

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

**WARRIOR MET COAL MINING, LLC**

**and**

**Case 10-CA-274900**

**UNITED MINE WORKERS OF AMERICA,  
INTERNATIONAL UNION**

*Kerstin Myers, Esq.,*  
for the General Counsel.

*John Holmes, Esq.,*  
*David Smith, Esq., and*  
*Matthew Stiles, Esq.,*  
for the Respondent.

*George Davies, Esq. and*  
*Kevin Fagan, Esq.,*  
for the Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

**MELISSA M. OLIVERO, Administrative Law Judge.** This case was tried using Zoom Government videoconferencing on February 14 – 18, 2022. United Mine Workers of America, International Union, filed the charge on March 30, 2021, and a first amended charge on August 17, 2021. (GC Exh. 1(a), (c).) The General Counsel issued a complaint and notice of hearing on September 17, 2021. (GC Exh. 1(e).) Warrior Met Coal Mining, LLC, (Respondent) timely filed its answer on October 1, 2021, denying the relevant allegations. (GC Exh. 1(g).) After considering all of the evidence and testimony presented, as well as the briefs of the parties, I find that Respondent violated the National Labor Relations Act (the Act) as alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, including my own observation of the demeanor of the witnesses,<sup>1</sup> and after carefully considering the briefs filed by the parties, I make the following:

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<sup>1</sup> Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather on my review and consideration of the entire record for this case. My findings of fact encompass the credible testimony and evidence presented at trial, as well as logical inferences drawn therefrom. Due to the voluminous record in this case, testimony or exhibits not mentioned in this decision have been considered but rejected.

## FINDINGS OF FACT

### I. JURISDICTION

Warrior Met Coal Mining, LLC, a limited liability corporation, with offices and places of business in Alabama, has been engaged in the business of mining, non-retail sale, and distribution of coal. In conducting its operations, during a 12-month period, Respondent purchased and received goods valued in excess of \$5000 directly from points outside the State of Alabama. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 1(g).)

### II. ALLEGED UNFAIR LABOR PRACTICES

#### *A. Respondent's Business and Labor Relations*

Respondent operates coal mines in the State of Alabama. (GC Exh. 1(g).) Respondent is a large-scale, low-cost producer and exporter of premium metallurgical ("met") coal, also known as hard coking coal ("HCC"), operating longwall processes in its underground mines based in Alabama Mine No. 4 and Mine No. 7.<sup>2</sup> (Jt. Exh. 39, p. 2354.) Respondent also owns a non-operational mine at Blue Creek, Alabama. (Id.) Respondent was formed in 2011 following the bankruptcy of Walter Energy. (Jt. Exh. 39, p. 2354.) Respondent closed its purchase of Walter Energy's assets on April 1, 2016. (Jt. Exh. 39, p. 2354.) United Mine Workers of America, International Union (Union) represents Respondent's employees and has done so at Respondent's facilities for decades. (Tr. 266.)

Kevin Fagan has served as General Counsel to the Union since June 2020. In this capacity, Fagan negotiates contracts, oversees outside counsel in litigation, and works with line officers on organizing and collective bargaining. He has negotiated many contracts over his career. (Tr. 95.) Cecil Roberts is the Union's International President. Levi Allen was previously the Union's International Secretary-Treasurer. (Jt. Exh. 1.) Brian Sanson was the Union's Director of Research until Allen retired, when he was appointed International Secretary-Treasurer. (Jt. Exh. 1.) Larry Spenser and James Blankenship, who also represented the Union in bargaining sessions with Respondent, represented the Union's District 20. (Tr. 65.)

Brian Chopin has been Respondent's Chief Accounting Officer and Controller since the company was formed in 2016. (Tr. 612.) He was previously the Chief Accounting Officer for Walter Energy, Respondent's predecessor. (Tr. 612.) He is a certified public accountant. (Tr. 612.) Chopin did not play any role in labor relations or contract negotiations. (Tr. 614.)

Kelly Gant has served as Respondent's Chief Administrative Officer since 2016. (Tr. 167.) She worked for Respondent's predecessor, Walter Energy, beginning in 2009. (Tr. 167.) Jack Richardson is Respondent's Chief Operating Officer. (GC Exh. 1(g).) Respondent admits, and I find, that Gant and Richardson are agents of Respondent within the meaning of Section 2(13) of

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<sup>2</sup> This information is contained in Respondent's Form 10-K, filed with the United States Securities and Exchange Commission in 2019. (Jt. Exh. 39.)

the Act. (Jt. Exh. 1; Tr. 34.) Furthermore, Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act. (GC Exh. 1(g).)

Respondent and the Union have been parties to a series of collective bargaining agreements, the most recent of which was effective through the fifth anniversary of the first day Respondent began operating the mines, or April 1, 2021. (Jt. Exh. 2; Tr. 265.) Article I – Preamble states

THIS AGREEMENT, by and between Coal Acquisition Sub 2 LLC (hereinafter called the “Employer”), and the International Union, United Mine Workers of America (hereinafter called the “UMWA” or the “Union”), on behalf of each member thereof, covers bargaining unit employees working at Mines No. 4 and 7 in Brookwood, Alabama (the “Covered Mines”) . . .

(Jt. Exh. 2, p. 1.) Article IA – Scope and Coverage defines work jurisdiction as

Any production of coal at the Covered Mines, including preparation, processing, and cleaning of coal; transportation of coal (except from plant to barge loadout facility, or by waterway or rail); repair and maintenance work performed at the mine site or at a central shop of the Employer; supply work at the Employer’s warehouse, at the mine site, or at the central shop of the Employer; maintenance of gob piles and mine roads; and work of the type customarily related to all of the above, including without limitation at the Preparation Plants and Surface Facilities, shall be performed by classified Employees of the Employer covered by and in accordance with the terms of this Agreement . . .

Watchmen, clerks, engineering and technical forces of the Employer, working at or from a Covered Mine office, are exempt from this Agreement. Essential supervisors such as mine foremen, assistant mine foremen who, in the usual performance of their duties, may make examinations for gas as prescribed by law, and such other supervisors as are in charge of any class of labor inside or outside the mines and who perform no more than limited production work are also exempt from this Agreement . . .

Jt. Exh. 2, p. 1-2.)

In the complaint, the General Counsel listed a bargaining unit that was essentially a summary of information from the parties’ expired contract, as set forth above. (GC Exh. 1(e).) Respondent denied that the unit description was correct. (GC Exh. 1(g).) Respondent did not present any evidence on the makeup of the bargaining unit or its appropriateness. Regarding the appropriateness of historical units, the Board’s longstanding policy is that a “mere change in ownership should not uproot bargaining units that have enjoyed a history of collective bargaining unless the units no longer conform reasonably well to other standards of appropriateness.” *El Vocero de Puerto Rico*, 365 NLRB No. 29, slip op. at 42-43 (2017), quoting *Paramus Ford, Inc.*, 351 NLRB 1019, 1024 (2007). The party challenging a historical unit bears the heavy burden of showing that the unit is no longer appropriate. *Id.* “Compelling circumstances” are required to overcome the significance of bargaining history. *Id.* citing *Cadillac Asphalt Paving Co.*, 349 NLRB 6, 9 (2007). I find that Respondent has not met its heavy evidentiary burden to show that

the unit contained in the contract is inappropriate. As such, I find that the Union represents the following appropriate unit of Respondent's employees:

Employees working at Mines No. 4 and 7 in Brookwood, Alabama (the "Covered Mines") performing the following work: Any production of coal at the Covered Mines, including preparation, processing, and cleaning of coal; transportation of coal (except from plant to barge loadout facility, or by waterway or rail); repair and maintenance work performed at the mine site or at a central shop of the Employer; supply work at the Employer's warehouse, at the mine site, or at the central shop of the Employer; maintenance of gob piles and mine roads; and work of the type customarily related to all of the above, including without limitation at the Preparation Plants and Surface Facilities, shall be performed by classified Employees of the Employer covered by and in accordance with the terms of this Agreement . . . Watchmen, clerks, engineering and technical forces of the Employer, working at or from a Covered Mine office, are exempt from this Agreement. Essential supervisors such as mine foremen, assistant mine foremen who, in the usual performance of their duties, may make examinations for gas as prescribed by law, and such other supervisors as are in charge of any class of labor inside or outside the mines and who perform no more than limited production work are also exempt from this Agreement . . .

#### *B. Negotiations for a Successor Agreement*

On December 1, 2020, the Union's International President, Cecil Roberts, sent a certified letter to Respondent notifying it of the Union's intent to terminate the collective bargaining agreement and bargain for a successor agreement. (R. Exh. 1.) On January 15, 2021, the Union sent a letter announcing the makeup of its bargaining team and asking for dates for negotiations. (R. Exh 2; Tr. 104.) The parties began bargaining for a successor contract on January 27, 2021.<sup>3</sup> (Jt. Exh. 1; Tr. 64.) Kelli Gant, Jack Richardson, and Jason McCown represented Respondent<sup>4</sup> and Levi Allen, Brian Sanson, James Blankenship, Larry Spencer, and Kevin Fagan represented the Union in negotiations. (Jt. Exh. 1.) McCown, one of Respondent's Directors of Human Resources, acted as the note-taker for Respondent, although his notes were not intended to be a verbatim transcript of negotiations. (Tr. 177.) Fagan took notes for the Union. (Tr. 346-347, 349.) The teams met for negotiations by Zoom due to the COVID-19 pandemic. (Tr. 64.)

Levi Allen served as the Union's primary spokesperson until June 8, when Allen retired, and Brian Sanson took over as the Union's primary spokesperson. (Jt. Exh. 1.) Gant served as Respondent's primary spokesperson. (Tr. 168.) Initially Richardson, Respondent's Chief Operating Officer, and Gant formulated bargaining positions. (Tr. 169.) Richardson was replaced on Respondent's bargaining team on July 21 by attorneys Lauren Leyden and Dustin Stark. (Tr. 532.)

Respondent's asserted goal in bargaining was to have flexibility in the contract throughout its entire term because of the volatility of the coal market. (Tr. 173-174.) Respondent also demanded flexibility in its other contracts. (Tr. 174.) For example, costs in Respondent's

<sup>3</sup> All dates hereinafter are in 2021 unless otherwise stated.

<sup>4</sup> Richardson and McCown did not testify at the hearing.

transportation contracts fluctuated with market pricing. (Tr. 174.) Respondent touted the “flexibility” in its collective-bargaining agreement with the Union as the basis for its low and variable cost structure. (Jt. Exh. 39, p. 2357.)

5 The Union, for its part, was seeking a fair contract with similar compensation to other coal mines in Alabama and across the country. (Tr. 269.) The Union considered wages and benefits at the Peabody Shoal Creek mine and the Oak Grove mine in Alabama in formulating its proposals. (Tr. 270.) During negotiations Allen noted that the Union and its members had made sacrifices to help the company emerge from bankruptcy and hoped to “get some things back.”  
10 (Jt. Exh. 4, p. 80.)

The bargaining session of January 27 was not long and much of it was spent discussing ground rules. (Jt. Exh. 3; Tr. 267.) The Union had previously presented a complete contract from another mine as a rough proposal. (Tr. 342.) Respondent would not consider agreeing to a  
15 contract from another mine. (Jt. Exh. 3.) During the initial session, notes reflect that Sanson said, “We will put together some ground rules and an information request. It will be very voluminous.” (J. Exh. 3.) Fagan did not recall this being said.<sup>5</sup> (Tr. 109.)

20 Shortly after the first session, Sanson began working on an information request to be sent to Respondent. (Tr. 285.) In formulating the information request, Sanson used past information requests made to different employers, Respondent’s public filings, and information from Respondent’s predecessor, Walter Energy. (Tr. 287.) Sanson testified that it was his practice to send large information requests. (Tr. 398.) Sanson did not usually make information requests before beginning negotiations, instead waiting until bargaining starts and then deciding what  
25 information is needed. (Tr. 286.) The information request in its final form would not be sent to Respondent until March 19. (Jt. Exh. 33; GC Exh. 4.)

Ground rules were signed by Gant and Fagan in February 2021. (R. Exh. 3; Tr. 111-112.) The ground rules stated as follows:

30 Ratification. The UMWA agrees to fully support the ratification of any complete tentative CBA reached between the parties. Following a failure of such ratification, if any, the parties will return to negotiations no later than three weeks following the failure of ratification.

35 (R. Exh. 3; Tr. 113-114.)

40 On February 24, Levi Allen advised Respondent’s team that the Union had made concessions to help the company emerge from bankruptcy and that employees wanted to share in Respondent’s success going forward. (Jt. Exh. 4.) The bargaining notes reflect that Gant responded by saying:

45 From our perspective, we are not interested in looking at the past, only forward. We’ve done a lot of things over the last 5 years outside of the contract to make things better – wage increases, bonuses. Times are not the same as they used to

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<sup>5</sup> I do not credit Respondent’s bargaining notes in this regard. Gant did not corroborate this statement and Richardson and McGown did not testify.

be. The coal market is still very volatile. We have a duty to keep the company solvent and to keep everyone working. We just don't know where the market will go.

5 (Jt. Exh. 4.)

10 The parties met again for bargaining on March 1 and 10. (Jt. Exh. 1.) On March 16, the parties began to discuss wage rates at Gant's suggestion. (GC Exh. 2; Jt. Exh. 7; Tr. 64.) This was the first substantive discussion of economic terms.<sup>6</sup> (Tr. 64.) The Union raised its wage proposal. (Tr. 67.) Respondent's team stated they had a different philosophy and would not agree to the Union's proposal. (Tr. 67-68.) Gant stated that Respondent could not afford a contract at the level of wage rates proposed by the Union. (Tr. 68.) According to Respondent's bargaining notes, Gant said, "[R]ight not with prices we are not breaking even. We need flexibility on coal prices. With what you proposed and the wages you requested we would have to lay everyone off. We don't want that to happen."<sup>7</sup> (Jt. Exh. 7.) Fagan recalled Gant stating that Respondent could not afford the contract with the wages proposed by the Union. (GC Exh. 2, p. 57; Tr. 68, 71.)

20 Respondent also objected to the Union's proposal because it did not give Respondent enough flexibility. (Jt. Exh. 7, p. 110; Tr. 70.) Respondent preferred offering bonuses to unit employees based on market prices over wage increases. (Id.) According to Gant, Respondent wanted to avoid layoffs and a bankruptcy.<sup>8</sup> (GC Exh. 2, p. 57; Tr. 71, 273.)

25 Early in the session, Richardson stated:

Last year we lost [\$]35.5 million and if we operated under the wages you requested, we would have laid off [mines] 4, 5, 7 north. Only run the east. Today the cost is 113 [\$113/ton].

30 (Jt. Exh. 7, p. 108.) The Union believed that the price of coal was not \$113/ton, but instead \$153/ton or \$147/ton.<sup>9</sup> (Jt. Exh. 7, p. 108.)

At the same negotiating session, Respondent's notes indicate the following exchange occurred:

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<sup>6</sup> In the complete contract proposal previously submitted to Respondent, the Union called for wage rate increases in each of the five years of the contract. (Tr. 64-66.)

<sup>7</sup> Gant testified that the decision to implement layoffs would be an overall business decision, based upon Respondent's ability to operate at an acceptable level. (Tr. 179-180.)

<sup>8</sup> Gant testified that it was not a matter of an inability to pay. (Tr. 680.) When she was made aware that she had claimed poverty she clarified that she had not. (Tr. 680.) She said it seemed to be a "misunderstanding." (Tr. 681.) She also said that Respondent did not mean it could not pay, but instead that they had a different philosophy of how to run the business. (Tr. 681.) I do not credit Gant's testimony for reasons stated in the Analysis portion of this decision.

<sup>9</sup> Platt's is used as a tool to establish the selling price of coal. (Tr. 637.) On March 19, Platt's contained Australian premium low vol index pricing, which Respondent asserts it used to price its coal. (GC Exh. 3; Tr. 672.) Also, although Platt's contained prices for Respondent's Alabama mines, Respondent contended it did not consider this pricing. (Tr. 673.)

Gant: This market is volatile over 5yrs its [sic] up and down for whatever reasons. When we make money, we want to give back to employees. I don't disagree things will come back. When things are tight, we have to get through the hard times, but we will need to [be] able to react and being flexible is what we need.

Allen: You're in the red now and the switch flips.

Spenser: If they are in the red can we look at their books?

Gant: We have everything online we are a publicly traded company.

Spenser: Don't we have that right, Brian?

Sanson: We just want to know what you're doing now.

Spenser: [P]eople are tired of MPP and even bench mark [sic]. Put it on their check. If Jack says we pay more than [O]ak [G]rove put it on their check.

(Jt. Exh 7, p. 109.) Gant did not refute Spenser's assertion that Respondent was in the red. (Jt. Exh. 7, p. 109.) Gant recalled that the conversation concerned Respondent's books being available. (Tr. 182-183.) She did not know why the Union wanted to look at Respondent's financials. (Tr. 187.) Gant stated that the breakeven point for Respondent at that time was roughly \$125/ton or \$126/ton. (Jt. Exh. 7, p. 111; Tr. 183.)

The parties met again for bargaining on March 19. (Jt. Exh. 1; GC Exh. 2, p. 62; Tr. 71.) Allen led off the meeting by stating that the Union would strike, but would instead like to get a deal done by April 1. (GC Exh. 2, p. 62.; Jt. Exh. 8, p. 114.) He also reiterated that the Union's position that it was seeking wage increases in each year of the collective bargaining agreement. (GC Exh. 2, p. 62; Jt. Exh. 8, p. 114; Tr. 72.) When discussing wages, the following exchange occurred:

Gant: Levi no one is saying 125 is profitable. That is our break even [sic] point. We are not married to that # [sic] under existing cost. 2021 will be different also. 125 is break even let's get that clear.

Sanson: We know you have paid out a lot of dividends to stock holders [sic] and senior notes. So, there is a lot of money getting made and passed around to corporate people. I am sure salaries are good. You are not in the poor house. You have paid 300 million to investors 2018 and 2019 230 million of a special dividends [sic] was paid. People are getting wealthy off these wage cuts. You won't make us believe you are not making money. Not to argue about this 125 #.

Richardson: We have public documents that show what we made and lost. We don't have 2 sets of books. Numbers are released to the public and they are under audit, so the accounting has to be right. (Examples of previous mines when company lost money, but union still believed that they were making money despite what was publicly reported.)

(Jt. Exh. 8, p. 117-118.) Richardson also mentioned that Peabody had a met coal mine in Alabama that was idle and not running. (Jt. Exh. 8, p. 118.) He asked the Union's team why Peabody would idle that mine. (Id.)

At this session, Fagan recalled the Union making a proposal for yearly wage increases to which Richardson reacted poorly. (Tr. 72.) He also recalled Richardson stating that Respondent had lost \$34 million the previous year and that a competitor, Peabody, had lost almost \$2 billion. (Tr. 72-73.)

At negotiations on March 19, Richardson stated:

[S]125[/ton] is our break even [sic] point. I asked you guys to pull reports from other companies. Peabody lost 1.9 billion. We lost 35.8 million. We are not making money and we need to survive through the tough times. No crystal ball on what the market is going to do and we don't know how long its [sic] going to last.

(Jt. Exh. 8, p. 114.)

#### C. Information Request

The Union sent an information request to Gant and Richardson via email at 3:37 p.m. on March 19. (GC Exh. 4.) Respondent's commentary during the bargaining sessions of March 16 and 19 prompted the information request. (Tr. 73.) Specifically, according to Fagan, Gant's comments that Respondent could not afford the wage increases proposed by the Union prompted the information request. (Tr. 74.) Sanson testified that he completed the information request after Respondent represented that it could not meet the Union's wage demands. (Tr. 283-284.) The entirety of the Union's information request is attached to the complaint as Exhibit A. The request was 16 pages long and sought over 220 pieces of information. (GC Exh. 1(e); Jt. Exh. 33.)

#### D. Respondent Gathers Information

Gant was overwhelmed with the information request, in part, she said, because the Union did not give priorities. (Tr. 682.) She testified that she first produced public financial records because they were easiest to obtain.<sup>10</sup> (Tr. 682-683.) She next provided health insurance information.<sup>11</sup> (Tr. 683.) The Union did not raise concerns with Respondent's document production between March 16, the date of the information request, and March 30, the date the Union filed the unfair labor practice charge. (Tr. 683.) On March 30 the parties were still working to reach a tentative agreement. (Tr. 689.)

According to Gant, no individual employee or manager of Respondent was responsible for gathering the requested information and transmitting it to the Union. (Tr. 199-200.) Instead, several of Respondent's managers were responsible for gathering information pursuant to the

<sup>10</sup> According to Chopin, he produced the public filings, not Gant.

<sup>11</sup> This information was, in fact, gathered by Moore from third parties.



Union's information request. Brian Chopin, Respondent's Chief Accounting Officer and Controller, was responsible for gathering information pursuant to the financial portions of the Union's information request. (Tr. 616.) Chopin became aware of the Union's information request shortly after it was received. (Tr. 616.) He testified that "priority" was given to responding to the information request, but he did not give any details as to how the response was prioritized. (Tr. 617.) Accounts payable clerks (AP clerks) and Respondent's tax manager assisted Chopin in gathering information. (Tr. 617.) Chopin gathered contractor information and provided it to Respondent's Vice President of Engineering, Phil Saunders.<sup>12</sup> (Tr. 617.) In all, Chopin was responsible for gathering about 35 pieces of information in response to the Union's information request. (Jt. Exh. 33, Tr. 619.)

Chopin gathered and provided Respondent's Forms 8-K, 10-K, and 10-Q to the Union in response to most of the requests for financial information.<sup>13</sup> (Tr. 621-632.) Chopin himself did not provide the information to the Union, but he testified that they were provided to the Union. Chopin was not responsible for the information sought in request 17 and was not sure who would have been. (Tr. 628.) Chopin also was not responsible for the information sought in request 19 and believed that human resources would have been. (Tr. 628.) He was not responsible for the information sought in request 29 and assumed the engineering department would have been. (Tr. 632.) Chopin provided no specific testimony about how he and his team went about gathering the information responsive to the Union's information request.

Chopin testified that Respondent could not produce coal sales contracts because they contained confidential information. (Tr. 634.) He stated that releasing such contracts would run afoul of confidentiality clauses in the contracts, release trade secrets, and would put Respondent in a bad light with competitors. (Tr. 634.) These contracts are maintained by Respondent's Chief Commercial Officer, Charles Lussier, and Respondent's in-house counsel. (Tr. 634-635.) Respondent also did not produce transportation or royalty agreements, at the direction of in-house counsel, because they were confidential. (Tr. 643.) Chopin did not know if a privilege log or log of confidential documents was kept. (Tr. 644.)

Chopin testified that Respondent did not advise the Union of the price of coal but stated that the price could be gleaned from Respondent's investor presentation, earnings release, quarterlies, 10Q, and 10K. (Tr. 635-636.) Respondent did not provide individual records of accounts payable and accounts receivable, as requested. (Tr. 648.) Respondent also did not provide a fixed asset register or disbursement registers, instead providing the SEC filings, which contain summaries. (Tr. 650.)

Chopin also testified that it would have been difficult to provide information from before 2020 due to a change in Respondent's accounting system.<sup>14</sup> (Tr. 651.) Respondent also had

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<sup>12</sup> Chopin provided the invoices to Saunders because he would have known which were for contractor services. (Tr. 642.) Saunders did not testify at the hearing.

<sup>13</sup> A Form 8-K is a form filed with the SEC disclosing material changes. A Form 10-K is an annual report filed with the SEC disclosing financial performance. A Form 10-Q is a quarterly report filed with the SEC. Source: <https://www.sec.gov/about/forms>.

<sup>14</sup> Chopin initially testified that Respondent could not provide information from before 2020 because of the change in accounting systems. (Tr. 651.) He quickly pivoted and testified that it would have been difficult to provide this information. (Tr. 652.) He was not sure if the Union was ever told about this

drafts and worksheets available but did not provide them. (Tr. 653.) Chopin admitted that Respondent did not produce a number of other documents. (Tr. 654-661.)

Dolores Moore is Respondent's Director of Human Resources. (Tr. 726.) She was made aware of the Union's information request when Gant sent it to her.<sup>15</sup> (Tr. 727.) Gant asked her to concentrate on benefits and personnel information for the bargaining unit. (Tr. 726.) Respondent's Payroll Manager Laura Crawford and Director of HRS<sup>16</sup> Jeff Cruce assisted her in gathering the information. (Tr. 728, 748.) Moore emailed them the Union's information request but discussed with them what reports were responsive and how to pull them. (Tr. 749.) Respondent had some of the information, but a vast majority of the requests were sent to third party administrators (TPAs). (Tr. 728.) Moore would review the documents at a high level and would submit them to Allyson Price. (Tr. 728.) It was Moore's understanding that Price would submit the documents to Gant for approval before sending them on to the Union. (Tr. 728.)

Moore began gathering documents from vendors on March 29. (Tr. 730.) She emailed the Union's information request and highlighted the areas each one was to help with. (Tr. 730.) Respondent's main third-party administrator (TPA) for health and welfare benefits was Creativa Associates (Creativa). (Tr. 729.) Moore worked with Creativa to gather responsive documents. (Tr. 729.) According to Moore, Creativa said "holy smokes" when it received the information request but began gathering the documents. (Tr. 731.) Creativa sent responsive documents through email and an online portal that is maintained as part of Respondent's regular business relationship with Creativa. (Tr. 732.) Creativa coordinated with Respondent's other TPAs, including Blue Cross, CVS Caremark, American Behavioral, VSP, and Prudential. (Tr. 732-733.) Moore's testimony lacked details regarding Respondent's specific actions in gathering the information responsive to the Union's request.

Moore was responsible for gathering information sought in Attachment B for unit employees only. (Tr. 743.) She worked with the human resources director and payroll manager to gather this information. (Tr. 743.) Respondent did not possess job descriptions, did not provide distribution of employees by sex because she believed it was illegal to do so, and she was not responsible for the S & A benefit part of the request. (Tr. 743.)

Moore did not share information with Price in the cloud, only by email. (Tr. 752.) When providing information on employees, the company was protective of their Social Security numbers, names, and that "sort of thing." (Tr. 752-753.) She considered employee names privileged when related to medical and drug claims. (Tr. 753.) Moore only focused on unit employees as she believed that they were the only ones relevant. (Tr. 754.)

Moore believed she talked to Gant when there were no responsive documents. (Tr. 754.) She did not remember if she told Price or the Union when there were no documents. (Tr. 755.) She admitted that benefits for unit and non-unit personnel are her responsibility. (Tr. 757.)

difficulty. (Tr. 652.)

<sup>15</sup> Moore later changed her testimony and stated that Gant talked to her about the information request, rather than emailing her about it. (Tr. 747.) If such an email existed, it was not provided to the General Counsel in response to her subpoena. (Tr. 746-747.)

<sup>16</sup> No description or definition for HRS was given at the hearing.

Moore conveyed to Creativa that compliance with the information request was important, but she did not provide any priorities. (Tr. 758-759.)

*E. Negotiations After the Information Request and Responses to the Information Request*

The parties met again for negotiations on March 23. (Jt. Exh. 1.) The Union's request for information was not discussed at bargaining that day. (Tr. 400.) At the outset of the meeting, after being asked by Richardson, Allen again stated that if the parties did not reach agreement, International President Roberts would authorize a strike. (GC Exh. 2, p. 62; Jt. Exh. 9, p. 121.) Richardson then stated, "Like [Gant] said when we first started negotiations, we want everyone to be able to work here till we mine out. Financials matter. When all is said and done, Kelli has to calculate everything in her models. We have to remain financially stable as a company." (Jt. Exh. 9, p. 121.) The parties started out discussing healthcare and discussed Respondent's use of contractors I the mines at length. (Jt. Exh. 9, p. 122, 126-128.)

By March 24, the Union was trying to pick up the pace to get to an agreement. (Jt. Exh. 10, p. 135; Tr. 151.) Allen requested improvements to the healthcare plan. (Jt. Exh. 10, p. 133.) Gant stated that Respondent was happy with its current plan but might entertain giving money to employees to offset expenses. (Id.) The parties continued to discuss wages. (Jt. Exh. 10, p. 134.)

On March 26, Gant sent an email to Spenser, Blankenship, Allen, Sanson, Fagan and Watson. (Jt. Exh. 34.) Attached to this email were the following documents responsive to the Union's information request:

1. Forms 5500 from 2016-2019 for the WMC Group Benefit Plan, UMWA 401(k) plan, and Salaried 401(k) plan
2. WMC Annual Reports 2017 – 2019
3. WMC Quarterly Earnings Presentations Q1 2017 – Q4 2020
4. WMC Form 10-K 2017-2020
5. WMC Form 10-Q Q1 2017 – Q3 2020
6. WMC Form 8-Ks from 2017-2020 relating to major events that arguably relate to some of the information requests
7. Exhibits to public filings, including the above, relating to topics covered in the Union's RFI (including income statements, balance sheets, condensed statements of cash flow and certificates of incorporation)

(Jt. Exh. 34.) Gant indicated that due to the size of the files, they would be sent in multiple emails. (Id.)

Much of the negotiation on March 29 focused on wages and Respondent's health plan.<sup>17</sup> (Jt. Exh. 11.) Items discussed included deductibles, out of pocket expenses, drug prices, and the cost of in-network versus out-of-network care. (Jt. Exh. 11, pp. 137-138.) The parties again debated the price of coal, with Sanson stating it was \$158/ton and Richardson stating it was \$111-113/ton. (Jt. Exh. 11, p. 140.)

<sup>17</sup> Allen wanted to focus on the 3 main areas – wages, healthcare and time off. (Jt. Exh. 11, p. 137.)

The negotiation session of March 29 started off with the following exchange:

Allen: Good morning everyone, we've had some time to review and sort of digest the counterproposal y'all sent us. To be quite honest we're a lot farther off than what we thought. At this point I'm thinking how on earth are we going to get a contract in place by Thursday? How can we push this table forward? Warrior Met Coal needs to let us know. We are now 2 days out from a potential labor dispute.

Gant: We've priced out things like the medical and we can talk about a few things we are willing to do, but we are already getting heat from our board on what we already brought to the table wages, healthcare. We think the focus needs to be on wages and benefits anyways, that's what employees likely care about the most.

(Jt. Exh. 11, p. 136.)

On March 29, Fagan sent a letter to the Regional Director of Region 10 of the NLRB. (R. Exh 4.) The letter indicated that if the parties did not reach a successor agreement by April 2, the Union would go out on strike. (Id; Tr. 485.)

Negotiations on March 30 again focused on healthcare costs, wages, the use of contractors, and working conditions. (Jt. Exh. 12.) Allen indicated that he would not be able to convince his members to accept maximum out-of-pocket costs of \$5,000. (Jt. Exh. 12, p. 143.) During negotiations, Gant stated, "Y'all's contract will end up putting people out of work, all this stuff we are arguing over now won't even matter then. Our intent is not to put people out of work." (Jt. Exh. 12, p. 145.) Later, at that same session, Gant stated:

Y'all's proposal is not sustainable long term . . . The financials out us worlds apart. When we are losing \$15/ton right now, the stuff we are talking about adds another \$5 a ton. We have to be able to manage this today. On the salary bonuses, we can put everyone in a plan to share success. I know y'all probably don't want that. But y'all need to know that nobody is pulling our strings. We have a responsibility to this company, and we care for all of our people. We want them to be able to work.

(Jt. Exh. 12, p. 146.)

On March 30, the Union filed an unfair labor practice charge with the NLRB alleging that Respondent was refusing to bargain in good faith by, inter alia, failing to respond to information and document requests. (R. Exh. 6.) The parties met again very briefly on March 31. (Jt. Exh. 13.) The parties discussed their desire to reach an agreement. (Jt. Exh. 13.) On March 31, the Union issued a press release indicating that the Union had issued a notice of an unfair labor practice strike to begin on April 1. (Jt. Exh. 30.)

The parties met again on April 1 in an effort to reach a contract. (Jt. Exh. 14.) Gant indicated that Respondent would not move on its use of contractors in order to stay flexible on absences. (Jt. Exh. 14, p. 149.) The parties also discussed wage increases, with Respondent being willing to consider annual raises for the first time. (Jt. Exh. 14, p. 150.) The parties also

discussed paid time off, holidays, benefits, the use of contractors, and the possible strike. (Jt. Exh. 14, pp. 150-155.) Respondent's board indicated this was their last offer. (Jt. Exh. 14, p. 154.) The Union tentatively accepted the offer. (Jt. Exh 14, p. 155.)

5 Union issued a press release on April 5, 2021, announcing a tentative agreement with Respondent. (R. Exh. 23; Tr. 140-141.) Respondent did not provide all of the information requested by the Union prior to reaching the tentative agreement. (Tr. 143.)

10 The Union took the tentative agreement to its members for a vote pursuant to the parties' ground rules, but it was rejected. The parties met again on April 29 after the tentative agreement was voted down by the Union's members. (Jt. Exh. 15.) For the first time at bargaining, the Union's information request was discussed. (Jt. Exh. 15.)

15 Allen: We've all been talking, and it seems Kevin and Bryan [sic] are still looking for some more information that was previously requested.

Gant: Just send us an updated list and we will have the information pulled.

20 Fagan: We will send a list. It will be separated by information that has already been received fully, partially, or still waiting on.

(Jt. Exh. 15, p. 157.) The parties continued to discuss wages, healthcare, time off, holidays, and the use of contractors. (Jt. Exh. 15.) During this session Gant stated, "If we put this stuff in place today, 4 mine would not be running. We want to keep people working." (Jt. Exh. 15, p. 158.) At this same session, Richardson said, "We have to remain competitive . . . Right now Mine 4 has the chips stacked against them. All of this stuff y'all are talking about, mine 4 doesn't run." (Jt. Exh. 15, p. 159.)

30 On May 3, Sanson sent a letter to Gant regarding Respondent's compliance with the Union's March 19 information request. (GC Exh. 7.) Sanson listed each request and then indicated, in red, those items with which Respondent had complied or partially complied. (GC Exh. 7.)

35 The parties met again for bargaining on May 6. (Jt. Exh. 16.) Allen continued to stress that the former tentative agreement had been rejected by 95% of the Union's members and that change was needed. (Jt. Exh. 16.) When discussing Respondent's use of contractors, the following exchange occurred.

40 Sanson: We put in a request for y'all's numbers of contractors and contractor hours. We still haven't received it.

Gant: We have sent a steady flow of information your way. Y'all requested a lot of information and we have people working on it and we send it when it's done.

45 (Jt. Exh. 16, p. 162.) The parties continued to discuss wages, work schedules, paid time off, and health care. (Jt. Exh. 16, p. 162-165.) During this session, Gant stated, "Y'all are proposing baking in rates that are higher, in a market that is severely down. We cannot operate long term with your proposal." (Jt. Exh. 16, p. 162.)

Near the end of the May 6 session, Allen stated:

. . . Brian has asked for some information we need; those are needed to help us look at costing. We realize these things cost money, but 95% voted no, that's almost unanimous.

(Jt. Exh. 16, p. 165,)

On May 12, Gant sent a response to Sanson's May 3 letter discussing Respondent's compliance with the information request. (Jt. Exh. 66.) Gant stated that Respondent was providing information on a rolling basis, "as the parties have discussed at the bargaining table." (Jt. Exh 66, p. 8221.) In her letter, relevant here, Gant discussed the request for secrecy, confidentiality, and non-disclosure agreements. (Jt. Exh. 66.) Gant stated that the Union failed to acknowledge that the 31 service agreements provided by Respondent contained confidentiality and non-disclosure agreements. (Jt. Exh. 66.) Gant also addressed the Union's request for healthcare data. (Jt. Exh. 66.) On May 3, Sanson indicated that Respondent had only partially complied with these requests. Gant did not address the missing data on healthcare and copays for 2016-2018.

In her May 12 letter, Gant also stated that the Union's information request used broad and vague language. (Jt. Exh. 66, p. 8222.) Gant did not identify any specific request as overly broad or vague. (Jt. Exh. 66, p. 8222.) Gant also asked that the Union identify any additional information actually needed to continue negotiations. (Jt. Exh. 66, p. 8323.) She asked the Union for a detailed explanation of what is being requested and the relation of each request to the proposal, the Union's members, or the terms of employment. (Jt. Exh. 66, p. 8223.)

The Union's information request was discussed again at the next bargaining on May 18:

Sanson: I need to address some information requests. I still need information on how many contractors you have working, so we can examine the 25% rule [Respondent's use of contractors]. You gave redacted copies of contracts. We are trying to compare cost of contractors versus us doing the work. This is now our 5th request. We want to know how many contractors are in there now. Also, we need clarity on the \$97k, did that number include supervisors? On the healthcare, we asked for a list of WMC top 50 most prescribed medications so we could maybe look at creating a formulary. By the way, some of the information y'all provided contained names, and, just so you know, would be a HIPAA violation. I'd suggest being more careful on that. This is us renewing our request for information. If you can't provide this information, let us know so we can discuss.

Gant: We continually provide y'all with information. You're [sic] request, Brian, was overly broad. Your 10-page request asked for things dating back to when the company was formed and we are continually working on these requests.

Sanson: Do y'all have a list of what you think is overly broad?

Gant: We're just asking for y'all to be more specific. We've provided everything you've asked for, and which contractors are you asking about?

...

Sanson: It [contractor information] is relevant to our conversations. We need to understand how to better track the 25%.

5 (Jt. Exh. 17, pp. 168-169.)

On May 26, Fagan sent a letter to Gant seeking information on Respondent's use of subcontractors, including some of the information sought on March 19. (R. Exh. 12; GC Exh. 1, p. 26; Jt. Exh. 33, p. 297.) Sanson's May 3 letter acknowledged Respondent's partial response to these requests by providing general service agreements but stated that Respondent did not provide the number of contractor employees working in the mines. (GC. Exh. 7.) Fagan stated that subcontracting information was necessary for the Union to evaluate before it considered whether to further modify its proposal with respect to subcontracting. (R. Exh. 12, p. 59-60.) Fagan also explained why the data included in Respondent's demonstrative chart (Jt. Exh. 69) was insufficient to satisfy the Union's request for underlying documents. (R. Exh. 12, p. 59-60.)

On June 1, Gant sent a letter to Fagan indicating that his May 26 letter ignored her May 12 correspondence asking the Union to provide an additional written explanation of what documents the Union was requesting any why they were requesting them. (Jt. Exh. 237.) Gant advised Fagan that she did not believe that the subcontracting information was relevant because employees did not assert subcontracting a reason for the strike. (Jt. Exh. 237, p. 80350.)

Fagan responded to Gant's June 1 letter on June 7. (R. Exh. 14, p. 65-66.) He advised Gant that the subcontracting issue remained relevant based on the parties' proposals and negotiations. (R. Exh. 13, p. 65.) Fagan further identified six issues that remained open at the bargaining table: the use of contractors; wage rates; PTO and holidays; healthcare; and attendance control. (R. Exh. 14, p. 66.)

At the next bargaining session on June 8, the Union again raised its information request. (Jt. Exh. 18.) According to Respondent's bargaining notes, the following exchange occurred:

Allen: Well, to start off, we have been reviewing and trying to respond to your proposal, as well as trying to dial in our counter proposal. We are still a good ways apart and just want y'all to know we are withdrawing our last proposal. One of our main concerns is subcontractors. We believe there is a lot of money to be saved if we can do the work and pass those savings on to our members. We still need a lot of information be able to formulate that. Brian has some things to go over.

Sanson: On March 19th, we put in an information request. We've received some information, but overall, it has been very lacking. We are putting y'all on notice the information we have received is insufficient. Yesterday we received a report of average hours worked. We should have had this immediately when we first started talking. There's some things we would like to have and I'm going to list those:

- Copies of minutes from our meetings
- Copies of minutes from committee meetings

- Copies of minutes from compensation committee

Y'all gave us 10K, 10Q, public filings.

- 5        - Corporate structure information. We are bargaining for Blue Creek and future employment. We need to understand the subsidiaries and who holds interests in what...

10       Fagan: To be clear, on May 12th, Kelli noted that we are not being specific enough. Brian, you are telling her specifically what you are asking for now, what we need, for the record.

15       Sanson: You've told us you are not giving us the business plan. So, if there's things like that, tell us. If it's XY and Z that you won't provide, tell us and we can mark it off our list. We also need:

- Outstanding PO's
- We got copy of payroll register – appreciate that.
- Need accounts receivable and accounts payable registers.

20       - Contracts with vendors. We got some info, but the important info was redacted. We need to know how much y'all are paying them. We might be a cheaper option.

- We got a data dump on prescription plan, it is a mess. Thousands and thousands of line items

25       - The medical information was helpful and was in a good format.

- We asked for budgets – both past and future and got no response.
- Taxes, other costs like shipping
- A/R, when are y'all getting paid from your customers?

30       Sanson: I looked yesterday and it showed WMC #7 mine selling for \$220 a ton. We're not getting copies of your contracts to see how much you're making. We have a right to the information if y'all are preaching bankruptcy. CAPEX is jobs...UMWA jobs. Historically we have a right to this information. We are glad to sign a confidentiality agreement that is legal binding. We also need:

- 35       - Royalty payments and the ability to change payments if on a sliding scale.
- Mine maps so we can determine the covered operation.
  - We are bargaining for Blue Creek and would like to see what the covered operation is. We want to see the maps.

40       - Any contracts with third parties

  - Debts...we want to see who has influence on WMC outside the board.
  - Litigation, any judgements, or settlements, pending lawsuits. Anything that might cost job loss.
  - Citations

45       - Information on the bonuses that bosses are getting. The 10K tells us nothing. We don't understand how mgmt. gets bonuses. We might want to put a bonus system together ourselves.

  - Surveys of properties to understand work jurisdiction.



- Outstanding environmental matters
- Lease agreements, anything that might affect the workers.
- Employee benefit plans, equity incentive plans. Still need more info on bosses' bonuses
- 5 - Agreements in place on your healthcare plans, a stop/loss report
- Administrative costs for medical plan
- Marketing agreements to 3rd parties to sell the coal.
- Bonds, we want to make sure WMC has adequate bonding.
- P.O.'s and invoices
- 10 - Y'all gave us job descriptions and seniority list that was helpful.
- We will skip the drug issues.
- COBRA premiums and data shows you have the ability to change the benefit plans, other companies' info doesn't reflect that.
- Our VEBA Patriot Plan for COBRA costs \$2,090 for family
- 15 - Your payroll register is too complicated, maybe y'all understand it but we don't. It has 30 lines for one employee. We need to see how much straight time, overtime, Saturdays worked, Sundays worked, Holidays, etc.

20 Sanson: I think that's all we need. I don't want to monopolize this meeting, but the lack of information is abusive. Y'all are trying to game the system. We need to understand the state of the company. We are doing proposals in the dark. We don't even know what's reasonable.

25 Allen: To summarize what Brian says, the lack of information is a major issue. We just want to understand the cost. Jack once made the statement about people who work at WMC should feel like they have a future. We want to understand who the decision makers are so we can lean on them a little.

30 (Jt. Exh. 18, pp. 170-171.) Later, at the same session, Allen stated:

May 3rd we sent a proposal. We are trying to get a contract. There's too much at stake now. Too many out of work. We need all this information now. We need to understand so we can determine what is a fair contract. There's a lot going on. What concerns do you have with the UMWA?

35 (Jt. Exh. 18, p. 172.) Gant responded:

40 Rules of engagement. We never got anything from y'all. Brian, we have people constantly pulling information. We can't provide to y'all till we get an understanding of the rules of engagement. Last meeting y'all said you would send something on a revision. We never got it.

45 (Jt. Exh. 18, p. 172.) Sanson disagreed and told Gant no one is killing themselves to pull the information. (Jt. Exh. 18, p. 173.)

Later at that session, when asked about provided information, Gant and Allen had the following exchange:

Allen: Is there anything y'all won't provide?

Gant: We haven't said we won't provide anything. We would have to have an NDA for anything not publicly available.

5

Allen: Okay, not a problem. Y'all just have one of your attorneys to send us something and we'll sign it. Larry, do you have anything?

(Jt. Exh. 18, p. 173.) Later during the session Allen reiterated, "We just need more information."  
 (Jt. Exh. 18, p. 173.) He also stated that the Union leadership needed to provide information to their members as to why Respondent could not give them more. (Jt. Exh. 18, p. 174) He stated, "We don't have enough information to give them an explanation now." (Id.) In wrapping up, Sanson said, "Provide us with the information we requested." (Jt. Exh. 18, p. 175.)

10

At the next bargaining session on June 15, the parties again discussed the information request:

15

Fagan: . . . I also want to follow up on our information request from June 8th.

20

Gant: I got your request, but we don't have all the information back yet. We forwarded your request the same day we received it.

Sanson: On that outstanding request for information, we did receive some of it, so thanks.

25

(Jt. Exh. 19.) Later at the same session the following exchange occurred:

Sanson: The faster we can get information, the faster we can move along with this process. On coal contracts – I think there's a disconnect. Y'all always give a verbal explanation but we're just not seeing it. Right now, the pricing looks high, like China shows \$223/ton. If it's not really that price I need to understand what it is, so I can explain.

30

Richardson: Every time I try to explain you cut me off, Brian. The China price is correct, but you have to subtract fees on the CFR. Australia prices are what they are loaded in Mobile.

35

Gant: We keep providing you with information that is public, so I don't know what else we can provide that would be more verifiable than what is already out there. This public information is what we give the SEC, our investors, and the auditors.

40

Richardson: Whether it's Platts numbers or IHS numbers you might sell for more or less, but a good rule of thumb is to subtract about \$80 and prices are always 30 days in arrears. The price you see today is not realized. The China market you must deduct transportation, taxes, penalties...about \$80.<sup>18</sup>

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<sup>18</sup> PRICE OF COAL

(Jt. Exh. 19, p. 179.) Later, in the same meeting, Sanson stated, “I want to reiterate our complaint not getting information. There’s still a ton outstanding.” (Jt. Exh. 19, p. 180.)

5 On June 25, Levi Allen resigned as the UMWA Secretary-Treasurer. (Jt. Exhs. 1, 20, 31.) Thereafter, Sanson served as the Union’s chief spokesperson and was appointed the UMWA’s Secretary-Treasurer. (Jt. Exhs. 1, 20, 32.)

10 On June 29, the parties again met for bargaining. (Jt. Exh. 20.) The parties exchanged proposals on wages, the use of contractors, supervisors performing unit work, absenteeism, healthcare, and 401(k) contributions, . (Jt. Exh. 20, p. 182-185.) During bargaining, Richardson stated:

15 In my 43 years of mining, I only ever had 100% medical for 3 months. It was when I worked for Bob Murray. Then Obamacare happened and knocked that out. Lots of companies have struggled recently, the Marshall mine, the Cumberland mine. Alpha paid someone to take it. That’s usually not good when someone pays you to take something. I have total respect for the UMWA and for Cecil Roberts. That being said, it’s a new day. I’ve seen a lot of changes over the years. I’m a  
20 man and a coal miner both, so I’m the same as a mule. We have to be creative to keep people working. We’re not anti-union. We’re just saying the recipe of the 70’s doesn’t work today.

25 (Jt. Exh. 20, p. 186.) At this session Gant stated, “Our goal in this process is to look at long term sustainability, so we have to quit looking at the past.” (Jt. Exh 20, p. 183.) Richardson added that, “Moving forward, we have to ensure we remain competitive. We have to make sure we take care of people for the long haul, not just the next 6 months.” (Jt. Exh. 20, p. 184.)

30 At the outset of bargaining on July 9, Sanson raised the Union’s information request again:

35 To get started I want to reiterate our request for information. Most all of what y’all have provided is not current. I listened to your call last night with investors and it looks like about 49% of what is being sold is on spot market. We have to have current information and legally, you are required to provide it to us. By not providing it to us, y’all are not bargaining in good faith.

(Jt. Exh. 21, p 200.) Gant replied, stating:

40 Brian, we haven’t released Q2 results yet. Most of the stuff you are talking about is public information anyways. We are not trying to hide anything. We are providing y’all with information and think we are bargaining in good faith, but I guess we have a difference of opinion, but we don’t think y’all are bargaining in good faith.

45 (Jt. Exh. 21, p. 200.)

On July 19, the parties met again for bargaining. (Jt. Exh. 22; Tr. 533-534.) After discussing the parties’ proposals, the following exchange occurred:

Spencer: That's fine, but we sent y'all a proposal a few weeks ago and information requests and never got a response back on that. Y'all need to give us some proposals too so we know where we stand.

5

Leyden: Well, we're not talking about the same proposal. The group on here this morning is making more changes that were not part of the same proposal, so it's not the same. Please walk me through your whole proposal. Kevin, we don't need to get bogged down, if there are any information requests you and I can get on a separate call to discuss.

10

(Jt. Exh. 22, p. 202-203; Tr. 533-534.) Leyden never reached out to Fagan to discuss the information request. (Tr. 534.)

15

The parties met again for bargaining on July 26 and discussed supervisors performing unit work, absenteeism, vacation and sick time, healthcare, overtime, job bidding, the use of contractors. (Jt. Exh. 23, p. 207-324.) The Union's request for information was not mentioned. However, at this session, Leyden stated, "Everything has a cost and even though we are not in bankruptcy status our goal is to never be there again. There is a cost every single day. We have to look at all of those things together. (Jt. Exh. 23, p. 214.)

20

The next bargaining session occurred on August 9. (Jt. Exh. 24.) The parties discussed wages, 401(k) contributions, the use of contractors, supervisors performing unit work, personal and sick leave, time off, and healthcare benefits. (Jt. Exh. 24, p. 218-226.) The parties continued bargaining on August 11, continuing to discuss contract terms, but the Union's information request was not mentioned.

25

On August 16, Fagan sent a letter to Gant regarding the status of Respondent's compliance with the Union's information request. (GC Exh. 12; Tr. 535.) Fagan admitted that there was a mistake in the letter. (Tr. 536.) Although the letter indicated that the Union had not received Respondent's 2017 and 2018 10-Ks, they had been received. (Tr. 536.)

30

On August 26, Gant raised Respondent's prior statements regarding its ability to pay for the Union's bargaining demands:

35

. . . The only other thing to discuss is that there's been some misunderstanding on some things we have discussed in the past. I want to make it perfectly clear that the company has never said or intended to say, or imply that there was an inability to pay for any of this stuff. I think some stuff has been misconstrued based on past conversations. We've never claimed financial insolvency as the reason for not doing things in our proposals and our contracts. Even if we said something that might be interpreted that way I want to make it clear that is not our intent and not what we meant by that. All our proposals have been based on our philosophies and the way we want to manage the company, not on an inability to pay. Again, just want that on the record. I think some of that has been misconstrued for whatever reason. Not what we've claimed in any of these conversations. Some of these conversations have mentioned cost, but didn't infer anything different. Inability and unwillingness are two different words.

40

45

(Jt. Exh. 26; Tr. 449.)

5 The information request was not discussed at bargaining on September 21. (Jt. Exh. 27.) On October 21, the following exchange occurred:

10 Fagan: Also, Dustin I have an information request that I need in short order. Our March 19 info session we asked and I'll follow up now. We want 2020 and 2021 YTD full sales contract. Price being sold, where it's going, and I'll break that down into subparts into more detail but we need to see that information. We haven't seen that to date. We will put the request in writing.

...

15 Stark: You framed the question up as a request for general financial information. We have not made any claim for inability to pay. What bargaining proposal does that relate to?

20 Fagan: I'll respond to that in due course, that's my answer.

(Jt. Exh. 28, p. 263.)

25 The parties did not discuss the Union's information request on January 20, 2022. (Jt. Exh. 29.) January 29, 2022, was the parties' last bargaining session before the hearing. At the time of the hearing the parties had not yet reached a new agreement.

*G. Remaining Outstanding Information Requests and Alleged Relevance of the Information Requests*

30 The Union's March 19 information request sought wide swaths of financial information, including sales registers, payroll registers, contracts, budgets, accounts receivable and payable, tax returns, tax forms, credit card statements, and valuation analysis. (Jt. Exh. 33.) Sanson testified that the Union needed this information to decide whether or not Respondent was truly able to pay the Union's demands. (Tr. 288.) Specifically, Sanson wanted to know:

35 . . . how their money was used, how it was spent, you know, how they were doing with their customers, just a whole range of items that you need to understand and know for collective bargaining.

40 (Tr. 288.) Sanson explained that the Union needed Respondent's financial information to understand Respondent's financial status, given its claims of inability to pay. (Tr. 288.)

45 Sanson testified that the Union sought accounts receivable information to see how much money Respondent had coming in from customers. (Tr. 288.) The Union was pursuing the identity of customers lost to evaluate Respondent's claimed losses and to see if they were related to the price of coal or a loss of customers. (Tr. 289.) He asked for cash receipts and disbursement records to see if Respondent was "moving money around". (Tr. 290.) Sanson stated that the unit was Respondent's primary driver of revenue and he wanted to know if

Respondent could not afford to pay the unit because it was transferring money to other entities or financing other things. (Tr. 290.)

Sanson requested internally prepared monthly and annual financial statements and worksheets because he wanted to see how capital was coming in and being used. He sought internal documents that had not been “scrubbed” for the SEC. (Tr. 291.) He sought a breakdown of corporate office costs because, in other negotiations, he had seen large expenditures there. (Tr. 291-292.)

The Union’s request for personnel information encompassed information pertaining to both the bargaining unit and non-bargaining unit personnel. (Jt. Exh. 33, p. 286-287.) Sanson wanted to know compensation for Respondent’s officers and directors to make sure their compensation was in line with industry norms and that large sums weren’t being expended that could be used for unit employees. (Tr. 292.) Also, the Union had become aware that foremen, working alongside unit members, were receiving large bonus checks, some in excess of \$30,000. (Tr. 293.) Therefore, Sanson wanted to know about incentives for management. (Tr. 293.) Sanson was also concerned that while Respondent was claiming it could not afford the Union’s demands, it might have been expending large sums on management compensation. (Tr. 293.) Sanson also requested copies of all officer and director insurance policies to evaluate whether Respondent was purchasing extravagant policies or offering deferred compensation outside of industry norms. (Tr. 296-297.)

Regarding unit personnel, the Union requested a full accounting of unpaid wages and accrued vacation time. (Jt. Exh. 33, p. 286.) Sanson testified that unit members had asked if their unpaid wages and benefits would remain after the expiration of the parties’ contract. (Tr. 294.) Sanson further requested an accounting of unpaid retention bonuses because Sanson believed the Respondent was offering retention bonuses to attract employees. (Jt. Exh. 33, p. 286; Tr. 294.)

Sanson described the parties’ agreement as unusual because it did not contain a benefits matrix. (Tr. 297.) Sanson requested ERISA and other plan information because of the number of plans that were out there. (Tr. 297.) He also wanted to see if there were any profit sharing or bonus programs that might siphon money away from the bargaining unit. (Tr. 297.) Respondent has never advised the Union that any of the categories of requested documents did not exist. (Tr. 298.)

The Union requested other agreements that could potentially impact the bargaining unit. (Tr. 298.) The Union had requested sales and supply agreements to see if they were out of line with industry standards. (Tr. 298.) The Union also wanted to see Respondent’s pricing agreement to see how it was pricing its coal. (Tr. 299.) The Union sought contractor agreements because it believed that subcontractors were not safe. (Tr. 299.) The Union also sought joint venture and partnership agreements because the Union had, in the past, entered into agreements with companies that would lease the properties where the unit worked and one of the companies would say that the contract didn’t apply to them. (Tr. 299.) The Union was attempting to preserve its work jurisdiction by requesting these agreements. (Tr. 299.) The Union sought advertising agreements because coal companies have been aggressive in trying to recruit personnel in other states. (Tr. 301.) The Union wanted to see how much money Respondent was spending at out-of-state recruiting events. (Tr. 201.) The Union asked for copies of secrecy,

confidentiality, and nondisclosure agreements to see if some of its members were bound by them. (Tr. 302.)

The act of sending information request was not an act of bad faith according to Fagan and Sanson. (Tr. 128, 393.) The request was sent three months after announcement of the union's intention to bargain. (Tr. 128.) It was sent eight business days before the collective-bargaining agreement was set to expire. (Tr. 128.) The Union did not provide a time limit for complying with the request. (GC Exh. 1(e), Exhibit A; GC Exh. 33; Tr. 131-132, 390.) The Union did not and could not have known how many pages of documents would have been responsive to its requests. (Tr. 134.) A chart provided by Respondent indicates that 7300 pages of information was provided by April 9. (Tr. 517.) Respondent did not stop producing documents between March 19 and September 17 (the date that the complaint was filed). (Tr. 576-577.)

According to the General Counsel, Respondent was obliged to respond to 222 separate subcategories of information in the Complaint. (GC Exh. 1(e).) The Complaint also limited the breadth of the request to documents only pertaining to Respondent, and not to any of its affiliates. (GC Exh. 1(e).)

As information was received from Respondent, Sanson would look through it. (Tr. 436.) The information was then cataloged by the Union's Associate General Counsel, T.J. Baker. (Tr. 436.)

Respondent maintains it provided all documents furnished by its third-party providers. (Jt. Exhs. 45, 48, and 49.) While the providers may have had more information, Respondent did not possess it. The Union and General Counsel argue that Respondent did not comply or did not fully comply with the requests. In addition, the General Counsel alleges that Respondent unreasonably delayed in providing some of the requested information.

As soon as Respondent, through Gant, claimed poverty during negotiations, the Union asked to see its books. (Tr. 284.) The Union still seeks the following information. (Jt. Exh. 33.) I will address the parties' positions on the status of each request *ad seriatum*, in brackets:

### **Financial Materials**

1. Copies of all auditor's letters and opinions for the four (4) years prior to today. [Respondent has provided its public financial disclosures, Form 10-K, including auditor opinions.<sup>19</sup> (GC Exh. 12, p. 220; Tr. 621.) Chopin admitted that he did not disclose his communications with auditors to the Union. (Tr. 644-645.)]

2. Copies of all correspondence with each Company's public accountants for the four (4) years prior to today. [Respondent provided its Form 10-K in response to this request. (Tr. 621.)]

3. Copies of the following documents for the four (4) years prior to today (in Excel if possible):

<sup>19</sup> Respondent provided all of its public financial disclosures on March 26.

- Sales register [No response. (GC Exh. 12, p. 220.)]
- Payroll register [Partial response. (GC Exh. 12, p. 220.)]<sup>20</sup>
- General ledger [No response. (GC Exh. 12, p. 220.)]
- 5 • Accounts payable [No response. (GC Exh. 12, p. 220.)]
- Accounts receivable [No response. (GC Exh. 12, p. 220.)]
- Fixed assets register [No response. (GC Exh. 12, p. 220.)]
- Disbursement register [No response. (GC Exh. 12, p. 220.)]

10 [Respondent disclosed its Forms 8-K and 10-K in response to request 3. (Tr. 622.) In response to the requests for the disbursement register, Respondent has provided its public financial disclosures, including Forms 10-K and 8-Q. (Tr. 621-622.) Chopin admitted that Respondent maintains a sales ledger, general ledger, records of accounts payable and receivable, a fixed asset register, and disbursements register, none of which were disclosed to the Union. (Tr. 646-650.) He further admitted that Respondent's public filings, which were disclosed, contain only summaries, balances, and totals, and not the specific information sought by the Union. (Id.)]

20 4. A list of each Company's outstanding purchase orders and contracts. [Respondent supplied service agreements and invoices, some in redacted form, from Respondent's vendors between April 16 and February 10. (Jt. Exh. 51, 55, 57, 59, 61, 63, 65, 68, 70, 72, 75, 78, 108, 115, 116, 130, 131, 155, and 156.) Chopin was not aware of any document that shows all of Respondent's outstanding purchase orders. (Tr. 623.) Respondent did not provide outstanding

25 purchase orders and contracts. (GC Exh. 12, p. 221.)

30 5. Copies of [Respondent's] budget for the current year, including drafts and worksheets (in soft, not PDF, format). [Respondent supplied its Form 8-K in response to this item. (Tr. 624.) Respondent did not comply with this request. (GC Exh. 12, p. 220.)]

35 6. Identification of customers lost by each Company for the four (4) years prior to today. [Chopin testified that Respondent had not lost any customers in the prior 4 years. (Tr. 624.) There is no evidence that the Union was ever made aware of this fact prior to the hearing.]

40 7. Copies of all tax audits or deficiency reports and a description of any open matters with tax authorities for each Company. [Chopin testified that no documents exist that are responsive to this request. (Tr. 624.) There is no evidence that the Union was ever made aware of this prior to the hearing.]

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<sup>20</sup> Respondent provided its payroll registers on a rolling basis to the Union between May 27 and September 1. (Jt. Exhs. 73, 74, 76, 77, 79, 80, 98, 99, 100, 101, 109, 110, 113, 114, 117, 118, 122, 123, 127, 129, 137, and 138.) Charts of year-to-date earnings and deductions do not include employee names, only employee ID numbers. Id. Moore provided payroll registers. (Tr. 734.)



8. Copies of all tax assessment documents from any taxing authority for each Company for the four (4) years prior to today. [Respondent provided its Forms 10-Q and 10-Q in response to this request. (Tr. 625.) On June 14 and 17, Respondent provided its state and federal tax returns to the Union. (Tr. 627.) The General Counsel maintains that Respondent did not provide any tax assessments from any taxing authority and that Respondent did not explain the delay in providing its tax returns. (GC Brf., Att. A, p. iv.)]

9. Detailed accounts receivable listing by date for all customers as of today including, but not limited to, a description of what steps each Company is taking to collect these amounts. [Respondent provided its Forms 10-Q and 10-K in response to this item. (Tr. 625.) The General Counsel asserts that Respondent did not provide a response to this item. (GC Brf., Att. A, p. iv.)]

10. Detailed accounts receivable aging . . . as of today (in Excel if possible). [Respondent provided its Forms 10-Q and 10-K in response to this item. (Tr. 626.) The General Counsel asserts that Respondent did not provide a response to this item. (GC Brf., Att. A, p. iv.)]

11. Detailed accounts payable aging as of today (in Excel if possible) [Respondent provided its Forms 10-Q and 10-K in response to this item. (Tr. 626.) The General Counsel asserts that Respondent did not provide a response to this request. (GC Brf., Att. A, p. iv.)]

12. Detailed cash receipts and disbursements records, including wire transfers, . . . the four (4) years prior to today. [Respondent provided its Forms 10-Q and 10-K in response to this item. (Tr. 627.) The General Counsel asserts that Respondent did not comply with this request. (GC Brf., Att. A, p. iv.)]

13. Detailed fixed asset and depreciation schedules/balances . . . as of today. [Respondent provided its Forms 10-Q and 10-K in response to this item. (Tr. 625.) The General Counsel asserts that partially responded with depreciation and depletion totals contained in the Form 10-K, but that the information was not current as of the date it was provided. (GC Brf., Att. A, p. v.)]

14. Accounting of all furniture, fixtures and equipment (fixed assets) at each Company's facility and an accounting of the disposition of any assets removed from the facility for the four (4) years prior to today. [Respondent provided its Form 10-K in response to this item. (Tr. 627.) The General Counsel asserts that Respondent did not provide a response. (GC Brf., Att. A, p. v.)]

15. Internally prepared monthly and annual financial statements/worksheets for the four (4) years prior to today. Respondent provided its Forms 8-K and 10-Q in response to this item. (GC Exh. 12, p. 222, Tr. 627.) [The General Counsel asserts that Respondent did not fully provide a response, as it did not provide monthly reports or internal reports. (GC Brf., Att. A, p. v.); Tr. 288.)]

16. Copies of the Company's Federal, State and Local tax returns for each Company for the 4 years prior to today including any extensions, claims for refunds or tax credits. [Respondent provided copies of its state and federal tax returns. (GC Exh. 12, p. 222; Tr. 627.) The General Counsel asserts that Respondent did not fully comply with this request because it did not provide local tax returns. (GC Brf., Att. A, p. vi.)]

17. Any and all appraisals of all real property owned by each Company for the four (4) years prior to today. [Chopin did not supply any information regarding this request because he is not responsible for it. (Tr. 628.) He did not know who would be responsible. (Tr. 628.) However, he testified that in the ordinary course of business, Respondent would maintain such records. (Tr. 662.)]

18. Actual vs. budget results for each week for the four (4) years prior to today. [Respondent does not track its budget weekly and, thus, would not have any documents to provide in response to this request. (Tr. 628, 710.) There is no evidence that the Union was ever told, prior to the hearing, that no such records exist.]

19. A copy of the most recent payroll. Respondent provided quarterly payroll records between May 25 and August 11. (Jt. Exh. 71, 73, 74, 76, 77, 79, 80, 98, 99, 100, 101, 109, 110, 113, 114, 117, 118, 122, and 123.) Moore testified that this request was duplicative of request 3 for a payroll register. (Tr. 735-736.) The General Counsel alleges that this production was not timely as Respondent did not explain why it took over two months to produce the first payroll register. (GC Brf., Att. A, p. vi.)]

20. Copies of W-2's, W-3's and 1099's for the three (3) years prior to today. [Chopin testified that Respondent provided Forms 10-Q, 10-K, W-2, and 1099. (Tr. 628.) Moore testified that she did not provide copies of W-2s and W-3 as requested, as she stated that the payroll reports would have included the same information. (Tr. 736.) The General Counsel asserts that Respondent has not provided these documents. (GC Brf., Att. A, p. vi.)]

21. Copies of all credit card statements for the two (2) years prior to today. [Respondent provided its Forms 10-Q and 10-K in response to this item. (Tr. 627.) The General Counsel asserts that Respondent did not comply with this request, despite Chopin's testimony that Respondent maintains a company credit card and bank statements for the card. (Tr. 663; (GC Brf., Att. A, p. vi.)]

22. Detailed list and supporting documents (i.e. invoices) of all capital expenditures . . . for the four (4) years prior to today. [Respondent provided its Forms 10-Q and 10-K and its investor presentation in response to this item. (Tr. 629.) The General Counsel asserts that Respondent partially responded with its SEC filings but did not provide a detailed list of supporting documents of all capital expenditures. (GC Brf., Att. A, p. vii.)]

23. Any valuation or liquidation analysis prepared by each Company or its outside accountants or other advisors for the four (4) years prior to today. [Chopin testified that no documents exist responsive to this request. (Tr. 629, 711.) There is no evidence that the Union was ever made aware of this prior to the hearing.]

24. All financial projections with respect to any assets of any Company, including mine by mine level financial/performance data (soft not pdf format) for the four years prior to today. [Chopin testified that no documents exist responsive to this request. (Tr. 630, 711.) There is no evidence that the Union was ever made aware of this prior to the hearing. Chopin also testified that Respondent performs performance analyses that were not provided to the Union. (Tr. 711.)]

25. Any preference analysis indicating against which parties' preferences, including any defenses. [Chopin testified that no documents exist responsive to this request. (Tr. 630, 712.) There is no evidence that the Union was ever made aware of this prior to the hearing.]

26. Any business plans or financial models (in a soft version - not pdf) prepared by or on behalf of each Company or on a consolidated basis for the four (4) years prior to today. [Respondent provided its 4th quarter earnings release in response to this item. (Tr. 631.) The General Counsel asserts that Respondent did not comply with this request. (GC Brf., Att. A, p. viii.)]

27. A detailed breakdown of all Capital Expenditures planned in 2021, 2022, 2023, 2024 and 2025. [Respondent provided its 4th quarter financial reports, which would include the following year's budget, in response to this item. (Tr. 631.) The General Counsel asserts that Respondent's disclosure did not satisfy the information request. (GC Brf., Att. A, p. ix.)]

28. Detailed breakdowns of a royalty payments and documents associated with the agreements. [Respondent disclosed its Form 10-K in response to this request. (Tr. 631.) Respondent did not disclose additional documents because it determined they were confidential. (Tr. 643.)]

29. Most recent detailed mine maps and reserve maps with all future mine plan development. [Respondent disclosed this information on June 11. (Jt. Exh. 82.) The General Counsel asserts that this disclosure was delayed and that Respondent did not explain reason for the 3-month delay. (GC Brf., Att. A, p. ix.)]

30. Detailed breakdown of payments made to vendors. [Respondent provided its Forms Form 10-K, Form 10-Q, and earnings release in response to this request. (Tr. 632.) Respondent maintains that between June 15 and February 10, 2022, it filed 115 sets of copies of daily labor and equipment reports and/or invoices. The General Counsel asserts that this disclosure was delayed and that Respondent failed to provide a detailed breakdown of payments to vendors. (GC Brf., Att. A, p. ix.)]

31. Breakdown of corporate office costs. [Respondent provided its Forms 10-Q and 10-K, and financial statements and earnings release in response to this request. (Tr. 632.) Chopin testified that corporate office costs are a component of selling general and administrative costs, broken out separately in the statement of operations in those statements. (Tr. 632.) The General Counsel asserts that Respondent did not provide this information. (GC Exh. 12, p. 224.) According to the General Counsel, overall administrative costs do not separately disclose any corporate office costs. (Jt. Exh. 38, p. 1922, 1961; (GC Brf., Att. A, p. x.)]

32. Breakdown of Transloading facility costs. [On March 26, Respondent provided its form 10-Q and 10-K and other public filings in response to this request. (Tr. 632-633.) Specifically, Chopin testified, the management discussion sections of those filings have a breakout of the cost of sales and presents sales volumes. (Tr. 633.) The General Counsel states that those filings have no specific information concerning the costs associated with a transloading facility. (Jt. Exh. 18, p. 1922, 1961; (GC Brf., Att. A, p. x.)]

33. Breakdown of rebuild and repair shop costs. [On March 26, Respondent provided its form 10-Q and 10-K and other public filings in response to this request. (Tr. 633.) The General Counsel states that those filings have no specific information concerning the costs associated with rebuild and repair shop costs. (GC Brf., Att. A, p. x.)]

34. List of contractors working in the mine. Please provide contract company name, number of employees working at the operations. [Between April 16 and September 27, Respondent provided 20 responses and 62 general service agreements showing the names of some contractors and between June 15 and February 10, 2022, provided 115 sets of daily labor and equipment reports and redacted invoices from contractors. (Jt. Exhs. 84, 85, 86, 96, 97, 102, 103, 104, 105, 111, 119, 120, 121, 124, 125, 126, 128, 132, 133, 134, 139, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, , 205, 206, 207, 108, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236.) On May 21, Respondent provided a one page spreadsheet entitled “Average Daily Contractors vs Average Daily Hourly Workforces demonstrative” without any underlying documents (Jt. Exh. 69, p. 8330.) The General Counsel argues that Respondent has not timely complied with this request. (GC Brf., Att. A, p. x.) Arguing further the General Counsel states that Respondent did not explain the 11-month delay. (Id.) The General Counsel also argues that not all general service agreements have been disclosed, as there are no such agreements with Warrior & Associates, a company for which respondent has produced invoices. (Jt. Exh. 181-236; GC Brf., Att. A, p. x-xi.)]

35. Breakdown of payments made to contractors performing work at the operations. [Between April 16 and September 27, Respondent provided 20

responses and 62 general service agreements showing the names of some contractors and between June 12 and February 10, 2022, Respondent provided 115 sets of daily labor and equipment reports and redacted invoices from these contractors. (GC Brf at App. G and H; Tr. 633.) Although Respondent has partially complied with this request, it delayed in providing the information. (GC Brf at App. A, p. xi.) And the General Counsel argues that not all general service agreements have been disclosed, as there are no such agreements with Warrior & Associates, a company for which respondent has produced invoices. (Jt. Exh. 181-236; (GC Brf., Att. A, p. xi.)]

### **Personnel**

1. Identify all officers and directors serving at any time since the formation of each Company to the present. In addition, provide all compensation paid to the officers and directors. [In her brief, the General Counsel maintains that Respondent satisfied this request with its disclosure of March 26.<sup>21</sup> (GC. Brf. App. B, p. xii.)]

2. List of all employees of each Company setting forth position, location, duties and functions, and annual compensation including bonus, deferred compensation and other benefits. [In her brief, the General Counsel maintains that Respondent satisfied this request with its March 24 response.<sup>22</sup> (GC Brf. App B., p. xii.)]

3. Accounting of all unpaid wages and accrued vacation for each Company as of today. [Union members asked if they would be paid for accrued vacation time when the contract expired. (Tr. 293.) On August 10, 11, 17, 19, 31 and September 1, Respondent provided year-to-date earnings, hours, leave, holidays, wages, overtime, bonuses, 401(k) contributions, healthcare, insurance, taxes, etc. for 2016-2019. Moore provided charts of year-to-date earnings and deductions for bargaining unit employees. (Tr. 737.) The General Counsel alleges that Respondent did not satisfy this request as the earnings report does not reflect unpaid wages. (GC Brf. App. B, p. xiii.)]

4. List of all participating employees and an accounting of any unpaid retention obligations for each Company as of today. [Sanson wanted to know if Respondent was paying retention bonuses to employees and the amount of any

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<sup>21</sup> The Charging Party maintains it was entitled to similar information for other companies. (GC Exh. 12, p. 227.) However, the General Counsel has limited the complaint allegations to information for Respondent. The Charging Party makes a similar demand in regard to request 2 in this section. (GC Exh. 12, p. 227.) The General Counsel under Sec. 3(d) of the Act has final authority over the issuance and prosecution of complaints before the Board. Counsel for the General Counsel has control over the complaint in an unfair labor practice proceeding such as this matter. The General Counsel in the complaint and on brief has made it quite clear what her theories of violations are under the complaint and are not. Where the Charging Party asserts a theory of violations which go beyond the reach of the complaint as defined and limited by the General Counsel, its arguments must fail on procedural grounds without reaching the substantive merits of their arguments. In addition, the General Counsel, in her brief, withdraws this complaint allegation. (GC Brief, p. 2.)

<sup>22</sup> In her brief, the General Counsel withdraws this complaint allegation. (GC Brf. p. 2.)

unpaid retention bonuses. (Tr. 294.) It could be part of the pot of money available for members in bargaining. (Tr. 294.) On August 10, 11, 17, 19, 31 and September 1, Respondent provided year-to-date earnings, hours, leave, holidays, wages, overtime, bonuses, 401(k) contributions, healthcare, insurance, taxes, etc. for 2016-2019. The General Counsel alleges that Respondent did not satisfy this request as the earnings report does not reflect any retention obligations. (GC Brf. App. B, p. xiii.) In addition, if no such documents exist, there is no evidence that the Union was ever made aware of this fact.]

5. A list of all loans, transfers or other arrangements (including guaranty and indemnification arrangements) to or with the officers, members, stockholders, directors, managers, consultants and employees. [On March 26, Respondent provided its public disclosures, shareholder statements, etc. The General Counsel alleges that Respondent did not satisfy this request as the public disclosures do not reflect any loans, transfers, or other arrangements as requested. (GC Brf. App. B, p. xiii.) In addition, if no such documents exist, there is no evidence that the Union was ever made aware of this fact.]

6. Copies of any documents relating to any other transactions between each Company or any of its subsidiaries and any member, director, officer, manager, owner, employee or consultant of each Company or any subsidiary. [On March 26, Respondent provided its public disclosures, shareholder statements, etc. The General Counsel alleges that Respondent did not satisfy this request as the public disclosures do not reflect any loans, transfers, or other arrangements as requested. (GC Brf. App. B, p. xiv.) In addition, if no such documents exist, there is no evidence that the Union was ever made aware of this fact.]

7. Copies of any and all professional or officer and director insurance policies since the formation of each Company to the present. [On March 26, Respondent provided its public disclosures, shareholder statements, etc. The General Counsel alleges that Respondent did not satisfy this request as the public disclosures do not reflect any officer or director insurance policies. (GC Brf. App. B, p. xiv.) In addition, if no such documents exist, there is no evidence that the Union was ever made aware of this fact.]

8. List of all Secured Lenders including the primary contact information for each group. [On March 26, Respondent provided its public disclosures, shareholder statements, etc. The General Counsel alleges that Respondent did not satisfy this request as the public disclosures do not identify any secured lenders. (GC Brf. App. B, p. xiv.)] In addition, if no such documents exist, there is no evidence that the Union was ever made aware of this fact.]

### **ERISA and Other Plans**

1. Copies of pension, health, deferred compensation, profit-sharing plans or programs, bonus, retirement, incentive compensation, severance and other employee benefit plans or agreements. [On March 29 and 31, Respondent provided copies of its health plans, benefit plans, FSA, disability benefits, EAP,

claims and appeals, and COBRA benefit plan documents. The General Counsel argues that Respondent has not provided any severance plans or other incentive plans in response to this request. (GC Brf. App. C, p. xv.) There is no evidence that Respondent has advised the Union that any requested plans do not exist.]

2. All actuarial reports relating to any plan referred to in the preceding request. [On March 29 and 31, Respondent provided copies of its health plans, benefit plans, FSA, disability benefits, EAP, claims and appeals, and COBRA benefit plan documents. The General Counsel argues that Respondent has not provided any documents responsive to this request. (GC Brf. App. C, p. xv.) Respondent is self-insured and none of the plan documents disclosed contain actuarial reports. There is also no evidence that Respondent has advised the Union that no such documents exist.]

3. Copies of all Form 5500. [On March 29, Respondent provided copies of Forms 5500 for 2016-2019. The General Counsel asserts that Respondent has not fully responded because it has not provided any Form 5500 for 2020 or 2021. (GC Brf. App. C, p. xv.)]<sup>23</sup>

4. List of any withdrawals from plan assets. [On March 26, Respondent provided all of the Company's public disclosures, shareholder statements, etc. Respondent is self-insured and none of the public filings or other documents contain withdrawals from plan assets. (GC Brf. App. C, p. xv.) If no such documents exist, there is no evidence that Respondent advised the Union of this fact.]

5. Copies of any agreements entered into with other companies related to health care benefit plans. [On April 12, Respondent provided the 2017-2020 COBRA benefit Guides. On April 15, 19, and 21, Respondent provided its Stop Loss Insurance Policies and related schedules, applications, and quotations with Blue Cross Blue Shield. (Jt. Exh. 50, 52, and 54.) Although Respondent has partially complied with this request by providing the Stop Loss agreements and COBRA benefit guides, it has not provided other health care related agreements with third party providers. (GC Brf. App. C, p. xvi.)]

6. Medical costs for 2015, 2016, 2017, 2018, 2019, 2020 and 2021 year to date. [On April 2, 3, and 5, Respondent provided the 2019, 2020, and 2021, high dollar reports with monthly summaries of high dollar individuals/treatments for unit employees. (Jt. Exh. 43, 44, and 45.) The Union believes that Respondent partially complied with this request by providing the high dollar reports, COBRA rates, summary metrics for Blue Cross Blue Shield for unit employees, medical clinic data, and summary of claims paid. (GC Exh. 12, p. 233-234.) Gant testified that she believed that Dolores Moore, Respondent's director of human resources, asked Respondent's third party administrator, Blue Cross Blue Shield to furnish health care information requested by the Union. (Tr. 226.) Moore testified that she contacted Creativa Associates, Respondent's health and welfare

<sup>23</sup> In her brief, the General Counsel withdraws this complaint allegation. (GC Brf. p. 2.)

insurance broker. (Tr. 729.) Creativa then made an effort to gather responsive documents from Respondent's other third party administrators, Blue Cross Blue Shield, CVS Caremark, VSP, Prudential, and American Behavioral. (Tr. 729, 733.) Moore herself only dealt with Creativa. There is no evidence that Respondent ever spoke directly to its third party administrators to gather more information after the Union identified shortcomings in the disclosures. The General Counsel asserts that while Respondent has furnished some of the requested information, it has failed to establish that it has made good faith efforts to secure the information from its TPAs. (GC Brf. App. C, p. xvi.)]

7. Drug costs for 2015, 2016, 2017, 2018, 2019, 2020 and 2021 year to date. [On April 5, 8, and 9, Respondent provided copies of its 2016-February 2021 prescription drug claims details for bargaining unit employees. (Jt. Exh. 45, 48, and 49.) In her brief, the General Counsel states that Respondent satisfied this information request with its April responses. (GC Brf. App. C, p. xvii.)]

8. Admin costs for 2015, 2016, 2017, 2018, 2019, 2020 and 2021 year to date. [On April 28, Respondent provided a breakdown of 2019 and 2020 medical clinical data, including annual costs. (Jt. Exh. 58.) According to the General Counsel, Respondent did not provide any response for 2016, 2017, and 2018, and the medical clinical data does not show administrative costs. (Jt. Exh. 58.) (GC Brf. App. C, p. xvii.)]

### **Other Agreements**

1. Copies of all marketing agreements, including sales agent or representative, dealer and distributor agreements, consignment and pricing agreements. [On March 26, Respondent provided all public financial disclosures relevant to this request. Respondent will not release its coal sales contracts because they are confidential, contain trade secrets, and would negatively impact customers. (Tr. 634.) Respondent has not discussed a non-disclosure agreement or other accommodation with the Union. Therefore, the GC and Union assert that respondent has not provided the requested information. (GC Exh. 12, p. 234; GC Brf. App. D, p. xviii.)]

2. Copies of all extant government contracts and subcontracts, if any. [On March 26, Respondent provided all of Respondent's public financial disclosures, shareholder statements, etc. Respondent has not provided any information pursuant to this request. Respondent's public financial documents do not identify government contracts. If such documents do not exist, there is no evidence that Respondent provided this information to the Union. (GC Brf. App. D, p. xviii.)]

3. Copies of all supply agreements (list outstanding sales commitments by sales order/invoice showing amount). [On March 26, Respondent provided all of Respondent's public financial disclosures, shareholder statements, etc. Respondent will not release its coal sales contracts because they are confidential, contain trade secrets, and would negatively impact customers. (Tr. 634.) Respondent offered to discuss a non-disclosure agreement at bargaining but never



followed through. Therefore, the GC and Union assert that Respondent has not provided the requested information. (GC Exh. 12, p. 234; GC Brf. App. D, p. xviii.)]

5           4.       Copies of all extant purchase and requirements contracts. (List outstanding  
purchase commitments by purchase order showing amount). [On March 26,  
Respondent provided all of Respondent's public financial disclosures, shareholder  
statements, etc. Respondent has not provided any information pursuant to this  
10       request. Respondent's public financial documents do not identify purchase and  
requirement contracts. If such documents do not exist, there is no evidence that  
Respondent provided this information to the Union. (GC Exh. 12, p. 234; GC  
Brf. App. D, p. xix.)]

15           5.       Copies of all extant joint venture and partnership agreements. [On March  
26, Respondent provided all of Respondent's public financial disclosures,  
shareholder statements, etc. Respondent has not provided any information  
pursuant to this request. Respondent's public financial documents do not identify  
joint venture or partnership agreements. If such documents do not exist, there is  
20       no evidence that Respondent provided this information to the Union. (GC Exh.  
12, p. 234; GC Brf. App. D, p. xix.)]

25           6.       Copies of all extant franchise agreements. [On March 26, Respondent  
provided all of Respondent's public financial disclosures, shareholder statements,  
etc. Respondent has not provided any information pursuant to this request.  
Respondent's public financial documents do not identify franchise agreements. If  
such documents do not exist, there is no evidence that Respondent provided this  
information to the Union. (GC Exh. 12, p. 234; GC Brf. App. D, p. xix.)]

30           7.       Copies of all extant management, service and tax sharing agreements. [On  
March 26, Respondent provided all of Respondent's public financial disclosures,  
shareholder statements, etc. Respondent provided copies of general service  
agreements between April 12 and September 27. Respondent has partially  
complied with this request by providing the general service agreements.  
Respondent did not explain the delay in producing these documents. Also,  
35       Respondent has not explained why the production was made over 5 months.  
Respondent has not produced, management service agreements or tax sharing  
agreements. If such documents do not exist, there is no evidence that Respondent  
provided this information to the Union. (GC Exh. 12, p. 234; GC Brf. App. D, p.  
xx.)]

40           8.       Copies of all performance guarantees and bonds. [On March 26,  
Respondent provided all of Respondent's public financial disclosures, shareholder  
statements, etc. Respondent has not provided any information pursuant to this  
request. Respondent's public financial documents do not identify performance  
45       guarantees and bonds. If such documents do not exist, there is no evidence that  
Respondent provided this information to the Union. (GC Exh. 12, p. 234; GC  
Brf. App. D, p. xx.)]

9. Copies of all advertising agreements. [Respondent may claim it asked the Union to explain the relevancy of this request at bargaining and it failed to do so. Respondent has not provided any information pursuant to this request. Respondent's public financial documents do not identify advertising agreements. If such documents do not exist, there is no evidence that Respondent provided this information to the Union. (GC Exh. 12, p. 234; GC Brf. App. D, p. xx.)]

10. Copies of all secrecy, confidentiality and nondisclosure agreements with employees or third parties. (Please indicate any employees not covered by such agreements.) [Respondent may claim it asked the Union to explain the relevancy of this request at bargaining and it failed to do so. Respondent has not provided any information pursuant to this request. Respondent's public financial documents do not identify any such documents. If such documents do not exist, there is no evidence that Respondent provided this information to the Union. (GC Exh. 12, p. 234; GC Brf. App. D, p. xxi.)]

11. Copies of all commission, brokerage and agency agreements between each Company and any third party. [Respondent may claim it asked the Union to explain the relevancy of this request at bargaining and it failed to do so. Respondent has not provided any information pursuant to this request. Respondent's public financial documents do not identify any such documents. If such documents do not exist, there is no evidence that Respondent provided this information to the Union. (GC Exh. 12, p. 234; GC Brf. App. D, p. xxi.)]

12. Copies of all contracts outside the ordinary course of business. [Respondent may claim it asked the Union to explain the relevancy of this request at bargaining and it failed to do so. Respondent has not provided any information pursuant to this request. Respondent's public financial documents do not identify any such documents. If such documents do not exist, there is no evidence that Respondent provided this information to the Union. (GC Exh. 12, p. 234; GC Brf. App. D, p. xxi.)]

13. Samples of forms of purchase orders and invoices. [Between April 12 and September 27, Respondent provided 62 general service agreements from its contractors/vendors. Respondent has not provided any information pursuant to this request. Respondent has not produced any sample forms. If such documents do not exist, there is no evidence that Respondent provided this information to the Union. (GC Exh. 12, p. 234; GC Brf. App. D, p. xxi.)]

14. Copies of all indemnification contracts and similar arrangements for officers and directors. [On March 26, Respondent provided all of Respondent's public financial disclosures, shareholder statements, etc. Respondent has not provided any information pursuant to this request. Respondent's public financial documents do not identify contracts for officers and directors. If such documents do not exist, there is no evidence that Respondent provided this information to the Union. (GC Exh. 12, p. 234; GC Brf. App. D, p. xxii.)]

15. Copies of all Agreements with affiliates, management or key personnel (including any transactions during the last four (4) years with any of them and any property or assets of any of them used by each Company or of each Company used by any of them). [On March 26, Respondent provided all of Respondent's public financial disclosures, shareholder statements, etc. Respondent has not provided any information pursuant to this request. Respondent's public financial documents do not identify agreements with affiliates, management, or key personnel. If such documents do not exist, there is no evidence that Respondent provided this information to the Union. (GC Exh. 12, p. 234; GC Brf. App. D, p. xxii.)]

16. Please identify each member of the bargaining unit by name and job classification, and for each such individual, provide the following information: [sic]. [In her brief, the General Counsel states that Respondent has satisfied this request. (GC Brf., App. D, p. xxii.)]<sup>24</sup>

17. Provide the job description for each classification during the term of the contract. [In her brief, the General Counsel indicates that Respondent has satisfied this request but did not explain the five month delay in providing the information. (GC Brf., App. D, p. xxii.)]

#### **ATTACHMENT A – ADDITIONAL HEALTH CARE DATA REQUESTS**

The UMWA is requesting utilization data for an experience period over the last four years (2016-2020). Please provide a summary page. Additionally, we request all available data for 2021. This request is for data that, at a minimum, will show the following information:

#### **DRUGS**

1. Reviews of health plan by claim administration, reviews of drug utilization and formulary management.
2. Mail-Order usage and costs
3. Chain Pharmacy Usage and costs
4. Independent Pharmacy usage and costs
5. Non-Retail Provider e.g. Hospitals usage and costs
6. Top single source generics
7. Top 50 brand drugs by cost and number of scripts
8. Top 50 generic drugs by cost and number of scripts
9. Top single source brand drugs and their closest competitors- price paid at pharmacy and price paid at mail-order.
10. Top 50 prescription drugs by savings (rebate \$)
11. Top 15 Therapeutic Classes ranked by payments
12. Network or retail pharmacy payment rates negotiated by the Employer /Providers and savings associated.

<sup>24</sup> In her brief, the General Counsel withdraws this complaint allegation. (GC Brf. p. 2.)

	13.	Cost of Part B drugs
	14.	Dispensing Fees
	15.	Brand drug inflation
	16.	Generic drug inflation
5	17.	Cost sharing savings associated with plan
	18.	Average day supply
	19.	Total number of Rx's
	20.	Total Ingredient Costs
	21.	Total contract fees
10	22.	Total Pharmacy Reimbursement
	23.	Average Co-Pay per Rx
	24.	Total Co-Pay Amount
	25.	Total Rx's Per Member Per Year (PMPY)
	26.	Total Rx's Per Member Per Month (PMPM)
15	27.	Pharmacy Reimbursement per Rx
	28.	Pharmacy Reimbursement PMPY
	29.	Pharmacy Reimbursement PMPM
	30.	Amount paid per Rx
	31.	Amount paid per days supply
20	32.	Amount paid PMPY
	33.	Amount paid PMPM
	34.	Ingredient cost per Rx
	35.	Ingredient cost per 30 days
	36.	Ingredient Cost PMPY
25	37.	Ingredient Cost PMPM
	38.	Utilizing members
	39.	% utilizing members
	40.	% DAW
	41.	% Generic Dispensed When Available
30	42.	Generic percentage
	43.	Amount paid/Generic Days Supply
	44.	Mail-Order %
	45.	Mail-Order % Days Supply
	46.	Specialty Amount Paid
35	47.	Specialty % of amount paid
	48.	Number of member education programs
	49.	Prescriber education programs
	50.	Demographics by Married and Single
	51.	All administrative costs PMPY
40	52.	All administrative costs PMPM
	53.	Date Last RFP was sent to providers
	54.	Number of Providers RFP was sent to
	55.	Cost comparison studies per provider
	56.	Medicare and PBM Prescription Drug Rebates per year
45	57.	Medicare subsidy amounts per year
	58.	The number of surcharges applied on non-formulary drugs by member
	59.	The total surcharges associated with non-formulary drugs

- 60. Excluded drugs and drug classes
- 61. Cost per prior authorization
- 62. Prior authorization program savings
- 63. Cost of Benefit Plan Consultations
- 5 64. Cost to adjudicate electronic claims
- 65. Cost for call center services
- 66. Clinical appeal costs
- 67. Non-Clinical Appeal costs
- 68. Writing Plan document costs
- 10 69. RDS rebate amounts (if any)

### **HEALTH CARE**

- 1. ER Visits PMPM
- 15 2. ER Visits PMPY
- 3. Total Emergency Room Visits Per Year
- 4. All outreach programs and the savings associated with them.
- 5. Provide number of covered employees and total participants and the average monthly costs for the following benefits.
- 20 6. Hospital Benefits
- 7. Hospital benefits PMPM
- 8. Hospital benefits PMPY
- 9. Physician Services
- 10. Physician Services PMPM
- 25 11. Physician Services PMPY
- 12. Physician Visits
- 13. Physician Visits PMPM
- 14. Physician Visits PMPY
- 15. Average cost per service
- 30 16. Co-Pays
- 17. Co-Insurance
- 18. Deductibles
- 19. Medicare Savings
- 20. Total service payments
- 35 21. Admin fees for physician and hospital services
- 22. Admin fees for physician and hospital services (% of Claims)
- 23. Lab tests PMPY and PMPM
- 24. X-ray costs PMPY and PMPM
- 25. Inpatient Facility-Visits, Services, Charges, payments, Average Length of Stay
- 40 26. Outpatient Facility- Visits, Services, Charges, payments, Average Length of Stay
- 27. All administration fees for medical, vision, prescription, dental for each year
- 45 28. Stop Loss premiums per member per month
- 29. Stop Loss threshold and amount paid by insurer each year

**VISION**

- 5
1.

Vision Care Services
2.

Vision Cost PMPM
3.

Vision Cost PMPY
4.

Admin fees for vision care
5.

Admin fees for vision care (% of Claims)
6.

Total cost per year

10

**Dental**

- 15
1.

Dental Care Services
2.

Dental Cost PMPM
3.

Dental Cost PMPY
4.

Admin fees for Dental care
5.

Admin fees for Dental care (% of claims)
6.

Total cost per year

20

**Life and AD&D Insurance**

1.

Cost PMPM
2.

Cost PMPY
3.

Total cost to company in each year

25

**Ambulance Services**

1.

All health care transportation services
2.

All network contracts and costs associated with each one
3.

Total cost per year

30

**Durable Medical Equipment**

- 35
1.

DME contracts and savings
2.

DME Costs PMPY
3.

DME Costs PMPM
4.

DME broken out by charges, payments, savings, average payment, average charge, average day supply.

40

**Other Data**

- 45
1.

Census of age, gender, active, retired and cost relevant to health and prescription drugs.
2.

Network Savings- Inpatient Facility, Outpatient Facility, Professional, Drug and Total.
3.

Non-Participating Network Costs- Inpatient Facility, Outpatient Facility, Professional, Drug and Total.

4. Member payment range report- Payments, % of Payments, Cumulative % of Payments, members, % of Average Enrolled Members, Cumulative % of Averaged Enrolled Members.
5. Inpatient Facility utilization by Diagnostic Category- Please sort by payments and other items such as days, admits severity index, etc.
6. Inpatient Facility- Please provide top 20 by payments, admits, days, services, % of payments.
7. Outpatient Facility Utilization by Type of Service- Please sort by payments and other items such as services, payment/member, etc.
8. Outpatient Facility- Please provide top 20 by payments, admits, days, services, % of payments.
9. Professional Utilization by type of service- Please sort by payment, services, etc.
10. Top Professional Providers Ranked by Payment- Please provide services, payment/member, etc.
11. High-Cost Report for Member Payments over \$25,000, \$50,000, \$75,000 and \$100,000.
12. PPO or other Network Access Fees per employee per month.
13. Disease management savings and cost per member.
14. Medical and Psychiatric Case Management
15. Non-Network Hospital/Physician Negotiations and Discounts
16. Subrogation Recovery savings and % of savings guaranteed by contract
17. Hospital Bill Audit savings
18. Clinical Review/Audit results
19. Savings from diabetes education programs
20. Savings associated with nurse advice line or similar program.
21. Savings from wellness program early detection
22. Number of healthcare related disputes in each year and the cost
23. Member payments by prescription and medical each year.
24. Cobra premiums and a detailed description on how each different class is calculated (example Single, Family, Employee plus one, etc.)
25. Detailed description of Step Therapy programs and savings associated
26. Number of Urgent Care or similar non-emergency care facilities is the geographical area.
27. Cost per visit per employee at Urgent Care or similar facilities.
28. Plan design matrix
29. Copy of all benefit Plan Documents
30. Deductibles, coinsurance, Co-payments, Maximum Out Of Pockets for each category of Employee
31. Total health care cost per employee per year.
32. Total cost of UMWA employee per year by mine.
33. Total medical and prescription costs
34. Rebate and discount amounts

Sanson testified that he sought information regarding Respondent's benefit plans in order to see whether potential cost savings existed. (Tr. 307.) By finding cost savings, Sanson hoped to free up additional funds for further wage and benefit increases for the bargaining unit. (Id.) The General Counsel alleges that Respondent has not complied with or not fully complied with these requests. (GC Brf. App. E, p. xxiv to li.)

#### **ATTACHMENT B- Other Supplemental Info Requests**

1) For calendar years 2016-2020 through the present, provide a quarterly distribution of production hours and employment for bargaining unit employees,

Distribution of hours should be provided on the following basis for both full-time and per diem Employees separately:

- A) Straight time hours
- B) Daily overtime hours
- C) Saturday hours
- D) Sunday hours
- E) Holiday hours
- F) Day shift hours
- G) Evening shift hours
- H) Midnight shift hours

2) For calendar years 2016-2020 through the present, provide the distribution of employees by job classification and wage rate for bargaining unit employees.

3) Provide the job description including duties and minimum qualifications for each job classification for bargaining unit employees.

4) For calendar years 2016-2020 through the present, provide a distribution of employees by age for bargaining unit employees.

5) For calendar years 2016-2020 through the present, provide a distribution of employees by years of continuous service for bargaining unit employees.

6) For calendar years 2016-2020 through the present, provide a distribution of annual earnings by employees for bargaining unit employees.

7) For calendar years 2016-2020 through the present, provide a distribution of employees by sex for bargaining unit employees.

8) Provide a distribution of employees on lay-off by years of continuous service with the employer as of December 31st for the years 2016-2020 through the present for bargaining unit employees. (this should include time spent with the previous employer before the bankruptcy)

9) For calendar years 2016-2020 through the present, provide the number of vacation/paid time off days/hours accrued per each bargaining Unit Employee.

10) For calendar years 2016-2020 through the present, provide the following work force turnover information for bargaining unit employees

- A) Number of retiring employees
- B) Number of voluntary quits
- C) Number of involuntary terminations
- D) Number of recalls from layoff



- E) Number of new hires
  - i) With experience
  - ii) Without experience

- 5            11) For calendar years 2016-2020 through the present, provide the total cost of unemployment compensation taxes for bargaining unit employees.
- 12) For calendar years 2016-2020 through the present, provide the total cost of workers compensation insurance for Bargaining unit employees.
- 10           13) Provide a distribution of employees indicating shift operation and rotation practices for the years 2016-2020 through the present for bargaining unit employees.

Shift and rotation practices should be delineated as follows:

- 15           A) Single shift, length of shift and starting time
- B) Two shifts, length of shift and starting time
- C) Three shifts, length of shift and starting time
- 20           14) For calendar years 2016-2020 through the present, provide the total amount of wages paid for newly-employed orientation/training for bargaining unit employees.
- 15) For calendar years 2016-2020 through the present, provide the total amount of wages paid for required training/refreshers training for bargaining unit employees.
- 25           16) For calendar years 2016-2020 through the present, provide the total amount of wages paid for training for bargaining unit employees.
- 17) For calendar years 2016-2020 through the present, provide the number of covered employees, the number of total covered participants and the average monthly cost of the following benefits for all plants of the employer:
- 30           A) Life and accidental death and dismemberment insurance
- Provide the cost data by working group and non-working group, (i.e. compensation and S & A) and delineate the administrative cost of providing the
- 35           above benefits for bargaining unit employees.
- 40           18) For calendar years 2016-2020 through the present, provide the following data regarding sickness and accident benefits if applicable for bargaining unit employees:
- A) Number of employees receiving S & A benefits
- B) Number of employees who exhausted all S & A benefits
- C) Average length of S & A benefits
- D) Total Cost
- 45           E) Average cost per hour worked

19) For calendar years 2016-2020 through the present, provide a distribution of co-payments for prescription drugs and physician services by working group and non-working group for bargaining unit employees.

20) Provide the monthly cost of employer-provided health, life and AD&D benefits since January 1, 2016 for bargaining unit employees:

- A) Working group
- i) Single
- ii) Family

21) Provide the projected monthly cost of employer provided health, life and AD&D benefits as of January 1, 2020 for bargaining unit employees.

- A) Working group
- i) Single
- ii) Family

22) For calendar years 2016-2020 through the present, provide a quarterly listing of the number of subcontracting jobs performed for the employer where the total value of the subcontracted work exceeded \$500.

- A) Number of such contracts
- B) Total cost of such contracts
- C) Type of work performed
  - i) Transportation
  - ii) Repair and maintenance
  - iii) Construction
- D) Reason for such subcontracting
- E) Number of hours worked on each subcontract.

All but the final request in this area sought information concerning the bargaining unit. With regard to the final request, Respondent's use of subcontractors was discussed frequently at bargaining. In response to this request, between April 12 and 27, Respondent provided general service agreements, in small groups of 2 to 4 agreements at a time. (GC Brf, App. D.) All of the agreements, save one, were signed by David Dinges, Respondent's Director of Materials Management and Purchasing. (Id.) No explanation was given for this disjointed disclosure. Respondent's disclosure of invoices pursuant to the final request was not done in any sort of logical order. (Id.)

Respondent's position regarding the information request is that it was, "grossly excessive, untailored, pretextual and in bad faith." (R. Brf. p. 1.) Respondent indicates that it has identified no documents withheld on the basis of attorney-client privilege and, thus, it has provided no privilege log. (R. Brf., p. 10.) However, Respondent admits that it has refused to produce certain documents based on confidentiality. (R. Brf., pp. 15-17.) Finally, Respondent argues that it has produced over 80,000 records from the time of the information request until February 10, 2022. (R. Brf., p. 18.)

## DISCUSSION AND ANALYSIS

### A. *Witness Credibility*

5 A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, 335 NLRB at 622. Some of my credibility findings are incorporated into the findings of fact set forth above.

15 I found Kevin Fagan to be a difficult witness. He quibbled with Respondent's counsel on cross-examination. For example, he engaged in the following exchange early in his cross-examination testimony:

20 Q. Is there anything else . . . that in response to the General Counsel's questions you were addressing in the context of these notes [GC Exh. 2].

A. I don't understand your question.

Q. These notes that you took, were these on a legal pad or some other paper holder?

25 A. Which notes?

(Tr. 87.) Considering that Fagan had testified at length about his notes under direct examination, it seems implausible that he would have to ask, "Which notes?" in response to a question on cross-examination.

30 He further sparred with Respondent's counsel on cross-examination:

Q. But he [Allen] was the authorized head of the UMWA bargaining team on the day of these notes, right?

35 A. Well, he was a member of the bargaining team and he took the lead in our bargaining team, yeah.

Q. Are . . . you quibbling over whether he was officially the head of your bargaining team?

40 A. Well, officially. I don't know what "officially" means. Was he the lead negotiator? Yes, he was.

(Tr. 150-151.) Given Fagan's difficult demeanor and sparring with opposing counsel, I credit his testimony only when it is supported by other, more credible evidence, or inherently probable or uncontroverted.

45 I did not find Kelli Gant to be a fully credible witness. She frequently testified in a hedging manner. For example, when asked if she said that with the wages the Union proposed, Respondent would have to lay everybody off, she replied that she did not know "verbatim" what she said. (Tr. 179.) When asked about other statements she made (according to Respondent's

own bargaining notes) she replied, “that’s what the notes say” or “that’s what the notes reflect.” (Tr. 181-182.) Given Gant’s apparent difficulty recalling important events, and her hedging responses to questions, I credit her testimony only when it is supported by other, more credible evidence, is inherently probable or uncontroverted, or constitutes a statement against Respondent’s interest.

I found Brian Sanson to be a credible witness. He testified in a straightforward and candid fashion. His testimony did not waver on cross-examination and was consistent with the documentary evidence presented at the hearing. He admitted things that might be seen as detrimental to his position, such as that he tends to send very large information requests. Thus, I credit his testimony.

I found Brian Chopin to be a somewhat credible witness, but his testimony lacked specificity. When asked questions about confidentiality agreements contained within Respondent’s contracts he stated, “I can’t speak to seeing them directly, but I’m almost certain all of our contracts do . . . have them.” (Tr 635.) However, his testimony did concede that although Respondent has many of the documents sought by the Union, Respondent did not disclose them and he did not explain why. Although I generally credited Chopin’s testimony, I did not credit it where it was contradicted by other witnesses or documentary evidence.

I did not find Dolores Moore to be a credible witness. She did admit to providing information only for bargaining unit personnel as instructed by Gant. However, she quibbled with counsel on cross-examination. When asked if she looked at any documents to prepare for her testimony she refused to answer until I asked her the same question. (Tr. 749-750.) Also, she changed her testimony on cross-examination. She initially testified that she received an email from Gant about the Union’s information request. Later, when the General Counsel lodged an objection because the email was not produced pursuant to her subpoena, Moore pivoted and said that she had a discussion with Gant about the information request. (Tr. 747-749, 751.) As such, I credit her testimony only when it is supported by other, more credible evidence, is inherently probable or uncontroverted, or constitutes an admission against Respondent’s interest.

I found Charles Lussier to be a credible witness. His brief testimony was given in a forthright and frank manner. He explained Respondent’s coal pricing and its use of Platt’s. His testimony was consistent with the documentary evidence in the case. The General Counsel chose not to cross-examine him. Therefore, I credit Lussier’s testimony.

#### *B. Legal Standards Regarding Information Requests*

In dealing with its employees’ collective-bargaining representative, one of the things which employers must do, on request, is to provide information that is needed by a bargaining representative for the proper performance of its duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Following an appropriate request, and limited only by considerations of relevancy, the obligation arises from the operation of the Act itself. *Ellsworth Sheet Metal*, 224 NLRB 1506 (1976). In each case, the inquiry is whether or not both parties meet their duty to deal in good faith under the particular facts of the case. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

Information requests regarding bargaining unit employees' terms and conditions of employment are presumptively relevant and must be provided. *Whitesell Corp.*, 352 NLRB 1196, 1197 (2008), adopted by a three-member Board, 355 NLRB 635, 649 (2010), enfd. 638 F.3d 883 (8th Cir. 2011); *Southern California Gas Co.*, 344 NLRB 231, 235 (2005). If the requested information is not directly related to the bargaining unit, the information is not presumptively relevant, and the requesting party has the burden of establishing the relevance of the requested material. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *The Earthgrains Co.*, 349 NLRB 389 (2007). The Board uses a broad, discovery-type standard in determining the relevance of requested information. Thus, the burden is not an exceptionally heavy one, requiring only that the desired information would be of use to the party in carrying out its statutory duties and responsibilities. *Certco Distribution Centers*, 346 NLRB 1214, 1215 (2006); *Shoppers Food Warehouse*, 315 NLRB 258 (1994); *Richmond Health Care*, 332 NLRB 1304, 1305 (2000) (potential or probable relevance is sufficient to give rise to an employer's obligation to provide information). A party has satisfied such a burden when it demonstrates a reasonable belief supported by objective evidence for requesting the information. However, the Board has also held that, as to non-unit information for which relevance must be demonstrated, the General Counsel must present evidence either that the union demonstrated the relevance of the non-unit information or that the relevance of the information should have been apparent to the respondent under the circumstances. *Disneyland Park*, 350 NLRB 1256, 1258 (2007). The Union's explanation of relevance "must be made with some precision; and a generalized, conclusory explanation is insufficient to trigger an obligation to supply information." 350 NLRB at 1258 fn. 5 (citations omitted).

After a union demonstrates the relevancy of the requested information, the burden shifts to Respondent to establish that the information was not relevant, did not exist, or for some other valid and acceptable reason could be furnished to the requesting party. *Samaritan Medical Center*, 319 NLRB 392, 398 (1995), citing *Somerville Mills*, 308 NLRB 425 (1992), and *Postal Service*, 276 NLRB 1282 (1985).

Additionally, the requested information does not have to be dispositive of the issue for which it is sought, but only has to have some relation to it. *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1104-1105 (1991). The Board will not assess the merits of the underlying dispute to determine the relevancy of the request for information. *Postal Services*, 332 NLRB 635 (2000). Even if the union is unable to articulate a reason for the requested information, the surrounding circumstances may show that the employer is "on notice of a relevant purpose which the union has not specifically spelled out" and is therefore required to produce the requested information. *Beverly Enterprises*, 310 NLRB 222, 227 (1993) (citing *Brazos Electric Power*, 241 NLRB 1016, 1018 (1979); *Disneyland Park* at 1257; *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). Once the relevancy of the request for information has been demonstrated, the burden shifts to the employer to establish that the information is not relevant, does not exist, or some other valid and acceptable reason why it could not be furnished. *Samaritan Medical Center*, 319 NLRB, 392, 398 (1995), citing *Somerville Mills*, 308 NLRB 425 (1992), and *Postal Service*, 276 NLRB 1282 (1985).

When an employer bases its bargaining position on an asserted inability to pay, the union is entitled to request and review the employer's financial records to assess the employer's representations about its dire financial condition. *Arlington Metals Corp.*, 368 NLRB No. 74, slip op. at 8 (2019). However, if the employer claims that concessions from the union are

necessary for the employer simply to avoid competitive disadvantage in the marketplace, the employer has no obligation to open its books and provide financial and competitor information when requested by the union. *Arlington Metals Corp.*, 368 NLRB No. 74, slip op. at 8-9 citing *North Star Steel Co.*, 347 NLRB 1364, 1369-1370 (2006).

Even if an employer does not claim an inability to pay a union, “a union may still seek specific financial data, and the employer must provide such information upon a showing of relevancy.” *Management & Training Corp.*, 366 NLRB No. 134 slip op. at 9 (2018). To comply with its duty to provide requested information that is relevant to, and necessary for, a union’s performance of its representational duties, an employer must provide information needed by the union “to assess claims made by the employer relevant to contract negotiations.” *Caldwell Mfg. Co.*, 346 NLRB 1159, 1159 (2006); see also *Audio Visual Servs. Group, Inc. d/b/a PSAV Presentation Servs.*, 367 NLRB No. 103 slip op. at 21 (2019); *KLB Industries, Inc.*, 357 NLRB 127, 128-129 (2011), enfd. 700 F.3d 551 (D.C. Cir. 2012). Information is relevant under *Caldwell* only if the union is seeking specific information to evaluate the accuracy of the Respondent’s specific claims and to respond appropriately with counterproposals. *Arlington Metals Corp.*, 368 NLRB No. 74, slip op. at 3 (2019) (citing *Caldwell*, supra at 1160).

The Board balances a union’s need for information against any legitimate and substantial confidentiality interest established by the employer. *Earthgrains Baking Cos., Inc.*, 327 NLRB 605, 611 (1999). As part of this balancing process, the party asserting the claim of confidentiality has the burden of proving that such interests are in fact present and of such significance as to outweigh the union’s need for the information. *Jacksonville Area Assn.*, 316 NLRB 338, 340 (1995). Where the employer fails to demonstrate a legitimate and substantial confidentiality interest, the union’s right to the information is effectively unchallenged and the employer has a duty to furnish the information. *A-Plus Roofing*, 295 NLRB 967, 970 (1989). It was thus Respondent’s duty, upon asserting its confidentiality concerns, to promptly offer an accommodation. See *Finley Hospital*, 362 NLRB No. 2, slip op. at 11-12 (2015) (employer’s failure to offer an accommodation for 2 months found violative of the Act).

Furthermore, a party claiming confidentiality must tell the union of its claim and bargain to seek accommodation of its interests. See *Minnesota Mining & Mfg. Co.*, 261 NLRB 27 (1982). In that event, the employer must offer and bargain in good faith over a reasonable accommodation, such as redacting the information and/or restricting its use. The burden is on the employer, not the union, to propose a precise option to providing the information unedited. See *A-I Door & Building Solutions*, 356 NLRB 499, 500-501 (2011); and *Borgess Medical Center*, 342 NLRB 1105, 1106 (2004). See also *U.S. Testing Co. v. NLRB*, 160 F.3d 14, 20-21 (D.C. Cir. 1998), and cases cited therein. To the extent that an employer claims that information sought is confidential, the Board has held that it cannot simply raise this concern but must instead come forward with an offer to accommodate both its concern and bargaining obligation. *Tritac Corp.*, 286 NLRB 522, 522 (1987).

Generally, a union as bargaining representative is presumptively entitled to information concerning terms and conditions of employment of unit employees. *Merchant Fast Motor Lines*, 324 NLRB 562, 563 (1997) citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967). Employee fringe benefits, including retirement plans, constitute mandatory terms of employment about which parties must bargain. *Elizabethtown Water Co.*, 234 NLRB 318, 320 (1978), and the Board has held that information concerning the financing of retirement plans is

presumptively relevant and reasonably necessary to a union in carrying out its collective-bargaining functions, particularly during ongoing negotiations. *Merchant Fast Motor Lines*, 324 NLRB at 563 citing *Circuit-Wise, Inc.*, 306 NLRB 766, 768-769 (1992); *Borden, Inc.*, 235 NLRB 982, 983 (1978), enfd. in relevant part 600 F.2d 313 (1st Cir. 1979).

Absent evidence of justification, an unreasonable delay in furnishing relevant information is as much a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all. *PAE Aviation and Technical Servs, LLC.*, 366 NLRB No. 95, slip op. at 3 (2018). It is the employer's duty to furnish relevant information as promptly as possible, given the circumstances, as a union is entitled to the information at the time the information request is made. *Id.* In determining whether a party has failed to produce information in a timely manner, "the Board considers a variety of factors, including the nature of the information sought (including whether the requested information is time sensitive); the difficulty in obtaining it (including the complexity and extent of the requested information); the amount of time the party takes to provide it; the reasons for the delay in providing it; and whether the party contemporaneously communicates these reasons to the requesting party." *General Drivers, Warehousemen & Helpers Local Union No. 89*, 365 NLRB No. 115, slip op. at 2 (2017). The analysis is an objective one, focusing not on whether the employer delayed in bad faith, but rather on whether it supplied the requested information in a reasonable time. *Management & Training Corp.*, 366 NLRB No. 134, slip op. at 3 (2018). Even though an employer has not expressly refused to furnish the information, its failure to make a diligent effort to obtain or to provide the information reasonably promptly may be equated with a flat refusal. *Shaw's Supermarkets*, 339 NLRB 871, 875 (2003), citing *NLRB v. John C. Swift Co.*, 124 NLRB 394 (1959), enfd. in part and denied in part 277 F.2d 641 (7th Cir. 1960).

Although there is not a per se rule for what constitutes an unreasonable delay, the Board has found delays from two to sixteen weeks to be unreasonable. See *Capitol Steel & Iron Co.*, 317 NLRB 809 (1995) (2 weeks unreasonable); *Aeolian Corp.*, 247 NLRB 1231, 1245 (1980) (3 weeks unreasonable); *Postal Service*, 308 NLRB 547, 551 (1992) (4 weeks unreasonable); *Postal Service*, 332 NLRB 635 (2000) (5 weeks unreasonable); *Linwood Care Center*, 367 NLRB No. 14, slip op. at 5 (2018) (6 weeks unreasonable); *Woodland Clinic*, 331 NLRB 735, 737 (2000) (7 weeks unreasonable); and *Regency Service Carts*, 345 NLRB 1286 (2005) (16 weeks unreasonable).

### C. Respondent Violated the Act in Failing and Refusing to Provide and Unreasonably Delaying Responding to the Union's Information Requests

Despite the Respondent's contentions to the contrary, I find that the General Counsel has established that the information sought by the Union was both relevant and necessary to its role as the bargaining unit representative for Respondent's employees. Initially, I find that Respondent claimed poverty several times at the bargaining table, both before and after the Union made its information request. Gant and Richardson stated several times that Respondent could not pay the wages and benefits requested by the Union and that if it did so, it might result in layoffs, closure, or another bankruptcy. Leyden also made a veiled reference to bankruptcy.

The Union also clearly articulated and established that it was entitled to the requested information so that it could fulfill its representational role in bargaining for an agreement and crafting counterproposals to the Respondent's proposals. See *NLRB v. Truitt Mfg. Co.*, 351 US

149, 152-153, 76 S. Ct. 753, 100 L. Ed. 1027 (1956); *Galaxy Towers Condo Assn.*, 361 NLRB 364, 375 (2014). The record contains objective evidence that the parties were engaged in difficult contract negotiations and, as of the hearing, still had been unable to reach an agreement. There is also evidence that the Union clearly articulated to the Respondent that the information was necessary and relevant to enable it to craft counterproposals.

Here, while it is undeniably the case that Respondent did provide some information to the Union as had been requested, it is also apparent that some information was delayed and other information not provided at all. As the above-cited cases demonstrate, Respondent is not empowered to make a unilateral determination that presumptively or otherwise demonstrably relevant information sought by the Union is unnecessary or irrelevant to bargaining or the performance of the Union's statutory duties. Instead, Respondent's arguments in this regard have been rejected by the Board and the courts. "That the information appears unnecessary to an employer is obviously an inadequate ground for refusal ..." *Amphlett Printing Company*, 237 NLRB 955, 956 (1978). Moreover, had the information sought by the Union been provided in a timely fashion, it is reasonable to infer that it could have been used to determine strategy and tactics in the negotiations: "Priority of issues, consideration of bargaining strategy as to trade-offs of economic and non-economic issues, even the nature and extent of the bargaining posture on the various issues might well have been impacted upon by such information and the need therefore would be current and present throughout the negotiations." *Bryant & Stratton Business Institute*, 321 NLRB 1007, 1014 (1996). Further, contrary to Respondent's contentions, the fact that a tentative agreement was negotiated without the requested data does not prove that the information was not relevant. See *NLRB v. Fitzgerald Mills Corp.*, 313 F.2d 260, 266 (2d Cir. 1963); cert denied, 375 U.S. 834, 84 S. Ct. 47, 11 L. Ed. 2d 64. In *NLRB v. Yawman & Erbe Mfg. Co.*, 187 F.2d 947, 949 (2d Cir. 1941), the court stated:

Nor is our determination that the information was relevant affected by the subsequent execution of a contract without disclosure. The most that can be inferred from the Union's action is that the advantages of a contract in hand outweigh those which the Union might later obtain when all relevant information would be available to it.

Respondent's efforts to secure information from within its own walls and from outside vendors was disorganized at best. Respondent failed to provide a cogent explanation of how information was obtained and transmitted to the Union. Instead, Gant somehow transmitted the information request to several managers of Respondent (only a few of whom testified at the hearing) and told them to gather information. Respondent further did not explain why certain information was provided in redacted form or why it failed to propose an accommodation to the Union for viewing information it deemed confidential. With regard to its third party vendors, Respondent purportedly called Creativa and told them to gather information on benefits. However, Respondent provided no evidence to corroborate its efforts to gather information from third party vendors.

Respondent argues that it did not claim an inability to pay the amounts that the Union proposed. However, I find that it did. Gant stated in no uncertain terms that Respondent "could not afford a contract at the level of wage rates proposed by the Union." Richardson and Gant both repeatedly stated that Respondent was operating at a loss. Richardson references the closure of a competitor's mine in response to the Union's proposals. Richardson also said that



the company had to remain financially stable, implying that paying the rates proposed by the Union would cause Respondent to become financially unstable. The record is replete with other references to the company operating at a loss, mine closure, layoffs, and bankruptcy by Respondent's bargaining team in response to the Union's financial proposals.<sup>25</sup> As such, I find that the Respondent claimed an inability to pay during bargaining.

I further find Respondent's purported retraction of this position unconvincing. Respondent attempted to retract its plea of poverty on August 26, over 7 months after bargaining commenced. Furthermore, Gant claimed that Respondent "never said or intended to say or imply that there was there was an inability to pay." This is disingenuous at best. Respondent made 10 or more statements that stated directly or indirectly that Respondent was losing money and could not afford the Union's proposals. Gant's statement in August cannot erase those statements. As such, I find that Respondent did not effectively retract its plea of poverty in August 2021.

Although an employer need not open its books to a union in the absence of a claimed inability to pay, a union may still seek specific financial data, and the employer must provide such information, upon a showing of relevancy. *Management & Training Corp.*, 366 NLRB No. 134, 2018 NLRB LEXIS 295 at \*9 (2018). In order to comply with its duty to provide requested information that is relevant to, and necessary for, a union's performance of its representational duties, an employer must provide information needed by the union to assess claims made by the employer relevant to contract negotiations. *Caldwell Mfg. Co.*, 346 NLRB 1159, 1159 (2006); see also *Audio Visual Services Group, Inc.*, 367 NLRB No. 103, 2019 NLRB LEXIS 173 at \*21 (2019); *KBL Industries.*, 357 NLRB 127, 128-129 (2011), *enfd.* 700 F.3d 551, (D.C. Cir. 2012). Information is relevant under *Caldwell* only if the union is seeking specific information to evaluate the accuracy of the Respondent's specific claims and to respond appropriately with counterproposals. *Arlington Metals Corp.*, 368 NLRB No. 74, slip op. at 3 (2019) (quoting *Caldwell*, *supra* at 1160). In the instant case, Respondent repeatedly rejected the Union's wage and benefit proposals, claiming that these proposals were "unsustainable" or would result in layoffs or bankruptcy. The Union was entitled to the information it was seeking in order to evaluate these claims.

The Union has demonstrated the relevance of the information through its numerous statements at the bargaining table, in writing, and in Sanson's testimony. When the Union first made its information request, it was engaged in bargaining with Respondent for a collective-bargaining agreement. The Union is still bargaining for an agreement. Thus, I find that the Union has demonstrated the relevance of the information it requested.

As indicated above, the Union made its lengthy information request on March 19. Respondent's evidence was murky as to how it gathered the information and how it made the information gathering a "priority." The record indicates that no one person was tasked with gathering the information. Instead, various employees and managers of Respondent gathered information and gave it to an employee to transmit to the Union. The employee who transmitted the information to the Union did not testify at the hearing.

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<sup>25</sup> I find that these statements by Respondent's bargaining team were made, as further bolstered by the fact that they appear in Respondent's own bargaining notes.

Although Respondent and the Union reached a tentative agreement on April 1, the Union overwhelmingly rejected the agreement. The Union then went on strike and the parties continued their negotiations. By the first bargaining session after the tentative agreement had been reached, the Union's information request had been pending for over two months. By the time of the hearing, the request had been pending for 10 months. Respondent still has not provided some of the requested information to the Union.

Also, Gant's demands that the Union explain the relevance of the requested information or narrow its requests were unavailing. There can be no dispute that the information sought by the Union that is the subject of the instant complaint was both relevant and necessary for the Union to formulate its bargaining proposals. However, Respondent asserts that the parties' reaching a tentative agreement in April 2021 mooted the Union's need for the information. I cannot so find. The Union has asserted other reasons why it needed the required the information, such to formulate additional proposals to bargain with Respondent and to respond to member concerns. Moreover, the Union sought information regarding non-unit personnel because unit members felt they were being treated unfairly by Respondent. The Union, at the bargaining table, explained that it was seeking information on compensation and bonuses for foremen because Union members reported that foremen working alongside unit members had received large bonuses. These bonuses, and raises to Respondent's senior executives, were paid at a time when Respondent claimed to be operating at a multimillion-dollar loss. Thus, I find that the Union has established the relevance and necessity of information concerning non-unit employees.

Subcontracting information was also relevant given the parties' bargaining history and Respondent's claims that it could not pay the wages sought by the Union. The parties repeatedly discussed Respondent's use of subcontractors in the mines. The Union believed that it could perform the same work as subcontractors for less money. Respondent rejected this contention. Thus, the Union required this information to evaluate Respondent's position on the use of subcontractors. The chart provided by Respondent regarding subcontractors does not satisfy the request for information. It omitted data on at least one subcontractor, Warrior Associates. Furthermore, Respondent did not establish a confidentiality interest in the subcontractor information and did not explain why the invoices it provided were redacted. As such, I find that Respondent must disclose the requested subcontractor data to the Union in an unredacted format.

Finally, the General Counsel asserts that *Arlington Metals Corp.*, 368 NLRB No. 74, slip op. at 3 (2019) and *Nielsen Lithographing Co.*, 305 NLRB 697 (1991), affd, 977 F.2d 1168 (7th Cir. 1992) should be overturned. (GC. Brf. p. 66-72.) It is well settled that administrative law judges of the National Labor Relations Board are bound to follow Board precedent which neither the Board nor the Supreme Court has reversed, notwithstanding contrary decisions by courts of appeals or district courts. *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984); *Pathmark Stores, Inc.*, 342 NLRB 378 fn. 1 (2004). As such, I am bound to follow the Board's holdings in these cases.

However, I find *Arlington Metals* distinguishable from the instant case. In *Arlington Metals*, the Board found that the employer statements during bargaining amounted to an "assertion of competitive disadvantage" rather than a claim of inability to pay. 368 NLRB No. 74, slip op. at 3. The Board found that the employer's repeated references to the poor state of the industry, market conditions, and other external factors did not rise to the level of a plea of poverty. *Id.* The Board in that case found that the judge relied too heavily on the employer's statement that, "the iceberg . . . is melting" in finding an inability to pay. *Id.* Conversely, in the instant case,

Respondent repeatedly linked the cost of the Union's demands to mine closure, layoffs, and bankruptcy. Therefore, I find this case distinguishable from *Arlington Metals* and find that Respondent's repeated references to layoffs, closure, and bankruptcy amounted to a plea of poverty, which entitled the Union to disclosure of Respondent's financial records.

In a similar vein, *Nielsen Lithographing Co.* is distinguishable from the case at bar. Like in *Arlington Metals*, the *Nielsen Lithographing Co.* Board, on remand from the 7th Circuit Court of Appeals, found that an employer's statements at bargaining amounted to a claim of competitive disadvantage, as opposed to a plea of poverty. 305 NLRB 697, 699 (1991.) The Board noted:

The employer who claims a present inability to pay, or a prospective inability to pay during the life of the contract being negotiated, is claiming essentially that it cannot pay. By contrast, the employer who claims only economic difficulties or business losses or the prospect of layoffs is simply saying that it does not want to pay. We do not say that claims of economic hardship or business losses or the prospect of layoffs can never amount to a claim of inability to pay. Depending on the facts and circumstances of a particular case, the evidence may establish that the employer is asserting that the economic problems have led to an inability to pay or will do so during the life of the contract being negotiated.

*Id.* Unlike the instant case, the employer in *Nielsen Lithographing Co.*, stated it was making a profit, and that labor costs would create a hardship at an unspecified point in the future. *Id.* The employer even noted that it might be able to remain competitive in the long run with increased labor costs. *Id.* However, in the instant case, Respondent's claims were quite different. As noted above, Respondent here linked the Union's wage and benefit demands to mine closure, layoffs, and bankruptcy. Thus, I find *Nielsen Lithographing Co.*, inapposite to this case.

Therefore, I find that Respondent violated Section 8(a)(5) and (1) of the Act as alleged in the complaint.

#### *D. Respondent's Affirmative Defenses and Arguments Lack Merit*

Respondent raised thirteen affirmative defenses in its answer to the complaint. It is well established that the burden of proving an affirmative defense lies with the party asserting it. *Marydale Products, Co., Inc.*, 133 NLRB 1232 (1961), and *Sage Development Co.*, 301 NLRB 1173, 1189 (1991). By finding that Respondent violated the Act as alleged in the complaint, I have addressed several of Respondent's defenses, including that: the complaint fails to state a claim; the allegations of the complaint are not unfair labor practices; Respondent has not violated the Act; Respondent's actions do not constitute an unfair labor practice; the information requests were grossly overbroad and unduly burdensome; Respondent's actions had no impact on the Charging Party; the Union failed to show how the requests were relevant and necessary; and, there is no substantial justification for the complaint. Respondent did not present any arguments or citations to case law in its brief supporting its affirmative defenses that its Constitutional rights were infringed, that the complaint was not substantially justified, or that the alleged violations were *de minimis*. As such, I cannot find that Respondent established any of its affirmative defenses.

In sum, I find that the General Counsel has established that Respondent violated Section 8(a)(5) and (1) of the Act, as alleged in the complaint.

### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. United Mine Workers of America International Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By failing and refusing to provide, and unreasonably delaying providing, the Union with the information it requested on March 19, 2021, that is relevant and necessary to the performance of its function as the exclusive collective-bargaining representative of Respondent's employees, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act.
4. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and 2(7) of the Act.

### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. More specifically, having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, it shall be ordered to cease and desist from failing and refusing to provide and unreasonably delaying in providing the Union with information relevant and necessary to the performance of its function as the exclusive collective-bargaining representative of its employees. Respondent will further be ordered to post and mail a notice to employees attached as set forth in the attached Appendix. Additionally, Respondent shall be ordered to timely provide the Union with the information it requested on March 19, 2021.

With respect to the Union's information requests in which there was an unlawful delay alleged, no further information need be provided. Where Respondent has refused to provide information to the Union because it is confidential or proprietary, it was Respondent's obligation and burden to formulate a reasonable accommodation in furnishing the requested information to the Union, and Respondent failed to do. See, *Kaleida Health, Inc.*, 356 NLRB 1373, 1381 (2011); *Borgess Medical Center*, 342 NLRB 1105, 1106-1107 (2004); *Pulaski Construction Co.*, 345 NLRB 931, 938 (2005); *S. Testing Co., Inc. v. NLRB*, 160 F.3d 14, 20-22 (D.C. Cir. 1998). I have concluded that by its delayed and staggered responses that Respondent was seeking a policy of delay and frustration rather than one of accommodation. In these circumstances, to order more bargaining concerning the production of information would not serve, but rather would frustrate the purposes of the Act, and serve to reward the Respondent for its course of conduct. In this regard, the Union's request for information was time sensitive with ongoing contract negotiations. Thus, the Union's interest in receiving the information quickly to protect the bargaining unit is high. See, *Kaleida Health, Inc.*, supra.; *Pennsylvania Power*, 301 NLRB 1104, 1108 fn. 18 (1991); and *Postal Service*, 359 NLRB No. 115 (2013).

Respondent failed to establish that any of the requested information is confidential. In so finding, I do not preclude Respondent from raising confidentiality arguments during the compliance stage of this proceeding, but I order Respondent to furnish to the Union the information requested to the fullest extent allowed by law. *Salem Hospital Corp.*, 359 NLRB No. 82, slip op. at 1 fn. 3 (2013), incorporated by reference in 361 NLRB No. 110 (2014).

In order to avoid confusion, to the extent it has not already been provided, Respondent shall forthwith provide the following information to the Union (if any such documents or records do not exist, Respondent shall so notify the Union):

**Financial Materials**

1. Copies of all auditor's letters and opinions for the four (4) years prior to today.
2. Copies of all correspondence with each Company's public accountants for the four (4) years prior to today.
3. Copies of the following documents for the four (4) years prior to today (in Excel if possible):
  - Sales register
  - Payroll register
  - General ledger
  - Accounts payable
  - Accounts receivable
  - Fixed assets register
4. A list of Respondent's outstanding purchase orders and contracts.
5. Copies of [Respondent's] budget for the current year, including drafts and worksheets (in soft, not PDF, format).
6. Identification of customers lost by each Company for the four (4) years prior to today.
7. Copies of all tax audits or deficiency reports and a description of any open matters with tax authorities for each Company.
8. Copies of all tax assessment documents from any taxing authority for each Company for the four (4) years prior to today.
9. Detailed accounts receivable listing by date for all customers as of today including, but not limited to, a description of what steps each Company is taking to collect these amounts.

10. Detailed accounts receivable aging . . . as of today (in Excel if possible).
11. Detailed accounts payable aging as of today (in Excel if possible)
- 5 12. Detailed cash receipts and disbursements records, including wire transfers, . . . the four (4) years prior to today.
13. Detailed fixed asset and depreciation schedules/balances . . . as of today.
- 10 14. Accounting of all furniture, fixtures and equipment (fixed assets) at each Company's facility and an accounting of the disposition of any assets removed from the facility for the four (4) years prior to today.
- 15 15. Internally prepared monthly and annual financial statements/worksheets for the four (4) years prior to today.
16. Copies of the Company's Federal, State and Local tax returns for each Company for the 4 years prior to today including any extensions, claims for refunds or tax credits.
- 20 17. Any and all appraisals of all real property owned by each Company for the four (4) years prior to today.
- 25 18. Actual vs. budget results for each week for the four (4) years prior to today.
- 30 19. A copy of the most recent payroll. Respondent provided quarterly payroll records between May 25 and August 11. (Jt. Exh. 71, 73, 74, 76, 77, 79, 80, 98, 99, 100, 101, 109, 110, 113, 114, 117, 118, 122, and 123.) Moore testified that this request was duplicative of request 3 for a payroll register. (Tr. 735-736.) The General Counsel alleges that this production was not timely as Respondent did not explain why it took over two months to produce the first payroll register. (GC Brf., Att. A, p. vi.)]
- 35 20. Copies of W-2's, W-3's and 1099's for the three (3) years prior to today.
21. Copies of all credit card statements for the two (2) years prior to today.
- 40 22. Detailed list and supporting documents (i.e. invoices) of all capital expenditures . . . for the four (4) years prior to today.
23. Any valuation or liquidation analysis prepared by each Company or its outside accountants or other advisors for the four (4) years prior to today.
- 45 24. All financial projections with respect to any assets of any Company, including mine by mine level financial/performance data (soft not pdf format) for the four years prior to today.

25. Any preference analysis indicating against which parties' preferences, including any defenses.

26. Any business plans or financial models (in a soft version - not pdf) prepared by or on behalf of Respondent for the four (4) years prior to today.

27. A detailed breakdown of all Capital Expenditures planned in 2021, 2022, 2023, 2024 and 2025.

28. Detailed breakdowns of a royalty payments and documents associated with the agreements.

29. Most recent detailed mine maps and reserve maps with all future mine plan development.

30. Detailed breakdown of payments made to vendors.

31. Breakdown of corporate office costs.

32. Breakdown of Transloading facility costs.

33. Breakdown of rebuild and repair shop costs.

34. List of contractors working in the mine. Please provide contract company name, number of employees working at the operations.

35. Breakdown of payments made to contractors performing work at the operations.

### **Personnel**

3. Accounting of all unpaid wages and accrued vacation for each Company as of today.

4. List of all participating employees and an accounting of any unpaid retention obligations for each Company as of today.

5. A list of all loans, transfers or other arrangements (including guaranty and indemnification arrangements) to or with the officers, members, stockholders, directors, managers, consultants and employees.

6. Copies of any documents relating to any other transactions between Respondent or any of its subsidiaries and any member, director, officer, manager, owner, employee or consultant of each Company or any subsidiary

7. Copies of any and all professional or officer and director insurance policies since the formation of each Company to the present

8. List of all Secured Lenders including the primary contact information for each group

### **ERISA and Other Plans**

1. Copies of pension, health, deferred compensation, profit-sharing plans or programs, bonus, retirement, incentive compensation, severance and other employee benefit plans or agreements.

2. All actuarial reports relating to any plan referred to in the preceding request.

4. List of any withdrawals from plan assets.

5. Copies of any agreements entered into with other companies related to health care benefit plans.

6. Medical costs for 2015, 2016, 2017, 2018, 2019, 2020 and 2021 year to date.

7. Drug costs for 2015, 2016, 2017, 2018, 2019, 2020 and 2021 year to date.

8. Admin costs for 2015, 2016, 2017, 2018, 2019, 2020 and 2021 year to date.

### **Other Agreements**

1. Copies of all marketing agreements, including sales agent or representative, dealer and distributor agreements, consignment and pricing agreements.

2. Copies of all extant government contracts and subcontracts, if any.

3. Copies of all supply agreements (list outstanding sales commitments by sales order/invoice showing amount).

4. Copies of all extant purchase and requirements contracts. (List outstanding purchase commitments by purchase order showing amount).

5. Copies of all extant joint venture and partnership agreements.

6. Copies of all extant franchise agreements.

7. Copies of all extant management, service and tax sharing agreements.

8. Copies of all performance guarantees and bonds.

9. Copies of all advertising agreements.



10. Copies of all secrecy, confidentiality and nondisclosure agreements with employees or third parties. (Please indicate any employees not covered by such agreements.)

11. Copies of all commission, brokerage and agency agreements between each Company and any third party.

12. Copies of all contracts outside the ordinary course of business.

13. Samples of forms of purchase orders and invoices.

14. Copies of all indemnification contracts and similar arrangements for officers and directors.

15. Copies of all Agreements with affiliates, management or key personnel (including any transactions during the last four (4) years with any of them and any property or assets of any of them used by Respondent).

17. Provide the job description for each classification during the term of the contract.

## **ATTACHMENT A – ADDITIONAL HEALTH CARE DATA REQUESTS**

The UMWA is requesting utilization data for an experience period over the last four years (2016-2020). Please provide a summary page. Additionally, we request all available data for 2021. This request is for data that, at a minimum, will show the following information:

### **DRUGS**

1. Reviews of health plan by claim administration, reviews of drug utilization and formulary management.
2. Mail-Order usage and costs
3. Chain Pharmacy Usage and costs
4. Independent Pharmacy usage and costs
5. Non-Retail Provider e.g. Hospitals usage and costs
6. Top single source generics
7. Top 50 brand drugs by cost and number of scripts
8. Top 50 generic drugs by cost and number of scripts
9. Top single source brand drugs and their closest competitors- price paid at pharmacy and price paid at mail-order.
10. Top 50 prescription drugs by savings (rebate \$)
11. Top 15 Therapeutic Classes ranked by payments
12. Network or retail pharmacy payment rates negotiated by the Employer /Providers and savings associated.

	13.	Cost of Part B drugs
	14.	Dispensing Fees
	15.	Brand drug inflation
	16.	Generic drug inflation
5	17.	Cost sharing savings associated with plan
	18.	Average day supply
	19.	Total number of Rx's
	20.	Total Ingredient Costs
	21.	Total contract fees
10	22.	Total Pharmacy Reimbursement
	23.	Average Co-Pay per Rx
	24.	Total Co-Pay Amount
	25.	Total Rx's Per Member Per Year (PMPY)
	26.	Total Rx's Per Member Per Month (PMPM)
15	27.	Pharmacy Reimbursement per Rx
	28.	Pharmacy Reimbursement PMPY
	29.	Pharmacy Reimbursement PMPM
	30.	Amount paid per Rx
	31.	Amount paid per days supply
20	32.	Amount paid PMPY
	33.	Amount paid PMPM
	34.	Ingredient cost per Rx
	35.	Ingredient cost per 30 days
	36.	Ingredient Cost PMPY
25	37.	Ingredient Cost PMPM
	38.	Utilizing members
	39.	% utilizing members
	40.	% DAW
	41.	% Generic Dispensed When Available
30	42.	Generic percentage
	43.	Amount paid/Generic Days Supply
	44.	Mail-Order %
	45.	Mail-Order % Days Supply
	46.	Specialty Amount Paid
35	47.	Specialty % of amount paid
	48.	Number of member education programs
	49.	Prescriber education programs
	50.	Demographics by Married and Single
	51.	All administrative costs PMPY
40	52.	All administrative costs PMPM
	53.	Date Last RFP was sent to providers
	54.	Number of Providers RFP was sent to
	55.	Cost comparison studies per provider
	56.	Medicare and PBM Prescription Drug Rebates per year
45	57.	Medicare subsidy amounts per year
	58.	The number of surcharges applied on non-formulary drugs by member
	59.	The total surcharges associated with non-formulary drugs

- 60. Excluded drugs and drug classes
- 61. Cost per prior authorization
- 62. Prior authorization program savings
- 63. Cost of Benefit Plan Consultations
- 5 64. Cost to adjudicate electronic claims
- 65. Cost for call center services
- 66. Clinical appeal costs
- 67. Non-Clinical Appeal costs
- 68. Writing Plan document costs
- 10 69. RDS rebate amounts (if any)

### **HEALTH CARE**

- 1. ER Visits PMPM
- 15 2. ER Visits PMPY
- 3. Total Emergency Room Visits Per Year
- 4. All outreach programs and the savings associated with them.
- 5. Provide number of covered employees and total participants and the average monthly costs for the following benefits.
- 20 6. Hospital Benefits
- 7. Hospital benefits PMPM
- 8. Hospital benefits PMPY
- 9. Physician Services
- 10. Physician Services PMPM
- 25 11. Physician Services PMPY
- 12. Physician Visits
- 13. Physician Visits PMPM
- 14. Physician Visits PMPY
- 15. Average cost per service
- 30 16. Co-Pays
- 17. Co-Insurance
- 18. Deductibles
- 19. Medicare Savings
- 20. Total service payments
- 35 21. Admin fees for physician and hospital services
- 22. Admin fees for physician and hospital services (% of Claims)
- 23. Lab tests PMPY and PMPM
- 24. X-ray costs PMPY and PMPM
- 25. Inpatient Facility-Visits, Services, Charges, payments, Average Length of Stay
- 40 26. Outpatient Facility- Visits, Services, Charges, payments, Average Length of Stay
- 27. All administration fees for medical, vision, prescription, dental for each year
- 45 28. Stop Loss premiums per member per month
- 29. Stop Loss threshold and amount paid by insurer each year

**VISION**

1. Vision Care Services
2. Vision Cost PMPM
3. Vision Cost PMPY
4. Admin fees for vision care
5. Admin fees for vision care (% of Claims)
6. Total cost per year

**Dental**

1. Dental Care Services
2. Dental Cost PMPM
3. Dental Cost PMPY
4. Admin fees for Dental care
5. Admin fees for Dental care (% of claims)
6. Total cost per year

**Life and AD&D Insurance**

1. Cost PMPM
2. Cost PMPY
3. Total cost to company in each year

**Ambulance Services**

1. All health care transportation services
2. All network contracts and costs associated with each one
3. Total cost per year

**Durable Medical Equipment**

1. DME contracts and savings
2. DME Costs PMPY
3. DME Costs PMPM
4. DME broken out by charges, payments, savings, average payment, average charge, average day supply.

**Other Data**

1. Census of age, gender, active, retired and cost relevant to health and prescription drugs.
2. Network Savings- Inpatient Facility, Outpatient Facility, Professional, Drug and Total.
3. Non-Participating Network Costs- Inpatient Facility, Outpatient Facility, Professional, Drug and Total.

4. Member payment range report- Payments, % of Payments, Cumulative % of Payments, members, % of Average Enrolled Members, Cumulative % of Averaged Enrolled Members.
5. Inpatient Facility utilization by Diagnostic Category- Please sort by payments and other items such as days, admits severity index, etc.
6. Inpatient Facility- Please provide top 20 by payments, admits, days, services, % of payments.
7. Outpatient Facility Utilization by Type of Service- Please sort by payments and other items such as services, payment/member, etc.
8. Outpatient Facility- Please provide top 20 by payments, admits, days, services, % of payments.
9. Professional Utilization by type of service- Please sort by payment, services, etc.
10. Top Professional Providers Ranked by Payment- Please provide services, payment/member, etc.
11. High-Cost Report for Member Payments over \$25,000, \$50,000, \$75,000 and \$100,000.
12. PPO or other Network Access Fees per employee per month.
13. Disease management savings and cost per member.
14. Medical and Psychiatric Case Management
15. Non-Network Hospital/Physician Negotiations and Discounts
16. Subrogation Recovery savings and % of savings guaranteed by contract
17. Hospital Bill Audit savings
18. Clinical Review/Audit results
19. Savings from diabetes education programs
20. Savings associated with nurse advice line or similar program.
21. Savings from wellness program early detection
22. Number of healthcare related disputes in each year and the cost
23. Member payments by prescription and medical each year.
24. Cobra premiums and a detailed description on how each different class is calculated (example Single, Family, Employee plus one, etc.)
25. Detailed description of Step Therapy programs and savings associated
26. Number of Urgent Care or similar non-emergency care facilities in the geographical area.
27. Cost per visit per employee at Urgent Care or similar facilities.
28. Plan design matrix
29. Copy of all benefit Plan Documents
30. Deductibles, coinsurance, Co-payments, Maximum Out Of Pockets for each category of Employee
31. Total health care cost per employee per year.
32. Total cost of UMWA employee per year by mine.
33. Total medical and prescription costs
34. Rebate and discount amounts

**ATTACHMENT B- Other Supplemental Info Requests**

1) For calendar years 2016-2020 through the present, provide a quarterly distribution of production hours and employment for bargaining unit employees,

Distribution of hours should be provided on the following basis for both full-time and per diem Employees separately:

- A) Straight time hours
- B) Daily overtime hours
- C) Saturday hours
- D) Sunday hours
- E) Holiday hours
- F) Day shift hours
- G) Evening shift hours
- H) Midnight shift hours

2) For calendar years 2016-2020 through the present, provide the distribution of employees by job classification and wage rate for bargaining unit employees.

3) Provide the job description including duties and minimum qualifications for each job classification for bargaining unit employees.

4) For calendar years 2016-2020 through the present, provide a distribution of employees by age for bargaining unit employees.

5) For calendar years 2016-2020 through the present, provide a distribution of employees by years of continuous service for bargaining unit employees.

6) For calendar years 2016-2020 through the present, provide a distribution of annual earnings by employees for bargaining unit employees.

7) For calendar years 2016-2020 through the present, provide a distribution of employees by sex for bargaining unit employees.

8) Provide a distribution of employees on lay-off by years of continuous service with the employer as of December 31st for the years 2016-2020 through the present for bargaining unit employees. (this should include time spent with the previous employer before the bankruptcy)

9) For calendar years 2016-2020 through the present, provide the number of vacation/paid time off days/hours accrued per each bargaining Unit Employee.

10) For calendar years 2016-2020 through the present, provide the following work force turnover information for bargaining unit employees

- A) Number of retiring employees
- B) Number of voluntary quits
- C) Number of involuntary terminations
- D) Number of recalls from layoff
- E) Number of new hires
  - i) With experience
  - ii) Without experience

11) For calendar years 2016-2020 through the present, provide the total cost of unemployment compensation taxes for bargaining unit employees.

12) For calendar years 2016-2020 through the present, provide the total cost of workers compensation insurance for Bargaining unit employees.

13) Provide a distribution of employees indicating shift operation and rotation practices for the years 2016-2020 through the present for bargaining unit employees.

Shift and rotation practices should be delineated as follows:

- A) Single shift, length of shift and starting time
- B) Two shifts, length of shift and starting time
- C) Three shifts, length of shift and starting time

14) For calendar years 2016-2020 through the present, provide the total amount of wages paid for newly-employed orientation/training for bargaining unit employees.

15) For calendar years 2016-2020 through the present, provide the total amount of wages paid for required training/refreshers training for bargaining unit employees.

16) For calendar years 2016-2020 through the present, provide the total amount of wages paid for training for bargaining unit employees.

17) For calendar years 2016-2020 through the present, provide the number of covered employees, the number of total covered participants and the average monthly cost of the following benefits for all plants of the employer:

- A) Life and accidental death and dismemberment insurance

Provide the cost data by working group and non-working group, (i.e. compensation and S & A) and delineate the administrative cost of providing the above benefits for bargaining unit employees.

18) For calendar years 2016-2020 through the present, provide the following data regarding sickness and accident benefits if applicable for bargaining unit employees:

- A) Number of employees receiving S & A benefits
- B) Number of employees who exhausted all S & A benefits
- C) Average length of S & A benefits
- D) Total Cost
- E) Average cost per hour worked

19) For calendar years 2016-2020 through the present, provide a distribution of co-payments for prescription drugs and physician services by working group and non-working group for bargaining unit employees.

20) Provide the monthly cost of employer-provided health, life and AD&D benefits since January 1, 2016 for bargaining unit employees:

- A) Working group
  - i) Single

ii) Family

21) Provide the projected monthly cost of employer provided health, life and AD&D benefits as of January 1, 2020 for bargaining unit employees.

- A) Working group
- i) Single
- ii) Family

22) For calendar years 2016-2020 through the present, provide a quarterly listing of the number of subcontracting jobs performed for the employer where the total value of the subcontracted work exceeded \$500.

- A) Number of such contracts
- B) Total cost of such contracts
- C) Type of work performed
  - i) Transportation
  - ii) Repair and maintenance
  - iii) Construction
- D) Reason for such subcontracting
- E) Number of hours worked on each subcontract

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>26</sup>

#### ORDER

Respondent, Warrior Met Coal Mining, LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information, and unreasonably delaying in providing it with information, that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of its employees in the following appropriate unit:

Employees working at Mines No. 4 and 7 in Brookwood, Alabama (the "Covered Mines") performing the following work: Any production of coal at the Covered Mines, including preparation, processing, and cleaning of coal; transportation of coal (except from plant to barge loadout facility, or by waterway or rail); repair and maintenance work performed at the mine site or at a central shop of the Employer; supply work at the Employer's warehouse, at the mine site, or at the

<sup>26</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.



central shop of the Employer; maintenance of gob piles and mine roads; and work of the type customarily related to all of the above, including without limitation at the Preparation Plants and Surface Facilities, shall be performed by classified Employees of the Employer covered by and in accordance with the terms of this Agreement . . . Watchmen, clerks, engineering and technical forces of the Employer, working at or from a Covered Mine office, are exempt from this Agreement. Essential supervisors such as mine foremen, assistant mine foremen who, in the usual performance of their duties, may make examinations for gas as prescribed by law, and such other supervisors as are in charge of any class of labor inside or outside the mines and who perform no more than limited production work are also exempt from this Agreement . . .

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Promptly furnish to the Union the information it requested on March 19, 2021, as set forth in Exhibit A to the complaint, and as specifically set forth in the Remedy portion of this decision.

(b) Within 14 days after service by the Region, post at its facility in Brookwood, Alabama, copies of the attached notice marked "Appendix."<sup>27</sup> Copies of the notice, on forms provided by the Regional Director for Region 10 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. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current

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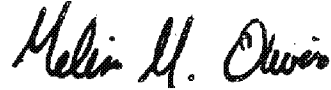
<sup>27</sup> If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

employees and former employees employed by Respondent at any time since March 19, 2021.

- 5 (c) Within 21 days after service by the Region, file with the Regional Director for Region 10 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. June 29, 2023

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A handwritten signature in black ink, reading "Melissa M. Olivero". The signature is written in a cursive, flowing style.

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Melissa M. Olivero  
Administrative Law Judge

## APPENDIX

### NOTICE TO EMPLOYEES

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### 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** refuse to bargain collectively with United Mine Workers of America, International Union, (the Union) by failing and refusing to furnish it with requested information, and unreasonably delaying in providing it with information, that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of its employees in the following appropriate unit as set forth in the parties' expired collective-bargaining agreement:

Employees working at Mines No. 4 and 7 in Brookwood, Alabama (the "Covered Mines") performing the following work: Any production of coal at the Covered Mines, including preparation, processing, and cleaning of coal; transportation of coal (except from plant to barge loadout facility, or by waterway or rail); repair and maintenance work performed at the mine site or at a central shop of the Employer; supply work at the Employer's warehouse, at the mine site, or at the central shop of the Employer; maintenance of gob piles and mine roads; and work of the type customarily related to all of the above, including without limitation at the Preparation Plants and Surface Facilities, shall be performed by classified Employees of the Employer covered by and in accordance with the terms of this Agreement . . . Watchmen, clerks, engineering and technical forces of the Employer, working at or from a Covered Mine office, are exempt from this Agreement. Essential supervisors such as mine foremen, assistant mine foremen who, in the usual performance of their duties, may make examinations for gas as prescribed by law, and such other supervisors as are in charge of any class of labor inside or outside the mines and who perform no more than limited production work are also exempt from this Agreement . . .

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

**WE WILL** furnish to the Union in a timely fashion the information it requested on March 19, 2021.

Dated \_\_\_\_\_ By WARRIOR MET COAL MINING, LLC  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

401 W. Peachtree St. NW, Suite 472  
Atlanta, GA 30308-3525  
(404) 331-2896  
Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/10-CA-274900](http://www.nlr.gov/case/10-CA-274900) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING  
AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY  
QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE  
DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (616) 930-9165.