
71:5;73:17;104:15;
117:16;118:11;119:17;
120:8,10;132:19,22;
133:2,3;152:11;
153:20;165:6
documents (6)
23:15;25:2,14;64:1;
68:17;118:13
doesn't (5)
18:21;76:11;97:1,3;
170:9
Doft (1)
199:25
dollar (4)
31:1;40:12;223:4;
224:1
Dommerph (1)
107:10
don't (86)
60:7;70:4,5;71:8;
75:22;76:6,11;77:23,
24;83:20;84:3,18;87:1;
91:17;92:16,16;93:21;
98:16;101:20;110:11;
113:2,11;114:24;
120:10;122:17,18;
123:24;126:21;127:25;
131:6;139:21;141:4;
144:1;146:5,6;148:6;
151:1,15,16;152:8,20;
154:24;155:1,2;
156:11,13,16,24;165:8;
166:6,13;167:5;
168:11,12,12,16;
174:14;175:5,6,8;
176:1;178:2;179:4,5,
25;180:4,18;188:18;
191:7;193:6;196:19;
199:9;200:17;203:16;
221:12;222:16;223:4,
24;224:4,4,5,7,8,23;
233:11;235:7
done (57)
12:1;22:10;35:7;
41:1;45:25;46:5;48:20;
50:9,20,25;51:2,5,11,
13;52:3,6,14,15,16;
53:18;54:1,2,5;55:4,5,
6,7,7,12,13;56:11;57:6,
24;58:8;66:15;67:1;
68:18;74:1;77:17,18;
81:23;84:1;85:15;
92:23;107:5;125:11;
131:1;163:10;187:10;
189:8,10;203:23;
204:20;215:18;229:3,
5;234:16
door (6)
52:4;55:11;95:9,10,
10;210:6
doorframe (1)
95:13
doorframes (1)
168:14
doorknob (2)
55:11;94:19
doors (12)
52:5;55:14;95:9;
97:19;138:13;168:2,3,
14;210:12;212:9,11,13
doorway (1)
203:24
double (2)
190:20;191:2
doubt (1)
180:13
down (18)
35:14,22;46:4;49:22;
50:2;53:4,4;84:25;
86:3;105:1;125:12;
172:25;188:19;207:24;
210:14,19;212:6;
223:16
download (1)
59:3
downtown (1)
221:24
drawings (2)
39:21,21
drill (1)
188:14
drills (3)
90:25;158:12;214:8
driving (2)
134:17,19
drywall (4)
138:13;211:18;
224:4;229:10
drywalls (1)
226:6
due (2)
108:20;196:9
dues (10)
108:1,3,6,18,22,25;
135:10,13,14;157:7
Duke (11)
161:9;162:4,4,7,8,17,
21,24;163:21;164:3,16
duly (6)
28:13;100:10;
115:23;128:10;181:3;
217:17
during (12)
31:18;63:23;69:1,7;
104:20;107:21;121:12;
137:9;138:3;141:18;
142:10;178:17
duties (7)
15:12;101:5;103:21;
116:19;129:13,24;
194:12
duty (1)
77:14

E

earlier (15)
22:24;83:24;94:18,
23,23;95:20;124:3;
142:21,22;146:15;
160:18;165:22;173:15;
216:4;232:14
early (2)
128:24;136:22
easily (1)
51:11
East (6)
72:14;130:9;133:18;
154:20;233:7,18
Eastern (1)
234:5
easy (1)
223:19
effect (5)
17:8;42:1;133:14;
136:16;150:4
effectively (1)
40:25
efficiencies (1)
202:9
efficient (2)
41:2;189:10
effort (3)
8:11;66:13,15
eighth (1)
14:3
either (28)
13:9;14:14,19;19:7;
20:20;51:17,25;52:3;
53:19;54:1,2,5,11,13;
55:4,5,6;66:21,25;
86:10;104:3;125:6;
147:8;156:4;174:23;
175:17,25;215:1
elected (3)
116:17;155:10,14
election (7)
18:18;19:21,22;
22:11,21;24:6;235:20
elections (1)
155:16
Electric (19)
45:10,12,16,22;46:6;
118:21;119:11,19;
120:16;121:7,7,7,8,8;
123:2,11,19;124:7;
125:19
Electrical (11)
45:7,24;46:5;66:8;
91:17;123:6,6;205:11,
21;206:12,20
electrician (6)
45:5;91:18;116:16;
127:12;213:11;225:13
electricians (14)
76:20;89:16;91:21;
120:13;124:7;125:5;
127:10,14,16;156:4,12;
200:15;220:18;224:24
electricity (1)
46:5
electronic (2)
38:7,11
electronics (1)
62:3
element (6)
34:9,13;37:12,15;
39:18;53:12
elevator (1)
127:24
Elisi (1)
199:25
Ellicott (2)
5:25;131:9
else (21)
8:19;20:21;44:8;
61:1;62:23;63:16;
91:23;114:4;115:12,
13;135:21;141:5,7;
143:17;148:25;156:5;
163:14;194:4;215:24;
219:17;226:10
embedded (1)
34:13
emergency (1)
196:8
Empire (13)
133:22,25;135:14;

146:18;150:6;158:23, 24;159:2,6,9,23;192:6, 7
employ (3) 36:7;62:11;110:6
employed (37) 28:19,21;36:10;39:8; 40:7;47:14;58:13; 65:10;69:5;72:11; 73:23;91:8;100:20,22, 24;116:6,15;128:20, 25;129:10;130:24; 141:20;159:24;160:8, 8,10;162:22,24;163:1, 4;165:15;166:4,6; 175:5;178:16,19; 193:21
employee (2) 69:2;219:1
employees (36) 14:2;15:6;18:10; 33:15;44:6;46:4,6; 47:9;49:13;51:2;53:21; 63:7;66:22;69:4,4; 79:14,25;80:13;96:19; 104:13,19;109:4; 159:24;160:7,10; 163:21,23;164:3; 165:12,13;195:18; 205:19,23;214:5; 220:22;224:2
Employer (33) 5:18;7:15;11:13; 13:23;14:4,10,17; 15:10;17:22;18:11; 20:13;23:23;24:1; 25:17;28:12;56:19; 59:17,25;60:8;61:10, 15;69:23;109:23,24; 110:3,10,12;111:7; 113:7;157:14;160:13; 172:6;235:23
Employer's (1) 232:7
employers (23) 35:11;36:4;77:2,10; 79:12;107:6;109:25; 110:16,23,23;112:6; 113:12,22;138:20,21; 156:20;157:9,11; 164:3;165:24;178:5; 188:21;222:3
Employer's (1) 22:5
employing (1) 62:13
employment (14) 14:3;31:9;91:13; 121:12;130:24;133:5; 157:10,12;163:4; 165:12;171:18;173:1; 183:4;191:16
employs (1) 44:6
encompass (2) 157:25;183:18
encompasses (1) 17:6
encouraging (1) 11:7
encroaching (1) 210:20
end (6) 98:8,12;180:14; 181:16;218:19;221:25
ended (1) 135:16
Energy (11) 161:9;162:4,4,7,8,17, 21,24;163:21;164:4,16
enforcement (1) 116:22
engage (6) 84:3;85:22;93:2; 131:4;157:17;158:15
engaged (5) 13:23;15:10;17:21, 22;59:19
engineer (2) 80:18;91:22
engineering (1) 29:1
engineers (9) 43:15;71:9;80:13,14, 18;92:13,15;136:23; 137:7
enjoyed (1) 33:18
enough (1) 48:19
ensure (1) 143:15
enter (3) 30:3,10;118:15
entered (3) 30:2,15;71:23
entertain (1) 24:21
entire (7) 7:1;19:8,18;20:22; 45:19;189:5;199:3
entities (3) 93:11;155:25;199:23
entitled (1) 15:20
entity (5) 29:19;41:14;159:18; 191:10,11
entry (1) 35:2
environment (2) 44:16;50:2
epoxy (1) 187:9
equipment (10) 31:2,4;34:13,19; 37:22;62:3;190:21; 191:3;213:4,6
Erie (3) 101:6;117:5;127:16
error (2) 9:12;10:22
especially (2) 52:17;211:12
essence (2) 20:14;21:7
essentially (1) 21:6
establish (3) 11:25;30:9;33:13
established (2) 19:4;30:25
establishing (1) 172:25
establishment (1) 31:7
estimate (1) 95:22
estimated (1) 31:2
estimates (1) 95:21
estimating (1) 46:22
estimation (2) 46:25;47:1
etc (2) 34:11,24
Etcetera (2) 68:10;158:12
even (11) 8:19;11:19,21;37:20; 89:21;94:23;157:14; 166:12;178:10,12; 213:12
event (1) 190:22
everybody (5) 37:21;101:21; 122:15;138:25;233:19
everybody's (1) 180:1
everyone (6) 6:18;76:13;94:6; 139:25;176:10;216:21
evidence (22) 7:10;8:1;11:15,19; 14:1;15:7;23:13;24:16; 25:14;28:7;30:16;45:6; 56:24;57:22;58:21; 60:19;120:9;154:6; 167:22;169:25;170:1; 222:20
exact (2) 40:21;64:20
exactly (3) 30:22;60:14;146:5
EXAMINATION (12) 28:17;70:21;71:2; 100:18;111:25;114:7; 116:4;128:18;168:22; 181:10;215:14;217:25
examine (1) 6:18
examined (1) 28:13
example (7) 22:5;31:3;34:14; 35:1;47:11;54:4; 171:20
examples (2) 35:15;95:7
excellent (1) 59:9
Except (1) 68:19
exception (2) 175:4;216:12
Exchange (2) 5:20;86:3
exclude (2) 179:4,15
excluded (6) 12:7;178:25;179:10, 15,24;233:16
excuse (2) 183:13;202:21
excused (12) 97:23,24;115:14,15; 127:22,23;180:16,17; 216:14,15;229:23,24
executive (1) 151:19
exhaustive (1) 137:17
Exhibit (60) 6:17,25,25;7:1,2,3, 10,12,17;12:23;25:16; 26:13,15;27:9;30:16; 33:25;42:23,24;43:2,7, 8,17;45:6;46:2;47:12; 55:22;56:24;57:1,22; 58:3,21,23;60:4,5,19; 67:16;68:6,25;69:23; 71:4;72:6;80:25;82:2; 84:2,18;85:4;102:7; 104:12;117:7,12; 120:10;152:3,10; 153:15;154:6;201:4; 202:21,21;216:20; 222:20
exhibits (12) 7:5,20,22;8:1;28:3,4, 7;56:18;67:16;68:23; 139:4,7
exist (5) 20:9,9;39:20;95:17; 234:11
existence (3) 24:6,10;88:16
existing (11) 15:20;18:13;22:8; 37:14,22,22,22;39:17; 95:16;106:4;210:8
exists (6) 11:22;20:7;22:18; 39:14,20;175:6
exit (1) 130:23
expanse (1) 185:14
expect (1) 143:20
expelled (3) 181:19,20,21
experience (11) 46:10;69:25;86:24; 92:4;144:25;149:9; 150:13;151:3,22; 172:7;178:3
explain (2) 30:22;41:9
exploring (1) 179:5
extensive (1) 15:4
extent (3) 60:13;69:4;122:5
extras (1) 29:1

F

face (1) 14:8
faces (1) 166:22
face-to-face (1) 85:25
facilitate (1) 20:19
facilitating (1) 20:14
facilities (24) 23:22;24:1;28:25; 45:2,23;49:4,6;55:3; 59:4,24;68:11;79:20; 82:20;93:15;106:5; 117:4;131:12;196:5, 13;213:2;222:13,13, 16;227:1
facility (31) 31:9;37:24;57:4; 58:12,14,15;60:23; 70:10;72:7,11,19,22; 74:7,13;75:2;93:18; 94:1;96:5,9;162:5; 185:4,5;187:10; 190:24;196:13;207:13; 212:7,7,11;216:25; 228:15
fact (17) 9:20;11:16,25;13:22; 14:10;17:20;41:5; 43:20;45:1;72:14;

84:12;162:13;167:22;
170:1;171:25;200:4;
214:22
factors (2)
149:5,8
facts (1)
87:1
fail (1)
19:11
fails (1)
95:10
fair (8)
40:10;45:22;55:17;
71:23;102:23;122:4;
196:14;200:10
fairly (2)
24:17;167:13
fall (3)
13:24;14:15;95:7
Falls (1)
129:2
familiar (15)
37:21;47:11;58:25;
71:10;72:7;75:15;76:2;
101:17;107:5;129:20;
147:14;153:16;171:20;
207:24;222:6
familiarity (1)
37:3
far (18)
8:11;10:19;63:5;
64:16;68:5;69:13;
104:6;151:1;154:17;
157:7,11,12;164:12;
167:7;168:14;174:4;
188:8;192:21
fashion (2)
107:16;174:16
faster (1)
29:18
favor (2)
11:9;224:21
favorable (2)
175:20,20
Favorite (1)
175:19
federal (3)
40:1,4;101:23
feels (1)
11:7
fees (1)
34:24
fellow (1)
150:22
Ferguson (22)
45:10,12,16,22;46:6;
118:21;119:11,19;
120:5,13,16;121:7;
123:2,11,19;124:7;
125:2,4,5,9,11,19
few (12)
47:6;67:13;85:11;
90:19;144:3;155:7;
185:2;201:1,6,15;
203:3;211:18
field (13)
120:24;139:10,18;
141:19,24;171:19;
188:20;194:20,24;
195:11;221:15;224:20;
225:3
fifty (1)
195:25
figure (2)
51:14;206:7
figures (1)
26:12
file (1)
25:1
filed (2)
94:16;233:17
fill (2)
70:23;212:17
Fillmore (5)
216:23,24;222:14;
227:1,14
filters (2)
37:15,18
final (3)
179:2;201:1;234:23
financial (2)
49:1;147:11
find (6)
59:8;87:2;91:3;
139:20;208:21;225:2
finds (1)
139:21
Fine (11)
56:21;77:23;98:14;
99:7;152:23,25;165:9;
174:17;199:18;207:3;
214:23
finish (5)
138:11;144:7,9;
149:24;217:6
finished (2)
144:2;221:24
finishing (1)
221:23
fired (1)
214:20
fireproofing (1)
199:4
firm (2)
5:16;45:10
firms (2)
107:13,15
First (26)
5:14;39:4,4;42:11,
17;49:17;100:10;
115:23;128:10;132:23;
136:14,19;146:19;
148:9;152:3;158:22;
167:20;168:15;176:8;
179:13;181:3;188:11;
196:19;199:10;213:14;
217:17
first-time (1)
39:23
Fisher (3)
199:18,21,23
fit (2)
205:1;212:15
five (9)
21:24;110:25;
112:14;129:5;175:24;
180:19;195:24;203:3;
217:9
five-minute (1)
21:21
five-year (4)
30:13,13;136:15,16
fix (15)
37:11,22;38:9,10;
39:18;51:20;94:25;
95:2,3;97:12;124:25;
228:24,25;229:6,10
fixed (1)
95:11
fixing (1)
168:2
fixture (2)
52:25;54:4
fixtures (2)
97:19;203:17
flat (2)
82:4;211:17
Flint (1)
222:15
floor (9)
49:25;134:14;178:9,
14;187:4;199:3;
210:24;213:15;223:16
flooring (14)
50:7;53:8;187:1,3,9,
9;200:4,4;205:12,13,
13;208:4,12;223:11
floors (5)
49:20,22,25;183:19;
210:23
fluctuate (2)
105:1;185:12
fluctuations (1)
84:9
focusing (1)
160:14
folded (1)
145:19
folks (6)
47:17;92:19;137:4;
159:20;160:20;211:15
followed (1)
145:6
follows (6)
28:14;100:11;
115:24;128:11;181:4;
217:18
follow-up (1)
137:19
foot (3)
191:1,1,1
footage (1)
210:20
footers (1)
138:11
force (2)
66:16;104:6
foreman (82)
48:7,14,16;66:16;
77:12,14,16,23;78:4,5,
13;88:13;104:4,8;
122:14,21,22,24;123:3;
125:7;145:9,10,11;
183:6,7,11,13,13,14,15,
15,17,18,21,22,24,24,
25;189:18,19;193:3,8,
10,25;201:19,20,21,22;
203:7,8;204:9,18,19,
25;205:3,7,11,11,12,
12,12,15,15,24;206:1,
3,9,10,10,12,23;207:1,
4;219:15,16,16,21,24,
24;220:13,17;221:10
foremen (17)
48:3,5,18;70:3;
77:14;78:13;79:6;90:7;
103:24;104:1;123:5;
204:22;205:3,9,16;
206:20;207:7
foremen's (1)
204:21
forget (1)
139:7
form (1)
93:17
formal (10)
5:5,9;6:16,23;30:2;
68:17;92:2;114:24;
157:7;173:20
formation (1)
147:8
former (2)
151:9;167:12
forth (14)
43:17;72:23;73:24;
86:3;105:10;111:4,11;
169:1,5;171:18;
172:15;189:13;190:3;
224:16
Forth's (1)
187:17
forward (2)
23:11;133:14
found (5)
91:16;132:20;
208:18;235:20;236:15
foundation (6)
65:11,14;167:20;
183:3;199:25,25
four (8)
101:3;107:19,20,21;
112:14;165:16;166:13;
185:1
fragment (3)
8:13;14:23,24
fragmentation (1)
87:4
fragmented (3)
17:20;19:5;236:7
fragmenting (1)
14:24
frame (1)
14:14
framed (1)
24:18
framing (1)
110:16
frankly (2)
10:23;59:18
free (1)
141:10
free-for-all (2)
203:14,14
fresher (1)
200:8
fringe (1)
26:14
front (3)
11:3;37:7;223:16
fruition (2)
77:4;86:6
Fry (1)
121:7
fulfill (1)
63:4
Full (2)
34:24;153:22
function (4)
61:4;70:8,8,10
functional (1)
97:20
functions (1)
212:10
Fund (5)
146:9;156:25;157:2;
168:25;169:1
funded (2)
155:22,25
funding (1)
155:24
funds (8)
85:15;129:18,19;
135:14,25;146:8;
192:7;200:1
FURLONG (231)
5:15,15;6:20;7:6,23;
9:4,10,11,14,24;10:18,
24;11:1,11,13;12:13,
16,18;13:10,12;16:1,3,
12,18,20;17:2,24;
18:19;20:3,9;21:1,13,
18,23;22:10;23:2,7,9,
14,17;24:7,21;25:3,6,
11,13,21,25;26:6,11;
27:9,24;32:9,10,12;

33:5,9,10;34:1,2;42:24, 25;47:3;54:22;56:15, 21;57:21;58:19;59:13, 22;60:5;61:8;65:10; 70:22,25;71:3;76:15; 81:11,12;82:8,9,15; 86:19;87:3,8,11,17; 88:22;89:9;90:3,11,15; 92:6,8;93:17,21,23; 94:8;99:5;100:4,5,15, 16,19;101:19,22;102:1, 6,8;104:12,14;106:4,6, 9,12,14,16;108:11; 110:15;111:23,24; 112:1,17;114:5,8,21; 115:7,13,17;116:3,5; 123:10;124:12;127:20, 21;128:5,16,19; 137:25;138:2;139:7,9, 21;141:1,6,13,15,17; 142:6,8;143:4;144:5, 13;145:21,23;148:9,14, 17,22,25;149:3,12,14, 20,22,23;152:1,11,14, 25;153:2,13,25;154:7; 155:3;157:16;158:8; 161:17,20;164:12,16; 167:20;168:7,20,21,23; 169:10,12,17;170:3,7, 11,14;173:8;179:7; 180:2,9,22,23;181:8, 11;199:14,17,19; 200:11,22;201:1,2,13; 215:15,23;216:17; 217:4,6,9,12,23;218:1; 224:11,13;226:12; 229:20,25;232:8,9,12; 233:9;234:24,25; 235:3,22
Furlong's (1)
17:15
furnished (1)
70:1
further (28)
16:19,20;18:24;19:5; 32:8;47:3;48:10;67:10; 90:11;97:21;108:11; 111:22;112:17;113:10; 114:7,21;124:12; 127:19,20,21;155:3; 168:19;173:8;201:13; 215:12,23;226:12; 229:18
future (1)
158:5

G

game (2)
180:6,9
gang (11)
44:19,21,23;91:3; 190:16,17,18,19,20; 191:4;213:3
Garrison (2)
169:8,14
gas (2)
188:13;214:20
Gates (11)
49:23,23;55:25; 121:25;122:1;196:6; 201:7;211:12;212:9; 216:9,25
gave (4)
64:6;94:14;176:10, 10
GCI (1)
72:7
general (62)
5:20;29:19;31:6; 35:15;36:20;41:6,10, 13,15,23;42:8,10,17; 44:25;45:3;46:20; 47:16;49:19;51:7;56:3; 58:10;59:19;61:3,25; 68:8;71:14;93:11; 97:18;121:14,17,20; 122:12,12;129:13; 145:10;183:7,13,14,15, 18,21;189:5;193:9; 194:13,17;195:14; 196:6;201:21,22; 203:10;204:9,18; 205:2;213:23;214:5; 216:22;219:16,24; 222:12;227:5,15,16
generally (22)
16:7;34:20,21;70:1; 77:13;97:1;101:4,6; 104:6;111:6;131:19; 132:11;142:22;145:8, 10;161:16;174:9; 175:25;212:20;219:21; 226:6;228:16
generate (1)
159:18
gentleman (10)
75:15;77:22,25; 88:18,25;89:5;193:6, 13;194:6;228:6
gentlemen (1)
47:18
geographically (1)
117:3
Giroux (1)
5:25
given (8)
20:10;33:24;64:3; 69:14;143:13;175:16; 176:9;178:23
glorying (1)
202:7
glue (2)
53:14,15
gluing (1)
53:12
goes (5)
16:22;60:16;101:7; 163:9;174:4
Good (22)
5:4;32:13,14;47:17, 19;69:11,16;81:7;92:7; 99:3;100:16,17;116:3; 128:16,17;153:11; 164:10;181:8,9; 203:21;217:23,24
govern (2)
133:15;163:21
governed (5)
163:3,20,21,24; 171:7
governs (3)
102:16;163:10; 165:11
graduates (1)
192:10
Graff (6)
216:13,24;222:14, 21;227:2,17
grant (1)
159:13
granted (2)
8:23;12:15
Great (4)
127:18;162:21; 196:23;211:5
Green (1)
5:16
grey (1)
235:8
grievance (5)
43:20,22;172:19; 173:20;174:12
grievances (7)
64:16;66:21,24; 101:9;173:13,25;174:3
grievement (1)
92:2
grievements (1)
92:3
group (38)
17:18;18:4;29:22,23, 25;31:23;38:13,25,25, 25;39:19,19;41:12; 45:3;48:7;51:17;52:1, 3,8,8,25;54:11,13;55:4, 5,6,13;56:11;58:8; 67:2;69:11;93:2,12; 104:3;134:2;175:20; 199:25;213:12
groups (6)
64:21,22;93:15;94:7; 96:5,9
guess (8)
22:21;52:4;96:15; 98:15;159:17;166:16; 168:11;227:11
guessing (2)
13:13;166:13
guest (1)
154:19
guns (3)
44:14;139:2;158:12
gut (1)
207:20
gutted (1)
199:3
gutting (1)
199:2
guy (3)
153:9;212:9;225:8
guys (13)
73:6,11,13;106:17; 123:21;158:7;171:23; 172:3;188:2;190:16; 203:16;215:21;228:9

H

half (7)
85:11,12;99:5,6; 110:9,12;175:24
halfway (1)
23:11
hall (7)
32:3;44:2;88:14; 103:10;104:1;212:6,13
hammer (1)
188:14
hand (18)
14:10;28:9;38:18; 52:24;54:4,10;90:25; 100:7;115:20;128:6; 139:1;150:22;152:8; 153:9;158:11,12; 188:12;217:14
handed (1)
135:2
handing (1)
117:7
handle (2)
53:16;101:8
handled (3)
29:7,10;87:15
handling (1)
106:1
hands (1)
135:16
hanging (1)
53:1
happen (7)
39:4;212:13,18; 215:8,17;225:5;232:19
happened (4)
33:21;34:15;40:19; 49:24
happening (3)
54:21;131:17;144:3
happens (1)
58:16
hard (1)
17:15
hardware (2)
95:10;138:14
Hartley (1)
135:25
hasn't (4)
98:19,20;117:15; 157:14
haven't (6)
104:15;164:10; 180:7;188:24;225:7; 232:21
Haynes (2)
169:8,14
he'd (1)
212:10
He'll (5)
103:13;125:8; 127:24;183:20;196:7
He's (26)
78:3,5;82:20;90:1; 102:9;145:3,4;150:16, 22;151:10;193:8,25, 25;194:13;203:2,21, 23;212:9;216:10; 226:22;227:6,14,15,20, 25;228:2
head (4)
34:5;57:17;92:21; 147:25
Health (24)
5:5,20;11:13;13:4,5, 22;15:5;25:17,23;26:1; 27:11,12;28:20,21,25; 30:20;36:7,11;86:15; 114:10;119:12;157:2; 196:13;221:23
healthcare (11)
17:21,21;18:2;19:4, 9;31:3;40:24;59:17,20, 24;60:8
hear (11)
12:4;14:16;15:3,14; 23:24;24:16;76:13; 98:10;105:13;148:6; 158:6
heard (20)
13:18,19;14:21; 45:10;83:3;98:2;105:9; 124:3;126:5,6;161:22; 168:10;176:23;178:24; 195:16;199:6;219:16; 222:10;229:2;232:6
HEARING (356)
5:3,4,5,7,11,18,22; 6:2,8,10,12,15,21,23; 7:3,9,11,21,25;8:2,4, 24;9:7,10,13,18;10:3, 17;11:6,11;12:10,14, 19,22,24;13:1,4,7,12, 13,18;14:5,15;15:22; 16:2,9,10,15,19,21,25; 18:10,16,24;19:1,2,12, 20;20:1,8,17,25;21:11,

16,17,20,24;22:2,14,20,23;23:3,12,16,17,19,25;24:4,9,13,22,25;25:5,8,11,13,19,24;26:4,21,25;27:3,5,8,16,21;28:2,5,5,8,15;32:9;47:5;48:11;54:24;55:21;56:16,22,22;57:19;58:20;59:14;60:2,7,17;61:11,20;65:15,19,23;67:10,11,13;68:2,5,10,12,19,23;69:13,18,22;70:6,11,16,18,20,24;71:1;76:8,11;81:8,10;86:22;87:10,12,14,16;88:18,21;89:5,8;90:12,14,16,18,20;93:19,22;94:11,12,14,17,23;95:3,6,15,19,23,25;96:6,10;97:22,25;98:10,18,21,24;99:3,6,9;100:3,7,12,15;101:24;106:3,7,13,15;108:12,14;110:18,20;111:23;112:18,20;113:11,15,17,21;114:1,4,6,22;115:3,6,9,12,14,16,19,25;124:13,15;127:20,22,24;128:3,6,12,15;137:22,24,25;138:1;139:23,24,25;141:1,9,11,14,16;142:4,7;144:1,6,9,12;148:6,9,12,23;149:2,11,13,15,19,21;152:3,7,15,16,19,23,25;153:5;154:2,5;155:4,6;157:19,23;158:2,4;161:19;162:2;164:15,17,20,24;165:1;167:24;168:8,9,20;169:9,11,24;170:6,8,13;173:9;175:12;178:1,3,7,16,21,25;179:9,13,18,20,22;180:5,11,14,18,21,25;181:5;199:6,8;200:23,25;201:14;204:5;211:23,25;215:13,24;216:1,3,6,10,14,16,19;217:3,5,8,10,14,19,22;226:13,15;227:21,23;229:19,21,23,25;232:1,4,17,23;233:2,11,14,21;234:3,4,15,17;235:2,19,23,25;236:8,12,14,18,25
hearings (1)
5:10
heavy (1)
102:21
Heineman (146)
6:2,5,6,6;7:7;8:3,4;9:2,8,18;10:8,22,25;11:10;12:11,19,21;17:9;19:1,2,16,23;20:19;48:11,13;55:1,2,20,23;56:13,25;57:2,18,23;58:2,4,18,22,24;59:12,16;60:3,4,11,20,21;61:14,23;62:20;63:15;65:17;66:1;67:10;81:15;83:18;87:25;90:18,19,22;92:10,12;93:20,24;94:10,12,15;96:4,8,14;97:21;108:14,15,17;110:19,21,22;111:22;112:20,22;113:10;124:15,16,18;125:21;126:10,13;127:4,19;139:19,24;154:4;155:6,7,9;157:21,25;158:9;160:6;161:21;162:3;164:19,22,25;165:2;168:1,19;169:24;171:16;173:10,12;175:14;178:22;179:16,19,21;180:6;199:10,15;204:5,6,8;212:1;213:1;214:4;215:6,12,16;216:1,2;226:15,16,18;227:24;228:12;229:16,18;232:19,24;233:4,22;234:3,16,25;235:24;236:18,20
Heineman's (1)
96:2
held (5)
29:2,3;112:12;155:16;234:5
help (5)
94:17;110:18;143:22;196:7,15
helping (2)
143:6;156:2
Here's (1)
127:15
Heritage (1)
205:13
hierarchy (2)
48:22;219:18
high (3)
45:18;48:19;191:1
higher (2)
54:14;183:22
highest (2)
89:17;219:25
highly (1)
44:15
Highpoint (1)
57:5
highway (1)
102:21
himself (2)
88:19;136:6
hinge (1)
95:12
hire (4)
29:12;84:15;111:7;119:6
hired (2)
133:6;221:18
hiring (4)
42:22;68:13;85:20;221:20
history (8)
23:4;47:19;85:18;86:14,17;87:5,7;163:12
hit (3)
52:4;55:11,15
hold (9)
12:3;15:13,13;23:21;139:25;144:1;147:24;150:23;180:14
hole (20)
50:18,20,20,21,24;51:13;53:10;55:10,11;80:4,5;81:15,16,16,18;94:18;97:1;168:15;228:23;229:2
holes (7)
51:10;55:8;168:2;228:21,22;229:3,3
home (1)
12:12
homeowner (1)
143:16
honest (1)
145:10
honestly (1)
131:16
honesty (1)
163:12
Honor (2)
11:10;132:9
honored (1)
153:4
hopefully (1)
130:24
Horn (12)
218:24;219:4,8,24;220:16,21;221:11;222:4;225:21,22;226:3,5
hospital (35)
18:14;36:18,19,19;49:23;54:17;55:3;59:17,18,23,24;65:3;68:8;109:5,8;127:11,11;132:3;138:16;159:7,8;185:3,12;190:23;196:6,6;201:7;216:7,22,23,24;222:12,15;223:24;227:16
hospitals (15)
59:23;62:4;64:19,21;65:7,12;95:9;127:13,16;159:25;160:1;222:22;225:23;226:1;227:17
hour (7)
85:11,12;99:5,7;110:9,13;175:25
hours (7)
108:8;112:16;114:2;135:18;163:16;175:25;185:15
housekeeping (1)
62:2
Huber (16)
75:19;107:6,9;139:14;142:2;171:20,20;218:24;219:4,8,21;220:2,13,21;221:8,15
human (2)
64:4;92:1
hundreds (1)
110:16
hurt (2)
119:3,5
HVAC (5)
34:11;187:16;205:15,20,21

I

I'd (8)
69:16;70:4,23;142:9;204:25;222:1;232:6;233:21
I'll (19)
67:22;81:6;82:8,25;84:19;101:6;105:9;110:19;124:6;131:3,13;143:22;149:4,20;152:20;153:25;170:12;180:25;201:1
I'm (85)
66:24;67:9;73:6;75:13;76:6,19;80:10,11;81:14;82:7;86:17;87:11;92:17;94:10,12;96:7,15;98:10;102:2,2;104:12;106:3,6;111:2;116:7;117:7;119:17;120:8;121:13;123:13;126:24;127:8,25;130:15;132:19;134:7;137:19;139:4,19;146:15;148:7,9,24;149:12;152:1,11;153:6;156:5;160:14;163:6,6;164:10;165:20;166:13,17,20;175:13;176:23;178:19;179:7,22;181:5,25;185:18;193:7;195:5;203:14;205:15;206:7,7;207:1,23;210:25;217:23;222:19;223:10;225:12;232:14;233:24;234:15,20,20,22;235:6;236:25
I's (1)
146:17
I've (13)
126:5;153:6,14;161:5,22;165:22;176:22;178:23;183:4;185:1,2;200:17;216:18
IBEW (4)
45:7;116:9,15,20
IBW (6)
118:3,8;119:23;123:6;167:12;176:23
ICU\CCU (2)
35:2,15
Identical (3)
221:16;225:4,21
identification (13)
6:16,24;7:2,20;28:4;55:22;57:1;58:3,23;120:9;152:10;153:8,14
identified (1)
153:10
identify (7)
55:24;57:3;58:5;88:19;89:6;101:6;156:3
IEOU (1)
36:19
illegal (3)
14:4,8;159:20
illustrate (1)
94:19
illustrates (1)
94:21
illustration (1)
199:19
imagine (3)
109:1;132:8;166:12
immensely (1)
166:23
implement (1)
41:22
important (1)
60:14
impossible (2)
22:9,13
improper (4)
17:25;18:20;232:22;236:24
improvement (1)
188:25
inadequate (1)
13:16
in-between (1)
211:12
inception (1)
160:9
incidentally (1)
75:12

inclined (1)
10:20
include (13)
25:19;31:2;34:8,16,19,23;125:13;129:24;173:4,5;180:3;232:13;233:16
included (3)
31:4;200:3;233:24
including (9)
7:14;11:23;14:17;27:14;34:21,24;119:24;179:16;223:25
inclusive (1)
6:25
incompetent (1)
148:16
inconsistent (1)
15:16
incorporates (1)
7:17
incorporating (1)
235:17
incorrect (3)
21:1;56:5;132:20
increase (1)
31:18
Indeed (1)
15:5
independence (1)
175:16
independent (18)
80:1;102:21,22;103:1;104:22;107:12;109:17,21;110:2,3,23;111:13;113:3,21;154:9;174:18,19;192:17
independents (3)
134:5;174:21;175:24
index (1)
7:1
indicate (1)
33:14
indicated (11)
10:9;26:2;33:24;79:10;81:13;89:11;102:9;107:18;120:22;167:12;193:3
indicates (1)
26:7
indicating (1)
33:18
individual (9)
17:11;21:3,4;64:15;68:19;95:11;101:13;145:12;151:5
individually (2)
64:12;133:6
individuals (5)
40:7;43:3;47:20;49:9;106:19
industry (30)
13:23;14:5,11;15:11;17:22;20:6;35:11;36:3;59:18,25;60:23;61:10,16;77:9;79:12;89:21;90:8;107:6;110:2;112:6;113:12;119:20,21;122:6;131:15;138:20,21;156:21;172:6;188:21
infection (1)
44:17
inference (2)
82:4;148:9
informally (1)
115:3
informed (2)
5:9;179:7
in-house (38)
29:8,9,22;40:20,22;50:12;51:21,25;52:8,25;55:13;56:11;57:6;58:8;61:4;64:21,22;65:4;67:7;73:18,22;74:1;75:5,8;79:11;80:1;81:14,21,22;136:24;196:23;211:4,9,17;213:20;224:25;228:24;229:5
initial (2)
23:4;32:22
initially (2)
191:23;233:17
inpatient (1)
49:17
input (1)
66:14
inscription (1)
104:16
inside (7)
77:8;79:11;83:21;120:20;121:10,19;138:16
insofar (2)
17:24;18:2
inspection (4)
196:9,10,11;212:14
install (2)
203:17;228:20
installation (1)
54:13
instance (6)
48:20;75:15;185:25;196:3;211:15;221:5
instances (1)
40:13
Institute (2)
49:23;55:25
institution (1)
51:16
integrate (1)
122:5
integrated (2)
66:9;83:10
integrity (1)
50:21
intended (1)
152:21
intercede (1)
172:18
interest (12)
6:12;9:16,22,25;10:4,18;11:4;13:17;14:19;33:13;130:23;180:13
interested (1)
174:23
interfere (1)
122:17
inter-grill (1)
208:10
interior (1)
183:2
interject (1)
148:6
international (14)
10:13;17:8,12,13;45:7;126:23;141:7;146:3;149:18;150:25;154:24;155:22;156:8;233:5
interpretation (2)
159:15;165:14
interpretive (2)
51:10,10
intervene (2)
6:3;196:2
Intervener (2)
236:14,20
Intervenor (6)
5:22;8:5,8;12:14,20;13:2
intervention (4)
8:10,23;11:9;211:14
intimate (1)
75:13
intimately (1)
146:20
into (38)
7:5,10;8:1;11:15,18;14:1;15:7;17:8;25:14;28:7;30:2,3,16;41:18;45:6;46:20;49:14;56:24;57:22;58:21;60:19;71:23;86:11,16;95:7,13;118:15;120:9;129:5,6;148:8;162:1,2;164:18;172:9;196:25;222:19;235:17
introduce (2)
6:15;7:11
invited (1)
222:8
involve (2)
96:24;97:1
involved (29)
32:21;44:13;50:4;114:2;129:18;133:12;143:9,19,20;144:23;145:3;146:7,20,23;147:5;169:13;174:2,10,12;178:13,14,15;188:3;191:23;199:22,23;200:16;223:15;224:23
involvement (1)
142:17
involving (2)
23:22;24:1
IOUE (1)
91:21
IPL (1)
121:8
Ironworkers (1)
14:13
irrelevant (2)
60:5,8
Iselin (1)
6:7
isn't (5)
82:5;98:15,17;112:23;215:21
issue (12)
10:21;11:7;13:24;14:21;20:2,3,6;87:4;114:12,13;164:14;204:24
issued (1)
38:3
issues (13)
13:8,14;22:4;24:17;44:17;66:17,25;67:5;142:18,19,22;173:23,24
it's (61)
66:13,15;67:16;68:6,15,16,24;70:14;71:18;77:8;81:17;87:3;89:10,15;96:12;98:8,16;102:22;103:1;105:3;109:23;111:8,11;122:13;123:24;126:17;132:24;144:3,4;159:19,20;161:7;163:18;166:8;168:16;170:3,6;179:12;180:6,9;190:12;196:12;203:14,14;204:12;208:1,7,8;225:6,19,20,21,21,25;232:13,15,22;233:8;235:12,13;236:5
items (2)
7:14;38:8
IUOE (5)
66:22;67:1;91:16,17;92:19

J

J-2 (2)
62:9,10
J-3 (1)
64:2
J-4 (3)
113:4;126:10;127:7
jab (1)
152:21
JAMES (1)
217:16
January (2)
23:10,10
JCO (2)
196:10,11
Jersey (1)
6:7
Jim (13)
49:4;75:16;77:22,24;144:21;145:3;171:25;193:6;217:12;227:11,13,16;228:7
job (82)
15:11;34:9;35:8,16,18;48:6;49:25;50:5;52:10;53:5,9,18,24;71:17,18;83:1;88:10,13,14;89:3,15,19,21;90:9;97:14,15,17;101:7,8;103:18;104:4;105:16;106:8,8,18;116:19;121:19,25;122:8,15,15,18,19;123:24;125:11;142:12;158:10,15;163:5,15;165:4;166:25,25;183:17,17,18,19;185:11,13,14,23,24;187:23;189:9;190:22;192:2;194:20;199:7,10,15,17;203:9;204:20,21,21;206:15;207:25;210:17;211:2;215:18;221:11;222:2
jobs (43)
15:7;25:16;34:4,5,19,19;35:22,24;36:2;38:22,23;39:3;40:12,16;46:3,4;48:4;52:3;66:3;84:1;122:14;124:21;131:14;148:3,4;149:25;189:8;201:20;204:16;210:25;211:2;219:22,22,23;220:1;222:23;223:2,25;224:1,1,1;228:2,10
Joe (1)
207:11
John (3)
100:5,9,14
Johnsen (1)
5:24
join (1)
14:2
joined (1)

26:15
Joiners (1)
26:18
joining (3)
218:13,14,25
joint (53)
8:14;11:24;12:1,6;
17:3;20:12,13,20,22;
21:8,9,12;25:15;26:13;
27:9;28:3,4,7;30:16;
33:25;42:23,24;43:2,7,
8,17;45:6;46:2;47:12;
62:15;67:16;68:24;
69:22;71:4;80:25;82:2;
84:2,18;85:4;102:7;
104:12;109:11;117:7,
12;120:10;196:12;
201:4;202:20,21;
216:20;218:9,10;
222:20
Jointers (1)
128:21
joists (1)
187:2
journeyman (1)
31:25
JUDGE (3)
87:7;101:20,23
July (6)
22:25;26:3,3,7;
27:12;117:12
jump (1)
196:8
June (1)
26:19
jurisdiction (16)
7:19;78:23,24;104:8;
117:3;122:24;123:5,7;
137:3;143:1;167:3;
224:15;234:4,6,7,12
jurisdictional (18)
7:16;15:15;82:22;
83:1,5;114:10,24;
142:10,11;172:22;
173:20,23,24;174:7;
202:8,17;203:13;
225:16
jurisdictions (3)
224:19;225:1,2
JX-3 (1)
92:14

K

Kaleida (185)
5:5,20;11:13;13:4,4,
22;14:4,10;15:5;17:20;
25:17,22;26:1;27:11,
12;28:20,21,25;29:7;
30:20;36:7,11;41:15,
23;43:25;44:6;45:13,
23;46:10,20;47:10,14;
48:22;55:17;58:12,13,
16,17;59:3,8,17,22;
60:12,15,22;61:15,24;
65:2,10,12;68:7,25;
69:25;70:12;75:9,23,
25;77:9;81:7;82:16;
83:20,21;88:1,10;89:3;
91:10;102:12,17;
103:4,10,24;104:5,7;
105:15;107:16,22,24;
108:7,19;109:5;
112:23;114:9;117:4,
18;118:25;119:12,23;
120:4,12;121:20;
123:3,12,13,19,21,25;
124:7;130:3,7,13,14,
16,24,25;131:7,11;
132:1,2,24;133:14;
134:8,18;135:2;136:5,
24;137:1,10,15;138:3,
24;139:17;141:20;
142:12;147:21;148:3;
158:11;159:10,13,14,
15,22;160:9,14,16,18,
20;161:1;165:12;
166:18,24;170:1;
171:12,17;173:14,17;
176:6,12,13;178:16;
185:4,5,18,20,21;
190:13;192:11,23;
193:21;194:8,14;
195:21;199:24;202:9,
17;203:13;205:19,23;
206:18,19,20;207:14;
208:7;214:6;216:11;
218:25;219:13;221:15,
18;222:8,10;224:21;
226:8,23,24;227:5
Kaleida's (6)
70:7;90:6;106:8;
165:11;192:13;224:2
Kaleida's (3)
59:1,9;60:11
keep (5)
37:10;76:8,10,12;
166:18
keeping (1)
19:5
keeps (1)
225:9
Kerch (1)
136:22
keys (5)
44:21;191:4,6,8,9
Kilger (9)
75:16,18;144:21;
171:25;217:12,16,21,
23;218:2
K-I-L-G-E-R (1)
217:21
kind (17)
10:14;29:21;32:4;
39:4;50:22;52:17;
53:10;67:21,22;130:5;
143:16;146:16;199:22;
202:5;203:6;210:19;
211:20
kinds (1)
219:23
Kline (1)
222:15
knew (1)
41:12
knowledge (43)
16:8;39:6;44:5;65:2,
6,7,16,18,24;66:20;
88:1;102:11;104:2,22;
109:6,12;112:13,14;
117:22;119:16;120:1;
123:11;135:4;136:10;
150:15;151:4,22,24;
153:22;154:22;156:9;
159:23;165:18;166:15,
18;168:11;172:13;
174:6;188:6;189:24;
192:10;195:23;219:6
known (1)
225:19
knows (5)
17:9;65:11;112:5;
146:21;216:21
Kramer (6)
221:22;222:3,6;
226:19,20;229:13
Kroll (1)
6:6
Kulczyk (15)
145:12,14,24;146:8,
23;180:23,25;181:2,8,
12,24;201:3;222:11,
17;224:14
K-U-L-C-Z-Y-K (1)
181:7
Kulczyk's (1)
145:22
Kwitowski (3)
77:22;193:6;194:3

L

Labor (23)
5:6,7;6:11;7:14;
8:17;9:22;21:2;31:2,
14;34:8,9,23;45:20;
63:5;66:16;68:14;
69:11;78:22;111:8;
116:22;154:9;193:10,
23
Laboratories (1)
222:15
laborer (7)
78:24;103:6;104:4;
106:24;107:1;114:14;
207:1
laborer's (1)
108:1
laborers (36)
44:7;63:19;91:7;
100:23;102:11,16;
103:3,5,19,22,23;
104:6,9,10,16;105:4,
18,20,22;107:4,15,16,
23;108:5,18,19;109:4,
7;114:17;142:18;
206:25;207:1;213:17;
220:7;221:9,11
labors (1)
67:22
lack (2)
116:24;149:8
laid (3)
39:3;65:11;84:12
laminate (1)
208:8
land (1)
58:16
language (3)
83:5;84:20;86:4
large (10)
40:12;50:21;64:21;
90:9;94:2;96:24;148:3;
165:12;183:19;229:2
larger (2)
67:25;204:13
largest (1)
118:21
laser (2)
188:13,14
lasers (4)
188:14;214:19,22,25
last (13)
14:7;22:25;41:2;
67:3;89:10;98:10;
112:15;151:5;169:6,
13;185:1;196:22;
215:16
late (2)
180:6,9
later (6)
11:8;129:2;132:18;
138:12;142:21;192:6
LaTere (2)
121:7,11
lather (1)
218:12
latter (1)
128:24
laughter (1)
101:25
law (7)
5:16;13:25;14:6,15;
15:20;18:21;60:1
lay (1)
84:14
layer (2)
178:9,14
layman's (1)
183:21
layoffs (4)
69:6,8,9;105:4
lead (4)
146:16;148:12;
149:3;219:25
leadership (1)
63:22
leading (1)
13:18
lead-up (1)
40:18
learn (2)
40:4;114:10
learned (1)
130:3
least (13)
10:12;14:6;17:3;
65:11;83:15;112:14;
147:12;157:19;163:13;
167:2;172:7;201:7;
233:1
leave (1)
221:25
leaving (1)
98:1
led (1)
20:3
left (4)
19:7;82:10;119:15;
232:7
legal (2)
139:22;155:2
lengthy (8)
60:10,18,18;164:20;
165:3,4,13,15
Leo (1)
206:9
less (11)
80:24;81:1,2,3,6;
91:8;110:9,12;166:8;
167:8;202:8
let's (15)
95:8;127:25;141:14;
144:6;146:13;149:2;
152:9,16;171:19;
180:14;185:3;207:23;
217:8;223:14;233:12
letter (1)
145:6
level (10)
31:4;52:7;54:14;
83:3;84:4;96:20;
174:13;196:20,20;
203:22
levels (5)
39:7,8;47:17;84:10;
195:13
liberal (1)
10:12
license (8)
41:13,16,24;42:1,3,5,
8,17
lid (2)
191:1,2
light (1)

37:18
lighter (1)
145:20
lighting (1)
50:9
liked (2)
54:23;202:9
likely (3)
46:6;52:21;163:13
limited (3)
135:7;153:18;164:6
line (10)
118:10,11;164:13;
172:1;178:9,9,10;
188:13;204:24;205:2
lines (4)
202:7,17;203:13;
225:17
Lipsitz (1)
5:16
list (8)
15:7;35:14;46:2;
69:10;120:11;201:3;
204:12;224:2
listed (9)
11:16,23;56:8;82:2;
84:1;126:17,18,25;
171:8
Listen (2)
228:18;229:9
listening (1)
15:22
lists (3)
25:16;62:11;149:5
litigable (1)
10:4
litigate (1)
11:4
little (12)
27:4;35:23;49:21;
51:24;54:3,14;147:12;
180:6;185:17;193:2;
202:7;213:22
live (1)
94:4
LM (1)
57:8
load (1)
211:15
lobby (5)
199:18,21;200:7;
223:9,11
Local (82)
11:21;16:4,7;17:6,6;
21:15;22:17;26:8;
27:15;73:5,16;100:23;
101:1,16;102:11,23;
104:16;108:2;109:4,
10,23;110:17;111:5,
18;112:3;115:11;
116:9,10,15,20,21;
117:3;118:8,11,18;
119:7;120:17;125:22;
126:19,22;127:10;
129:3,4,5,6,17;130:20;
133:17,21,24;134:2;
135:12,12;138:4;
141:2;146:4;148:1;
149:17;150:3,3,3,23;
151:9,11,13,18;158:20,
22,23,24,25;159:2,6;
170:16,19;188:4,6;
191:25;192:8,8,8;
234:19
locals (1)
135:15
located (1)
116:10
location (1)
204:25
locations (2)
15:12;213:12
lock (2)
190:25;191:2
locks (3)
37:12;190:20;191:2
lockset (1)
95:12
long (16)
28:21;29:2;30:4;
47:10;69:10;85:11;
87:5;101:1;110:24;
112:15;164:9,11;
165:18;171:17;195:21;
218:5
longer (4)
20:7;22:17;147:12;
224:11
longest (1)
165:18
look (20)
9:24;22:16,16;29:20;
31:23;35:22;42:23,23;
46:4;59:8;62:9;77:1;
84:17;87:4;101:10;
118:12;133:2;148:11;
200:8;233:19
looked (2)
38:12;200:8
looking (15)
14:11,25;15:1;21:15;
35:22,23;67:15;71:4;
81:23;82:5;86:23;
133:3;201:3;204:12;
207:23
looks (5)
51:24;56:9;59:6;
132:23;204:12
losing (1)
131:11
lot (26)
23:15;29:18;41:1;
44:16,17;47:19;52:5;
53:7;57:17;62:1;66:14;
69:8;80:6;92:2;95:8;
111:4,11;125:1;
149:13;190:23;200:8,
9;203:20;210:20,22;
212:8
Lounge (1)
207:24
low (3)
45:17;224:1,1
lower (2)
174:13;195:13
LP (2)
58:10;60:25
lunch (1)
99:4

M

Main (2)
5:25;200:10
Mainly (2)
124:9,19
maintain (9)
37:13;42:1;62:3;
171:22;190:16;191:4,
6,8,9
maintained (1)
171:17
maintenance (114)
15:4,5;18:3,13;36:8,
10,25;37:5,9,10,17;
38:2,9,9,13,19,22,24;
39:9,13,25;40:3,15;
49:7,13;50:12,21,25;
51:8,12,25;52:8,13,19;
53:3,23;54:1,5,16;55:7,
10,12;65:8,13;67:7;
71:6,7,10,13,18,19,25;
73:11;74:18;79:14,20,
25;80:6,12,19;81:16,
21,24;82:4;83:11;
85:22;86:2,8;90:23;
91:19;92:19,22;93:2,
12;94:25;95:11,14;
96:17,20;97:15,16,18;
105:10;107:24;124:4,
8;136:24;137:4;
158:16,21;159:3;
185:19;195:17,24,24;
196:15;211:5,9;
212:23;213:2,20;
214:5,14;223:20;
224:2;225:8,10;
227:25;228:4,6,9,10;
229:3,6
major (1)
96:16
majority (3)
33:18;135:1;201:4
making (2)
37:18;189:8
Mallinckrodt (1)
149:3
man (4)
46:15;89:12;163:15;
185:14
manage (1)
53:2
management (2)
70:7,14
manager (22)
49:14;56:6;57:8,25;
101:16;102:9;103:16;
115:10;116:17,17,20,
21;120:23;123:17,20;
158:14;161:7;162:16;
167:12,15;174:17;
216:8
managers (2)
49:10,12
manner (3)
41:1;77:17;189:11
manpower (1)
196:7
many (32)
36:10;40:12;46:17,
17,17;63:21;67:14;
69:14;85:4;112:2,12;
119:1;121:1;122:14;
123:21;130:14,16;
137:11;138:3;143:9;
148:2;151:14;161:10;
166:4,21;178:12,13;
185:1,13,14;188:18;
205:9
March (3)
181:16;218:19;
221:19
mark (3)
56:17;58:22;136:22
marked (17)
6:16,24;7:2,20;28:4;
33:25;55:20,22;56:25;
57:1;58:2,3,23;73:17;
79:15;120:8;152:10
market (2)
29:20;35:19
marking (1)
152:4
Markowiak (5)
193:13,14,15,19,20
masonry (1)
46:16
masons (2)
76:20;89:16
Massaro (11)
100:5,9,14,16,20;
102:11;104:15;107:21;
108:11,18;114:9
M-A-S-S-A-R-O (1)
100:14
Mater (8)
107:6,9;142:2;183:2;
185:8;188:21;189:12,
17
material (3)
105:25;211:15,16
materials (7)
31:2,2;34:8,9;39:23,
23;67:23
matter (6)
5:5;13:25;14:15;
162:13;235:12,14
matters (1)
16:22
may (31)
10:17,17;26:19;
28:15,16;49:14;54:22;
69:18,19;89:10,10;
101:19;124:3;137:25;
148:10;150:6;152:14;
155:1;170:2;176:4;
179:2,10,25;191:11;
212:6;224:20;225:6,
23;232:9;234:19,21
maybe (18)
21:17;23:17;34:5;
36:12,13;85:12;94:15;
142:25;148:7;152:21;
166:8;167:24;170:8;
172:1;191:1;196:14;
202:8;224:19
Maynard (1)
72:16
McCormick (2)
147:1,3
McDonald's (1)
62:7
McKerin (1)
151:13
mean (51)
10:20;18:21;19:21;
21:1;27:23;44:1;54:3;
61:4;93:18;94:20,21;
95:13;106:8,12;
110:15;113:22;114:22;
118:25;139:14;148:16;
157:16;161:1;164:13,
18;165:10;166:20;
167:7,7,11;170:5;
173:20,21;199:2,2,12;
208:6;210:5;213:16;
216:21;220:17,20,20;
221:9;224:24;225:8,
13,19,20;228:16;
229:8;232:24
meaning (1)
7:15
means (8)
18:22;20:19;67:19;
76:20;77:17;93:19;
106:10;141:2
meant (3)
41:9;153:9;170:5
mechanical (1)
227:12
mechanicals (1)
205:16
mechanics (1)
220:11
mechanism (1)

32:4
mechanisms (1)
37:14
mediate (1)
172:21
medical (4)
34:13;58:15;138:16;
210:7
medium (1)
45:18
meet (4)
33:2;63:18;85:5;
167:2
meeting (8)
39:1;63:20;86:4;
122:19,19;132:9,12;
204:21
meetings (11)
122:15,15;129:17;
131:7;132:6,16;
154:16;157:6;189:9,
16,18
meets (1)
7:16
member (16)
17:12,14;118:4,5;
125:22,25;126:3;
151:9;154:21,23;
181:12,15;188:6,12;
219:6;233:4
members (17)
25:17;31:10;38:17,
22;108:8;113:22;
119:23;120:12;127:5;
130:22;133:24;138:4,
10;145:5;160:8;
162:22;234:5
membership (5)
20:23;63:22;101:9;
130:1;218:15
memorandum (10)
17:25;27:9;30:3;
62:15;67:19;83:24;
102:12;132:24;133:16;
236:6
Memorial (2)
216:24;222:14
memorized (2)
68:21;92:17
memory (1)
84:19
men (5)
69:11;125:12;
185:16;227:6,8
mention (11)
9:6,15,20;11:3,19,
21;67:4,5;71:6,7;
228:13
mentioned (8)
187:13,25;188:17;
200:16;211:4;216:3;
227:1,17
merely (6)
11:20;33:3,4;81:18;
107:23;160:24
merged (3)
146:18;192:6,8
met (8)
32:15,24;33:11;
62:16,23;63:21;131:8;
132:1
Metal (34)
8:21,24;9:3,6,9,12,
15,19,19;10:10,11,16;
11:3;125:25;126:14,
18,19,23,23;135:21;
138:13;155:20,22,24;
156:1,5,7,7;176:22,24;
187:21;189:14;190:20;
191:2
metals (1)
176:18
method (2)
122:9;123:15
MFG (1)
216:24
MFS (1)
216:23
Michael (2)
5:19;89:7
microphone (1)
202:1
midst (1)
215:7
Midway (1)
235:3
might (14)
20:2;30:10;49:3;
53:1,1;68:20;93:8;
94:19;96:24;113:23,
23;124:24,25;196:15
mill (7)
134:13;178:13,20;
200:4;208:3;234:4,5
Millard (5)
216:23,24;222:14;
227:1,14
Miller (1)
62:16
million (7)
15:9;34:6,16,17;
67:21,25;199:15
millwright's (1)
233:5
Millwrights (19)
16:6;178:3,10,17,23,
23;179:4,7,14,16;
180:3,7;232:13,19;
233:6,16,23;234:10,18
minor (3)
167:13,15,21
minute (2)
200:22;217:6
minutes (9)
21:25;85:11;110:25,
25;112:8;114:2;
175:24;211:18;217:9
misaligned (1)
95:9
misled (1)
162:1
miss (1)
23:8
missed (1)
24:8
misspoke (1)
73:20
mistaken (1)
146:15
misunderstanding (1)
236:10
miter (3)
139:2;188:15,15
miters (1)
44:14
mixed (1)
225:24
MOA (8)
18:12;22:25;25:1;
27:19;67:15;69:22;
132:25;236:12
MOAs (2)
178:17,18
mode (1)
196:25
model (1)
41:3
modern (3)
141:21,24;188:24
modified (1)
133:6
moment (13)
23:21;43:1,6;87:11;
139:8;148:15;149:20;
151:12;153:11;172:9;
190:11;218:4;232:1
money (1)
143:18
monitor (1)
101:7
monitoring (1)
88:14
month (3)
132:16;165:16;
221:24
months (5)
165:16,16;176:2;
212:8;221:25
morass (1)
162:1
more (47)
5:12;17:9;22:24;
39:16,17;43:1;50:22;
54:3;62:12;68:18,18;
71:1,25;80:6,24;91:7;
92:15;99:6;124:2;
131:11,11;138:12;
141:21,24;142:20;
149:13;152:9;163:13;
164:18;166:12;172:1;
175:20;188:24;192:2;
194:17;195:14;200:17;
202:5,6,9,16,17;
204:16;206:6;216:18;
219:19;232:5
morning (6)
5:4;32:13,14;98:2;
132:17;228:9
most (11)
24:25;30:14,15;
145:9;146:2;167:15,
21;183:1;219:22;
221:7,9
motion (3)
6:3;12:14;233:15
motions (1)
8:2
motivation (1)
40:21
MOU (65)
11:15,18,19,23;16:3;
19:24;21:4,15;22:12;
25:18;26:9,15;32:22,
24;35:20;38:18,23;
39:8;40:8,11;41:18,22;
45:6;46:21;62:24;63:8;
64:13;65:3;71:4,6;
84:18;86:16;87:19;
102:7;103:10;106:17;
114:11;117:8;118:8,
15;126:10;127:7;
132:25;142:14;148:18,
19;159:9,16;160:18;
161:23;165:11;169:22;
170:5;171:8;176:5,8;
178:8;202:4;234:11,
11,12,18;235:9,17;
236:22
MOUs (1)
172:12
mouth (3)
150:22;152:8;153:9
move (19)
8:7,10;10:20;11:5;
31:14;48:25;49:23,24;
50:1;56:13;57:18;
58:18;59:12;141:14;
153:25;180:3;202:1;
232:12,15
moved (2)
129:6;151:14
moving (2)
97:20;166:24
MRI (1)
34:15
much (24)
39:11;40:23;47:4;
49:15;67:25;84:22;
99:4;114:2;123:21;
125:6;129:18,19;
132:23,24,25;134:18;
138:14;143:16;164:18;
180:13;195:23;216:12;
225:9,10
multi-disciplinary (1)
39:1
multi-employer (1)
134:2
multi-faceted (2)
62:4,4
multi-million (1)
40:12
multiple (12)
31:12,13;38:1;45:19;
48:18;59:23;83:14;
84:6;86:25;120:18;
183:19;191:2
multitude (2)
139:15;151:19
Murphy (13)
49:4;82:17,21;115:1;
124:24;125:4;196:2,4,
5;207:19;216:10;
227:15,16
Murphy's (1)
125:2
mushing (1)
161:22
must (5)
13:24;14:15;17:12;
22:18;44:12
mutually (1)
47:18
myriad (1)
15:17
Myself (1)
64:4

N

name (19)
10:13;12:16,20;13:2;
100:13,14;116:1;
121:5;123:18;124:1,
23;128:13;131:20;
150:16;181:6;207:11;
217:20;218:23;227:21
named (9)
75:15;77:22,25;
101:13;123:17;145:12;
193:6,13;194:6
names (5)
11:1;12:23;131:8;
166:22;193:17
naming (1)
123:15
napkin (2)
163:18;164:10
narrow (1)
93:22
Nasker (5)
151:5,7,17,20,22
Nater (1)
139:14
Nation (1)

159:16
National (3)
5:6,7;8:17
Nations (1)
175:19
nature (21)
21:19;34:4;35:18,18;45:2;46:12;51:20;62:5;64:16;71:13;86:4;92:1;106:1;135:3;168:3;185:17;187:9;188:16;191:14;201:9;214:13
necessarily (3)
67:23;202:19;214:18
necessary (1)
139:3
need (16)
11:7;25:1;31:11,17,22,25;43:1,25;52:7,12;53:15;87:1;101:20;137:21;179:8;228:18
needed (6)
29:18;41:3,13,13;63:5;98:21
needs (7)
12:11;43:25;51:16;63:5;84:15;95:11;166:19
negotiate (13)
64:9;109:21;110:11;112:10;116:22;136:4;143:24;144:15;147:10;160:22,23;161:6;190:9
negotiated (31)
62:24;63:1,10;67:19;85:19;109:13;113:18;132:21;134:1,4;146:1;150:17;160:16,19,25;161:4,8;162:4;163:14;169:14,21;170:16,21,24;171:1,11;174:21;176:8;189:25;190:2;235:16
negotiating (11)
32:25;118:20;150:13;151:3,23;169:4;170:5;172:14;190:6,8,10
negotiation (8)
12:5;32:22;63:23;86:2;109:11;110:10;129:16;161:5
negotiations (11)
20:14;67:4;85:1,14;111:11;112:8;157:14,18;172:11;175:23;190:10
neighbors (1)
92:7
neutral (1)
121:25
New (43)
5:21;6:1,7;27:7;39:22,22;41:22;48:25;50:6,7;52:18;55:25;56:1,10;57:4;58:6;72:9;74:10,21;77:1;79:9;85:1;86:3,11;93:5,12;106:4,8;129:21;149:8;156:10,12,14;192:3;200:3,4,5,6;208:11,14,15;223:16;228:18
next (9)
16:22;30:24;100:4;105:5;128:4;145:19;180:22;196:20;219:20
Niagara (5)
58:15;129:2,12,14;146:4
nice (1)
68:2
niche (1)
213:22
night (1)
200:9
nine (1)
218:12
NLBR (1)
149:4
nobody (3)
136:12;141:8;180:9
nonconforming (1)
236:23
non-conforming (3)
19:3,8,18
none (5)
56:10;83:3;91:23;174:3;207:6
non-signatory (1)
130:11
nonunion (6)
101:7,10;122:1;130:4,6;131:19
non-union (2)
29:10;46:18
nor (3)
92:2;141:4;175:6
normal (1)
31:6
normally (2)
55:8;123:24
North (5)
72:14;133:18;154:20;233:7,18
Northeast (20)
6:5;8:4,6;11:20,22;12:9;13:20,25;15:1,23;16:4,8,14;17:4;19:10;20:11;21:11,14;26:17,22
Northshore (1)
36:19
Northwest (4)
26:16,22;27:2;64:2
northwestern (1)
27:6
note (1)
11:18
Noted (2)
5:2;142:5
notice (2)
5:11;34:15
noticed (2)
45:5;202:20
notified (3)
180:7;232:20;234:13
notify (1)
180:10
November (2)
116:18,18
nowhere (1)
71:5
number (16)
16:7;26:10;31:17,18;34:5;36:12;40:24;74:6,21;80:10;104:23;105:1;126:20,22;129:3;180:12
numbers (2)
57:17;185:8
nursery (1)
57:4
nurses' (1)
50:6
Nursing (2)
57:5;210:14

O

OB/GYN (1)
210:14
object (6)
82:7;86:17;139:19;167:14;232:22;233:17
objecting (1)
148:7
objection (43)
6:20;7:6,7,8,21,23,24;28:2,5;56:14,15,23;57:19,20,21;58:19,20;59:14;61:8,8;65:10;87:12;93:17,23;94:8;110:15;139:22;142:4;154:2,3,4;157:16;158:4;161:19,20;164:12;167:20,21;168:7;169:24;180:5;232:17,18
objections (1)
7:4
observation (1)
190:12
observe (2)
138:4;189:21
observed (1)
138:9
obtain (1)
31:21
Obviously (4)
10:1;13:13,16;130:17
occasion (12)
84:14;105:15,17,18;114:10;120:4;123:18;137:9;143:24;144:15,18;183:6
occasional (2)
91:25;121:13
occasionally (2)
96:19;142:21
occasions (2)
82:22;142:20
occur (1)
52:23
occurs (1)
50:19
off (31)
6:21,22;8:25;16:13;21:24;22:17;23:21;25:6,9,10;26:4,6;27:18;34:5;53:14;84:12,15;99:9;127:25;137:22;148:2,22;152:16;180:19;200:22,23;211:23;217:10;232:1;233:12,12
offense (1)
163:14
offensive (2)
139:20,21
offer (2)
25:12;233:22
office (4)
53:4;125:7;130:9;147:24
OFFICER (349)
5:3,7,18,22;6:2,8,10,15,21,23;7:3,9,11,21,25;8:2,4,24;9:7,10,13,18;10:3,17;11:6,11;12:10,14,19,22;13:1,4,7,12;14:5;15:22;16:2,10,15,19,21,25;18:10,16,24;19:1,2,12,20;20:1,8,17,25;21:11,16,17,20,24;22:2,14,20,23;23:3,12,16,17,19,25;24:4,9,13,22,25;25:5,8,11,13,19,24;26:4,21,25;27:3,5,8,16,21;28:2,5,8,15,24;29:4;32:9;47:5;48:11,24;49:1;54:24;55:21;56:16,22;57:19;58:20;59:14;60:2,7,17;61:11,20;65:15,19,23;67:10,11,13;68:2,5,10,12,19,23;69:13,18,22;70:6,11,16,18,20,24;71:1;76:8,11;81:8,10;86:22;87:10,12,14,16;88:18,21;89:5,8;90:12,14,16,18,20;93:19,22;94:11,12,14,17,23;95:3,6,15,19,23,25;96:6,10;97:22,25;98:10,18,21,24;99:3,6,9;100:3,7,12,15;101:24;106:3,7,13,15;108:12,14;110:18,20;111:23;112:18,20;113:11,15,17,21;114:1,4,6,22;115:3,6,9,12,14,16,19,25;116:21;124:13,15;127:20,22,24;128:3,6,12,15;137:22,24,25;138:1;139:23,24,25;141:1,9,11,14,16;142:4,7;144:1,6,9,12;147:11;148:1,6,12,23;149:2,11,13,15,19,21;152:3,7,15,16,19,23,25;153:5;154:2,5;155:4,6;157:19,23;158:2,4;161:19;162:2;164:15,17,20,24;165:1;167:24;168:8,9,20;169:9,11,24;170:6,8,13;173:9;175:12;178:1,3,7,16,21,25;179:9,18,20,22;180:5,11,18,21,25;181:5;199:6,8;200:23,25;201:14;204:5;211:23,25;215:13,24;216:1,3,6,10,14,16,19;217:3,5,8,10,14,19,22;226:13,15;227:21,23;229:19,21,23,25;232:1,4,17,23;233:2,11,14,21;234:3,4,15,17;235:2,19,23,25;236:8,12,14,18,25
officers (1)
155:14
offices (3)
23:22;24:1;131:9
official (1)
173:4
off-the-record (1)
153:7
often (5)
47:1,18;55:14;86:24;97:3
old (2)
148:1;208:11
once (12)
8:25,25;10:14;71:1;85:8,9,10;105:5;122:19;132:16,16;163:18
on-demand (4)
38:10;45:16,17,20
one (76)

6:18;8:17;13:19;15:16;17:18;22:23;23:8,9,9;26:10,11,19,22;27:22,22,24,25;32:5;34:16;35:23;40:24;47:12;48:7,7;49:17;50:3,5,18;56:18;59:7,23;60:8;67:16;68:23;69:24;81:23;83:5;87:3;94:18;113:6;114:5;118:11,21;134:4;143:9;148:11;149:3,8;151:5;161:8;169:15;170:2;171:9;178:12;185:19;196:1,14;199:22,24;202:21,22;203:24;204:12;208:9;212:9;213:18;216:18;219:1;223:4,5,14,14;225:23;228:18;232:10;236:5
ones (5)
36:15;56:8;67:19;113:23;131:14
one-year (3)
30:11;132:23;136:13
on-hand (1)
45:3
only (31)
8:11;10:8;12:1;13:17;19:17;21:14;22:16;25:19;27:24,25;43:18;45:24;65:2;78:13;84:20;85:13;127:5;136:14,19;154:19;159:8,24;168:4,6;169:18;171:8;196:1;202:21,22;236:9,21
onto (2)
26:9;236:9
open (3)
12:4;164:11;165:14
opened (1)
58:7
opening (5)
13:9,10;16:22,24;22:3
operating (9)
43:15;48:24;71:9;80:13,14,18,18;136:23;137:7
operation (2)
41:19;59:10
operations (6)
49:7;59:4,21;60:12,13,13
operators (1)
137:2
opportunities (2)
29:20;129:25
opportunity (10)
31:8;32:18;49:20,22;72:18;74:7,12,24;138:4;153:19
opposed (2)
95:4,16
opted (1)
119:7
option (1)
175:20
Orchard (2)
116:11,12
order (7)
5:4;17:10;41:12,22;187:23;206:15;210:17
organization (9)
7:15;9:22;143:22;154:9;155:18;193:11,23;232:20;233:6
organizations (1)
6:12
organize (2)
129:25;143:6
organizing (4)
146:23;147:5,19;153:16
other's (1)
203:15
others (6)
46:8,24;84:7;85:19;86:16;188:21
otherwise (4)
12:22;84:1;89:22;234:21
ours (1)
87:23
out (73)
17:17;18:7;24:23;25:1,7;29:19,23;31:25;34:12;35:9,19,25;37:11;38:14,18;39:3;41:23;44:2;46:23,23;51:14;57:24;59:8;64:12,15;78:13,17,19;82:4;83:23;99:1;104:1,3,24;129:4;135:25;136:21,25;141:24;145:18;151:9;163:16;165:17;166:21;167:6,13;168:3;170:2;171:19,24;172:4;183:1;185:15;188:20;189:1,22;192:1;194:20,23;195:11;205:1,13,16;206:8;208:9;212:17;215:8,10,17;220:20;221:14;224:20;225:3
outlined (2)
157:7;158:19
outside (26)
24:2;46:10;51:19;60:23;64:24;65:12;75:19,24;77:2,9;82:11;83:20;84:4;85:15;105:22;121:19;137:20;170:22;171:12;183:5;185:7;187:18,19,20;190:14;200:19
outspoken (1)
145:4
over (47)
41:2;68:7;69:1;78:23,24;83:12;88:7;104:8;112:4;114:19;117:4;118:24;122:24;123:3,6,7,12,19;124:7,21;132:6;133:3;137:10,15,19;138:3,24;139:17;141:19;148:10;165:13;171:17;192:11;196:22;203:3,5;211:11;216:8;221:12,23;222:1,8,16;225:6,7;229:9,10
overall (4)
8:22;70:10,19;179:16
overlooked (1)
234:19
overruled (4)
60:17;61:21;158:2;162:2
oversaw (1)
203:9
oversee (2)
90:7;183:20
overseeing (3)
189:6,7;205:3
oversight (3)
49:15;66:13;77:18
own (42)
29:19;41:6,10;43:7;44:19,21,21;45:1;46:25;60:23;62:3;69:23;79:1;89:23;122:25;123:1;141:4,4,8;143:17;168:11;169:21;171:4;188:12;190:16,18,21;191:8,9;192:17;194:16;204:22;212:21;213:6,7,21,22;214:7;220:17;221:10;234:12;235:16
owned (1)
58:15
owner (9)
122:13,13;159:19,19,20;162:5,11,14,15

P

package (2)
80:11,12
page (5)
26:25;122:16;126:15;199:16;233:20
pages (6)
126:17;161:10,12,13;163:14;165:10
paid (11)
26:2,8,14;68:24,25;92:15;156:2;189:21;190:3;195:4,5
paint (1)
203:16
painted (1)
51:25
painter (4)
193:25;205:12;206:9,9
painters (15)
76:20;91:6;142:19;170:25;193:12,25;194:1,2;200:15;213:11,17;220:5;221:3,4;225:13
painting (4)
50:7,8;53:8;206:20
paper (1)
39:20
papers (2)
6:16,24
paperwork (3)
163:9,12;212:17
paragraph (1)
133:5
parallel (1)
31:12
Parent (1)
207:24
Park (2)
116:11,12
parking (2)
58:6;74:22
part (46)
8:5,7,9,18,22;16:6;17:5;18:13;20:23;22:11;27:6;41:21;46:19;60:14;64:24;65:8;95:15;98:7;112:23,24;128:24;129:24,24;133:18,22;137:3;147:12,19;154:25,25;155:1;159:2;166:16;179:19,19;181:25;192:25;201:24;202:4;210:16,16;221:3,4,9;234:11,11
participate (2)
117:10;148:18
participating (1)
118:3
particular (13)
15:19;48:7,8,17;69:7;133:16;161:14;164:15;175:7;196:9;218:23;222:12,13
particularly (1)
232:15
parties (10)
5:9;6:11;7:4,12;10:6;12:23;20:15;25:13;132:21;179:11
parts (1)
97:20
party (5)
5:12;45:8;102:12;113:3;142:14
pass (1)
125:11
passionate (1)
148:4
past (1)
145:4
patch (5)
80:4,5;81:15,16;229:9
patching (3)
81:16;168:2,14
paths (1)
107:23
patient (4)
49:20;210:18,22;228:23
patients (1)
50:1
patrol (1)
101:6
Paul (4)
33:1;132:1;160:19;163:19
Pause (24)
82:14;100:6;104:11;108:10;115:18;123:9;125:20;126:9,12;127:3;139:6;143:3;152:13;153:12;160:5;168:18;180:24;212:25;214:3;215:5,11;228:11;229:15;232:11
pay (14)
26:10,11,14;69:1,7;70:4;80:9;81:7;85:14,14;111:8;143:17;168:24;169:5
paycheck (1)
194:25
paying (3)
80:24;157:8;189:24
payroll (1)
64:4
pedestal (1)
101:22
pending (2)
23:22,25
penetration (1)
203:24
Pension (4)
146:9,17;156:25;169:1
people (40)
23:20;31:11;33:19;39:8;54:16;63:2;70:15,

15;79:20;81:16;86:25;
94:25;104:23;110:6;
130:24;131:7;136:24;
143:9;148:10;151:14;
159:8,9;165:15,18,21,
22,23,25;166:2,21;
167:12;190:24;196:23;
199:24;202:16;204:22;
207:3;224:25;228:25;
229:6
per (1)
235:11
percent (11)
81:23;82:1,10;92:22,
22;195:25,25,25,25;
196:1,15
percentage (2)
92:25;93:7
percentages (2)
82:5;95:20
perception (1)
14:22
perform (15)
15:8;29:22;34:10;
35:12;37:1,6;38:14;
40:16;83:20,21;130:4;
200:3,9;214:13;224:3
performance (2)
135:7;203:15
performed (11)
15:12;25:16;36:3;
46:3;105:22;120:11;
135:18;185:20;195:18;
205:23;220:21
performing (9)
33:19;40:12;43:3;
82:11;105:21;114:15;
135:13;164:1,2
Perhaps (11)
9:18,21,22;20:6;
34:11;53:8;95:16;
170:3;179:3,13;212:6
period (11)
26:10,11;62:14;69:1,
1,1,5,7;104:20;165:15;
166:19
periods (2)
47:10;165:13
permanent (2)
45:22,23
permit (1)
46:21
permits (1)
31:5
person (10)
47:14;54:5;80:6;
89:17;146:16;148:4;
207:11;219:20,25;
229:5
personal (5)
65:24;75:12;120:1;
168:11;190:22
personally (4)
46:13;64:17;75:8;
77:6
personnel (4)
20:4;59:5;97:6;
159:7
personnel's (1)
20:5
persons (1)
6:11
perspective (2)
53:3;163:17
pertain (1)
106:4
pertaining (1)
7:18
pertains (1)
187:3
pertinent (2)
86:21;232:15
Pete (5)
115:1;150:19;
207:19;227:15,15
Peter (7)
49:4;82:17,21;153:2;
196:2,4,5
petition (30)
8:20;9:5,7,16;10:1;
11:1,2;13:16;14:9,13;
16:17;19:11;24:11;
59:21;66:17;94:16;
149:6;179:1,3,8,10,15,
24;180:3;232:9,12,16;
233:15,16;236:22
petitioned (2)
157:20;180:8
Petitioner (21)
5:14,15;6:20;7:14;
9:2,14;10:10,15;11:17;
12:16;13:14;19:6;
20:10;98:5;100:4,5;
152:10;154:6;161:21;
217:12;235:19
Petitioner's (3)
152:2;153:2,15
Petitioner's (3)
9:23;56:18,19
petitions (2)
23:22,25
ph (19)
36:19;88:5;118:21;
121:7;131:9;136:23;
139:14,14;147:1;
151:5,13;169:8,8,15;
172:1;185:8;192:3;
199:25;227:12
phone (1)
132:7
phrase (8)
40:18;41:5,6;94:25;
149:9;170:3,4,6
phrased (2)
65:15;164:14
phrasing (1)
41:21
pick (4)
76:12;199:17;223:8,
14
picking (1)
132:3
picture (1)
59:9
piece (1)
39:20
pile (2)
134:17,18
pipe (1)
199:4
PLA (19)
132:25;159:17;
160:18;161:4,4,5,6,23;
162:4;163:3,18,20;
164:6,9,11,16,21;
165:5,7
place (6)
26:22;59:8;133:11,
15;172:11;175:23
placed (1)
138:12
plan (2)
122:9;216:17
plane (1)
12:11
planned (2)
105:4;185:15
planning (1)
70:14
plans (1)
39:2
plant (3)
162:17;173:21;216:8
plaster (1)
203:20
plasterer (8)
47:11,12;202:22,22;
203:19;205:6;206:23;
207:5
plasterers (7)
43:13;76:20;91:6;
156:4,14;170:24;220:9
plastic (2)
44:17;208:8
please (31)
5:13;6:4;10:25;11:8;
28:9;30:22;45:15;57:3;
58:5;88:19;89:6;100:7,
13;116:1;126:11,20;
128:4,5,7,12,15;152:9;
156:3;169:11;181:6;
217:13,14,19,20,20;
232:2
Plenty (1)
122:23
pluck (1)
17:17
plumber (10)
48:21;78:2,3;187:25;
188:1;189:14;194:11;
204:25;213:11;224:25
plumbers (17)
43:8;44:7;46:7;
63:19;66:8;78:7,8,10;
91:6,21;108:24,24;
135:21;169:19;170:15;
194:14;225:13
plumbing (9)
50:9;203:17;204:24;
205:11,20,21;206:1,20;
210:21
plus (2)
118:24;121:4
pocket (1)
188:14
point (7)
131:8;145:8,18;
155:15;166:6;194:16,
16
pointed (1)
88:7
Pole (1)
139:14
police (2)
101:10;103:18
policing (2)
79:1;145:1
poor (1)
41:21
position (58)
13:14;15:23;16:2,10,
16;17:1,15,19;18:9,12,
17;19:3,10,13,20;
20:10;22:4,14,20;
77:18;82:19;95:13;
98:2,4,19;116:20;
118:1,19;120:23;
130:20;149:17,17;
150:23;151:17,18;
155:10,12;172:21;
178:22;179:2,11;
183:9,22;189:7;
207:12;226:21;227:19;
232:7,8;234:9,23;
235:4,14,18;236:1,5,
18,20
positions (1)
145:24
possible (3)
52:21,22;164:13
possibly (3)
37:15;96:24;114:25
postpartum (4)
204:10;205:10;
207:20;210:17
potter (2)
214:19;215:1
poured (1)
138:12
pouring (2)
131:20,21
power (3)
162:17;188:15;
190:21
practice (3)
90:8;212:7,11
preclude (2)
24:6,10
Predominantly (4)
34:14;52:13;53:6;
90:25
predominate (1)
72:16
predominately (1)
70:9
preexisting (1)
95:10
premises (1)
54:17
prepared (1)
235:19
preparing (1)
223:5
presence (2)
45:23;85:15
present (8)
33:22;62:23;63:16,
23;111:13;119:11;
174:22;234:14
presented (1)
63:21
president (16)
28:24;29:3;33:6;
109:14;118:2;129:17;
131:25;150:25;151:11,
13,16,17,20;172:10;
173:2,5
presume (1)
9:23
pretty (20)
10:5;45:22,23;53:9;
54:8,9;60:10;69:17;
84:22;105:2,3;129:17,
19;132:23,24,25;
138:14;216:12;225:9;
236:3
prevent (1)
18:5
preventative (2)
37:15;38:9
previous (1)
222:3
Previously (3)
48:25,25;210:21
price (4)
67:17;199:18,21,23
primarily (6)
17:20,21,22;29:9;
47:9;61:15
primary (3)
121:11;122:1;160:9
principally (1)
222:11
principle (1)
116:21

prints (1)
39:2
prior (17)
23:5,6,7;29:7;35:25;
42:5;49:23;66:17,17;
67:19;71:21;84:5;
169:16;185:20;210:23;
218:13,14
privately (1)
132:6
probably (30)
19:23,25;23:14;68:6,
21;69:8;80:11;81:22;
117:9;123:14;132:8;
142:20;145:9,10;
146:3;147:11,12;
160:11;163:12;165:21;
172:1;175:3;211:10;
220:1;226:22;227:11;
228:5,24,25;229:6
problem (5)
9:25;21:10;51:9;
161:21;212:14
problems (4)
54:11;96:16;202:8;
225:7
procedure (6)
8:17;43:20,22;46:22;
122:20;174:12
procedures (3)
5:9,11;8:20
proceed (8)
15:21;137:25;
189:19;199:3;204:22;
206:15;217:22;235:20
proceeded (1)
208:12
proceeding (2)
6:13;235:3
proceedings (1)
11:5
process (11)
31:1,6,12,21;66:12;
111:8;114:1;129:17;
138:13;143:19;176:3
processed (1)
13:16
processing (3)
14:9,13;24:11
produce (1)
187:3
production (1)
29:18
professional (1)
75:14
program (9)
146:11,14,14,18,19;
191:20,23;192:11,15
programs (6)
40:1,4,8,8;64:19;
192:18
progression (1)
205:2
project (44)
21:2;29:13;30:24;
31:1,4,17,19;34:20,21,
25;35:3;38:25;39:5;
48:8,17;50:23;56:1;
57:13;58:17;67:23,24;
68:1;69:6,10;104:5;
105:5,22;114:16;
159:17;161:14;166:24,
25;178:14;185:10;
187:14,17;189:6,6,10;
201:10;205:10;210:17;
215:9;224:9
projects (28)
30:25;31:12,13,13,
15;35:24;37:19,20;
40:25;41:1,3;46:23;
48:14;49:16;67:15;
68:6;82:2;104:7;
120:11,13;131:17;
185:24;201:3,5;
204:13;215:7;224:8;
228:17
proliferation (1)
18:6
pronouncing (1)
193:7
proof (1)
233:22
proofs (1)
235:7
properly (3)
8:14;66:19;88:2
proposals (1)
86:3
propose (4)
6:15,23;7:11;12:2
protect (2)
44:16;103:18
protected (1)
131:4
protecting (1)
172:25
provide (7)
31:23;32:1;37:15;
63:7;65:4;77:12,13
provided (4)
16:14;70:3;97:17;
176:5
provides (2)
31:8;69:23
provision (2)
63:5;135:10
public (1)
60:12
pull (4)
31:5,10;52:7;80:10
pulling (1)
53:13
purports (1)
120:11
purpose (1)
59:20
purposes (5)
60:1;66:10;86:14;
108:20;235:13
pursuant (4)
41:18,20;44:2;154:8
push (1)
95:13
put (31)
12:8;14:1;15:7;
17:18;25:21,25;35:9,
19,25;38:10;39:15;
44:16;55:15;57:4;58:7;
60:4;84:17;85:19;
86:11,16;101:22;
131:22;153:14;168:13,
13;190:21;200:7;
210:8,12;228:5;233:9
putative (1)
15:2
putting (4)
41:18;52:24;87:23;
223:16

Q

quantities (1)
31:11
quantity (1)
31:24
questioner (1)
144:4
quick (1)
51:6
quickly (4)
40:25;42:16;51:11;
111:24
quit (1)
151:14
quite (8)
57:16;67:17;123:25;
131:15;178:19;188:3;
201:6;203:3
quote (1)
8:12

R

rail (2)
54:12,13
rails (2)
54:10,11
raise (8)
10:8,14;11:7;28:9;
100:7;115:19;128:6;
217:14
raised (5)
14:14;66:25;87:3;
179:11,23
raises (1)
200:1
ramp (2)
58:6;74:22
ramping (1)
130:6
ran (3)
191:25;219:12,22
range (1)
211:1
ranking (2)
31:24;89:17
rare (1)
55:8
rarely (2)
55:7,7
rate (3)
70:5;80:14,15
rates (13)
26:14;80:23,24;
86:15;87:20,23;92:14,
20;168:24,24,25;
169:4;190:3
rather (2)
101:8;202:10
Ray (1)
6:6
R-case (1)
13:13
reach (1)
29:21
reached (5)
26:7;29:19;64:12,15;
83:3
reaching (1)
29:23
reaction (1)
130:21
read (2)
9:4;111:1
reader (1)
161:25
reading (1)
26:3
reads (2)
26:16;87:3
ready (1)
15:21
reaffirm (1)
83:23
real (2)
85:13;86:14
really (21)
13:17;23:8;29:9;
41:3;77:24;85:18;
92:18;98:21;101:9;
133:1;139:21;146:20;
156:16;160:14;199:19;
203:22;212:24;219:23;
224:23;225:7;235:7
reason (2)
10:8;20:6
reasons (2)
232:13;234:2
rebuild (1)
96:16
recall (24)
30:11;32:24;35:16;
41:7;53:7,7;62:25;
63:17;76:17,18;83:21;
88:2;114:13;132:7;
133:11;136:20;159:5;
162:25;163:2;165:3;
174:1;215:18;224:16,
22
recalls (1)
69:6
receipt (1)
7:4
receive (2)
11:18;24:14
Received (18)
7:9,10;8:1;11:15;
28:6,7;45:6;56:24;
57:22;58:20,21;60:19;
120:9;153:25;154:5,6;
171:4;222:19
recent (1)
24:25
recently (4)
49:24;58:7;84:12;
199:12
receptacle (1)
124:25
receptacles (1)
125:14
reception (2)
223:9,11
recess (13)
21:21,23;22:1;99:11;
128:2;137:23;152:18;
180:20;200:24;211:24;
217:11;232:3;233:13
recognition (2)
19:4;157:22
recognize (8)
88:8;89:1;117:15;
132:22;150:9;188:18;
223:2,3
recollection (5)
35:3;71:15;164:9;
176:13,20
reconfiguration (1)
208:17
reconfigured (1)
210:24
record (73)
5:3,14;6:10,21,22;
7:5;8:25;12:3,8,15;
21:24;23:20;25:4,6,9,
10;26:4,6;32:15;33:5,
13;45:15;60:14;63:14;
70:23,25;86:20;87:6,9;
88:19;89:6;99:10;
100:3,12;102:6;115:9;
116:1;117:14;118:18;
128:1,3;137:17,22,24;
141:6;145:21;148:22,
23;152:17,19,20;
153:3;161:25;162:1;
170:13,15;180:19,21;

200:22,23,25;211:23,25;216:20;217:10;219:17;232:1,4;233:12,12,14;234:1;235:1
recross (1) 173:9
RECROSS-EXAMINATION (3) 90:21;112:21;173:11
redirect (10) 67:11;71:2;111:23,25;114:7;168:20,22;215:13,14;229:19
redundant (1) 200:17
refer (2) 111:2;113:21
reference (3) 7:17;71:17;134:13
referenced (1) 97:14
references (1) 133:4
referred (1) 122:21
referring (2) 117:8;167:11
refers (1) 67:15
reflect (4) 59:18;145:21;153:3;235:18
reflective (1) 192:20
reflects (2) 26:2;86:23
regard (2) 69:25;153:5
regarding (6) 221:20;224:15;232:7,8;234:23;236:1
regardless (1) 201:10
regards (2) 44:16;47:20
Region (7) 9:21;10:5,19;13:18;24:2;26:16;64:2
Regional (43) 6:5;8:4,7;11:20,22;12:9;13:21,25;15:1,23;16:4,8,14;17:4,5;19:10;20:11;21:11,14;23:22;24:1;26:17;27:2;61:9,13,14;64:20;65:2,7;72:15;86:18,19;87:2;133:18;149:5;154:20;233:7,18,25;234:21;235:21;236:16,17
regret (1) 211:10
regular (3) 35:11;133:10;138:25
regularly (1) 165:12
rehab (1) 199:2
Relations (3) 5:6,7;8:17
relationship (9) 18:22;21:9,10,19;45:12;119:12;163:22,24;211:20
relative (3) 67:6;81:4;131:15
relatively (1) 48:25
relevance (4) 59:13,15;161:17;164:13
relevant (1) 59:21
relies (1) 11:24
rely (1) 17:20
remain (2) 143:20;218:7
remained (1) 69:4
remediated (1) 199:5
remediation (1) 53:16
remember (5) 117:9;131:20;136:22;195:19;224:17
removal (1) 53:16
removed (2) 208:8,10
removes (1) 8:18
renegotiate (1) 64:13
renovate (1) 49:19
renovation (18) 15:8;29:22;35:2,15;38:25;49:18;50:23;51:9;52:17;53:4;66:7;73:13;76:24;93:3,13;199:21;204:10;207:24
renovations (7) 29:8;35:25;49:25;50:3,5;73:8;96:16
rep (2) 132:14;172:18
repair (23) 53:25;54:2,12;93:15,18;94:1,2,2,3,3,20,22;95:4,5,12,14,14;96:13,20,22,24;97:19;228:15
repaired (2) 55:16;95:11
repairs (7) 54:16;55:3;94:7,9;96:5,9;97:8
Repeat (3) 40:2;61:22;139:25
rephrase (5) 41:21;110:20;121:14;170:8,12
replace (5) 8:12,13;15:1;40:19,23
replaced (2) 18:9;208:18
replacement (2) 22:8;53:16
replacements (1) 228:15
replaces (2) 8:18;154:10
replacing (2) 54:4;98:6
report (3) 48:24;103:12,13
reported (1) 49:1
reporter (5) 100:13;137:21;181:6;202:1;217:20
reporting (1) 235:6
reports (1) 49:3
represent (15) 80:18;109:4;127:10,12,14,15;148:10;149:9;156:8,10,12,14,17;159:6,23
representation (6) 8:21;13:15;131:3;232:25;234:8;235:13
representational (1) 12:1
representative (30) 8:15,16,18;11:24;15:2,25;16:11;20:13,20;22:15;25:22;27:14;36:14;88:12;108:20;129:1,12,13;136:10;137:10;142:11;143:13,14,21;144:14,15;154:10;158:17;167:17;174:19
representatives (6) 21:12;27:14;33:2;36:16,22;113:18
represented (15) 15:6,20;33:15;46:3;63:4;66:19;88:2;92:19;122:19;136:23;141:2;157:4;159:9;195:18;232:20
representing (1) 91:16
request (2) 44:3;110:4
require (1) 68:20
required (2) 68:14;69:6
requirements (1) 10:19
requires (1) 14:2
reshim (1) 95:12
residual (1) 19:7
resignations (1) 151:19
resigned (2) 151:14,18
Resolution (4) 153:15,17,23;154:8
resolve (2) 82:22;180:2
resolved (5) 115:3;174:7,15,16;179:25
resolving (2) 149:6,6
resources (1) 64:4
respect (51) 12:5,8;25:3;32:24;33:12;34:3;42:21;46:11;75:23;77:8;78:14;81:13,20;85:14;103:9,19,21;105:10;106:17;111:17;114:9;119:19;123:2;130:20;131:5;133:8;141:18,23;142:9;143:5;144:25;146:10;147:8;150:2;151:2;157:19;167:22;169:22;171:3;172:22;175:15;189:2,12;201:7,9;203:15;213:3;218:22;222:10;225:1,2
respected (1) 224:20
respective (1) 108:7
responding (1) 224:14
response (10) 6:9,10,14;11:12;12:24;43:24;54:23;99:2,8;131:13
responsibilities (3) 28:25;49:8;216:6
responsibility (1) 49:13
responsible (9) 48:16;49:6;66:2;77:16;79:1,6;185:25;204:18;227:25
restate (1) 234:2
result (2) 130:22;218:20
results (1) 86:6
resume (1) 99:9
retain (1) 47:17
retaining (1) 200:3
rethink (1) 205:1
retire (1) 116:8
retired (4) 116:7,16;117:13;192:1
reverse (2) 153:6;233:25
review (2) 64:5;153:19
rework (2) 208:12,13
reworked (1) 208:13
Richard (1) 5:15
rid (1) 40:22
right (213) 11:8;15:9;16:21;22:24;24:4;25:4;28:2,9;30:9,22,25;31:16;32:5,21;33:21;35:1;38:17;40:15;42:5,15,21;43:6;44:5;46:10;48:5,9;49:19;51:18,21;57:16;60:17;61:12;70:24;71:7;72:11,18;73:1,10,17;74:4,6,21;75:4,11,18,22;76:4,19,23;77:14,22;78:6,9,16;79:12,19;80:12,19,23;81:9,18,19,20;83:7,14,23;84:23;85:13;87:25;88:5,7;89:14;90:6;92:9;93:14;97:22;99:3;100:7;102:5,23;103:18,21;104:4;105:15,20,24;106:2,21,22,24;107:4,9,12,15;108:6;111:14;113:15;114:19;115:20;117:11,14,21;118:7,10;119:14,17;120:1;121:12;122:4;123:8,18,23;124:2;128:6;131:22;133:2,17,21;134:1,11,13,24;135:24;137:5;139:4;141:1,9,11,13;144:5;145:19;149:1;

151:2,5;152:2,16;
153:19;163:25;169:19;
170:7;171:16,22;
176:9;178:1,13,20;
179:20;180:2;181:18;
185:7;187:11,16,17,21,
25;189:21;191:6;
193:10,19,21;194:1,6,
15,19;195:9,13,21;
196:18,25;199:14;
200:21;203:12,18,19;
204:3,10;205:23,25;
206:4;208:5,15;
211:19;213:25;214:12,
14;216:5;217:14;
218:7,11;219:8,14;
220:2,13;221:9,17;
223:4,12,14,18,20,23,
25;224:18;225:1,5,7;
226:1;229:14;233:15,
21;234:4,5;235:1
rights (5)
134:5;174:25;180:8;
232:25;234:8
Road (6)
116:11;148:3,3;
192:3;222:15,15
ROBERT (1)
181:2
Rochester (3)
121:11;151:9,10
role (20)
109:10;117:21;
143:5,8,10,10,13,15;
146:8,10;147:7,17;
169:4;172:9,14;173:2;
181:24;190:6;191:19;
193:23
Ron (1)
5:8
roofers (2)
43:11;44:7
room (15)
6:12;51:24;76:13;
88:7,23;105:6;145:16,
22;210:3,4,18;216:21;
221:12;224:10,14
rooms (3)
210:1,18,22
rotating (1)
188:14
rough (1)
80:10
roughly (4)
57:13;104:19,23;
112:3
routine (2)
37:17;38:8
row (1)
152:5
rule (2)
93:11;233:24
rulemaking (1)
18:5
rules (7)
10:12;18:2;19:4,6,6,
10;236:24
ruling (2)
153:6;233:24
run (4)
13:19;14:15;129:17;
219:9
running (2)
203:21;219:11
Russ (1)
147:14
RW (1)
183:1

S

safe (2)
191:10;194:15
sake (1)
215:8
Sam (7)
101:13,16;103:13,
15;104:3;110:11;
114:25
same (55)
47:21;52:19;72:14,
22;73:1,8;74:1,4,15;
75:4,5;79:11,19;83:4;
91:2;94:8;98:13,14;
101:15,22;107:15;
109:2;122:16;132:21;
133:1;141:19;142:1;
159:15;166:18,21;
171:23;172:3;175:3,
22;189:24;190:13;
195:4,5,6,7,8;200:18;
204:16;212:11;213:12;
214:21,25;215:2;
221:15;222:16;225:2;
226:10,11;233:2,4
sat (3)
63:10;84:25;190:9
satisfied (1)
10:19
save (2)
25:8;176:23
saw (10)
73:7;79:11;91:1;
106:21;139:2;153:11;
158:11;188:15;212:15;
223:5
saws (8)
44:14;139:1,2;
188:15,15,15,15;
214:10
saying (4)
27:23;83:5,6;211:10
scanner (1)
34:15
scanners (1)
34:16
scenario (1)
38:10
schedule (1)
66:5
scheduled (1)
66:14
scheduling (2)
66:3,12
school (1)
156:23
Schooling (1)
146:22
schools (1)
159:17
scientific (1)
166:15
scientist (1)
166:17
Scime (1)
5:16
scope (8)
60:11;68:5;167:2,3,
5;183:16;200:2;235:5
SCOTT (324)
5:3,8,18,22;6:2,8,10,
15,21,23;7:3,9,11,21,
25;8:2,24;9:7,10,13;
10:3,17;11:6,11;12:10,
14,19,22;13:1,4,7;
15:22;16:2,10,15,19,
21,25;18:10,16,24;
19:1,12,20;20:1,8,17,
25;21:11,17,20,24;
22:2,14,20,23;23:3,12,
16,19,25;24:4,9,13,22,
25;25:5,8,11,19,24;
26:4,21,25;27:3,5,8,16,
21;28:2,5,8,15;32:9;
47:5;48:11;54:24;
55:21;56:16,22;57:19;
58:20;59:14;60:2,7,17;
61:11,20;65:15,19,23;
67:11,13;68:2,5,10,12,
19,23;69:13,18,22;
70:6,11,16,18,20,24;
71:1;76:8,11;81:8,10;
86:22;87:10,12,14,16;
88:18,21;89:5,8;90:12,
14,16,18,20;93:19,22;
94:11,14,17,23;95:3,6,
15,19,23,25;96:6,10;
97:22,25;98:10,18,21,
24;99:3,6,9;100:3,7,12,
15;101:24;106:3,7,13,
15;108:12,14;110:18,
20;111:23;112:18,20;
113:11,15,17,21;114:1,
4,6,22;115:3,6,9,12,14,
16,19,25;124:13,15;
127:20,22,24;128:3,6,
12,15;137:22,24;
138:1;139:23,25;
141:1,9,11,14,16;
142:4,7;144:1,6,9,12;
148:6,23;149:2,11,13,
15,19,21;152:3,7,16,
19,23,25;153:5;154:2,
5;155:4,6;157:19,23;
158:2,4;161:19;162:2;
164:15,17,20,24;165:1;
167:24;168:9,20;
169:9,11;170:6,8,13;
173:9;175:12;178:1,3,
7,16,21,25;179:9,18,
20,22;180:5,11,18,21,
25;181:5;199:6,8;
200:23,25;201:14;
204:5;211:23,25;
215:13,24;216:1,3,6,
10,14,16,19;217:3,5,8,
10,14,19,22;226:13,15;
227:21,23;229:19,21,
23,25;232:1,4,17,23;
233:2,11,14,21;234:15,
17;235:2,19,23,25;
236:8,12,14,18,25
screw (3)
44:13;139:2;158:12
screwdrivers (1)
90:25
seat (1)
151:11
seated (3)
28:15;128:12;217:19
second (7)
14:21;35:2;40:24;
63:11;136:16;144:1;
219:11
secondly (1)
148:11
secretary (1)
147:11
secretary/treasurer (1)
173:6
section (1)
59:3
secure (1)
41:23
secured (1)
42:17
securing (1)
129:25
security (7)
14:2,4,7;17:25;
18:20;29:1;200:6
seeing (1)
210:25
seek (1)
172:19
seeking (3)
8:12,13;236:23
seem (1)
8:20
seems (3)
60:9;161:21;235:8
SEIU (5)
36:18;66:21;67:1;
71:9;80:21
self-employ (1)
29:21
self-evident (1)
68:6
send (6)
44:2;78:13,16;
185:15;228:3,4
sends (1)
78:19
Seneca (1)
159:16
sense (1)
37:11
sent (6)
104:1,3;108:1;134:8;
135:14,15
separate (19)
16:7;30:7;43:20,21;
70:14;160:16;171:3;
190:9;210:2;213:6,11,
21;225:9;232:20;
233:5,7,8;234:8,8
separately (3)
210:7;234:10,11
series (2)
7:13;89:11
serious (1)
10:21
serve (1)
14:8
served (1)
116:17
service (2)
5:10;15:6
session (1)
110:10
sessions (3)
86:25;112:12,15
set (10)
43:17;64:6;85:16;
86:3;122:1,1;124:23;
169:1;172:15;190:3
sets (1)
228:2
settled (1)
67:8
seven (1)
29:4
seven-day (1)
19:25
several (6)
82:22;112:16;
142:20;148:3;149:25;
199:23
severance (2)
19:9;236:24
severed (3)
18:7;19:5;20:24
shabby (1)
51:25
shades (1)

52:11
shall (1)
133:7
share (1)
47:21
shared (2)
174:2;234:7
sharply (2)
224:20;225:17
she'll (2)
234:22,22
Sheet (35)
8:21,24;9:3,6,9,11,15,19,19;10:10,11,16;11:3;26:13;47:12;125:25;126:14,18,19,23,23;135:21;155:20,22,24;156:1,4,7,7;176:18,22,24;187:21;189:13;228:9
sheets (1)
228:25
Sherman (3)
207:11,18;216:3
Sherman's (1)
207:12
Shield (3)
161:9;162:20,22
shirt (5)
88:8,19,25;89:5;145:20
shoes (1)
192:1
shooters (1)
188:13
shop (1)
208:11
short (5)
111:8;176:3;196:7;216:18;222:20
shorten (2)
23:15,20
shortly (1)
11:19
shoulder (2)
133:3;219:19
shouldn't (1)
94:15
show (15)
6:10;15:7;34:1;42:24;59:20;72:3;110:3;119:17;120:8;132:19;139:4;150:8;152:11;220:18;222:19
showed (1)
236:3
showing (17)
9:16,22,25;10:4,18;11:4;13:17;14:18;15:14,18;26:14;33:12,14;58:25;104:12;135:1;180:13
shown (4)
7:3;72:3;102:6;126:10
shows (3)
12:23;68:25;203:22
shut (2)
49:22;50:2
sic (1)
36:20
side (5)
46:7,7;67:24;122:5;187:22
side-by- (2)
122:4;187:21
side-by-side (7)
76:23;77:3;119:23;121:23;189:2,13;200:12
sign (27)
108:22;109:25;110:1,4,7,12,23,24,24;111:15,15;113:7;117:6,10;118:8;119:7;127:6,8;134:17;136:4;137:7;174:23;175:3,17,17;176:19,20
signatories (2)
160:11,12
signatory (7)
18:12;21:2;25:18;30:18;32:6;64:7;219:4
signature (10)
27:17;101:17;102:2,3;118:10,11;126:17;150:8,9,10
signatures (1)
126:16
signed (40)
7:12,18;16:5,6,9;17:4;22:17,25;26:9;27:11,12,13,18,22;30:20;31:10;33:14,17;109:14;112:2;118:11;121:10;132:24;134:16;138:19;150:3,5;172:12;176:12,13;220:2,5,7,9,11;234:10,18;235:9,15;236:9
signing (2)
63:23;174:23
signs (3)
20:23;21:3;108:24
similar (10)
21:3;38:4,18;52:6;64:19;90:7;185:8;194:19;211:1;214:15
simple (4)
53:13;223:18,19;224:1
simpler (2)
53:18;212:5
simplistic (1)
53:22
simply (12)
9:12;13:20;15:1;31:23;71:24;95:21;103:18;135:7;153:10;163:16;221:7;235:13
simultaneously (1)
31:14
single (3)
83:10;150:16;164:7
singly (1)
63:1
sink (4)
208:7,10,11,18
sit (7)
58:16;64:9;86:3;154:15,18;155:1;190:8
site (17)
88:10,13,14;89:3,15,19,22;101:8;121:25;122:2,10;151:9;163:5,11,24;164:3;190:23
sites (13)
83:2;101:7;105:16;106:8,18;121:19;122:8;130:7;142:12;158:10,15,18;194:20
sitting (7)
9:23;86:25;88:23;145:16,19;150:22;152:5
situation (3)
83:14;132:3;203:19
six (13)
41:2;49:3;62:11,12;88:16;165:16;185:2,9;195:22,23;196:22;210:23;212:8
size (6)
55:11;167:2,3,6,7,11
skill (9)
31:12,25;39:7,8;47:17;91:19;188:15;196:18,20
skilled (8)
18:3,13;31:9,14;57:4;65:8;69:11;81:22
skills (6)
15:12;39:16;40:16;45:19;172:4;192:20
skillset (4)
48:19;79:18,24;95:12
skillsets (3)
44:6,13;45:17
slower (1)
49:21
small (37)
37:11,19,20,21;49:25;50:5,20,24;51:10,13;53:9;54:2,8,9;55:10;67:15,20,20,24;68:3;80:4,5;90:25;93:7;94:3,21;96:22;97:19;123:24;131:18;210:1,3,4,25;223:4,8;229:3
smaller (3)
54:1;96:20;124:21
soap (3)
52:24;54:4,10
sole (1)
8:16
solely (1)
63:24
solicited (1)
10:10
solid (1)
69:16
somebody (11)
8:19;22:18;88:13;91:23;93:8;108:24;122:9;189:6;228:17;229:9;232:25
someone (4)
93:8;143:17;163:13;190:22
sometimes (11)
38:12;47:1;55:15;97:3,6,10,12;144:3,3;202:20;225:5
somewhat (3)
59:2;77:16;202:19
somewhere (1)
235:8
soon (1)
60:4
sorry (27)
12:25;20:13;24:8;42:13,14;43:9;57:15;61:16;62:18;63:11;92:17;96:7;98:10;106:3;127:25;130:15;144:12;146:17;157:22;175:13;199:8;202:2;205:15;207:2;217:23;223:10;234:15
sort (4)
8:16;13:13;146:5;202:7
sounds (1)
128:13
source (1)
59:9
space (1)
210:8
speak (4)
63:14;85:1;87:1;159:19
speaking (4)
20:4;70:11;81:14;101:4
speaks (2)
10:1;11:1
specific (9)
15:11,12,12;45:4;54:3;61:17;171:10;185:24;188:13
specifically (9)
44:1;65:22;80:15;130:7;131:19;132:10;137:2;163:11;179:9
specs (1)
188:25
spectrum (1)
183:4
speculative (1)
165:8
speeches (1)
141:12
spell (5)
100:13;116:1;181:5;217:20;227:21
spelled (2)
128:13;135:25
spend (1)
143:18
spent (2)
82:10;183:3
spinning (1)
89:23
spoke (3)
77:12;132:8;190:11
sponsors (1)
199:24
sponte (1)
12:8
sprinkler (5)
187:19;205:15,20,21;206:21
sprinkling (1)
206:3
Square (2)
5:25;210:20
stability (1)
171:16
stadium (1)
219:23
staff (14)
38:11;50:12;51:6,21;65:4,8;69:9;156:2;211:5,9,11,17;212:23;229:3
staff's (1)
213:2
staffing (1)
68:22
stages (2)
142:21,22
Stair (4)
54:10,11,12,13
stand (3)
180:23;195:16;217:12
stand-alone (1)
133:21
standard (2)
5:10;208:7
standards (1)
7:16
standing (2)

12:7;16:9
standpoint (2)
155:2;183:21
stands (2)
113:12;138:21
start (4)
12:3;49:16;82:5;
132:2
started (5)
30:5;129:4;157:14;
160:11;219:11
starting (2)
30:23;171:9
state (17)
5:13;6:3;27:6;39:25;
40:4;100:12;133:22,
25;135:14;150:6;
158:23,24;159:2,6,9,
23;233:22
stated (4)
16:16;20:10;151:15;
173:15
statement (10)
5:10,12;13:9,11;
15:23;16:23;22:3;
41:10;46:19;77:13
statements (2)
30:8;179:3
states (1)
71:19
stationary (3)
91:22;92:13,14
stations (3)
50:6;200:6,7
status (6)
11:24;12:1,6,15;
33:19;135:2
stay (3)
18:7;47:9,18
stayed (1)
69:12
steadily (1)
69:5
steady (3)
105:2,3;171:22
steady-Eddie (1)
81:22
steel (1)
34:10
steering (2)
155:13;181:25
stepped (1)
192:1
steward (17)
78:22,23;88:13;
103:10,12;123:18,20,
24;124:1;145:3,7,8;
147:23;148:2,2,3;
149:24
stewards (8)
78:17,19;79:1;90:6;
123:11,15,16,17
still (8)
11:22;55:17;87:12;
98:6;119:16;150:3;
191:25;220:17
stipulate (10)
20:12;21:8,9;23:14;
24:7,15,20;33:8;59:22;
174:25
stipulated (8)
20:17;24:5,9,13;
25:14,25;26:13;217:3
stipulation (7)
7:12,18;12:20;24:14;
25:2;33:5,12
stipulations (4)
7:13;23:18,20;25:12
stone (1)
188:19
stop (1)
73:10
stops (1)
55:15
storage (4)
45:2,3;213:7,9
Street (3)
5:20,25;131:10
strictly (1)
95:22
strike (2)
12:8;152:7
stripes (1)
219:19
struck (1)
153:6
structural (5)
34:10;81:17;96:16,
24;97:1
structure (3)
39:24;50:21;90:6
structured (1)
89:24
structures (3)
37:14,22;44:12
stud (1)
138:13
studs (2)
224:4;226:6
study (2)
92:23;95:24
stuff (1)
131:13
sua (1)
12:7
sub (1)
72:16
subbed (6)
205:13,16,20,22;
206:13;220:20
subcontracted (1)
57:24
subcontracting (1)
55:17
subcontractor (1)
51:22
subcontractors (1)
56:7
subdivisions (1)
178:11
subjectively (1)
93:8
submit (1)
134:8
subpoena (1)
153:4
subpoenaed (1)
153:2
subs (2)
56:7;57:11
subsections (1)
134:17
subsequent (1)
136:15
subsequently (2)
151:14;154:25
subset (1)
36:18
substance (1)
224:18
Substantially (3)
81:2,3;166:8
suburb (1)
116:13
Suburban (8)
36:19;68:9;216:13,
23;222:14;227:15,15,
18
succeeded (1)
22:18
success (2)
30:9,10
successful (6)
22:10;29:23;30:12;
174:12,14;187:24
successive (2)
30:8;236:4
successor (3)
17:5;150:24;178:17
sufficient (1)
180:12
suggest (3)
55:12;76:19;93:8
suggested (1)
67:21
suggesting (1)
203:14
suggests (1)
18:21
suit (1)
152:5
sum (1)
224:18
Sumbrum (3)
77:25;194:6,8
sums (1)
104:13
superintendent (12)
69:24;70:1,2,4,5,10;
89:15,17;194:13;
226:22,25;227:14
superintendents (1)
89:22
supervise (2)
202:20,22
supervision (11)
17:7,8;47:21;48:16;
66:16;189:5;193:2;
194:16,17;195:13,14
supervisor (5)
48:23;193:3;203:4;
226:20;227:14
supervisors (4)
48:3;49:11,12,15
supervisory (3)
49:12;77:19;194:12
supplement (3)
54:16;71:24;96:20
supplied (1)
18:11
supply (1)
69:24
support (2)
97:3,5
supported (1)
44:12
suppose (8)
16:21;22:9;48:18;
52:24;93:9;98:8,12;
235:14
supposed (1)
203:16
sure (35)
10:18;11:21;17:8;
31:16;34:18;37:19;
39:5;48:19;55:21;66:8;
67:6;101:20;106:6;
111:2;117:11;123:13;
124:16;126:24;136:7;
145:5;148:24;156:5;
163:6,8;166:3,20;
189:8;201:16;204:6,
10,20;211:5;232:15;
234:3;235:4
Surgery (1)
222:15
surprised (1)
10:15
suspect (1)
147:13
swap (1)
10:13
swear (1)
180:25
sworn (6)
28:13;100:10;
115:23;128:10;181:3;
217:17
symbols (1)
216:21
system (12)
31:10;36:13;37:25;
38:7,8,11,24;45:20;
46:25;47:1;68:7;
216:11

T

tab (1)
56:3
table (8)
9:23;86:25;91:1;
146:2;169:22;170:1,4,
5
Taft- (1)
135:24
talent (1)
53:15
talk (6)
50:24;85:1;185:17;
190:11;193:2;222:22
talked (6)
132:1;199:10;
201:19;205:6;211:2;
222:1
talking (12)
12:6;20:12;51:24;
61:3;73:6;79:24;83:4;
136:22;142:24;165:20;
225:10,12
tape (3)
137:21;221:2,4
taper (7)
168:15;193:8,10;
203:7;205:11;206:10;
229:10
tapers (9)
76:21;170:25;194:3,
5;200:15;220:5,16;
221:1,11
taping (6)
77:23;203:6;205:7;
206:7,20,23
task (1)
38:15
tasks (7)
38:3;104:7;105:21,
24,25;167:16;212:5
taught (1)
39:13
taxing (1)
57:14
teacher (3)
146:12,13,21
team (1)
66:13
tear (1)
37:13
technically (1)
19:16
technology (2)
28:24;29:3
Telco (7)
130:7,8,18,23;131:1,
5,19

tells (2)
60:12;125:4
ten (2)
110:25;195:25
tend (4)
37:13;50:1;172:3;
180:11
tends (1)
54:13
tenure (2)
137:9;142:10
term (7)
26:19;31:18;76:22;
81:4;84:3;85:1;116:24
terminated (4)
129:6,7,8;218:16
terms (29)
32:25;38:2;42:22;
43:17;102:16;113:18;
133:5;134:21;157:9,
12;169:18;171:7,9,23;
172:15,25;175:18,21,
25;178:17;183:16;
188:25;191:11,16;
219:18;220:20;221:13;
235:4,10
test (1)
30:10
testified (12)
28:13;43:24;68:13;
94:18;95:20;96:1;
100:11;115:24;128:11;
170:9;181:4;217:18
testify (2)
168:9;170:12
testifying (2)
41:7;105:6
testimonies (1)
235:18
testimony (27)
12:2,3,4,8;14:16;
15:3,17;21:16,18;
23:13;32:19;65:23;
86:23;92:8;94:24;
152:7;153:6;173:15;
195:16,19;201:9;
211:4;216:4;222:11;
223:5;229:2;236:2
thanks (2)
128:15;234:3
That's (103)
66:11;68:17;72:2,6,
9;73:7;74:1;76:22;
77:21;79:21;80:8;81:4,
9,9,25;82:11,13;83:6,6,
7;84:22;85:3,15;86:9;
87:5,8;90:5;91:15;
92:8;93:14,23;95:13;
98:7,14,21;104:23;
106:2,12;109:16;
111:17,18;113:6,9;
120:8;123:7;136:16;
141:11;148:14,19;
149:12;150:10;151:1;
153:10;154:12;157:15;
159:21;163:10;164:5,
14;165:9,14;166:15;
167:6;169:3;171:13;
172:6;173:3,7;174:17;
176:6;179:1,4,11,23;
185:15;187:19;191:18;
193:8;194:21,25;
196:1;206:7;207:3,9;
214:23;215:20,22;
217:1;222:21;223:17;
224:21,23;225:19,20;
228:6,6,14;229:12,14;
234:17,18;235:20;
236:11
theoretically (2)
146:21;150:6
there's (35)
66:14;68:16,22;69:2;
80:14;81:17;91:25;
94:9;110:16;111:4,10;
121:25;122:12;155:24;
158:4;164:13;165:15,
21,22,23;166:6,12,21;
169:24;179:8;195:1;
196:8,23;202:21,22;
203:15,20;228:5,23;
233:6
thereafter (1)
33:17
therefore (1)
179:8
they'd (1)
68:17
they're (32)
68:7,11;81:1;87:19;
95:22;104:3;105:4;
112:24;113:3;117:5;
119:19,20;121:10;
123:13;126:25;130:11;
143:18;148:17,18;
154:22,25;162:6;
165:17;166:9;178:25;
179:23,24;196:7;
220:11;232:21;233:4,6
they've (4)
105:3;131:14;
151:14;171:17
thick (1)
148:7
third (2)
133:5;199:15
Thirty (2)
121:2,4
Thirty-seven (1)
218:6
Thomas (2)
128:5,9
though (7)
98:1;158:5;163:20;
175:11,15;178:10,12
thought (12)
65:17;83:23;93:20;
113:9;148:14;157:21,
22;180:14;199:10;
206:13;233:9;236:2
threats (2)
131:4,6
three (13)
30:8,13;68:18;
142:25;169:15;176:2,
17;180:19;190:9;
206:5;221:24,25;236:4
throughout (6)
36:12;37:24,25;69:5;
166:19;210:25
throw (1)
229:9
thus (1)
8:11
ticket (7)
38:3,4,7,8,14,15,24
tickets (4)
38:10,11,12,18
tile (3)
50:7;53:17;187:9
tiles (1)
50:8
till (1)
33:21
Tim (1)
147:1
timely (2)
41:1;189:10
times (10)
53:1;85:4;105:3;
122:23;137:11;144:3;
146:15;178:12,13;
202:23
timing (3)
39:3,4;52:7
title (8)
28:23;29:2,3,5;
102:19,20;126:24;
147:24
titled (1)
153:15
today (7)
32:15,19;42:1;175:6;
218:7,23;232:6
together (19)
18:7;25:22,25;26:8;
32:25;39:1,5,15;48:1;
66:5,9;85:19;87:23;
163:19;191:11;202:5,
6;206:14;213:24
told (8)
107:22;113:3;
131:12;132:2;153:7;
158:10;168:10;205:19
Tom (5)
114:25;115:1,7,9;
228:9
tons (1)
163:15
Tony (2)
115:17,22
took (9)
86:15;118:18;
120:22;136:6;149:17;
172:11;210:18;221:24;
222:2
tool (2)
44:15;214:7
tools (61)
44:13;45:2,4;72:22;
74:4,15,18;75:4;90:23,
24;91:1,2;120:24;
121:1;137:14,18;
138:23;139:1,3,16,17;
141:18,20,21,23;142:1;
158:11,12;183:5;
188:9,11,12,13,17,19;
190:12,13,13,22;
191:12;195:6,7;
200:18,18;213:3;
214:5,15,18,19,20,21,
25;215:1,2;218:22;
219:9;221:13,14,15;
226:10,11
top (5)
34:5;208:8,10,12,18
total (12)
31:1,4;34:21,24;
35:5;67:17,23;80:11,
12;143:15,15;207:20
totally (1)
210:24
toward (1)
185:19
towards (1)
42:23
tower (2)
49:19;199:1
towers (1)
50:1
town (1)
183:1
trade (21)
17:11;18:11;31:12;
32:3;39:3,13;44:15;
45:4;46:17,18;78:14;
85:16;122:19;131:13;
133:6;143:1;146:21;
191:10;194:11;213:10;
234:12
Trades (142)
5:23;8:5,15,22;
11:14,16;13:2;14:18,
22;15:14;16:12;17:3,
10,12,14,16;19:19;
20:12,14,16,21;21:3,
12;22:12;25:20;27:10,
13,17,18;30:1;31:9,23;
32:5;33:3,7,15;34:10;
35:8;36:4;39:19;41:23;
46:3;54:5;56:19;61:15;
62:14;64:12,15,25;
65:4;66:3,19;68:14,25;
70:2,3;71:24;72:24;
73:2,6,14;74:2,16;
77:12,13;78:13;82:24;
83:25;87:19;91:6,13,
19;98:7,14;102:13;
109:2,13;114:11;
117:20;118:1,2,5,16,
20;120:12;121:21,23;
122:4;125:23;126:1,4,
15;127:6;131:25;
132:6,9,12;133:11,13;
137:1;154:11,15,16,19,
23;156:2;159:14,18;
160:23,24;162:22;
172:11;173:2,4;174:8,
13;176:15,17,20;
187:13,24;188:7;
189:9;191:6;192:17;
195:18;200:16;202:5;
213:18,20,23;215:20;
225:12;227:7,9;
233:17;234:10;235:9,
15;236:3,9,10
Trades' (1)
17:1
Trades-wide (1)
14:20
traditional (1)
86:24
train (1)
192:4
trained (2)
44:15,18
training (3)
46:16;151:8;192:3
trampling (2)
66:22;137:3
tremendous (1)
163:19
tricky (1)
199:22
Trico (1)
131:10
trips (1)
138:3
troubleshooting (1)
39:16
true (7)
36:2;45:1;81:9;
84:22;169:21;171:22;
224:23
trust (3)
85:15;129:18;146:8
trustee (1)
146:9
try (11)
47:16;51:7,12;53:24;
54:18;55:1;76:8;91:18;
110:19;161:25;163:7
trying (17)
51:14;53:6;67:9;
87:8;94:10,13;96:15;

129:21,25;143:9;
145:5;157:25;164:19,
22;176:23;206:7;
221:22
turn (1)
170:6
Turner (3)
56:3,5;60:25
twenty (3)
166:12;185:2,9
Twenty-one (1)
139:12
twice (3)
8:25;63:20;122:17
two (33)
6:17;14:25;19:6;
23:7;36:15;49:5;68:18;
81:23;83:15;93:11;
114:2,19;141:19;
142:24;161:12,13;
163:14;165:10,16;
170:11;174:8;175:25;
176:10,17;185:19;
191:25;195:25;196:1,
14;215:2;217:6;225:5,
12
two-page (1)
25:15
type (31)
30:11;35:24;36:25;
37:5,7,16,17,19,23;
51:9;58:14;71:19;73:1,
5;74:1,15;77:18;93:5;
97:18;132:9;138:7,9,
16;185:10;187:10;
195:8;200:4;201:10;
224:6;226:4,7
types (18)
40:16;49:9;50:11;
52:3;74:4;75:4,5;82:1;
84:1;94:9;106:22;
137:14,18;138:23;
139:16,17;141:19;
188:9
typical (4)
139:2;159:12;172:6;
185:21
typically (13)
34:12;35:8;37:12;
48:5;49:14;52:10;
77:14;96:22;135:14;
178:4,8;214:7;224:6
typo (3)
26:21,23;27:3

U

UA (3)
108:3;188:4,6
UB (2)
175:5,5
UBC (5)
16:7;154:10,18;
191:20;219:4
ultimately (1)
61:9
Um-hum (1)
47:13
unaware (1)
8:16
unchanged (1)
232:8
unconcerned (1)
18:9
under (54)
8:19;15:19;17:23;
18:5;19:3,6;26:15;
38:23;39:8;40:7,11;
41:14;49:2;52:23;
61:16;72:23;73:2,13,
13;74:16;80:9,23,25;
92:13;103:10;106:10,
17;107:1;114:11;
119:2;120:15;125:2;
126:16;138:15;143:1;
148:11,18,19;149:3;
157:12,22;159:9;
170:15,18,21;191:16;
192:13;203:8;205:23;
207:4;211:1;228:6;
236:5,24
underlying (7)
20:15;21:4;78:19;
86:11;102:15;169:2;
235:10
understands (1)
94:6
understood (5)
10:15;98:18;148:15;
170:12;206:16
Underwood (1)
228:9
undue (1)
18:6
Union (72)
9:5,15,17;10:2,16;
11:2,17;12:18;14:2,3,3,
7;15:6,13,14;17:12,14,
25;18:20;22:7;29:10;
32:3;34:12;48:5;62:11;
67:3;69:24;80:3;83:11;
88:2,13;113:19;
118:23,24;120:11,23;
126:3,7;130:17;
131:18;132:11;135:13;
142:19;143:10;144:14,
14;145:25;147:7,24,
25;148:4;149:8,18;
155:20,23;156:4,4,5,
14;173:13;181:13,15;
183:10;218:3,4,9,9,10,
16;221:3,4;233:5
unions (5)
27:14;64:7;83:15,15;
127:5
unique (1)
203:19
unit (64)
8:9,13,14,16,22;
14:23,24,24;15:4,5,16,
19,19;16:16;17:16,19;
18:3,3,4,6,7,13;19:3,7,
8,13,14,17,17,19;
20:23;22:6,8;24:15;
83:10,11,16;91:20;
92:19;97:16;98:3,4,9,
13,16;109:7;157:20;
208:4;210:14;224:2;
232:7,8;234:10,24;
235:5,20;236:1,5,8,15,
19,21,21,23
United (4)
26:18;128:20;
129:10;178:11
units (7)
14:25;85:23;86:2,8;
109:8;158:21;159:24
University (5)
175:4,9,11,15;
185:11
unless (4)
10:20;86:20;163:11;
229:8
unlikely (1)
52:21
Unsuccessfully (1)
94:12
up (61)
13:18,19;14:15,21;
15:9;23:15;31:10;
33:21;38:8;44:11,16;
52:24;53:13;57:5;58:7;
76:9,10,12,12;87:11;
98:8,12;105:1;107:23;
110:12,23,25;119:11,
23;122:1,1;130:6,13;
135:16;137:19;142:21;
143:13;151:15;168:13;
169:6,13;181:16;
187:1,2;188:24;
190:25;192:9;194:16;
200:2,5;201:1;210:8,
12;217:6;218:7;
221:23,24;225:24;
228:2,17;229:10
upgrade (4)
200:7;208:3,6;
210:14
upgrades (1)
50:9
upon (4)
78:19;84:15;108:7;
171:4
uptight (1)
202:16
use (19)
38:24;39:23;44:13;
45:16,16,18,25;62:12;
69:23;72:22;74:16;
90:23;96:19;105:9;
131:3,3;139:19;170:4;
188:11
used (14)
40:18;41:5,6;94:25;
188:20;190:8,13;
192:4;200:4,5,19;
214:6;221:14,15
using (7)
39:22;54:15;74:15;
158:11;188:9;190:13;
214:15
usual (1)
122:20
usually (16)
89:17;105:4,5;161:7;
174:16;183:16,17,18,
20;189:7;190:21,25;
196:6,8;213:14;220:16
utilize (4)
43:21;46:22;107:15;
138:23
utilized (8)
22:11;76:17;107:16;
130:18;137:18;139:18;
141:18;142:1
utilizes (1)
139:17
utilizing (4)
75:4;130:4;137:15;
141:20
utterly (1)
60:5

V

V6 (1)
210:14
V7 (1)
210:16
V9 (2)
207:24;211:2
variable (1)
80:14
varied (1)
185:23
varies (1)
111:3
variety (10)
14:16;15:18;27:13;
45:17;69:8;102:23;
158:12;188:11;199:1;
210:25
various (21)
25:17;35:22;46:4;
48:3;56:7;57:11;68:14;
82:23;87:19;92:20;
109:25;114:11;160:11,
24;162:22,23;163:4;
189:9;204:19;205:3;
207:16
vary (1)
67:17
Vascular (2)
49:23;55:25
vast (1)
31:8
VCT (1)
223:16
verbal (1)
63:14
verbally (1)
68:18
versus (4)
51:9;65:13;105:10;
124:4
vice (7)
28:24;29:3;151:10,
12,16,20;173:5
vicinity (1)
183:18
view (2)
22:5,7
vinyl (2)
187:8,8
virtually (2)
36:2;171:25
virtue (2)
134:16;181:21
visit (5)
101:7;105:15;120:4,
6;158:15
visited (2)
106:8,18
vital (1)
15:16
vocational (1)
46:16
voice (2)
76:9,12
voltage (3)
45:18,18,18
voluntary (2)
157:22;192:2
volunteer (1)
200:6

W

wage (3)
80:23;86:15;87:20
wages (9)
26:2,7;62:11;68:24,
25;81:7;92:16;104:13;
171:3
wait (2)
14:6;158:5
waiving (1)
13:21
walk (3)
72:18;74:7,24
walked (3)
215:8,10,17
walking (1)
190:24
walk-through (1)

74:24
wall (11)
55:10;80:4,5;94:18;
97:1;168:15;203:24;
228:21,22,23;229:3
walls (15)
44:11;50:6,8,18;
55:9;73:9,11,23;168:2,
13,16;203:17,21;
210:12;226:6
wants (5)
5:12;11:6;111:7,8;
125:11
Washington (1)
151:13
wasn't (11)
73:22;98:12;114:23;
152:21;157:23;165:10;
174:2;205:21;208:21;
225:10;235:4
waste (1)
210:7
wastes (2)
210:2,7
way (25)
13:9;14:14;32:18;
35:1;42:11;44:25;
51:18;58:13;65:15;
68:15,16;75:14;79:20;
98:14,15,17,25;138:19;
153:10;154:20;158:20;
194:21;204:21;211:10;
228:5
ways (1)
77:16
WCHLB (1)
216:22
we'd (2)
190:8;206:14
We'll (6)
71:1;99:9;124:6;
180:2;217:6;218:4
we're (17)
79:24;82:10;83:4;
86:23;87:8;116:12;
117:11;122:16;124:22;
139:24;148:23;153:11;
164:12;196:2;203:12;
216:19;235:1
we've (5)
69:10;117:8;163:15;
219:16;232:6
wear (1)
37:13
website (4)
59:1,4,19;60:6
Wednesday (1)
132:17
week (3)
122:20;132:16,17
weekly (4)
38:12;122:15;189:9,
16
weeks (1)
165:16
weight (1)
232:21
welcome (1)
9:24
welfare (1)
157:2
weren't (3)
136:8;211:8;213:12
what's (11)
77:14;80:12;82:19;
97:15;98:5;104:4;
113:4;163:10;165:14;
196:11;222:19
what's (4)
19:20;31:21;54:20;
59:13
whatsoever (3)
169:25;172:14;173:2
whereas (1)
202:15
Whereupon (23)
22:1;28:10;97:24;
99:11;100:8;115:15,
21;127:23;128:2,8;
137:23;152:18;180:17,
20;181:1;200:24;
211:24;216:15;217:11,
15;229:24;232:3;
233:13
Who's (5)
70:16;101:15;
150:21;151:7;196:4
whoa (2)
169:9,9
whole (12)
17:17;18:4;23:14;
80:6;164:16;183:18;
188:11,17;189:6;
203:20;216:11;227:6
whose (2)
107:22;219:19
wide (1)
191:1
willing (3)
21:7,7,23
window (3)
52:11,11;171:9
windows (2)
52:9;97:19
wireman's (1)
120:20
wise (2)
146:22;196:18
withdraw (6)
43:7;81:6;82:8,16;
107:4;119:18
within (13)
7:15;31:6;37:14;
50:11;63:22;83:10,16;
104:7;167:3;174:13;
195:13;225:12;234:12
without (4)
13:21;89:23;98:17;
234:13
witness (115)
24:19;28:9,12;34:1;
42:24;61:22;65:18,22;
67:21;68:4,9,11,16,22;
69:7,16,19,20,21;70:3,
9,13,17,19;76:6,10,14;
81:9;90:2,13;92:6;
94:8,21;95:2,5,8,18,22,
24;96:12;97:24;
100:10,14,17;101:19;
102:6;104:12;105:18;
106:7;113:14,16,20,25;
114:3,23;115:5,8,10,
15,16,23;116:2;117:7;
126:10;127:23;128:4,
10,14,17;141:3,7,10,
15;144:3,8,11;152:22,
24;153:7;158:3,6;
161:23;167:23;168:13;
169:13;175:13;178:2,
6,8,19;179:5;180:17,
22;181:3,7,9;199:7,9,
12,18,21;201:16;216:5,
8,12,15,18;217:17,21,
24;224:11;227:22;
229:22,24,25
witness' (1)
61:12
witnessed (1)
77:6
witnesses (8)
12:4;14:16;15:18;
101:21;144:6;168:7;
216:20;232:5
Women (4)
68:7;207:23;216:7,
22
won't (1)
178:13
wonder (4)
21:20,20;22:4;69:3
wonderful (2)
163:15,18
Wood (1)
6:7
Woodard (10)
150:19,21;151:2,12,
15;152:4,6;153:3,3,8
word (5)
105:9;111:10,10;
139:19;153:8
words (7)
12:10;40:21;83:19;
119:5;142:5;219:16;
236:8
work (230)
15:8,12,17;24:23;
25:1,7;30:23;33:19;
34:11;35:24;36:25;
37:5,7,16;38:3;40:12,
20,22;41:4,12;43:4;
46:5,11,18,18;47:25,
25;48:3,5,7,20;50:9;
51:9,19;52:19;53:10,
11;55:18;56:10,19;
61:1;65:12;66:5,23;
67:1,7;71:6,7,13,19;
72:23;73:1,2,5;74:1;
75:5,9,20,24;76:23;
77:19;78:14;79:6,10;
81:21;82:4,11;83:6,6,
12,16,20,21;84:9,9;
86:4;88:14;89:22;
91:24;93:5;94:24;
98:13,17;100:23;
101:7;103:19;104:6;
106:10,17,24;107:1,5;
108:8;114:15,17,19;
118:25;119:2,5,6,23;
120:4;121:1,13,19,20,
25;122:4,5,10,11,13,
14;123:21,25;124:8,8,
9,9,19;125:1;127:13,
14,16;129:25,25;130:4,
22;131:1,11,22;133:6;
134:11,13,15,21;135:8,
13,18;136:21,25;138:7,
9,11,12,15;139:3;
142:25;158:16;164:1,
2;167:2,7;172:5;180:4;
183:3,16;185:18,19,20;
187:10;188:9,10;
189:12,13,19;190:23;
191:11;192:22;193:4;
194:8;195:8,17,24,24;
196:16,18,23,25;200:3,
3,4,9,12,14;201:4,10;
203:20;205:3;206:14,
25;207:7;208:3;
210:19,23;211:6;
212:5;215:21;218:22,
22;219:9,9,11,12;
220:14,20,21;221:21;
222:12,13,21,22;
223:18;224:6,7,8,24;
225:6,6,18,19,20;
226:1,4,7;228:3,4,14;
229:12;232:24
worked (40)
46:11;75:18;76:7;
89:11;120:13,15,23;
121:5,17,21,23;122:8,
14;139:10,13;147:21;
170:15;172:1;183:25,
25;185:7;187:13,21;
189:2;194:20;195:10;
202:5,6,24,25;203:5;
207:4,14;212:3,6;
218:24;219:21;222:4,
11;226:4
worker (10)
38:19,22;39:13;54:6;
91:17;105:10,11;
196:15;214:14;223:20
Workers (74)
8:21,24;9:3,6,9,12,
15,19,20;10:10,11,16;
11:4;15:8;35:8;36:8,
10;37:1,6,9,10;38:2,24;
39:9,25;40:3,11,11,15;
45:7;47:23;52:19;66:8;
71:10,18,25;72:1;
74:19;75:23;80:19;
91:7,7;97:15;107:24;
108:18;123:6,6;124:4,
4;125:4,25;126:14,18,
20,24;127:12;135:21;
149:4,10;155:20,22,24;
156:1,5,7,7;159:12;
163:4,24;175:4;
176:18,22,24;187:21
workforce (6)
54:16;65:9;103:9;
166:24;171:17,23
working (67)
16:13;26:15;37:3;
40:11;46:7;47:20;
48:17;52:20;66:9;
69:11,15;72:12,21;
74:12;75:2,24;77:3,9;
79:12;80:1;82:1;88:1;
102:16;103:4,9,24;
104:5,20,24;105:18,20;
106:18,19;107:24;
114:11;117:17;123:3,
12,13,19,22;124:22;
130:7;137:12;138:5;
139:18;142:2;180:10;
183:5;188:20;189:17;
192:23;194:23;195:6,
10;200:19;202:15;
203:8;205:9;211:7,8;
212:9;219:8;221:8;
225:22;226:7;232:14
works (10)
39:15;68:15,16;
98:14;125:2,6,7;
219:18;226:23,24
worn (1)
208:9
worried (2)
137:1,2
worth (2)
10:6;21:21
worthwhile (1)
152:14
wouldn't (12)
21:21;23:23;98:8,15;
163:14;201:10;214:18,
19,19,20;215:10,18
wrap (1)
201:1
wrapped (2)
55:14,16
wrapping (1)
87:11

writes (1)
234:21
written (1)
68:17
wrong (7)
9:4,22;82:5;170:4;
204:25;233:24;234:22

Y

year (13)
23:1,9;26:12;136:14,
19;171:23,23;172:3,4;
191:25;218:19,20;
219:12
years (35)
14:7;23:11;28:22;
29:4;41:2;46:17;75:19;
88:16;101:3;107:19,
20,21;114:12;118:24;
121:1;139:12;147:12;
148:2;154:18;164:10;
172:1;185:1;195:22,
23;196:22;203:3,3;
211:12;218:6,12,24;
219:2;220:1;222:5,5
yellow (2)
88:25;89:5
York (7)
5:21;6:1;27:7;
156:10,12,15;192:3
you'd (2)
211:16;228:16
you'll (2)
89:15;159:13
You're (33)
76:2;80:15,24;81:22;
83:18;92:7;96:15;
97:22;98:19;111:10;
115:14;116:24;127:22;
152:4;167:11;180:16;
185:22;188:10;190:13;
194:22;195:2,6,8,10;
200:19;202:15;210:19;
216:14;222:6;226:7;
229:12,23;232:24
you've (16)
82:2;84:14,14;93:25;
98:2;107:18;120:10;
126:6;168:10,10;
195:21;196:14;212:3;
221:12;235:8,10
young (4)
46:15,15,17;89:12

EXHIBIT I

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

NORTHEAST REGIONAL COUNCIL OF CARPENTERS

and **Case 03-CB-077042**

CONCERNED CARPENTERS FOR A DEMOCRATIC UNION

and **Case 03-CB-077667**

CARPENTERS INDEPENDENT LOCAL NO. 1

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, and to avoid unnecessary costs or delay, IT IS ORDERED THAT the charge in Case 3-CB-077042, filed by Concerned Carpenters for a Democratic Union (CCDU), and the charge in Case 3-CB-077667, filed by Carpenters Independent Local No. 1 (Local 1), against Northeast Regional Council of Carpenters (Respondent), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act by engaging in the following unfair labor practices:

I

(a) The charge in Case 03-CB-077042 was filed by CCDU on March 21, 2012, and a copy was served by regular mail on Respondent on the same date.

(b) The amended charge in Case 03-CB-077042 was filed by CCDU on May 29, 2012, and a copy was served by regular mail on Respondent on May 30, 2012.

(c) The charge in Case 3-CB-077667 was filed by Local 1 on March 29, 2012, and a copy was served by regular mail on Respondent on the same date.

(d) The amended charge in Case 3-CB-077667 was filed by Local 1 on June 20, 2012, and a copy was served by regular mail on Respondent on the same date.

II

(a) At all material times, Respondent has been comprised of various local unions affiliated with the United Brotherhood of Carpenters, including United Brotherhood of Carpenters, Local 276 (Local 276) and United Brotherhood of Carpenters, Local 291 (Local 291), and has been a labor organization within the meaning of Section 2(5) of the Act.

(b) At all material times, CCDU has been a labor organization within the meaning of Section 2(5) of the Act.

(c) At all material times, Local 1 has been a labor organization within the meaning of Section 2(5) of the Act.

III

(a) At all material times, the Construction Industry Employers' Association, (Association), has been an organization composed of various employers in the construction industry, including Huber Construction, Inc., a corporation , with an office and place of business in Depew, New York and LP Ciminelli Construction, Inc., a corporation, with an office and place of business in Buffalo, New York., one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with Respondent.

(b) In conducting their operations described above in paragraph III(a), annually Association members collectively perform services valued in excess of $50,000 in states other than the State of New York.

(c) At all material times, the Association has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

IV

At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

Michael Capelli	--	NRCC Executive Secretary/Treasurer
Dave Haines	--	NRCC Regional Manager
Eustice Eggie, III	--	NRCC Trial Committee Chairman
Daryl Bodewes	--	Local 276 President
Mark Sowalski	--	Local 291 President

V

(a) About February 10, 2011, Respondent, by e-mail, requested that Respondent's members ascertain and disclose the union membership, activities, and sympathies of other members.

(b) About February 21, 2012, Respondent brought internal charges against its members James Avelino, Chuck Lezette, Jason Bard and Steven Cuomo.

(c) About March 13, 2012, Respondent imposed fines on its members Tom Burke, Russ Barone, Jim Kilger, Mark Wyzykowski, Bob Kulczyk, Charles Gibson, Scott Rybczynski, James Avelino, Chuck Lezette, Jason Bard and Steven Cuomo.

(d) About April 13, 2012, Respondent disciplined its members Charles Gibson, Jason Bard and Steven Cuomo by requiring them to participate in union training and union participation.

(e) Respondent engaged in the conduct described above in paragraph V(b), (c) and (d) because the named members formed, joined and/or assisted Local 1 and/or CCDU, and to discourage other members from engaging in these activities.

VI

By engaging in the conduct described above in paragraph V(a) through (d), Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act

VII

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph V and VI, the Acting General Counsel seeks an order requiring that Respondent : (1) post in its Local 276 and Local 291 offices any Notice to Members and Employees that may issue in this proceeding; and (2) electronically post the Notice to Members and Employees on its website and e-mail a copy of the Notice to Members and Employees to all members of Local 276

and Local 291. The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before July 12, 2012, or postmarked on or before July 11, 2012**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

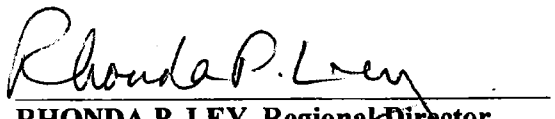
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **File Case Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by

traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on August 6, 2012, at 1:00 p.m., in the Hearing Room at the Niagara Center Building, 130 South Elmwood Avenue, Suite 630, Buffalo, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Buffalo, New York this 28th day of June, 2012.



RHONDA P. LEY, Regional Director
National Labor Relations Board – Region 3
Niagara Center Building
130 S. Elmwood Avenue, Suite 630
Buffalo, New York 14202

Attachments

FORM NLRB-4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case: 03-CB-077042
03-CB-077667

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; ***and***

(5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

MICHAEL CAPELLI, Exec. Sec./Treasurer
NORTHEAST REGIONAL COUNCIL OF
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TIMOTHY TROTTER
UNISTRUT
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ITASCA, IL 60143-3460

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.