UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 4
615 CHESTNUT ST
STE 710
PHILADELPHIA, PA 19106-4413

Agency Website: www.nlrb.gov
Telephone: (215)597-7601
Fax: (215)597-7658

January 16, 2013

**Via E-Filing**

Gary Shinners, Deputy Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street N.W., Room 11602
Washington, DC 20570-0001

Re: Hanson Aggregates B.M.C., Inc.
Cases 04-CA-033330, 04-CA-033508, 04-CA-033547,
04-CA-034290, 04-CA-034362, 04-CA-034363,
04-CA-034378 and Board Order 353 NLRB 287 (2008)

Dear Mr. Shinners:

Counsel for Region Four of the National Labor Relations Board (Region Four) submits this response to the Charging Party's December 2, 2012 letter to the Board. This letter identifies new information not previously supplied in the Charging Party's July 6, 2012 Request for Review of the Acting General Counsel's Decision on Appeal from Compliance Determination (RFR) in the subject cases or its October 3, 2012 letter to the Board. As the Charging Party's letter raises issues not fully discussed in the documents currently before the Board in this matter, including the undersigned's August 27, 2012 response to the RFR (August 27, 2012 Response) and the undersigned's October 12, 2012 response to the Union's October 3, 2012 letter, this response is permitted by Section 10602.4 of the NLRB Casehandling Manual (Part Three) Compliance Proceedings.

On December 20, 2011, the Regional Director of Region Four (Regional Director) issued a Compliance Determination in which she found that Respondent had fully complied with the applicable Board Order concerning the subject cases. On January 26, 2012, the Charging Party appealed this determination to the Acting General Counsel, who upheld the Region's

Determination on June 26, 2012. The Charging Party's RFR and the undersigned's August 27, 2012 response are currently before the Board.

In its December 2, 2012 letter, the Union continues in its specious attempt to forestall a final determination by the Board that Hanson Aggregates BMC (Respondent) has fully complied with the Board's Order of September 30, 2008. Specifically, the Union now argues that: (1) the existence of Formal Settlement Agreements entered into by Respondent, including one recently received by the Union, should undercut the conclusion of full compliance with the 2008 Order; (2) the Board should direct that these matters be handled by its contempt branch; and (3) employees have not been fully made whole because liability for Respondent's elimination of its prior "skill points" compensation plan is ongoing. As shown below, all of these contentions should be rejected because they are untimely raised and substantively meritless.

UNTIMELY REFERENCE TO PRIOR COMPLAINT AND FORMAL SETTLEMENT STIPULATION

For the first time in these lengthy proceedings, the Charging Party now argues that the existence of meritorious allegations alleged in the Complaint in Case 04-CA-037998, and the existence of a Formal Settlement in other cases entered into in 2011, somehow precludes the closing of the instant cases. Before addressing the undersigned's contention that these arguments are untimely raised, a brief recitation of the history of these cases must be considered.

The Board Order in Cases 04-CA-034678, etc. (the cases that were settled pursuant to the Formal Settlement the Charging Party referenced in its letter of December 2, 2012) was enforced by the Third Circuit United States Court of Appeals on August 25, 2011, and the Charging Party was aware of the Settlement, the Board's approval of it, and the Court's enforcement of the Board Order that arose out of the Formal Settlement (See Exhibits 1, 2, and 3 attached to this letter). Also, on or about September 27, 2011, the Charging Party was aware that Region Four considered the allegations in Case 04-CA-037998 to be meritorious, because the Regional Director issued a Complaint on that date (See exhibit 4 to this letter)[1] By letter dated October 17, 2011, Region Four's Compliance Officer notified the Charging Party of the Region's intention to close the above-captioned cases on compliance and gave the Charging Party an opportunity to present any objection(s) it had to closing these cases. (See Exhibit 1 of the undersigned's August 27, 2012 Response). Accordingly, as early as October 17, 2011 the Charging Party was on notice that the Region did not consider the meritorious allegations in either Cases 04-CA-034678 or in Case to 04-CA-037998 to preclude a determination that Respondent had fully complied with the enforced Order in the instant case. The Regional Director issued a Formal Compliance Determination on December 20, 2011 finding that Respondent fully complied with the Order. While the Charging Party was aware of all of the operative facts that would have enabled it to raise these new issues by October 17, 2011, throughout the whole appeal process, including its RFR, it failed to raise these issues until December 2, 2012.

[1] The Charging Party correctly notes that it did not receive the Formal Settlement Stipulation remedying the violation alleged in Case 04-CA-037998 and one alleged in Case 04-CA-069822 until November 2012.

Section 102.52(a) of the Board's Rules and Regulations provides that the Charging Party may appeal the Regional Director's Compliance Determination to the General Counsel within 14 days of the issuance of that determination. The appeal shall contain a complete statement setting forth the facts and reasons upon which it is based and shall identify with particularity the error claimed in the Regional Director's determination. Section 102.52(c) of the Board's Rules and Regulations provides that the Charging Party may within 14 days after service of the General Counsel's decision in the appeal, file a request for review of that decision with the Board in Washington, D.C. which shall contain a complete statement of the facts and reasons upon which it is based and shall identify with particularity the error claimed in the General Counsel's decision.

The Charging Party has not adhered to either Section 102.52(a) or 102.52(c), as it has not timely raised any of the particular issues outlined above. Accordingly, Counsel for Region Four submits that the Board should not give consideration to these additional arguments and issues in evaluating the General Counsel's decision to uphold the Regional Director's Compliance Determination.

IMPROPER REQUEST THAT THE BOARD REFER THIS MATTER TO ITS CONTEMPT LITIGATION AND COMPLIANCE BRANCH

In its December 2, 2012 letter, the Union requests that the Board "channel" Cases 04-CA-037988 and 04-CA-069822 to "Contempt," presumably referring to the Contempt Litigation and Compliance Branch in the General Counsel's office (CLCB). It is respectfully submitted that the Board deny this request, as the Board's Compliance Manual provides that allegations of non-compliance with Board Orders are to be referred to CLCB after investigation and analysis by the Region. See Section 10616.4. There is no provision in the Board's Rules or Casehandling Manual that contemplates that referral to that Branch would be considered by the Board in deciding whether to close cases on compliance.

The Board should take official notice that as part of the investigation of the two referenced cases, the Region submitted these cases to CLCB to evaluate the propriety of instituting contempt proceedings. CLCB determined that institution of contempt proceedings to remedy the unfair labor practice conduct found in the referenced cases was unwarranted. In Case 04-CA-037998, on September 21, 2011, CLCB agreed with the Region's recommendation against institution of contempt proceedings submitted on June 30, 2011. In Case 04-CA-069822, on April 23, 2012 CLCB agreed with the Region's recommendation against institution of contempt proceedings submitted on February 29, 2012. In undertaking these responsibilities, the Region and CLCB fulfilled their respective prosecutorial obligations to conduct thorough investigations, to consider the heightened evidentiary burden in contempt cases, and to evaluate whether contempt proceedings were warranted or necessary (See Compliance Manual Sections 10618 and 10632). These casehandling procedures and our adherence to them, led to careful consideration of the contempt issues now raised by the Union. As the Union has provided no rationale for circumventing these procedures, or overturning the result produced by adherence to them, the Board should summarily reject the request to refer this matter to CLCB again.

IMROPER RELIANCE UPON THE EXISTENCE OF THE SETTLEMENT AGREEMENT IN CASES 04-CA-037998 AND 04-CA-069822

In its December 2, 2012 letter, the Union attaches, and relies upon, the existence of a unilateral Formal Settlement Stipulation in Cases 04-CA-037998 and 04-CA-069822 in an attempt to forestall denial of its RFR. Concurrently with this letter to the Board, and consistent with Section 101.9(c)(2) of the Board's Statement of Procedures and Casehandling Manual Section 10164 7(a)(3), the Region has submitted this Stipulation for approval, and the Union's objection to this approval, to the General Counsel's Division of Advice (See Exhibit 5 to this letter, Union's Objection to Formal Settlement Stipulation). The Stipulation remedies relatively minor and limited Section 8(a)(1),(3) and (5) violations. As previously noted, CLCB has previously determined that institution of proceedings finding Respondent in contempt of the Board's Order by these violations is unwarranted. In light of these circumstances, the Board should reject the argument that the existence of this Settlement Stipulation provides a basis for refusing to close these cases on compliance. Even if the Board eventually refuses to approve the Formal Settlement Stipulation in Cases 04-CA-037998 and 04-CA-069822, this action would not preclude the Board from determining that Respondent fully complied with the Board's Order in the instant case.

THE UNION'S UNTIMELY, MERITLESS ATTACK ON THE REGION'S SKILL POINTS CALCULATIONS

For the first time in these lengthy proceedings, the Union now argues to the Board that employees have not been made whole because the Region improperly terminated backpay for employees victimized by the Respondent's elimination of its skill point system. While the Union previously argued in its RFR that the Region's method of calculating skill points backpay was erroneous, and was based on the "personal agenda" of the "Compliance Officer" (arguments amply refuted by the undersigned's August 27, 2012 Response), it never argued, as it does now, that the Region improperly terminated skill points backpay liability in December 2009. For the reasons set forth above, Sections 102.52(a) and (c) required the Union to raise this specific argument at an earlier stage of this Compliance review, and the Board should not consider this argument at this late stage.

Assuming arguendo that the Board rejects this timeliness argument, it is respectfully submitted that the Region's termination of skill points backpay liability in December 2010[2] was reasonable under the circumstances, and should not preclude the Board from determining that Respondent has fully complied with the Board's Order. In furtherance of this alternative argument, the undersigned provides a brief summary of the major elements of skill points backpay liability.[3]

---

[2] The Region terminated skill points backpay liability as of December 2010. The Union's December 2, 2012 letter erroneously cites December 2009 as the termination date.

[3] A full explanation is provided in the undersigned's August 27, 2012 response, pages 16-20.

Prior to January 1, 2006, bargaining unit employees were paid under a compensation system that combined an individual base wage with a skill point component. In addition to the base wage, employees could earn an additional $.07 per hour by earning skill points through additional training and other methods. On January 1, 2006, Respondent unlawfully implemented a new compensation system (NCS) eliminating the skill point component referenced above and replacing it with a new system in which wages were tied to new job classifications. Under the NCS, employees were granted annual wage increases during the years 2006 through 2008 according to their job classification, and the skill point system was eliminated.

As explained more fully in the August 27, 2012 Response (p. 7-12), the Region decided that Respondent had unlawfully proposed and implemented an integrated compensation system consisting of the elimination of the skill point component and its replacement by a compensation system providing for wages corresponding to job classifications and wage increases for the years 2006, 2007, and 2008. Consequently, in fashioning a make-whole remedy for this unlawful conduct, the Region initially calculated the earnings that would have been received by employees had they maintained the pre existing wage rates supplemented by the potential $.07 per hour skill point enhancement. The Region then deducted the actual earnings received under NCS. These calculations showed that almost all unit employees fared better under the NCS than they would have if Respondent had retained its prior system. Therefore, as a result of these calculations, only nine employees out of 48 received backpay due to Respondent's unlawfully implemented compensation system. For six of these nine employees, backpay was terminated by the fourth quarter of 2006 (See Exhibit 26 to 8/27/2012 Response identifying employees Ashton, Filkins, Kleban, Leonard, Morrison and Weber). Thereafter, the wage increases that these individuals received for 2007 provided higher compensation than they would have received if the Employer had retained its prior compensation system. Consequently, termination of backpay for 45 unit employees out of 48 was caused by the enhanced earnings attributable to the new compensation system.

For three individuals, backpay ran, at least, through the fourth quarter of 2010 (Employees Fitch, Frede and Ricketts). These employees enjoyed high hourly wage rates in 2005 (Fitch $20.21, Frede $26.10, Ricketts $20.01-See the last three pages of Exhibit 25 to 8/27/2012 Response).[4] In contrast to the other 45 employees, their skill points backpay was not reduced to account for the annual wage increases provided for in the NCS. Accordingly, they would have continued to enjoy the hourly skill point adjustment indefinitely.[5]

Recognizing this, the Regional Director offered to toll backpay if Respondent agreed to pay the entire amount then due for skill points backpay (See Exhibit 26 to 8/27/2012 Response, demand letter of December 22, 2010) and Respondent did so. This demand letter acknowledged

---

[4] Under the Respondent's NCS, these individuals were red circled, did not receive hourly wage increases, but instead received lump sum payments (See Exhibit 6 to this letter, pages 11-12)

[5] These three individuals received backpay totaling $1,123.19 in 2010 (See Exhibit 26 to 8/27/2012 Response). If backpay had continued to run at the same level of earnings, the total amount would have increased by $2,246 for the past two years.

that Respondent might not have any liability for the change to its compensation system if formal proceedings ensued. This acknowledgment recognized that in a future compliance proceeding, the Board could find that since the Union had not made an adequate request to rescind the NCS, Respondent would have been privileged to continue it, and employees would receive no backpay.

In agreeing to toll liability for elimination of skill points, the Regional Director decided to compromise as to a relatively insubstantial amount of backpay, recognizing that employees might not receive any compensation for Respondent's elimination of skill points. That decision was based in part on the Union's failure to object to termination of skill points backpay liability in 2010 when it was tolled. The Regional Director maintained this position when the Union failed to raise this argument when its position was solicited in 2011 prior to the Compliance Determination. In these circumstances, the amount of money paid by Respondent to satisfy skill points backpay liability is reasonable and satisfies the Board's requirement that backpay closely approximate the amount due to victims of unfair labor practice conduct. *Art's Way Vessels,* 358 NLRB No. 142, slip op at 4 (September 26, 2012).

In summary, the Charging Party has not presented additional evidence or argument that would warrant overturning the Regional Director's Compliance Determination. Accordingly, the Board should deny the Charging Party's Request For Review. A copy of this letter and exhibits to it have been served on this date to the below parties by electronic mail.

Respectfully submitted,

CARMEN P. CIALINO, JR.
Counsel for Region Four of the
National Labor Relations Board

cc:
Frank Bankard, Organizer, International Union of Operating Engineers, Local 542
Oe542@yahoo.com
Louis Agre, Esquire, International Union of Operating Engineers, Local 542
agrelou@gmail.com
Jonathan R. Nadler, Esquire, Reed, Smith, Shaw & McClay, LLP
JNadler@ReedSmith.com

**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**FOURTH REGION**

**HANSON AGGREGATES BMC, INC.**

**and** **Cases 4-CA-34678**
**4-CA-35134**
**4-CA-35140**
**4-CA-35189**
**4-CA-35487**
**4-CA-35553**
**4-CA-36099**
**4-CA-36256**
**4-CA-36468**
**4-CA-36530**
**4-CA-37161 and**
**4-CA-37348**

**INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542, AFL-CIO**

## FORMAL SETTLEMENT STIPULATION

### I. INTRODUCTION

Through this Formal Settlement Stipulation (the Settlement Stipulation), the undersigned parties agree that, upon approval of the Settlement Stipulation by the Board, a Board Order in conformity with its terms will issue and a court judgment enforcing the Order will be entered. The parties also agree to the following:

### II. JURISDICTION

1. Respondent is a Delaware Corporation with a quarry in Penns Park, Pennsylvania (herein the quarry) and is engaged in extracting and processing crushed stone and manufacturing bituminous asphalt.

2. In conducting its business operations during the one year period ending December 31, 2008, and on an annual basis, Respondent sold and shipped goods and materials valued in excess of $50,000 directly to points located outside the Commonwealth of Pennsylvania.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

### III. LABOR ORGANIZATION STATUS

The Union is a labor organization within the meaning of Section 2(5) of the Act.

Exhibit 1

## IV. PROCEDURE

1. **FILING AND RECEIPT OF CHARGES** On the dates listed below opposite the respective charge numbers, the Union filed charges and amended charges in this proceeding, which were served on Respondent on the dates indicated. Respondent acknowledges receipt of the charges and the amended charges as listed:

| Charge/amendment | date filed/amended | date served on Respondent |
|---|---|---|
| 4-CA-34678 | June 7, 2006 | June 8, 2006 |
| | | |
| 4-CA-35134 | January 22, 2007 | January 22, 2007 |
| | | |
| 4-CA-35140 | January 29, 2007 | January 29, 2007 |
| | | |
| 4-CA-35189 | February 26, 2007 | February 26, 2007 |
| First Amended | March 12, 2007 | March 13, 2007 |
| Second amended | April 17, 2007 | April 17, 2007 |
| | | |
| 4-CA-35487 | June 27, 2007 | June 28, 2007 |
| Amended | August 20, 2007 | August 20, 2007 |
| Second amended | September 18, 2007 | September 18, 2007 |
| | | |
| 4-CA-35553 | July 24, 2007 | July 24, 2007 |
| Amended | August 20, 2007 | August 20, 2007 |
| | | |
| 4-CA-36099 | April 21, 2008 | April 22, 2008 |
| | | |
| 4-CA-36256 | July 25, 2008 | July 29, 2008 |
| | | |
| 4-CA-36468 | November 28, 2008 | November 28, 2008 |
| Amended | February 20, 2009 | February 23, 2009 |
| second amended | March 31, 2009 | March 31, 2009 |
| | | |
| 4-CA-36530 | January 13, 2009 | January 13, 2009 |
| Amended | March 31, 2009 | March 31, 2009 |
| | | |
| 4-CA-37161 | November 13, 2009 | November 16, 2009 |
| | | |
| 4-CA-37348 | March 2, 2010 | March 3, 2010 |
| Amended | March 5, 2010 | March 8, 2010 |

2. **ISSUANCE OF CONSOLIDATED COMPLAINT**. On June 15, 2009, after the issuance of an earlier Consolidated Complaint and an Order Severing Cases, the Regional Director for Region Four of the Board issued an Order Further Consolidating Cases, Consolidated Complaint and Notice of Hearing in Cases 4-CA-34678, 4-CA-35134, 4-CA-35140, 4-CA-35189, 4-CA-35487, 4-CA-35553, 4-CA-36099, 4-CA-36256, 4-CA-36468, 4-CA-

36530 and 4-CA-37348 (the June 15, 2009 Consolidated Complaint) alleging that Respondent violated the National Labor Relations Act. Respondent acknowledges receipt of a copy of the June 15 Consolidated Complaint, which was served by certified mail on June 15, 2009. On June 15, 2010 the Regional Director for Region Four of the Board issued a Corrected Complaint and Notice of Hearing in Case 4-CA-37348 (the June 15 Corrected Complaint) alleging Respondent violated the National Labor Relations Act. Respondent acknowledges receipt of a copy of the June 15, 2010 Corrected Complaint which was served by certified mail on June 15, 2010. On July 15, 2010 the Regional Director issued an Order Further Consolidating Cases in Cases 4-CA-34678, 4-CA-35134, 4-CA-35140, 4-CA-35189, 4-CA-35487, 4-CA-35553, 4-CA-36099, 4-CA-36256, 4-CA-36468, 4-CA-36530 and 4-CA-37348 and also on that date filed Amendments to Consolidated Complaint in Cases 4-CA-34678, 4-CA-35134, 4-CA-35140, 4-CA-35189, 4-CA-35487, 4-CA-35553, 4-CA-36099, 4-CA-36256, 4-CA-36468, and 4-CA-36530. Respondent acknowledges receipt of a copy of the Order Consolidating Cases which was served first class mail on July 15, 2010 and Amendments to Consolidated Complaint which was served by certified mail on July 15, 2010. On December 14, 2010 the Regional Director for Region Four of the Board issued a Complaint and Notice of Hearing in Case 4-CA-37161 the December 14, 2009 Complaint alleging Respondent violated the National Labor Relations Act. Respondent acknowledges receipt of a copy of the December 14, 2010 Complaint which was served by certified mail on December 14 2010. On December 14, 2010 the Regional Director issued an Order Further Consolidating Cases and Scheduling Hearing in Cases 4-CA-34678, 4-CA-35134, 4-CA-35140, 4-CA-35189, 4-CA-35487, 4-CA-35553, 4-CA-36099, 4-CA-36256, 4-CA-36468, 4-CA-36530 4-CA-37161 and 4-CA-37348 Respondents acknowledges receipt of a copy of the December 14, 2010 Order Further Consolidating Cases and Scheduling Hearing which was served first class mail on December 14, 2010

3. **WAIVER**. Respondent waives the filing of an Answer to the December 14, 2010 Complaint and the June 15, 2009 Consolidated Complaint and the June 15, 2010 Corrected Complaint and withdraws its Answers to all previous Consolidated Complaints and Corrected Complaints issued in any of the above captioned cases. All parties waive the following: (a) hearing; (b) administrative law judge's decisions; (c) filing of exceptions and briefs; (d) oral argument before the Board; (e) the making of findings of fact and conclusions of law by the Board; (f) and all other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.

4. **THE RECORD**. The entire record in this matter consists of the following documents: this Settlement Stipulation; the charges and amended charges in the cases as set forth above at part I; and the June 15, 2009 Consolidated Complaint, the June 15, 2010 Order Further Consolidating Cases and the Amendments to Consolidated Complaint, the June 15, 2010 Corrected Complaint, the December 14, 2010 Complaint and the December 14, 2010 Order further Consolidating Cases and Scheduling Hearing. Copies of the charges and amended charges are attached as Exhibits A-1 through A-21. A copy of the June 15, 2009 Consolidated Complaint is attached as Exhibit B, and a copy of the June 15, 2010 Corrected Complaint is attached as Exhibit C. A copy of the Order Further Consolidating Cases is attached as Exhibit D. A copy of the Amendments To Consolidated Complaint is attached as Exhibit E. A copy of the December 14, 2010 Complaint is attached as Exhibit F. A copy of the December 14, 2010 Order Further Consolidating Cases and Rescheduling Hearing is attached as Exhibit G.

5. **ENTIRE AGREEMENT – NON-ADMISSION OF VIOLATIONS**. This Settlement Stipulation constitutes the entire agreement between the parties and there is no agreement of any kind, verbal or otherwise, that alters or adds to it. It is understood that by signing the Settlement Stipulation, Respondent does not admit that it has violated the Act.

6. **SCOPE OF THE SETTLEMENT STIPULATION AND RESERVATION OF EVIDENCE**.

This Settlement Stipulation settles only the allegations in the above-captioned cases as described above, and does not constitute a settlement of any other case(s) or matter(s). More specifically, the Settlement Stipulation does not settle the allegations in Case 4-CA-37675, concerning the alleged unlawful denial of access to the Employer's facility. The Settlement Stipulation does not preclude persons from filing charges, the General Counsel (or the Acting General Counsel), from prosecuting Complaints, or the Board and the courts from finding violations with respect to any other case(s) or matter(s), regardless of whether such matter(s) are known to, or are readily discoverable by, the General Counsel (or the Acting General Counsel) or the Union. The General Counsel (or the Acting General Counsel) reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of this or any other case(s), and a Judge, the Board, and the courts may make findings of fact and/or conclusions of law with respect to that evidence.

7. **EFFECTIVE DATE**. This stipulation is subject to the approval of the Board and it does not become effective until the Board has approved it. The Regional Director or the Acting General Counsel or the General Counsel will file with the Board this stipulation and the documents constituting the record as described above. Once the Board has approved the stipulation, Respondent will immediately comply with the provisions of the order as set forth below.

## V. FACTS

1. (a) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Mechanics, Welders and maintenance employees employed by Respondent at the quarry, excluding all other employees, including temporary employees, Laboratory Technicians, office clerical employees, managers, guards and supervisors as defined in the Act

(b) On September 9, 2004, the Union was certified as the exclusive collective bargaining representative of the Unit

(c) At all times since September 9, 2004 based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

## VI. ORDER

Based upon this Settlement Stipulation and the record as described above, and without any further notice of proceedings, the Board may immediately enter an Order providing as follows:

Respondent, Hanson Aggregates, BMC, Inc., its officers, agents, and representatives, at its Penns Park, Pennsylvania facility, shall:

1. Cease and desist from:

(a) Telling employees that there was no Union representation because the Union pulled the stewards out of the facility.

(b) Threatening employees that it would fire employees who supported the Union.

(c) Making any changes to the eligibility requirements for the annual safety bonus program without giving International Union of Operating Engineers Local 542, AFL-CIO (the Union) notice and an opportunity to bargain over any changes, and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.

(d) Selecting employees for promotion, promoting them, and changing their rate of pay without first giving the Union notice and an opportunity to bargain and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.

(e) Changing the payment schedule for the annual safety bonus payment covering Union employees without first giving the Union notice and an opportunity to bargain and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.

(f) Failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the Unit by unilaterally changing their terms and conditions of employment of these employees absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

(g) Failing and refusing to bargain with the Union as the exclusive collective bargaining representative of employees in the unit by failing to provide, or to timely provide, the Union, with requested information that is relevant and necessary for the Union to perform its duties as the exclusive collective bargaining representative of the Unit employees.

(h) Changing employees' work schedules such that they would have less that 9.5 hours turnaround time between the ending of one shift and the beginning of another absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

(i) In any other manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the Union, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative actions necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively and in good faith concerning wages, hours, and other terms and conditions of employment with the Union as the exclusive representative of all the employees in the bargaining unit set forth below, and, if an understanding is reached, embody such understanding in a written, signed agreement. The bargaining unit at Respondent's Penns Park, Pennsylvania facility is:

> All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Mechanics, Welders and maintenance employees employed by Respondent at the quarry, excluding all other employees, including temporary employees, Laboratory Technicians, office clerical employees, managers, guards and supervisors as defined in the Act

(b) Refrain from making any changes to the terms and conditions of employment of employees in the Unit absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

(c) Within 14 days of the Regional Director's approval of this Agreement, upon request from the Union, rescind the promotions of the following individuals and reduce their wages to reflect the positions to which they are returned.

Michael Kleban
Donald Filkins
Joseph Leonard
Samantha Morrison

(d) Within 14 days after service by the Region, post at its facility in Penns Park, Pennsylvania copies of the attached notice marked Appendix A. Copies of the notice, on forms provided by the Regional Director for Region Four, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification, on a form provided by the Region, attesting to the steps Respondent has taken to comply herewith.

## VII. ENFORCEMENT OF ORDER

The United States Court of Appeals for any appropriate circuit may, on application by the Board, enter its judgment enforcing the Order of the Board in the form set forth above. Respondent waives all defenses to the entry of judgment, including compliance with the Order of the Board, and its right to receive notice of the filing of an application for the entry of such judgment, provided that the judgment is in the words set forth above. However, Respondent shall be required to comply with the affirmative provisions of the Board's Order after entry of judgment only to the extent it has not already done so.

HANSON AGGREGATES BMC, INC.

Dated: 4/28/11 By: Robert W Reeter

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542, AFL-CIO

Dated: _____ By: _____

Approval recommended:

By: Ela Hollo 5/9/11

**ELANA R. HOLLO** **Date**
Counsel for the General Counsel
National Labor Relations Board

Approval recommended:

By: Dorothy L. Moore-Duncan 5-9-11

**Regional Director, Region Four** **Date**
National Labor Relations Board

Approved:

By: _____ or _____

Office of the General Counsel
(or the Acting General Counsel)
National Labor Relations Board
Washington, DC 20570

Regional Director, Region Four
National Labor Relations Board
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106

Dated: _____

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HANSON AGGREGATES BMC, INC.

and

INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 542,
AFL-CIO

Cases 4-CA-34678
4-CA-35134
4-CA-35140
4-CA-35189
4-CA-35487
4-CA-35553
4-CA-36099
4-CA-36256
4-CA-36468
4-CA-36530
4-CA-37161
4-CA-37348

# DECISION AND ORDER

## Statement of the Cases

On May 9, 2011, Hanson Aggregates BMC, Inc. (the Respondent), and the Acting General Counsel of the National Labor Relations Board entered into a Unilateral Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

## Findings of Fact

1. The Respondent's business

Exhibit 2

The Respondent is a Delaware corporation with a quarry in Penns Park, Pennsylvania (the quarry), and is engaged in extracting and processing crushed stone and manufacturing bituminous asphalt.

In conducting its business operations during the one-year period ending December 31, 2008, and on an annual basis, the Respondent sold and shipped goods and materials valued in excess of $50,000 directly to points located outside the Commonwealth of Pennsylvania.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

2. The labor organization involved

International Union of Operating Engineers Local 542, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate unit

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Mechanics, Welders and maintenance employees employed by Respondent at the quarry, excluding all other employees, including temporary employees, Laboratory Technicians, office clerical employees, managers, guards and supervisors as defined in the Act.

On September 9, 2004, the Union was certified as the exclusive collective bargaining representative of the Unit.

At all times since September 9, 2004, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

## ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that:

The Respondent, Hanson Aggregates BMC, Inc., Penns Park, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that there was no Union representation because the Union pulled the stewards out of the facility.

(b) Threatening employees that it would fire employees who supported the Union.

(c) Making any changes to the eligibility requirements for the annual safety bonus program without giving the Union notice and an opportunity to bargain over any changes, and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.

(d) Selecting employees for promotion, promoting them, and changing their rate of pay without first giving the Union notice and an opportunity to bargain and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.

(e) Changing the payment schedule for the annual safety bonus payment covering unit employees without first giving the Union notice and an opportunity to bargain and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.

(f) Failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the unit by unilaterally changing the terms and conditions of employment of these employees absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

(g) Failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the unit by failing to provide, or to timely provide, the Union with requested information that is relevant and necessary for the Union to perform its duties as the exclusive collective-bargaining representative of the unit employees.

(h) Changing employees' work schedules such that they would have less than 9.5 hours turnaround time between the ending of one shift and the beginning of another absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

(i) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self organization, to form labor organizations, to join or assist the Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, bargain collectively and in good faith concerning wages, hours, and other terms and conditions of employment with the Union as the exclusive representative of all the employees in the bargaining unit set forth below, and, if an

understanding is reached, embody such understanding in a written, signed agreement. The bargaining unit at the Respondent's Penns Park, Pennsylvania facility is.

> All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Mechanics, Welders and maintenance employees employed by Respondent at the quarry, excluding all other employees, including temporary employees, Laboratory Technicians, office clerical employees, managers, guards and supervisors as defined in the Act.

(b) Refrain from making any changes to the terms and conditions of employment of employees in the unit absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

(c) Within 14 days of the Board's approval of this Agreement, upon request from the Union, rescind the promotions of the following individuals and reduce their wages to reflect the positions to which they are returned.

Michael Kleban
Donald Filkins
Joseph Leonard
Samantha Morrison

(d) Within 14 days after service by the Region, post at its facility in Penns Park, Pennsylvania copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced, or covered by any other material.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification, on a form provided by the Region, attesting to the steps the Respondent has taken to comply therewith.

Dated, Washington, D.C., July 18, 2011.

Craig Becker, Member

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL) **NATIONAL LABOR RELATIONS BOARD**

## APPENDIX

## NOTICE TO EMPLOYEES

**Posted by Order of the**
**National Labor Relations Board**
**An Agency of the United States Government**

**POSTED PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS**

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join or assist a union;
- Choose representatives to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

**WE WILL NOT** do anything that interferes with these rights.

**WE WILL NOT** tell you that you do not have Union representation because the Union pulled its stewards out of our facility.

**WE WILL NOT** tell you that we will discharge employees who support the Union.

**WE WILL NOT** refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the appropriate bargaining unit at our Penns Park, Pennsylvania facility, which consists of the following employees:

> All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Mechanics, Welders and maintenance employees employed by us at the quarry, excluding all other employees, including temporary employees, Laboratory Technicians, office clerical employees, managers, guards and supervisors as defined in the Act.

**WE WILL NOT** refuse to bargain with the Union as the exclusive collective-bargaining representative of employees in the unit set forth above by unilaterally changing the terms and conditions of employment of these employees absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

**WE WILL NOT** refuse to bargain with the Union as the exclusive collective-bargaining representative of employees in the unit set forth above by failing to provide, or to timely provide, the Union with requested information that is relevant and necessary for the

Union to perform its duties as the exclusive collective-bargaining representative of the unit employees.

**WE WILL NOT** change the eligibility requirements for our annual safety bonus program and **WE WILL NOT** change the payment schedule of our annual safety bonus program without first providing the Union with notice about the proposed change and offering to bargain with the Union about it.

**WE WILL NOT** select bargaining unit employees for promotion, promote bargaining unit employees, or change their rate of pay without first providing the Union notice about the proposed change and offering to bargain with the Union about it.

**WE WILL NOT** change employees' work schedules such that they would have less than 9.5 hours turnaround time between the ending of one shift and the beginning of another absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

**WE WILL NOT**, in any other manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act. Some of those rights are described at the top of this notice.

**WE WILL**, if the Union requests it, rescind the promotions of Michael Kleban, Donald Filkins, Samantha Morrison and Joseph Leonard and reduce their wages to reflect the positions to which they are returned.

**WE WILL**, on request, bargain with the Union as the exclusive representative of our employees, and if an understanding is reached, reduce it to writing and sign it.

**WE WILL** refrain from making any changes to the terms and conditions of employment of employees in the unit absent an overall impasse in good faith bargaining for a collective-bargaining agreement and without first giving the Union notice and an opportunity to bargain.

HANSON AGGREGATES BMC, INC.

_____
(Employer)

DATE _____ BY: _____
(Representative) (Title)

DCO-153

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

| | | |
|---|---|---|
| NATIONAL LABOR RELATIONS BOARD | : | Circuit No. 11-2998 |
| | : | #DCO-153 |
| Petitioner | : | Board Case Nos.: |
| | : | 4-CA-34678 |
| | : | 4-CA-35134 |
| | : | 4-CA-35140 |
| | : | 4-CA-35189 |
| v. | : | 4-CA-35487 |
| | : | 4-CA-35553 |
| | : | 4-CA-36099 |
| | : | 4-CA-36256 |
| | : | 4-CA-36468 |
| HANSON AGGREGATES BMC, INC. | : | 4-CA-36530 |
| | : | 4-CA-37161 |
| Respondent | : | 4-CA-37348 |

JUDGMENT

Present: Fisher, Barry and Van Antwerpen, Circuit Judges

THIS CAUSE was submitted upon the application of the National Labor Relations Board for the enforcement of a certain order on consent issued by it against Respondent, Hanson Aggregates BMC, Inc., its officers, agents, successors, and assigns, on July 18, 2011, in Board Case Nos. 4-CA-34678, 4-CA-35134, 4-CA-35140, 4-CA-35189, 4-CA-35487, 4-CA-35553, 4-CA-36099, 4-CA-36256, 4-CA-36468, 4-CA-36530 4-CA-37161 and 4-CA-37348; and upon the record in that proceeding, certified and filed in this Court enforcing the order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the Third Circuit that the order of the National Labor Relations Board be, and the same is hereby enforced; and that the Hanson Aggregates BMC, Inc., its officers, agents, successors, and assigns, abide by and perform the directions of the Board set forth in its order. (See attached Order and Appendix)

Mandate shall issue forthwith.

BY THE COURT

D. Michael Fisher
Circuit Judge

DATED: August 25, 2011
cc: Linda Dreeben, Esq.
Jonathan R. Nadler, Esq.

Exhibit 3

**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**FOURTH REGION**

HANSON AGGREGATES BMC, INC.

and Case 4-CA-37998

INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 542,
AFL-CIO

## COMPLAINT AND NOTICE OF HEARING

International Union of Operating Engineers Local 542, AFL-CIO, herein called the Union, has charged that Hanson Aggregates, BMC, Inc., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.*, herein called the Act. Based thereon, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1 (a) The charge in Case 4-CA-37998 was filed by the Union on March 1, 2011, and a copy was served by first class mail on Respondent on March 2, 2011.

(b) The amended charge in Case 4-CA-37998 was filed by the Union on June 20, 2011, and a copy was served by first class mail on Respondent on June 22, 2011.

2. (a) At all material times, Respondent, a Delaware corporation with a quarry in Penns Park, Pennsylvania, herein called the quarry, has been engaged in extracting and processing crushed stone and in manufacturing bituminous asphalt.

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), sold and shipped goods valued in excess of $50,000 directly to points outside the Commonwealth of Pennsylvania.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

Exhibit 4

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, Doug Chilson held the position of Assistant Quarry Manager and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act:

| | | |
|---|---|---|
| Doug Chilson | — | Assistant Quarry Manager |
| Lance Battersby | — | Plant Supervisor |

5. On or about February 16, 2011, Respondent, by Doug Chilson, at the quarry: (a) threatened to discharge an employee who because the employee was engaging in Union activity; (b) threatened the employee with unspecified reprisals if the employee engaged in further Union activity; (c) threatened to sue the employee and take back money Respondent had paid to the employee if the employee engaged in Union activity; and (d) told the employee to quit if the employee did not like Respondent.

6. (a) On or about 2011, Respondent issued a three-day suspension to its employee James Quarles.

(b) Respondent engaged in the conduct set forth above in subparagraph (a) because: (1) James Quarles was supporting the Union; and (2) in order to discourage other employees from supporting the Union.

7. By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

8. By the conduct described above in paragraph 6, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

## 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 Complaint. The Answer must be **received by this office on or before October 11, 2011, or postmarked on or before October 10, 2011**. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the Answer with this Regional Office.

An Answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at **http://www.nlrb.gov**, click on the **File Case Documents tab, and then 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 two (2) hours after 12:00 noon (Eastern Time) on the due date for the 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 Sections 102.21. If the Answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of the 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 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 be accomplished in conformance with the requirements of Section 102.114 of 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 untimely filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

## NOTICE OF HEARING

**PLEASE TAKE NOTICE** that at 10:00 a.m. on **December 14, 2011**, and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board in a hearing room of the National Labor Relations Board, Region 4, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this 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.

Signed at Philadelphia, Pennsylvania on this 27th day of September, 2011.

Daniel E. Halevy

**DANIEL E. HALEVY**
Acting Regional Director, Fourth Region
National Labor Relations Board

# International Union of Operating Engineers

LOCALS 542, 542-RA, 542-C, 542-D

ROBERT HEENAN
Business Manager

CHARLES PRISCOPO Asst Bus Mgr
JAMES REILLEY, President
MIKE MAZZA Vice President

AFFILIATED WITH THE AFL-CIO BUILDING AMERICAN FEDERATION OF LABOR TRADES DEPARTMENT

THOMAS P. DANEBS, Recording Secretary
JAMES T. JONES Treasurer
PAUL HEADLEY, Financial Secretary

1375 VIRGINIA DRIVE · SUITE 100, FORT WASHINGTON, PA 19034
(215) 542-7500
Fax: (215) 542-7557


November 30th 2012

*Via of Electronic Filing*

Acting General Counsel Lafe Solomon
Office of General Counsel
1099 14th Street NW
Washington D.C. 20570

RE: *Appeal 04-CA-037998 and 4-CA-69822*

Dear Acting General Counsel Solomon:

This letter and documentation attached is an Appeal and Objection to the above reference Cases which Region 4 has formulated a Formal Settlement Agreement.

First, the formulation of a Formal Settlement Agreement is not ripe at this time since there is presently a Compliance review before the Board (See Exhibit 'A')

Second, Now the Region places two Cases into the Formal Settlement Agreement. Case 4-CA-37998 is a Case which the unfair labor practices took place in February 2011. These infractions are direct violations found in Cases 4-CA-33330 et al.. therefore now sustaining my Exhibit 'A' to the Board.

It would be a mockery to the National Labors Relations Act for General Counsel to except this proposed Formal Settlement Agreement for Three reasons.

1. The Settlement is not ripe for formulation while Exceptions have been filed for a Compliance review. And as noted in Exhibit 'B' additional argument for this Compliance review is currently before the Board in Exhibit 'B' which is a direct reference to Case 04-CA-069822.

2. Case 04-CA-37998 remedy by the Region formulated in its Formal Settlement Agreement plagiarized Case 4-CA-33330 et al. Remedy.



Exhibit 5

In conclusion: both Cases have not only violated 4-CA-33330 et al. but also two other Formal Settlement Agreements which the Region has entered into by this notorious unlawful employer of employees Rights. Simply, how many bites of the Apple will General Counsel or the Region give this Employer? And how many times will the Employer be given the Non-Admission clause as note in NO. 5 of the Formal Settlement Agreement?

Both reference Cases need not to be placed in a Formal Settlement Agreement but forward to the Division of Contempt as recommended by the investigating Field Attorney of Region 4 after a Complaint was sustained by the Regional Director.

Respectfully submitted,

Frank Bankard
Local 542

Presented to union
12/1/05 - 12:00pm

COMPANY PROPOSAL - FINAL

# AGREEMENT

BETWEEN

## HANSON AGGREGATES BMC, INC.
PENNS PARK

AND

## INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542

2005 – DECEMBER 31, 2008

Exhibit 6

Section 2 All work performed over forty (40) hours per week will be compensated for at time and one-half (1 ½) the employee's normal rate.

Section 3 Starting times for each shift will normally be as follows.

1st Shift - 6AM – 8AM
2nd Shift - 2PM – 4PM
3rd Shift - 10PM – Midnight

The Employer may change starting times of shifts on an individual, job class, plant, or overall basis in order to meet customer or production demands.

Section 4 Employees required to work on the 2nd or 3rd shift will receive $0.25 per hour differential for all hours worked on that shift

## ARTICLE XIX
## WAGES

| Grade | Job Classfication | 01/01/06 ($/hour) | 01/01/07 ($/hour) | 01/01/08 ($/hour) |
|---|---|---|---|---|
| 1 | General Labor/Helper General | $ 13.50 | $ 13.91 | $ 14.33 |
| 2 | Utility Person | $ 14.00 | $ 14.42 | $ 14.85 |
| 3 | Operator Trainee<br>Maintenance Trainee | $ 14.50 | $ 14.94 | $ 15.39 |
| 4 | Haul Unit Operator<br>Loader Operator I<br>Plant Operator I | $ 15.00 | $ 15.45 | $ 15.91 |
| 5 | Equipment Operator<br>Loader Operator II<br>HMA Plant Operator I<br>Mechanic Trainee<br>Plant Maintenance I<br>Plant Operator II | $ 16.50 | $ 17.00 | $ 17 51 |
| 6 | HMA Plant Operator II<br>Loader Operator III<br>Mechanic I<br>Plant Maintenance II | $ 18.00 | $ 18.54 | $ 19.10 |
| 7 | Mechanic II<br>Lead Person/Crew Leader | $ 20.00 | $ 20.60 | $ 21.22 |

Any employee under the new rate will receive an increase equal to 1/3 of the difference of the 2008 rate and their current rate for each year of the contract.

Those employees whose current rate is higher than the new rate will be red-circled and not receive an hourly increase until the contract rate exceeds their current rate. Red-circled employees will receive a lump sum payment on the anniversary date of the contract, equal to $500.00 on 1/1/06, $600.00 on 1/1/07, and $700.00 on 1/1/08. If an employee's current wage is within $0.10 of the new listed rate, he will receive the new rate plus the lump sum applicable to red-circled employees.

## ARTICLE XX
## HEALTH AND WELFARE

Section 1 The Company agrees to maintain for all bargaining unit members and their eligible dependents, for the duration of this Agreement; health and welfare benefits including medical, dental, prescription drugs, vision care, and life insurance, under the current Company sponsored plan referenced as Hanson Choice.

Section 2 The union's participation in the Hanson Plan will be in a manner consistent with the terms and conditions applied to the Company's non-union hourly employees, including any and all changes in benefits, employee monthly contributions and office co-pays, and providers.

Section 3 The Company shall require the employees to share in a portion of the cost of all health and welfare plans. Such shared cost may include but not be limited to monthly contributions and other payments as stated in plan documents. The Company and the union incorporate by reference into this Agreement the rights, privileges and benefits applicable to participants under the Hanson Choice Summary Plan Description.

Section 4 Benefits and employee co-payments and contributions are subject to change with no additional negotiation during the term of this Agreement.

Section 5 The Company shall provide the union documentation of any change made to the plan.

Section 6 The Company will continue to provide short-term disability coverage and will continue to offer long-term disability coverage as long as not in conflict with #2 above.

## ARTICLE XXI
## RETIREMENT

Section 1 The Company agrees to maintain for all bargaining unit members, for the duration of this Agreement, retirement benefits under the current Company sponsored plan.

Section 2 The union's participation in the Hanson Retirement plan will be in a manner consistent with the terms and conditions applied to the Company's non-union hourly employees, including any and all changes in benefits, employee contributions, and administrators.

Section 3 The Company and the union incorporate by reference into this Agreement the rights, privileges and benefits applicable to participants in the Hanson Retirement plan.