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SHERWIN ALUMINA COMPANY, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 42143
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Respondent.	)	
	)	

UNION PACIFIC RAILROAD COMPANY’S REPLY  
TO SHERWIN ALUMINA COMPANY’S PETITION FOR AN ORDER  
COMPELLING PROVISION OF COMMON CARRIER SERVICE

GAYLA L. THAL  
LOUISE A. RINN  
PATRICIA O. KISCOAN  
DANIELLE E. BODE  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, Nebraska 68179  
(402) 544-3309

MICHAEL L. ROSENTHAL  
CAROLYN F. CORWIN  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, D.C. 20001  
(202) 662-6000

*Attorneys for Union Pacific Railroad Company*

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*Contains Color Images*

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Beginning last summer, Union Pacific cooperated extensively with Sherwin to develop a contingency plan for service in the event of a labor disruption, giving executive-level attention to Sherwin's situation. Months in advance of the lockout, Union Pacific warned Sherwin that rail service using union-represented employees would not be practicable if there was picketing at the plant. Union Pacific explained that our union-represented employees consistently refuse to cross picket lines in these situations out of concern for personal safety, and that we will not require our employees to work under conditions they believe are unsafe. {

}<sup>1</sup>

Union Pacific carefully evaluated the alternatives and determined that we could divert management personnel to serve Sherwin's plant for only a limited period after the onset of a labor disruption. That limited service was intended to give Sherwin time to increase its stockpile of lime and implement alternatives to direct rail service (or to resolve the labor dispute). Union Pacific explained to Sherwin that those managers who were qualified and available to operate trains to Sherwin's plant had primary responsibilities for ensuring safe operations over a large territory and supporting reliable service to many other customers and thus could not continue working beyond their normal duties to serve Sherwin's plant for an extended period. Union Pacific personnel assisted Sherwin further by spending substantial time analyzing Sherwin's alternatives to direct rail transportation and presenting Sherwin with a feasible rail-to-truck transloading alternative.

After locking out its unionized employees, Sherwin took advantage of Union Pacific's offer to continue serving the plant using management personnel. As the lockout stretched on,

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<sup>1</sup> Material within brackets is redacted from the public version of this filing.

Union Pacific went beyond our original commitment, serving Sherwin for four weeks using management crews. Sherwin used the time to continue stockpiling lime; it also arranged for additional transportation of lime by truck. According to Sherwin's public statements, its production has not suffered from the lack of direct rail service for lime shipments.

Under the circumstances, Sherwin's request for additional rail transportation of lime to its plant during the lockout is not reasonable. Sherwin is asking the Board to prioritize Sherwin's labor relations choices over Union Pacific's concerns for our own employees and employee relations, and over our ability to provide safe, reliable service to other customers. Sherwin's apparent position that railroads must order union-represented employees to cross picket lines unless and until they are subjected to violence is inconsistent with railroads' obligations under the Federal Railroad Safety Act, which allows railroad employees to refuse to work when confronted by a hazardous safety or security condition related to the performance of their duties. *See* 49 U.S.C. § 20109 ("FRSA"). The common carrier obligation does not extend so far.

When a railroad suspends service to a shipper's facility during a labor dispute at the facility, it must show that it responsibly evaluated whether the shipper's demand for service was a "reasonable request." *Louisiana Grocers Co-Operative v. Illinois C.G.R.*, 353 I.C.C. 606, 609 (1977). In this case, Union Pacific determined that, to continue serving Sherwin's plant, union-represented railroad employees would have to cross a picket line that was established as a result of Sherwin's decision to lock out its own employees, and that requiring our union-represented railroad employees to cross the picket line would potentially expose them to personal harm and would undermine our employee relations. We also determined that management personnel could serve Sherwin for only a limited period before impairing our ability to safely and efficiently serve other customers. In addition, we concluded that alternatives for continuing direct rail

service that Sherwin suggested to us appeared impracticable. And, we determined that Sherwin had truck and transload options that would allow it to continue to obtain lime during the lockout. In these circumstances, Union Pacific has not violated our common carrier obligation under 49 U.S.C. § 11101(a).

Part I of this reply describes Union Pacific's service to Sherwin both before and during the lockout, our communications with Sherwin about contingency planning, and our evaluation of Sherwin's request for continued service. Part II explains why Sherwin's request for additional rail service during the lockout is not reasonable under the circumstances.

This reply is supported by verified statements from witnesses who bring their personal knowledge and experience to bear on the issues raised by this proceeding:

- **LaKeisha Gatson-Dunham**, Union Pacific's Senior Business Manager, Industrial Products. Gatson-Dunham, who has sales and marketing responsibility for Sherwin's account, describes her communications with Sherwin personnel relating to the lockout and her efforts to develop a viable transload alternative for Sherwin.
- **Robert M. Johnson**, Union Pacific's Manager of Train Operations in Corpus Christi, Texas. Johnson has responsibilities for safety training and compliance and for service to Sherwin and other railroad customers across a broad territory in Union Pacific's Brownsville Subdivision. Johnson describes Union Pacific's service to Sherwin's plant using management personnel after the lockout began and how service on the management crew affected his and other managers' performance of their regular responsibilities over the four weeks that management personnel served the plant.
- **A. Terry Olin**, Union Pacific's Assistant Vice President Labor Relations for Operating Crafts. Olin describes the involvement of Union Pacific's Labor Relations Department in assessing Sherwin's request for continued direct rail service during its lockout and the safety and employee engagement concerns that Union Pacific must address when a customer seeks service during a labor disruption at its facility. Olin also describes legal doctrines that caution against Union Pacific's becoming entangled in another employer's labor dispute.
- **Brad A. Thrasher**, Union Pacific's Vice President and General Manager, Industrial Products. Thrasher describes his conversations with Sherwin personnel relating to the lockout and explains aspects of Union Pacific's response to the lockout.
- **Gregory D. Workman**, Union Pacific's Regional Vice President of Transportation for Southern Region Operations. Workman describes his approach to planning for

labor disruptions at customer facilities in the Southern Region and the specific considerations that informed Union Pacific's planning with regard to Sherwin. He also discusses why alternatives suggested by Sherwin for continuing direct rail service to Sherwin's plant did not appear practicable.

## **I. BACKGROUND**

After Sherwin advised that it might face a work stoppage and picketing when a contract with its unionized employees expired in the fall of 2014, Union Pacific established a contingency plan for a limited continuation of service to Sherwin's plant. Union Pacific communicated the plan to Sherwin on July 23, 2014, nearly three months before Sherwin caused a work stoppage by locking out its 450 unionized employees. Union Pacific determined that we could practicably continue serving Sherwin on a reduced basis using management personnel for three weeks, until October 30. Union Pacific subsequently extended that service until November 6.

Union Pacific carefully evaluated Sherwin's request for additional service during the lockout and determined that the request was not reasonable, so long as Sherwin's employees remained locked out and continued to picket at the rail entrance to the plant. In making our evaluation, Union Pacific considered the effects of continuing service on our own employees and employee relations, the associated impact on our other customers, suggestions that Sherwin offered for continuing direct rail service, Sherwin's ability to use stockpiling, trucks, and rail-to-truck transloading of lime to ensure continued production of alumina at its plant, and Sherwin's control over the duration of the lockout.

### **A. Union Pacific's rail service to the Sherwin plant**

The Sherwin plant's primary function is to extract alumina from bauxite ore to produce smelter-grade alumina. The plant is located on Corpus Christi Bay. It has a deep water port accessible by large vessels, which constitute the primary mode of transportation for Sherwin's

incoming bauxite and outgoing alumina. Sherwin also ships to customers by barge, rail, and truck. *See* Counsel's Exhibit A (Sherwin press release).

Union Pacific ordinarily transports two products for Sherwin: inbound lime and a small percentage of Sherwin's outbound alumina. Both products can move via transload and truck, as well as by rail. Gatson-Dunham RVS at 2. The lime is used in the process of extracting alumina from bauxite ore. The alumina that moves by rail is primarily chemical-grade alumina, which accounts for only a small part of Sherwin's total alumina production. The lime has moved in common carrier service, and the alumina has moved pursuant to contract. *Id.*

#### **1. Train operations to and from the Sherwin plant before the lockout**

Before Sherwin locked out its unionized employees, Union Pacific served the plant five days per week, Monday through Friday, using a three-person crew consisting of one locomotive engineer, represented by the Brotherhood of Locomotive Engineers, a Division of the Teamsters, and one conductor and one brakeman, represented by the Sheet Metal, Air, Rail and Transportation Workers – Transportation Division. Johnson RVS at 2.

On Mondays, the crew typically moved 15 to 25 cars into the plant and approximately the same number of cars out of the plant. On other days, the crew typically moved 5 to 10 cars into the plant and approximately the same number of cars out of the plant. The inbound cars included loaded cars of lime and empty cars to be used for loading alumina; the outbound cars included loaded cars of alumina and empty cars that had transported the inbound lime. *Id.*

Trains serving Sherwin's plant were made up by union-represented employees at Union Pacific's New Gregory Yard. The yard is located across a highway from and just west of the Sherwin plant. *Id.*; *see also* Counsel's Exhibit B (diagram of Sherwin plant and vicinity). The trains served four customers located off Union Pacific's line: Sherwin, DuPont, Occidental Chemical, and Reagent. The crew would start by serving DuPont, first dropping off and then

picking up cars from that facility, and then perform similar operations at the other customer facilities, finishing with Sherwin's plant. Johnson RVS at 2.

To serve Sherwin's plant, the crew would pull the train west on Union Pacific's line, past the turnout to Sherwin's lead track, then cut out the block of cars being delivered to the plant. A conductor would then walk back to the switch and align it so the train could enter the lead track, walk across the highway, and unlock a derail mechanism that prevents cars on the lead track from accidentally crossing the highway and entering Union Pacific's line. The crew would shove the inbound cars across the highway, onto the lead track, and stop for the conductor, who would climb back onto the train. The crew would then shove the inbound cars into one set of designated tracks and collect the outbound cars from other designated tracks. *Id.* at 2-3. The crew would pull the outbound cars from the lead track onto Union Pacific's line, stopping to drop off a conductor at the derail. The conductor would relock the derail, walk across the highway, and realign the switch between the lead track and Union Pacific's line. The crew would then pick up the waiting cars from the other customer facilities, and pull the train into New Gregory Yard. *Id.* at 3.

## **2. Train operations to and from the Sherwin plant after the lockout began**

As discussed further below, Union Pacific suspended regular service to Sherwin's plant by our union-represented crews after Sherwin locked out its unionized employees on October 11, 2014. However, for four weeks after the lockout began, Union Pacific served the plant twice per week, on Tuesdays and Thursdays, with a three-person crew made up of management personnel. During this period, union-represented employees in New Gregory Yard made up a special train of inbound cars for Sherwin—separate from the train that would serve DuPont, Occidental Chemical, and Reagent. The management crew would board the train, shove the train down Union Pacific's line, and then follow the same basic steps the regular crews followed to throw

the switch, walk across the highway, and unlock and relock the derail. A conductor from the management crew had to walk past picketing Sherwin employees to unlock the derail and then again after relocking the derail. *Id.* at 3-4.

In addition to running this special train for Sherwin, one other operational difference when the management crew served Sherwin's plant was that as many as 40 cars were moved into the plant on Tuesdays. This increased the complexity of the work and thus the time required to serve the plant for two reasons. First, there was not enough space to drop off all the inbound cars before pulling outbound cars, so the crew had to travel to the plant, pull the outbound cars, and bring those cars to New Gregory Yard before shoving the inbound cars into the plant. Second, setting out the inbound cars required additional moves to fit the cars into the available tracks, none of which could accommodate all of the 30 to 40 inbound cars. *Id.* at 4. It took the management crews from two to four hours to switch the plant. *Id.*

Performing even two switches per week for Sherwin after the lockout began placed a significant strain on Union Pacific's management personnel located in south Texas. When we initially agreed to serve Sherwin using management personnel in July 2014, we had only seven managers in the two management offices closest to Gregory: three in Corpus Christi and four in Bloomington, Texas (approximately 70 miles north of Gregory). Workman RVS at 5-6; *see also* Counsel's Exhibit C (diagram of Union Pacific's Texas Gulf lines). Only one of these managers was qualified as a locomotive engineer. Workman RVS at 6. By the time the lockout began in October, one of the seven managers had started a scheduled leave, and the day after we began serving the plant, another manager went on medical disability leave. Within the next week, we lost yet another manager to medical disability leave. *Id.* To keep our commitment to Sherwin, we had to use a manager from Brownsville, Texas, who drove approximately 170 miles to Gregory

every night before a management crew was scheduled to serve the plant, then drove back to Brownsville afterwards. *Id.*; *see also* Johnson RVS at 6.

Robert Johnson, based in Corpus Christi, was one of the managers who regularly served as a crew member on the train to Sherwin during this period. His regular responsibilities include managing yard and road crew operations, interacting on a daily basis with customers, and performing federally mandated safety testing and safety training of crew members in a territory that includes approximately 130 miles of track from Bloomington to Kingsville, Texas. Johnson RVS at 5. Working on a management crew serving Sherwin's plant pulled Johnson and the other managers away from these regular duties for hours at a time (and the manager who had to drive to and from Brownsville spent far more time away from his regular duties). Moreover, on the days they worked on a train to Sherwin, the management employees became subject to federal hours of service laws. That meant they could not work more than 12 hours in a day on those days, and then they could not resume work before 10 hours of rest. *Id.* at 6. For Johnson, whose workday ordinarily begins at 5:30 a.m., that meant he could not perform management duties after 5:30 p.m. on Tuesdays and Thursdays, even if there were an incident in his territory during those times. *Id.*

After four weeks of special service (including a one-week extension that Sherwin requested), with Sherwin's unionized employees still locked out and picketing the plant, Union Pacific suspended service by management personnel. The reduction and then suspension of rail deliveries has not disrupted Sherwin's production of alumina at its plant. Sherwin's parent company reported earlier this year that Sherwin's alumina production declined in 2014, but stated that the decline was not related to the lockout:

The reduction was due to a conscious decision to temporarily curtail one of the five digestion units throughout H2 2014

reflective of weak market conditions for Atlantic alumina, coupled with various power supply issues during the year caused by outages at the third party energy supplier.

Counsel's Exhibit D (Glencore press release). Even more recently, in a March 9, 2015, press release, Sherwin stated that the lockout still had not impacted production: "Sherwin's production since that decision in June 2014 [to curtail one of the five digestion units] and since the lockout of the hourly employees on October 11, 2014, remains on target with our expectations."

Counsel's Exhibit A (Sherwin press release). In fact, data Sherwin produced in discovery show that, since Union Pacific suspended rail service, Sherwin has received on average as much lime by truck as it previously received by rail. *See* Counsel's Exhibit E (Sherwin data).

**B. Union Pacific's establishment of a contingency plan for serving Sherwin and communications with Sherwin about the plan**

Over the past eleven months, Union Pacific has devoted a great deal of attention to Sherwin's concerns. Union Pacific cooperated with Sherwin's effort to develop a contingency plan several months before the expiration of Sherwin's labor agreement with its unionized employees, and we continued working with Sherwin after the lockout to provide it with an opportunity to stockpile lime and implement alternatives to direct rail service.

**1. Planning and communications before the lockout**

Union Pacific learned that Sherwin was concerned about a potential labor disruption and wanted to develop a contingency plan for rail service in a May 14, 2014, telephone call between Sherwin's George Gleditsch and LaKeisha Gatson-Dunham, Union Pacific's sales representative responsible for the Sherwin account. Gatson-Dunham RVS at 2. Gatson-Dunham told Gleditsch that he needed to contact Union Pacific's Operating and Labor Relations departments to develop a contingency plan, and she provided the contact information for those departments. *Id.* at 2-3.

On June 10, Gleditsch spoke with Jennifer Powell, Union Pacific's Assistant Director of Labor Relations. Consistent with Union Pacific's practice in situations involving potential labor disputes at customer facilities, Powell gathered information about Sherwin's operations and facilities and the potential dispute. Gleditsch followed up in a letter to Powell dated June 11, writing that Sherwin had "adequate time to plan," because the labor agreement would not expire until September 30, 2014. He enclosed a diagram of Sherwin's facilities on which he had drawn the location of the potential picket line in relation to Union Pacific's tracks. The diagram made clear that our crews would have to cross the picket line to serve the plant. Olin RVS at 3; *see also* Counsel's Exhibit F (Gleditsch letter with diagram).

On June 18, Gleditsch again spoke with Gatson-Dunham, who offered to help schedule a conference call between Sherwin employees and personnel from Union Pacific's Operating and Labor Relations departments. Gatson-Dunham RVS at 3.

On July 8, Gatson-Dunham and Gary Taggart, Union Pacific's Labor Relations Director, participated on a conference call with Gleditsch and other representatives of Sherwin. During the call, Taggart told Gleditsch that Union Pacific likely would be unable to provide regular service in the event of a labor disruption. He explained that Union Pacific crews consistently refuse to cross picket lines at facilities they serve out of concern for their personal safety, and that Union Pacific would not force crew members to cross picket lines in that situation. *Id.* Taggart also told Gleditsch that service on a reduced schedule by management personnel might be possible for a limited period. *Id.* at 3-4. Gleditsch suggested another alternative—that Sherwin could supply crews and locomotives to move cars between the plant and Union Pacific's line across the highway from the plant. *Id.* at 4. Gatson-Dunham and Taggart told Gleditsch that they would

reach out internally to get a decision on a contingency plan and would schedule another conference call once they had an update. *Id.*

Union Pacific's Labor Relations and Operating departments concluded that Sherwin's proposed alternative was not feasible for at least three reasons. First, Sherwin would need to have locomotive engineers and conductors who were certified by the Federal Railroad Administration ("FRA"), as well as a proper safety plan for moving trains across the highway. Second, having inexperienced operators in New Gregory Yard would increase safety risks. Third, we were concerned that if some Sherwin employees entered Union Pacific's property, the picketing Sherwin employees might feel justified in following the train from Sherwin's plant to Union Pacific's property and picketing on our property, obstructing our operations. Olin RVS at 4; Workman RVS at 12.

Around July 14, Gregory Workman, Union Pacific's Regional Vice President of Transportation for the Southern Region Operations of Union Pacific, met with Jack Huddleston, Union Pacific's General Superintendent of the Houston Service Unit, who had been working with the Marketing and Labor Relations departments to develop the contingency plan for serving Sherwin. The two agreed that in the event of labor picketing at Sherwin's plant, Union Pacific would be able to serve Sherwin twice a week for three weeks using management personnel. Workman RVS at 3.

On July 17, 2014, Gatson-Dunham provided Gleditsch with an update, telling him that Union Pacific was still working on a contingency plan and that she hoped to have a response to him by the following week. Gatson-Dunham RVS at 4. Rather than wait to hear further from Gatson-Dunham, Gleditsch began calling Cameron Scott, Union Pacific's Executive Vice President of Operations. As a result of those calls, Randy Blackburn, Union Pacific's Vice

President of Transportation, spoke with Workman about the contingency plan for serving Sherwin. Workman RVS at 8-9.

On July 23, Blackburn asked John J. O’Leary, Jr., Union Pacific’s Assistant Vice President of the National Customer Service Center, to call Gleditsch and explain Union Pacific’s contingency plan. *Id.* at 9. O’Leary spoke with Gleditsch that same day. O’Leary told Gleditsch that in the event of a labor disruption at the plant Union Pacific would be able to offer two-day-a-week service for up to three weeks using management personnel, and that the details could be coordinated with our local operating managers. Gleditsch told O’Leary that he understood the resource issue raised by committing managers to providing train service. {

} Gleditsch asked O’Leary whether there was any flexibility in the end date for service by management personnel and whether Union Pacific would consider allowing Sherwin to supply a locomotive and an engineer to operate on Union Pacific track. O’Leary told Gleditsch that Union Pacific would consider those questions and respond. *Id.*

Approximately a week later, Gleditsch called O’Leary. When O’Leary returned the call, he provided contact information for Ramiro Barba, Union Pacific’s Director of Transportation Services for the Houston Service Unit, whom Workman had asked to serve as a point of contact for Sherwin. O’Leary also addressed Gleditsch’s questions from July 23, explaining that Union Pacific could not provide service using management personnel for more than three weeks and could not allow Sherwin’s employees or contractors to operate trains on railroad property. *Id.*

On September 23, Gatson-Dunham contacted an individual at the Port of Corpus Christi who had reached out on behalf of Sherwin to obtain rates from Union Pacific and Kansas City Southern for transportation of lime to a transload facility in Corpus Christi. Gatson-Dunham

RVS at 4-5. Gatson-Dunham responded on September 25 by providing the requested rates to Gleditsch and others at Sherwin. *Id.* at 5. She suggested that Sherwin consider using the same transload facility for its outbound alumina shipments. *Id.*

## **2. Planning and communications after the lockout began**

Sherwin locked out its employees on October 11. On October 22, Sherwin's Kent Britton wrote a letter to Brad Thasher, Union Pacific's Vice President and General Manager, Industrial Products, regarding Union Pacific service for outbound contract shipments of alumina. *See* Counsel's Exhibit G (Britton letter). Sherwin now asserts that Union Pacific had no official contingency plan for serving its plant during the lockout until Thrasher responded to Britton's letter on October 28 (Gleditsch VS at 6), but that is obviously incorrect. Union Pacific management personnel had begun switching Sherwin's plant on Tuesday, October 14, a few days after the lockout began. Johnson RVS at 4. By October 28, Sherwin was more than two weeks into its lockout, and Union Pacific had been serving Sherwin using management crews during all of that time.

Thrasher's October 28 response to Britton reviewed Union Pacific's communications with Sherwin and reiterated the reasons why neither regular service using union-represented crews nor extended service using management personnel was practicable during the lockout. Thrasher RVS at 2; *see also* Counsel's Exhibit H (Thrasher letter). Thrasher's letter also emphasized Union Pacific's willingness to assist Sherwin in pursuing transportation alternatives, and in particular, the use of rail-to-truck transloading service. Thrasher RVS at 2.

On October 28, after Thrasher sent his letter, there was a telephone call among Britton, Gleditsch, Thrasher, and Gatson-Dunham. On the call, Thrasher reviewed the reasons why Union Pacific could not practicably provide regular service to Sherwin under the circumstances. *Id.* Britton asserted that the picket line had been peaceful, and Thrasher related his understanding

that picketers had confronted at least one of our management crew members. *Id.* Thrasher told Britton that Union Pacific was concerned not only about the potential for violence on the picket line, but also the potential for threats and intimidation and violence that rail employees might face when they were off-duty. *Id.* at 2-3.

Thrasher also explained why service by management personnel could not be a long-term solution. *Id.* at 3. In addition, he explained why it did not appear practicable for Sherwin or a third party to move cars between the plant and Union Pacific's line, and he suggested that Sherwin pursue transloading as an option. *Id.* Britton said that lime could be trucked to the plant, and he expressed interest in pursuing a transloading option, especially for outbound alumina. *Id.* at 4. Thrasher agreed to attempt to get approval to continue serving Sherwin using management crews for one additional week, until November 6, 2014, to provide more time for Sherwin to make alternative transportation arrangements. *Id.* at 3. Thrasher then contacted Union Pacific's Operating Department and was able to obtain an extension to November 6 for service by management personnel. *Id.*; Workman RVS at 10.

Following up on the October 28 phone call, Gatson-Dunham renewed her efforts to assist Sherwin in developing a transloading option, with a focus on outbound alumina (which was the primary object of Britton's concern during the call). (As described above, in September, at Sherwin's request, Gatson-Dunham had established rates for transporting lime to a transload facility in Corpus Christi.) Immediately after the October 28 call, Gatson-Dunham asked Union Pacific Distribution Services ("UPDS") to undertake a thorough review of potential transload options for Sherwin. Gatson-Dunham RVS at 6. Over the next week, Union Pacific and UPDS identified and analyzed six potential transload options that could have accommodated both inbound lime and outbound alumina. Gatson-Dunham provided Sherwin frequent updates

throughout the process, and she ultimately informed Sherwin of Union Pacific's conclusion regarding the most suitable option. Gatson-Dunham provided Britton with rate information for this transload by email on November 5. *Id.* But Gatson-Dunham and her colleagues never heard back from Sherwin concerning the rates she provided in either September or November for transloading lime or alumina. *Id.*

Since November 6, Sherwin has been producing alumina using lime that it stockpiled in rail cars and that it has received by truck. Gleditsch VS at 8-9. Notably, Sherwin apparently did not take full advantage of the time when Union Pacific was serving its plant using management personnel to obtain lime by rail. {

} Gatson-Dunham RVS at 7.

On December 9, Britton called Thrasher again to discuss rail service to Sherwin's plant. During the call, Britton confirmed that Sherwin's locked-out employees continued to picket the plant, and Thrasher again explained that Union Pacific would not ask our union-represented employees to cross the picket line. Thrasher RVS at 4. Britton again asked about using additional management crews or a third party to move cars between the plant and Union Pacific, Thrasher again explained why those alternatives appeared impracticable, and Britton commented that Sherwin was continuing to consider transloading as an option. *Id.* at 4-5.

On December 24, Britton sent Thrasher a request that Union Pacific provide common carrier rates and service terms for movements of lime from two sources. *Id.* at 5. Sherwin never gave a reason for this request. It did not assert that its lime stockpile was running low or that it was having difficulty receiving lime by truck. On January 2, 2015, Thrasher responded by email, identifying the applicable tariff, which was the same tariff that covered movements of lime to

Sherwin's plant before the lockout. *Id.*; *see also* Counsel's Exhibit I (Thrasher email). On January 20, Sherwin used Union Pacific's web site to bill a single rail car of lime from one of its suppliers to Gregory. On January 30, Sherwin used the web site again to bill a single rail car of lime from a different supplier to Gregory. When the cars arrived at Union Pacific's yard in Gregory, Sherwin asked Union Pacific to spot the cars at the plant. Union Pacific promptly responded that we would not spot the cars while the picketing continued. Thrasher RVS at 5.

On February 10 and 11, Britton and Thrasher had a brief email exchange in which Britton wrote that Sherwin planned to further explore its transload options. *Id.* Thrasher renewed Union Pacific's offer to assist in pursuing those options, and the Union Pacific employee who was covering Sherwin's account in Gatson-Dunham's absence offered to provide additional assistance if Sherwin needed it. *Id.*; *see also* Counsel's Exhibit J (email exchange).

Union Pacific had no further communications with Sherwin about these matters until March 10, when Sherwin filed its petition.

**C. Union Pacific's careful evaluation of Sherwin's request for additional service during the lockout**

In evaluating Sherwin's request for service during the lockout, Union Pacific carefully evaluated a range of possible service options, including service by regular crews, service by crews consisting of management personnel, and rail service options Sherwin suggested. We also considered Sherwin's ability to use stockpiling, trucks, and rail-to-truck transloading to obtain the lime needed to continue producing alumina, as well as Sherwin's control over the duration of the lockout.

**1. Use of union-represented crews**

Union Pacific told Sherwin in July 2014 that rail service using union-represented crews would not be practicable if the crews would have to cross a picket line to enter the plant. Gatson-

Dunham RVS at 3. And Union Pacific crews *would* have to cross a picket line to enter the plant. As explained below, picketers are standing adjacent to the point where the Union Pacific train turned into Sherwin's lead track, and a Union Pacific conductor must walk past the picketers to unlock and relock a derail mechanism located next to the picket line in order to serve the plant. Johnson RVS at 4; *see also* Counsel's Exhibit B (Sherwin plant diagram). In fact, picketers at Sherwin confronted our management crews on at least two occasions to determine whether we were attempting to serve Sherwin using union-represented crews. Johnson RVS at 4-5.

Union Pacific's concern about using union-represented crews in such situations is based on considerations for employee safety and employee relations. Union Pacific will not require our employees to work under conditions they believe are unsafe. Olin RVS at 5. In Union Pacific's experience, union-represented train crews invariably express concern for their personal safety and the safety of their families when they are asked to cross a picket line at a customer location. *Id.* In addition, under the FRSA, railroad employees may refuse to work when confronted with a hazardous safety or security condition related to the performance of their duties, and in 2007 Congress amended the statute to give railroad employees a private cause of action to sue their employers if they are disciplined for the good faith exercise of their right to refuse to work in dangerous situations. *Id.* Moreover, Union Pacific's unions take the position that we cannot require their members to cross a union picket line, and they have made clear that they would instruct their members not to cross a picket line. *Id.* at 5-6. Union Pacific should not be forced into a confrontation with the unions representing our employees because of Sherwin's decision to lock out its own unionized employees. *Id.* at 6.

**a) Employee safety concerns**

When Sherwin contacted Union Pacific about the potential labor disruption at its plant, Union Pacific began the contingency planning process by collecting information to evaluate the

feasibility of continuing to provide regular service using union-represented crews. We determined that Sherwin's employees were currently represented by a union—United Steelworkers Local 235-A. Olin RVS at 3. Sherwin provided a diagram of the site that showed the relation of our tracks to the potential picket line. The diagram made clear that our crews could not enter the plant without crossing the picket line. *Id.*; *see also* Counsel's Exhibit F.

In fact, Union Pacific crew members necessarily would come into close proximity to the picketers if they served the plant. For Union Pacific's train to enter the plant, a conductor must leave the train to align the switch from Union Pacific's line to Sherwin's lead track, walk across a highway, and unlock a derail located on the lead track just a few feet south of the highway. A conductor would have to perform the same operations in reverse on the way out of the plant. All of these activities, especially unlocking and relocking the derail mechanism, would take place in very close proximity to the picketers, who are standing along the highway adjacent to the point where the Union Pacific train enters Sherwin's lead track. Johnson RVS at 4; *see also* Counsel's Exhibit B.

Union Pacific determined that our union-represented employees would certainly raise safety concerns about the Sherwin situation and could not be expected to cross the picket line in the event of a work stoppage, and we ultimately confirmed this. After Sherwin filed this petition, Union Pacific labor relations personnel spoke with the General Chairmen of the relevant rail employee unions about the possibility that the Board could require Union Pacific to ask union-represented employees to cross the picket line if the agency accepted Sherwin's position. These General Chairmen advised that the unions would tell their members not to cross the picket line out of concern for their personal safety. Olin RVS at 5.

Sherwin's evidence shows that it, too, had concerns for the safety of people who crossed the picket line. Sherwin hired off-duty sheriff's deputies to watch the picket lines. Britton VS at 5. It also hired a "specialized private security firm to man external checkpoints in the vicinity of [the] plant"—checkpoints that continue to operate "24 hours a day, 7 days a week." *Id.*

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} Counsel's Exhibit K (Sherwin Guidelines).

Sherwin's continued 24 hours a day, seven days a week use of enhanced security measures is not surprising under the circumstances. The United Steelworkers have publicized the lockout and the impact of the work stoppage on Sherwin and have accused Sherwin and its parent company of abusing the Sherwin workers. *See* Counsel's Exhibits L-N (USW press releases). The United Steelworkers themselves have been accused of harassing, coercing, and threatening picket-line crossers in recent months in connection with strikes the union has mounted at refineries in the nearby Houston area. On February 23, a Shell Oil Company refinery

worker filed an unfair labor practice charge against the union for harassing and threatening workers crossing a picket line. *See* Counsel's Exhibits O-P (National Labor Relations Board docket sheet and press release). Unfair labor practice charges alleging coercion were also filed against the United Steelworkers on March 10 and March 18 in connection with activity at LyondellBasell Industries. *See* Counsel's Exhibits Q-S (National Labor Relations Board docket sheets and news story).

As Thrasher explained to Britton, Union Pacific's safety concerns do not relate solely to threats or other violent activity on the picket line itself. Thrasher RVS at 2-3. Our employees have expressed concern for their personal safety during their off-duty hours if they are identified as having crossed a picket line at a shipper facility. Olin RVS at 5. There was plainly a risk of such incidents here. On at least two occasions, picketers confronted our management crew members as they unlocked the derail mechanism, apparently to determine whether our union-represented employees were crossing the picket line. Johnson RVS at 4-5. Those confrontations show that the locked-out employees are prepared to confront Union Pacific personnel and that they were watching to determine whether union-represented railroad employees crossed the picket line.

Sherwin's own records {

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These incidents make clear that Union Pacific's concerns about potential threats to railroad employee safety were and are reasonable.

**b) Broader employee relations concerns**

Union Pacific's decision not to try to force union-represented crews to cross the picket line at Sherwin's plant also reflected an interest in avoiding unnecessary confrontation with our employees and their unions. We devote considerable effort to maintaining positive, constructive relationships with the unions that represent our employees. Union Pacific and the unions share common interests in creating and maintaining a safe working environment and safe operations and providing high quality service to our customers. In recent years, Union Pacific and the unions have successfully advanced these interests by fostering an atmosphere of mutual cooperation and trust, reflecting our common understanding that employee safety is a top priority. Olin RVS at 2.<sup>2</sup> Union Pacific values that cooperation, which ultimately contributes importantly to our ability to provide a high level of service to our customers. *Id.* Positive relationships with our employees are especially important when cooperation and sacrifice are needed to deal with particularly challenging operating conditions, such as unusually heavy traffic volumes and natural disasters. *Id.*

Almost nothing would be more damaging to Union Pacific's relationship with the unions representing our employees than trying to force union-represented employees to cross a picket line, especially in a situation where the customer had locked out its own employees. Based on our past experience, the consequences are predictable. The unions would tell their members not to cross the picket line and would assert that we have no contractual right to require members to

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<sup>2</sup> Union Pacific just achieved a record first-quarter safety performance, with a 23 percent injury rate improvement compared with the first quarter of 2014. *Id.*

cross the picket line or to discipline them for refusing. If we persisted, the unions might even strike. *Id.* at 7.

Engaging in a dispute of this type would damage Union Pacific's employee relations over the longer term and could spark disruptions in our operations that would affect service to many customers besides Sherwin. *Id.* We believe it is imprudent to invite such disputes unless there are very strong reasons to do so. Union Pacific's other customers have rarely put us in such a situation. *Id.* at 9.

## **2. Use of management crews**

Union Pacific told Sherwin in July 2014 that service using management personnel for a limited period might be possible in the event of a labor disruption. Gatson-Dunham RVS at 3-4. In our experience, management crews are not subject to the same level of risks to their personal safety as our union-represented crews when they cross picket lines. Olin RVS at 6 n.1; *see also* Johnson RVS at 4-5. But diverting management personnel to serve on train crews ultimately has a detrimental impact on our ability to provide safe, reliable service for all our customers, and we simply cannot do this for Sherwin for extended periods.

Union Pacific carefully evaluated our ability to assign management personnel under the circumstances and concluded that we could serve Sherwin with management crews on a limited basis for several weeks as an accommodation to our customer. Our ability to serve Sherwin on a regular basis or for a longer period was limited by the number of management employees in the area who were both qualified and available to operate trains, the heavy volume of rail traffic in Texas during this period, and the impact on operations and service to our other customers of repeatedly pulling rail managers away from their normal duties. Workman RVS at 6-8.

Union Pacific cannot simply take any management employees and assign them to operate a train. Federal law requires railroads to have written programs for certifying the qualifications

of locomotive engineers that include specified criteria and procedures, to submit the programs to the FRA for approval, and to adhere to the approved programs. *See* 49 C.F.R. part 240. Federal law also requires railroads to have a formal program for certifying conductors, and FRA rules mandated by the Rail Safety Improvement Act of 2008 prescribe minimum Federal safety standards for the eligibility, training, testing, certification and monitoring of conductors. *See* 49 C.F.R. part 242. In fact, one of the critical duties of Union Pacific's Managers of Operating Practices is to test our train crew members at various times and locations on their knowledge and compliance with safety and operating rules. Workman RVS at 8.

As discussed above, when we initially agreed to serve Sherwin using management personnel, we had only seven managers in the area, three in Corpus Christi and four in Bloomington. *Id.* at 5-6. Several of these managers subsequently went on medical leave. Almost immediately after the lockout began, we had only four managers in those offices, and only one who was qualified as locomotive engineer. *Id.* at 6. To keep our commitment to Sherwin, we had to use a manager from Brownsville. *Id.*<sup>3</sup>

When management personnel are assigned to provide local train service for a customer, they are pulled away from their management duties. There is a limit to how frequently and how long managers can be diverted before operations and safety will begin to suffer. Our managers have day-to-day responsibilities for supervising and providing guidance to engineers, conductors, and hostlers assigned to them to ensure that these employees possess the necessary technical expertise to safely and efficiently operate trains and locomotives on their assigned territories and

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<sup>3</sup> Union Pacific is in essentially the same position today. Currently, we have seven managers in Corpus Christi and Bloomington, only two of whom are locomotive engineers (and one of whom is receiving medical care that makes him unavailable to work on some days). Expanding the geographic scope to Brownsville would add only two more managers, neither of whom is qualified as a locomotive engineer. *Id.* at 11.

that they are complying with Union Pacific's FRA-mandated operating procedures. *Id.* at 7-8. Our managers are also responsible for execution of daily transportation plans to achieve customer satisfaction. They must coordinate train, yard, and terminal activities to ensure the highest level of safe and efficient service. They also maintain contact with customers to provide updates on service plans and address any issues that arise in day-to-day operations. And they respond to derailments and other incidents. *Id.* at 8; *see also* Johnson RVS at 5-6.

In October 2014, when the lockout began, Union Pacific's operations in southeastern Texas required an especially high level of management attention in order to maintain reliable service to the railroad's customers. Especially in the Southern Region, our traffic volumes were high, numerous track projects for capacity expansion and maintenance were scheduled, and we were aggressively hiring new train service employees. All these factors placed substantial burdens on our managers in the region. Workman RVS at 11-12.

Union Pacific initially told Sherwin that we could serve the plant using management personnel two days a week for three weeks. In concluding that we could practicably serve the plant for this period, we considered the available management resources relative to the regulatory requirements for safety and the potential impacts on service to other customers; we also took into account Sherwin's ability to stockpile lime and arrange for alternate transportation via truck or rail-to-truck transload, as well as Sherwin's control over the duration of the lockout. *Id.* at 5-8. In October 2014, when Gleditsch asked Thrasher whether Union Pacific could provide service for a longer period using management personnel, we reevaluated the circumstances and, in an effort to provide more time for Sherwin to implement a transload option, concluded that we could extend service using management crews for one additional week, but that we could not continue indefinitely. *Id.* at 10.

### 3. Sherwin's proposals

During the parties' discussions prior to and during the lockout, Sherwin offered three proposals it said would assist Union Pacific in serving the plant during the lockout: (i) financial support for additional management personnel to operate trains to Sherwin; (ii) use of Sherwin's equipment and personnel to move cars between the plant and Union Pacific property; and (iii) use of a Union Pacific-approved contractor to move cars between the plant and Union Pacific property. None of the proposals appeared practicable.

*Sherwin's proposal to pay for management crews.* This suggestion failed to address the underlying problem with using management personnel to serve Sherwin's plant: Union Pacific's concerns were not financial. As discussed above, our ability to use management crews to move trains for a customer is constrained by the availability of management personnel and the inability of our managers to perform their normal duties when they are diverted to operating trains. Workman RVS at 10-11. At one point, Sherwin proposed to offset Union Pacific's costs of temporarily transferring additional management personnel to Gregory, but transferring management personnel would just shift the problem, leaving other parts of our network shorthanded. *Id.* at 11.

*Sherwin's proposal to use its own personnel.* Sherwin's proposal to use its own equipment and personnel to move trains to and from Union Pacific property was not practicable for three reasons. First, Sherwin employees could not operate trains on Union Pacific lines unless they were FRA-qualified engineers and conductors. *Id.* at 12. Thus, while Sherwin's offer was well-intentioned, the proposed operation would have been illegal. Second, having inexperienced operators in our New Gregory Yard would increase safety risks, especially given the presence of TIH and other hazardous commodities in the yard. *Id.* Finally, even if Sherwin's employees were properly qualified, allowing Sherwin's employees and equipment onto Union Pacific property

has the potential to entangle the railroad in Sherwin's labor dispute. Union Pacific was concerned that if we allowed Sherwin equipment and employees to operate on Union Pacific's lines—and into New Gregory Yard, which supports our service to other customers—Sherwin employees might conclude that they could picket on Union Pacific property. *Id.*; *see also* Olin RVS at 4. Our union-represented crews would then be faced with the prospect of crossing a picket line to serve not only Sherwin, but also all of our other customers in the area. We cannot afford this potential disruption to our service to customers.

***Sherwin's proposal to use a third-party contractor.*** Sherwin's proposal that Union Pacific use a non-union third-party contractor to serve the plant for the duration of the lockout also did not appear practicable. Arranging for a third party to operate on Union Pacific's line and into our yard to pick up and deliver cars for Sherwin would require identifying a qualified, non-union contractor with an excellent safety record, and reaching agreements between or among the parties on a number of issues, including the scope of activities to be performed, compensation, safety and operations, and liability and indemnity. Workman RVS at 12-13. Reaching agreements on critical issues would be complicated by concerns about whether the arrangement might expose Union Pacific to picketing under the National Labor Relations Act under a theory that we were allying ourselves with Sherwin. Olin RVS at 8-9. Moreover, depending on how the agreements were structured, Board authority might be required both for the initiation of the operations and their termination. With all of these issues in play, the necessary arrangements would take a considerable amount of time and effort to put in place, assuming we could negotiate acceptable agreements. Workman RVS at 13. The use of a third-party contractor thus did not appear to be a practicable solution, particularly for what appeared to a temporary problem that

Sherwin could end through its own actions, and especially when Sherwin had the options of using trucks and transloading to obtain lime. *Id.*

#### **4. Sherwin's access to lime during the lockout**

In evaluating the reasonableness of Sherwin's request for additional service, Union Pacific also took into account the fact that Sherwin had alternatives to direct rail service to its plant during the lockout. Workman RVS at 5. Sherwin had at least three ways to maintain a supply of lime during the lockout, and it has used two of these alternatives to maintain its supply. Sherwin's recent public statements reveal that production at the plant has not suffered.

*First*, Sherwin had an opportunity to stockpile lime. Sherwin knew on July 8, 2014—more than three months before locking out its employees—that Union Pacific likely would not be able to provide regular service in the event of a labor disruption. Gatson-Dunham RVS at 3. Moreover, Sherwin controlled the timing of the work stoppage. Sherwin's employees did not go on strike; instead, Sherwin locked them out. If Sherwin needed more time to stockpile lime, it could have delayed the lockout. And, Union Pacific gave Sherwin more time to build its lime stockpile by serving Sherwin for four weeks using management personnel after the lockout began. Stockpiling proved to be a viable alternative. Sherwin says it stockpiled “approximately 50 railcars” of lime and still had approximately 20 cars available at the time it filed the petition. Gleditsch VS at 8.

*Second*, Sherwin can and does receive lime by truck. Britton VS at 4; Gleditsch VS at 7. Notably, Sherwin described its 50 cars of lime as a “20-day reserve,” but it filed its petition 124 days after the last management crew served the plant. The fact that it still had 20 cars on hand at that time presumably was due to truck deliveries during the lockout period. *See* Gleditsch VS at 8. In fact, during that period, Sherwin found an additional lime supplier with trucks to help replenish its stockpile. *Id.* at 8-9.

*Third*, Sherwin could receive lime using a rail-to-truck transload. Union Pacific has used transloading to deliver lime and other bulk products for many other customers, so a transload appeared feasible for Sherwin. Thrasher RVS at 3-4. As discussed above, Union Pacific provided rates for a transload option under which lime would move by rail to Corpus Christi, and then only a short distance by truck to Gregory. Gatson-Dunham RVS at 5. Sherwin has not even tried to take advantage of that option.

Union Pacific's conclusion that Sherwin has viable alternatives has proven accurate. The lockout has not affected Sherwin's alumina production. As recently as March 9, Sherwin stated publicly that "Sherwin's production . . . since the lockout of the hourly employees on October 11, 2014, remains on target with our expectations." Counsel's Exhibit A.

In addition, Sherwin produced data in discovery that show the company has been able to obtain a substantial amount of lime by truck. In fact, Sherwin has been able to obtain as much lime by truck as it previously received by rail. Sherwin filed its Complaint on March 10, 2015. Sherwin's records show that in the three previous months, during which it received lime by truck only, Sherwin received an average of {        } tons of lime per month. By comparison, from January 2013 through September 2014, the last full month before the lockout, Sherwin received an average of {        } tons of lime per month, mostly by rail. *See* Counsel's Exhibit E (Sherwin data). Union Pacific's suspension of service for inbound lime after the first four weeks of the lockout plainly has not affected Sherwin's ability to obtain the lime it needs to operate its plant.

**II. SHERWIN'S REQUEST FOR COMMON CARRIER SERVICE IS NOT REASONABLE UNDER THE CIRCUMSTANCES.**

Consistent with our common carrier obligation, Union Pacific responsibly evaluated whether Sherwin's request for continued direct rail transportation of lime after Sherwin locked out its unionized employees was reasonable. We reasonably concluded that in the circumstances

service using union-represented train crews would not be possible, and we could provide service for only a limited time using management personnel. We communicated our concerns and our plan to Sherwin, and we assisted Sherwin in exploring options for alternate transportation. While Union Pacific service to the Sherwin plant has been suspended, Sherwin has obtained lime by truck, and its business has not suffered. In addition, Sherwin locked out its employees and thus controlled the timing of the work stoppage. Under the circumstances, Sherwin's request that the Board prioritize Sherwin's labor relations choices over Union Pacific's concerns for our own employees and employee relations, and over our ability to provide safe, reliable service to other customers, is not reasonable.

**A. The common carrier obligation is not absolute.**

Sherwin cites Union Pacific's common carrier obligation, but that obligation does not require Union Pacific to provide service to the Sherwin plant in all circumstances. Railroads' common carrier obligation under 49 U.S.C. § 11101(a) "is not absolute, and the law exacts only what is reasonable of the railroads under the existing circumstances." *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 325 (1981) (internal quotation marks omitted); see also *Midland Valley R.R. v. Barkley*, 276 U.S. 482, 485 (1928) ("The law exacts only what is reasonable . . ."); accord *Decatur Cnty. Comm'rs v. STB*, 308 F.3d 710, 715 (7th Cir. 2002); *GS Roofing Prods. Co. v. STB*, 143 F.3d 387, 391-92 (8th Cir. 1998).

Railroads are required to "provide, in writing, common carrier rates to any person requesting them," and then to "provide rail service pursuant to those rates upon reasonable request." *State of Mont. v. BNSF Ry.*, NOR 42124, slip op. at 7 (STB served Apr. 26, 2013). "What constitutes a reasonable request for service is not statutorily defined but depends upon all the relevant facts and circumstances." *Id.* Thus, as courts have recognized, "[t]he STB has been given broad discretion to conduct case-by-case fact-specific inquiries to give meaning to these

terms . . . in the wide variety of factual circumstances encountered.” *Granite State Concrete Co. v. STB*, 417 F.3d 85, 92 (1st Cir. 2005); *see also Kalo Brick*, 450 U.S. at 325 (“The judgment as to what constitutes reasonableness belongs exclusively to the Commission”). When evaluating a carrier’s explanation for denying a request for service, “the Board tries to avoid micromanaging a carrier’s operational decisions.” *State of Mont.*, slip op. at 7 n.28.

The delicacy of the situation a railroad faces in the case of a labor dispute at a customer facility requires giving railroads leeway to take into consideration the many factors at play. As discussed in the next section, both courts and the Board’s predecessor have recognized that a railroad may not be obligated to provide service in this context, depending on the facts and circumstances.

**B. Determining whether a demand for rail service during a labor dispute at a shipper’s facility constitutes a reasonable request requires case-by-case consideration of the specific facts, interests, and other legal considerations.**

Supreme Court precedent establishes that the existence of a labor dispute at a shipper facility might relieve a carrier of its usual duty to provide common carrier service in some cases. *See Local 1976, United Bhd. of Carpenters & Joiners of Am. v. NLRB*, 357 U.S. 93, 109 (1958). Sherwin apparently believes that only a showing of violent activity on a picket line would justify a rail carrier’s failure to serve a facility. *See* Petition at 18-24. In fact, a carrier can justifiably decline to continue serving a facility during a labor disruption for reasons other than the actual occurrence of violent incidents on a picket line. “[T]he carrier has the right to responsibly evaluate, on all its elements, . . . whether the situation . . . fairly constitutes the shipper’s demand for service from the carrier as one of ‘reasonable request’ under the statute.” *Minneapolis & St. Louis Ry. v. Pac. Gamble Robinson Co.* (“*Gamble Robinson*”), 215 F.2d 126, 132 (8th Cir. 1954). As the Supreme Court has explained, the sufficiency of a carrier’s justification for

declining to provide service in the context of a labor dispute at a customer facility is for the Board to decide, and the Board must consider the particular facts presented by each case:

It is the [Board] that in the first instance must determine whether, because of certain compelling considerations, a carrier is relieved of its usual statutory duty, and necessarily [the Board] makes this determination in the context of the particular situation presented by the case before it.

*Local 1976*, 357 U.S. at 109.

Board precedent recognizes the fact-specific nature of the inquiry that must be performed in a case like this one. When a railroad declines to continue serving a shipper during a labor dispute at the shipper's facility, the railroad must show that it "responsibly evaluate[d]" whether the shipper's demand for service was a "reasonable request" and that it acted with "due diligence in attempting to provide [service]." *Louisiana Grocers Co-Operative v. Illinois C.G.R.*, 353 I.C.C. 606, 609, 610 (1977). The relevant factors both the railroad and the Board must consider include: which party bears responsibility for the labor disruption; whether the carrier's employees would have to cross a picket line to serve the shipper facility; whether the carrier is concerned about harm to employees; whether the carrier is concerned more broadly about harm to relations with its employees; whether the carrier made reasonable efforts to serve the shipper; and whether the shipper is cut off from interstate transportation if it does not receive the particular type of service it requests from the railroad. *See, e.g., id.* at 608-10; *Montgomery Ward & Co., Inc. v. C., M., St. P. & P. Ry. Co.* ("Chicago, Milwaukee"), 268 I.C.C. 257, 259-60 (1947); *Montgomery Ward & Co., Inc. v. Consolidated Freightways* ("Consolidated Freightways"), 42 M.C.C. 225, 230, 233-34 (1943); *see also Meier & Pohlmann Furniture Co. v. Gibbons*, 233 F.2d 296, 303-04 (8th Cir. 1956). The Board has broad discretion to conduct a case-by-case, fact-specific analysis because whether a carrier justifiably declined to continue

serving a shipper facility during a labor disruption “is a question of defining the carrier’s duty in the framework of the national transportation policy.” *Local 1976*, 357 U.S. at 110.

Here Union Pacific carefully evaluated all the factors listed above, determined that we should not require our union-represented employees to cross the picket line at Sherwin’s plant, provided service using management personnel for almost a month after the lockout began, and worked with Sherwin personnel to develop alternatives to ensure that Sherwin could obtain the lime it needed during the lockout. Sherwin’s argument that Union Pacific violated our common carrier duty when we ultimately suspended direct service to Sherwin’s plant erroneously focuses only on whether there was evidence of actual violence, ignores relevant facts in the current situation, and relies on cases that were decided under different factual circumstances and under legal theories inconsistent with current law regarding the common carrier obligation. Sherwin’s argument is also inconsistent with Congress’s adoption of an amendment to the FRSA in the Federal Railroad Safety Authorization Act of 1980, which expressly protects the rights of railroad employees to refuse to work when confronted by a hazardous safety or security condition, *see* Pub. L. No. 96-423 § 212, 94 Stat. 1815 (1980), and Congress’s subsequent creation of a cause of action for retaliatory discharge in the Implementing Recommendations of the 9/11 Commission Act of 2007, *see* Pub. L. No. 110-53, § 1521, 121 Stat. 447 (2007).

Sherwin’s suggestion that a rail carrier has a nearly absolute obligation to continue providing service in the event of a labor dispute is based primarily on *Montgomery Ward & Co. v. Northern Pacific Terminal Co.* (“*Northern Pacific*”), 128 F. Supp. 475 (D. Ore. 1953). *See* Petition at 17. That district court decision, involving a shipper’s claim for damages from numerous rail and motor carriers that had all declined to provide service to the shipper’s facility during a seven-month strike, has little or no relevance here. The court in *Northern Pacific* ruled

(incorrectly, as other cases demonstrate) that there were only two valid justifications for failing to provide common carrier service: an act of God and acts of public enemies. *See id.* at 505. It said that other justifications were “entirely irrelevant and immaterial.” *Id.* It found that “[t]here were acts of violence and threats of violence” in that case, but said that “these are not even plausible excuses for the carriers . . . .” *Id.* at 513. The court took a radical view of employer-employee relations—that the recognition of a picket line by common carriers “lays the foundation for a general strike and class war.” *Id.* at 517. It said carriers were obligated to devote all of their resources to maintaining service, even if this would have led to strikes against the carriers (possibly leading to the shutdown of rail systems during wartime) and even “[i]f bankruptcy had been the result.” *Id.* at 518. This is not sound precedent for today’s national transportation system, nor is the reasoning consistent with the subsequent amendments to the FRSA, described above, which demonstrate Congress’s increased emphasis on the importance of railroad workers’ physical safety. It is highly unlikely that a court examining these facts today would be so dismissive of worker safety that it would expect railroad employees to cross a picket line to deliver goods and compel a railroad to require its employees to serve a customer in such circumstances.

*Northern Pacific* also involved facts very different from those in this case. Picketing there began with a strike called by a union, not with the employer’s decision to lock out its employees. *See id.* at 485. And the court found that the carriers had conspired with each other and with the unions “to cut Wards off from interstate transportation.” *Id.* at 508; *see also id.* at 513 (noting that terminal company employees encouraged strikers to make a show of violence and refused to cooperate when local police attempted to remove obstructions that the strikers had placed on the track).

Addressing a complaint arising out of the same underlying series of events as *Northern Pacific*, the Interstate Commerce Commission adopted a very different view of the common carrier obligation and the relevant factual circumstances. In *Chicago, Milwaukee*, the Commission found that there was no violation of the common carrier duty because the railroad was not responsible for the strike and picketing; a picket line blocked the railroad's access to the shipper's facility; and the railroad reasonably decided not to risk a confrontation with its own employees and their union by attempting to force its employees to breach the picket line. *See* 268 I.C.C. at 259-60; *see also Consolidated Freightways*, 42 M.C.C. at 230 (“[The strike] was caused by a dispute to which the [shipper] was a party, so that it was within its power, not within the power of the defendant[] [motor carriers], to resolve the dispute and have the strike called off, thereby providing unrestricted access to its plant.”); *id.* at 231 (a carrier “may refuse to receive property for shipment if transportation on its line . . . has become impossible or impracticable because of circumstances beyond its control, as, for example, a strike, the strike not being induced or caused by the carrier”).<sup>4</sup>

Other cases recognize that potential picket line violence can be a sufficient reason for a carrier to decline a shipper's request for continued service during a labor disruption, but that violence or the potential for violence is not the only legitimate justification. In *Meier & Pohlmann*, the court stated that a carrier may decline to provide service without testing the propensity of picketers to engage in violence: “an employer is not required to subject his employees to risks of injury or harm.” 233 F.2d at 304; *see also Consolidated Freightways*, 42

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<sup>4</sup> Like the motor carriers in *Consolidated Freightways*, Union Pacific has a tariff that limits its holding out to provide service when strikes or similar labor disturbances beyond its control make service impracticable. *See* Counsel's Exhibit V (UP Circular 16-E, Item 45). In addition, the industry track agreement covering Sherwin's plant limits Union Pacific's service obligations in the event of a labor dispute. *See* Counsel's Exhibit W (Industry Track Agreement § 4).

M.C.C. at 233 (“[I]t was not incumbent upon [the carrier] to force the issue to the point of resorting to force and violence.”). The court likewise recognized that a carrier may consider potential risks to employees and their families that exist away from the picket line:

“It would hardly be a reasonable request for carrier service, for a shipper to demand, in effect, . . . that a railroad . . . compel [its employees] to subject themselves and their families to a real and substantial danger of retaliatory bodily harm in their outside life from . . . striking employees.”

223 F.2d at 304 (quoting *Gamble Robinson*, 215 F.2d at 132). The court in *Meier & Pohlmann* also recognized that a carrier may properly weigh the potential harms to its own operations and its ability to serve other customers of an attempt to provide service during a labor disruption against the harm to a shipper that could obtain alternative service:

“[The carriers] were compelled to weigh the damage to commerce in general against an attempt, with no assured success, of furnishing to the plaintiff a service that was a convenience at times, but the lack of which did not prevent plaintiff from moving its goods in commerce.”

*Id.* (quoting the trial court).

Sherwin also focuses on the discussion of picket line violence in *Gamble Robinson*. Petition at 19, 21. In that case, the court of appeals upheld a lower court’s finding that a railroad that suspended service to a facility violated its common carrier obligation even though there was evidence of picket line violence. The court of appeals noted that in view of the evidence of substantial danger to personal safety the trial court could properly have found that the refusal to provide service was justifiable conduct. 215 F.2d at 133-34. But on appeal the case turned on a narrow legal issue: whether there was sufficient evidence to uphold the trial court’s finding that the carrier’s motive for refusing service was not the avoidance of violence—which the carrier had asserted—but rather that the refusal reflected the carrier’s “policy to avoid any possibility of friction with the striking union.” *Id.* at 133. The court of appeals cited the trial court’s finding

that the carrier “took no affirmative steps whatsoever to comply with its duty as a common carrier.” *Id.* at 135 (quoting the trial court). Here, Union Pacific did not cast its lot with Sherwin’s union. To the contrary, we considered the safety of our own employees and our relationships with our own employees and their unions. In addition, Union Pacific devoted substantial efforts to helping Sherwin obtain the lime it needed. We served Sherwin’s plant for four weeks using management personnel, diverting those employees from their management duties during a time when railroad resources in the area were stretched. Union Pacific and UPDS personnel also spent substantial time developing and evaluating alternatives to direct rail service for the period after service by management personnel ended. Union Pacific is not taking sides in the labor dispute between Sherwin and Sherwin’s employees.

Finally, Sherwin relies on the Commission’s statement in *Louisiana Grocers* that “the mere appearance of a picket line or peaceful picketing does not *usually* justify failure to provide service.” Petition at 23 (emphasis added) (quoting 353 I.C.C. at 609).<sup>5</sup> In that case, the Commission carefully and correctly avoided absolute statements, recognizing that a case-by-case, fact-specific analysis is appropriate. The Commission ruled against the carrier there because “no reason appear[ed] on the record” to explain the carrier’s decision not to provide service, and thus the carrier could not demonstrate that it had “responsibly evaluate[d]” the shipper’s demand for service. 353 I.C.C. at 609.

Union Pacific’s decision not to continue serving Sherwin while the lockout dragged on is not based on the “mere appearance of a picket line or peaceful picketing.” Instead, Union Pacific

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<sup>5</sup> Sherwin also quotes extensively from *Pickup and Delivery Restrictions, California, Rail*, 303 I.C.C. 579 (1958), which contains nearly identical language. Petition at 19-20 (quoting 303 I.C.C. at 594-95) (“[T]he mere existence of a strike or picketing does not necessarily prevent the performance of pickup or delivery service.”).

considered a range of relevant factors and avoided the sorts of conduct that troubled courts and the Commission in other cases. As discussed in more depth below, the record in this case establishes that Union Pacific responsibly evaluated and reasonably responded to Sherwin's demand for additional service.

**C. Union Pacific's decision not to continue providing direct rail service to the Sherwin plant was reasonable.**

The evaluation of Sherwin's demand for service under all the facts and circumstances required consideration of whether to attempt to serve Sherwin's plant using union-represented crews, and whether to continue serving the facility using management personnel for the duration of Sherwin's lockout. Union Pacific responsibly evaluated those questions, and we reasonably concluded that continuing direct rail service indefinitely during the lockout was impracticable. In connection with our consideration of Sherwin's demand, we took into account Sherwin's control over the timing of the work stoppage and its ability to obtain lime supplies in other ways, and we devoted substantial effort to attempting to help Sherwin obtain substitute service for its lime (and alumina) shipments through a rail-to-truck (or truck-to-rail) transload facility. These points reinforce the conclusion that Union Pacific acted reasonably in the circumstances of this case.

**1. Union Pacific's decision not to order union-represented employees to cross the picket line at Sherwin was reasonable.**

Shortly after Sherwin first expressed concern about a potential labor disruption at its plant, Union Pacific determined that the situation would not involve the "mere appearance of a picket line or peaceful picketing." *Louisiana Grocers*, 353 I.C.C. at 609. A diagram that we obtained from Sherwin showed that picketers would likely be positioned along the highway our train crosses, adjacent to the rail entrance to the Sherwin plant, meaning that Union Pacific employees would have to cross the picket line to gain access to the plant. Olin RVS at 3; *see also* Counsel's Exhibit F. In fact, a conductor would need to get off the locomotive and work directly

adjacent to the picketers when locking and locking a derail mechanism near the rail entrance. Johnson RVS at 4; *see also* Counsel's Exhibit B.

Union Pacific decided that we would not order union-represented employees to cross the picket line for two practical reasons, both of which were reasonable considerations.

*First*, in our experience, Union Pacific's union-represented crew members facing similar situations invariably report concerns for their safety both in crossing a picket line and (if they were to cross the picket line) away from the workplace. Olin RVS at 5. Union Pacific does not believe it is appropriate to ignore those safety-related concerns, and we did not believe we were required to test the propensity of particular picketing employees to engage in violence. *See Meier & Pohlmann*, 233 F.2d at 304 ("an employer is not required to subject his employees to risks of injury or harm"). Furthermore, ignoring those safety-related concerns and ordering employees to work despite expressed concerns would potentially subject us to liability under the FRSA.

The reasonableness of Union Pacific's evaluation is confirmed by Sherwin's own actions as reflected in the record: Sherwin notified sheriff's deputies before the lockout, it hired a private security firm without waiting to see whether the picketing would be peaceful, and the private security force has remained at its plant 24 hours a day, seven days a week. Britton VS at 5.

Sherwin's actions are understandable, and so are Union Pacific's. The Sherwin lockout remains a high-profile dispute for the United Steelworkers, and the union has made heated accusations about the conduct of Sherwin and its parent company. *See* Counsel's Exhibits L-N. In addition, charges of violence, threats and intimidation have been made in connection with recent, nearby disputes involving the United Steelworkers. *See* Counsel's Exhibits O-S. And, as Union Pacific's actual experience in this case demonstrated, the picketers at Sherwin can and will confront rail employees accessing the plant. Johnson RVS at 4-5. Finally, {

} See Counsel's Exhibit T; see

also Counsel's Exhibit U.

*Second*, Union Pacific has practical concerns related to our strong interest in maintaining positive, constructive relationships with our union-represented employees and their unions. Olin RVS at 2. Such positive relationships are important to our ability to provide a high level of service to shippers and to ensure safe operations. This encompasses the inevitable need for cooperation and dedication on the part of union members when the railroad faces particularly challenging conditions, such as unusually heavy traffic volumes and natural disasters that affect operations. *Id.* Union Pacific is not siding with Sherwin's locked-out union; rather we are trying to avoid the friction with unions representing our own employees that would result if we asked railroad union members to cross picket lines of another union. *Compare Gamble Robinson*, 215 F.2d at 133.

The Board's precedents recognize that, just as a railroad cannot reasonably be required to expose employees to violence, it cannot reasonably be required to take steps that would necessarily undermine its relationship with unions representing its own employees in order to accommodate a shipper, particularly a shipper that has access to viable transportation alternatives. *See Chicago, Milwaukee*, 268 I.C.C. at 259; *Consolidated Freightways*, 42 M.C.C. at 234. This is especially true when the labor disruption arises directly from actions taken by the shipper, which has the power to resolve the dispute, "thereby providing unrestricted access to its plant." *Consolidated Freightways*, 42 M.C.C. at 230. Sherwin plainly has the power to provide unrestricted access in this case: the picketing resulted not from a strike by Sherwin's employees, but from Sherwin's decision to lock out its employees. In these circumstances, there is no reason

to require Union Pacific to support Sherwin by forcing our union employees to cross the picket line. *See Gamble Robinson*, 215 F.2d at 132 (“It cannot be said to have been any part of the purpose of [Section 11101(a)] to try to assist shippers” in their labor disputes).

**2. Union Pacific’s decision to suspend service using management personnel after four weeks was reasonable.**

Union Pacific’s decision not to order union-represented employees to cross the picket line at Sherwin’s plant did not mean that Sherwin had no rail service after locking out its employees. For four weeks, Union Pacific made a reasonable attempt to continue serving Sherwin using management personnel. *Contrast Gamble Robinson*, 215 F.2d at 129 (railroad management crews refused to serve shipper).

Union Pacific initially determined that we could continue serving Sherwin using management personnel on a limited basis for three weeks. This special service during the early weeks of the lockout gave Sherwin an extended opportunity to stockpile more lime and arrange for alternate transportation, as well as move outbound chemical alumina. At Sherwin’s request, Union Pacific extended service by management personnel for an additional week. Thrasher RVS at 3. Union Pacific could not practicably use our management personnel to serve Sherwin for a longer period. Particularly during this busy period in south Texas, there were very few management employees available, requiring Union Pacific to bring a management employee from Brownsville (170 miles away) to help serve Sherwin.

Moreover, as discussed above, our managers are already fully occupied with their responsibilities for supervising the operations of the railroad, ensuring safety, and coordinating service to our customers. And, as explained above, if managers operate a train to serve a customer, they become subject to hours of service rules that limit the length of time they can work that day and require specific rest periods, meaning that for almost half a day they will be

unavailable to respond to incidents in their territory. Diverting managers from their normal management duties to operate trains to and from Sherwin's plant detracts from the railroad's ability to operate efficiently and to serve other customers. This is a particular problem when traffic volumes are high and the railroad is attempting to absorb a number of new crew hires, as was the case in late 2014, and as remains the case in the Southern Region. Workman RVS at 11. The Board's precedents recognize that railroads may reasonably decide in such circumstances to preserve service to their broader base of customers, rather than divert resources to serve a customer engaged in a dispute with its unionized employees. *See Chicago, Milwaukee*, 268 I.C.C. at 259; *Consolidated Freightways*, 42 M.C.C. at 234.

Union Pacific's conclusion that we could not reasonably continue to serve Sherwin using management personnel beyond the first four weeks of the lockout also reflected an evaluation of Sherwin's alternatives to continued rail service. Workman RVS at 5. We gave Sherwin several months' notice that the railroad would be unable to continue service to the plant in the case of a labor dispute involving a picket line, providing Sherwin with time to build lime stockpiles and arrange for alternate transportation. Our provision of four weeks of special service using management crews after the lockout began gave Sherwin a further opportunity to stock up on lime and develop alternatives to direct rail service. Union Pacific knew Sherwin could receive lime by truck. We also knew Sherwin could receive lime via transloading. *Id.* A shipper's access to alternative transportation is a significant consideration in balancing the shipper's need for continued direct rail transportation against other demands on a railroad's resources. *Compare Meier & Pohlmann*, 233 F.2d at 304 (quoting trial court's statement that, in considering the application of tariff provisions excusing "impracticable" service due to labor picketing, railroad was "compelled to weigh the damage to commerce in general against an attempt . . . of

furnishing to [a shipper during a strike] a service that was a convenience at times, but the lack of which did not prevent [the shipper] from moving its goods in commerce.”); *Northern Pacific*, 128 F. Supp. at 508 (discussing a conspiracy “to cut [a shipper] off from interstate transportation”).

In evaluating the reasonableness of Union Pacific’s decision to suspend service using management personnel after four weeks, it is also relevant that we put substantial time and effort into helping Sherwin develop and analyze alternatives for obtaining lime and that Sherwin failed to pursue several opportunities. As noted above, Sherwin had several months’ notice that Union Pacific would not provide regular service in the event of a labor dispute involving a picket line. Sherwin stockpiled lime during this period before the lockout and afterward, when Union Pacific was providing service using management personnel, but apparently it did not take full advantage of this opportunity. {

} Gatson-Dunham RVS at 7.

Union Pacific and UPDS also developed transload alternatives for Sherwin, and Gatson-Dunham communicated to Sherwin the viable alternative they identified. *Id.* at 6. But after stating several times that it would investigate transloading further, Sherwin failed to follow through. *Id.*; Thrasher RVS at 5. In addition, Sherwin never responded to the various rate quotations that Gatson-Dunham provided. Gatson-Dunham RVS at 5, 6. These circumstances bolster the conclusion that Union Pacific acted reasonably in deciding that it should not extend service with management personnel for the Sherwin plant.

Union Pacific also considered the fact that Sherwin controlled (and continues to control) the timing of the work stoppage. Workman RVS at 13. Sherwin’s employees did not strike;

instead, Sherwin locked them out. As a result, Sherwin appears to have more flexibility than many customers facing a labor disruption.

Union Pacific evaluated the circumstances correctly and arrived at a reasonable decision. This is confirmed by Sherwin's reports that its alumina production has not been affected by the lockout at its plant: its production "since the lockout of the hourly employees on October 11, 2014, remains on target with [its] expectations." Counsel's Exhibit A.

### III. CONCLUSION

Union Pacific has not violated our common carrier obligation by suspending direct rail service to Sherwin during Sherwin's ongoing lockout of its unionized employees. Union Pacific cannot practicably serve Sherwin using unionized employees and could not continue using our management personnel to serve Sherwin without impairing our ability to provide safe, reliable service to our other customers. Moreover, Sherwin has the ability to obtain lime without direct rail service, and it has done so, and it controls the timing of the work stoppage. Under these circumstances, the Board should not prioritize Sherwin's labor relations choices over Union Pacific's concerns for our own employees and our other customers.

Respectfully submitted,



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MICHAEL L. ROSENTHAL  
CAROLYN F. CORWIN  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, D.C. 20001  
(202) 662-6000

GAYLA L. THAL  
LOUISE A. RINN  
PATRICIA O. KISCOAN  
DANIELLE E. BODE  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, Nebraska 68179  
(402) 544-3309

*Attorneys for Union Pacific Railroad Company*

May 5, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of May, 2015, I caused a copy of the foregoing document to be served by hand on all parties of record in Docket No. 42143.



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Michael L. Rosenthal



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

SHERWIN ALUMINA COMPANY, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 42143
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Respondent.	)	

**REPLY VERIFIED STATEMENT OF LAKEISHA GATSON-DUNHAM**

My name is LaKeisha Gatson-Dunham. I am a Senior Business Manager of Industrial Products for Union Pacific Railroad Company. I have held this position for six years. In this capacity, my responsibilities include managing day-to-day customer issues, negotiating contracts with new and existing customers, and developing business opportunities that penetrate new markets or increase market share. I am the account representative for Sherwin Alumina and Glencore, Sherwin’s parent company. I have been responsible for the Glencore and Sherwin accounts since 2009. Prior to my current position in Industrial Products, I was a Senior Business Manager, Carload Solutions for a Union Pacific subsidiary, Union Pacific Distribution Services (“UPDS”), where I researched and developed multi-modal transportation solutions for customers, including rail-to-truck and truck-to-rail transload options for bulk commodities.

I am submitting this statement in support of Union Pacific’s reply to the petition Sherwin filed in this proceeding. George Gleditsch, Sherwin’s Procurement Manager, sponsored a Verified Statement in which he describes various interactions with Union Pacific, and in particular, with me, as Sherwin and Union Pacific worked to develop a contingency plan for

serving Sherwin in the event of a labor disruption at Sherwin's plant in Gregory, Texas.

Gleditsch characterizes Union Pacific as being unresponsive and unhelpful. I disagree with these characterizations. I had frequent conversations with Gleditsch, and I escalated his concerns to the appropriate decision-makers within Union Pacific. Before Sherwin's collective bargaining agreement expired, I provided rates for transloading inbound lime, and I later helped identify a better transload option for outbound alumina than the option Sherwin had identified on its own. I believe Union Pacific communicated our contingency plan clearly and promptly for the period when Sherwin locked out its unionized employees and developed feasible transportation options for Sherwin.

Sherwin uses multiple transportation modes at its Gregory plant, including vessel, barge, rail, and truck. Union Pacific transports two commodities for Sherwin's Gregory plant: inbound lime and outbound alumina. The lime moves in common carrier service under tariff rates, and the alumina moves under a contract. The alumina Union Pacific transports for Sherwin is chemical-grade alumina, which represents only a small part of Sherwin's total production of alumina at its Gregory plant. Both lime and alumina<sup>1</sup> can move via transload and truck. In fact, when I worked at UPDS, Sherwin transloaded alumina under a UPDS program, under which alumina was transloaded from railcars and trucked to various destinations. I understand that Sherwin continues to use that UPDS program to reach various destinations by truck. Union Pacific also moves lime in transload service for other customers.

My first conversation with Gleditsch regarding the possibility of a labor disruption at the Gregory plant was on May 14, 2014. We initially spoke on the phone, and I explained that Gleditsch would need to discuss contingency plans with Union Pacific's Labor Relations and

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<sup>1</sup> I refer to "chemical-grade alumina" as "alumina" in my statement.

Operating departments. Later that day, Gleditsch summarized our discussion in an email, and I provided contact information for Robert Johnson (Manager of Train Operations) and Thomas (Gary) Taggart (Director of Labor Relations – Operations). I understood from Gleditsch that he was going to reach out to Taggart and Johnson for further discussions.

I learned from Jennifer Powell in Union Pacific's Labor Relations Department that Gleditsch spoke with her on June 10 and 11 when Taggart was unavailable. Gleditsch emailed Powell a map of Sherwin's plant on June 11, and he also mailed a letter and a larger map, which Powell received on or around June 16. Powell forwarded a copy of the letter and map to me on June 16, and Gleditsch emailed me later that day, stating that he would call me the next day to discuss scheduling a conference call with the appropriate parties.

Gleditsch and I next spoke on June 18, and I offered during that call to schedule a conference call between Sherwin employees and personnel from Union Pacific's Labor Relations and Operating departments. After resolving various scheduling conflicts, I scheduled this call for July 8. Gleditsch, Dan Searles, and Christopher Gonzalez participated on the call for Sherwin, and Taggart and I participated for Union Pacific. Johnson was unable to join the call because he had to deal with several local operating issues that arose unexpectedly.

During the call, Taggart explained Union Pacific's experience with situations where our customer's unionized employees strike a facility. He stated that, based on this experience, Union Pacific likely would not be able to provide regular service to Sherwin's plant in the event of labor picketing. Taggart explained that our union-represented crews consistently refuse to cross picket lines at customer facilities out of concern for their personal safety, and that Union Pacific does not force its union-represented employees to cross picket lines in those situations. Taggart told Gleditsch that limited service by a crew made up of management personnel with appropriate

certifications might be possible for a short period of time, but that Union Pacific's Operating Department would have to make the final decision on any contingency plan involving management personnel. The Sherwin representatives on the call suggested a second option in which Sherwin would supply crews and locomotives to move cars into and out of their plant from Union Pacific's yard across Highway 361. Taggart and I told Gleditsch that we would raise both options internally and attempt to obtain an approved contingency plan. I also committed to scheduling another conference call once we had an update to share with Sherwin.

I updated Gleditsch on July 17, informing him that Union Pacific was still reviewing the options we had discussed on July 8 and that I was striving to have an answer by the following week. Gleditsch emailed me later that day, confirming receipt of my voice mail, but indicating that he was unhappy that Union Pacific's internal review had not concluded—even though a potential strike was several months away. Gleditsch informed me that he was going to escalate the issue within Union Pacific. I later learned that he contacted Cameron Scott, Union Pacific's Executive Vice President for Operations, on July 17 and 23.

I understand that on July 23, 2014, John O'Leary (Union Pacific's Assistant Vice President of the National Customer Service Center) spoke with Gleditsch to communicate Union Pacific's contingency plan for serving Sherwin in the event of a strike—serving Sherwin's plant two days a week for up to three weeks using management personnel. That same day I received an email from Gleditsch stating that he had spoken to O'Leary. I did not receive any further questions from Gleditsch about the contingency plan.

On September 23, the Port of Corpus Christi contacted Union Pacific on behalf of Sherwin inquiring about rail rates to a transload location for inbound lime shipments to Gregory. Later that day, I contacted the individual with the Port, who then requested through rail rates for

lime from an origin served by Union Pacific in Dittlinger, Texas, to a transload location served by Kansas City Southern (“KCS”) in Corpus Christi. After obtaining KCS’s rate factor for its portion of this through movement, I responded on September 25 by providing the requested rail rates to Gleditsch, Robert Abbate (Glencore), and Sarah Waldhelm (Sherwin). I suggested that Sherwin consider using this same transload facility for Sherwin’s outbound alumina shipments. I did not receive any feedback on those rates from Gleditsch or any other Sherwin representative.

On the morning of September 24, I spoke with Robert Abbate, my main contact at Glencore. Abbate asked for clarification on Union Pacific’s contingency plan in the event of a strike. I called Abbate that day and left two voice mail messages reiterating that Union Pacific planned to provide service two times a week for three weeks. Abbate confirmed on September 25 that he received both of my voice mail messages and stated that Sherwin management was not happy with Union Pacific’s position.

Between September 26 and October 27, I did not have any communications with Sherwin regarding their labor dispute, though I learned that Sherwin locked out its 450 unionized employees on October 11. On October 28, I participated on a conference call with my boss, Brad Thrasher, Gleditsch, and Kent Britton, Sherwin’s Chief Financial Officer. Thrasher reiterated that the plan Union Pacific had described to Sherwin on July 23 had not changed, and that our management personnel had been serving Sherwin for nearly three weeks. Thrasher explained that we simply did not have the resources to continue service with management personnel, especially with the strong traffic demands we were facing at the time. Britton stated that Sherwin was most concerned about outbound shipments of alumina and losing market share to their competitors for that product. Thrasher and I inquired about Sherwin’s product requirements for transloading so that we could understand any obstacles. During this discussion, Gleditsch commented that a

transload rate he had separately identified resulted in a cost \$40 per ton higher than what Sherwin had been paying. Thrasher commented that this incremental cost seemed high—especially in comparison to other products we transload—and I agreed to work with UPDS to find a lower cost transload alternative for outbound alumina. I also mentioned that I had previously sent Gleditsch rail rates for transloading inbound lime shipments, and Britton commented that he had not seen those rates. Britton and Gleditsch asked for more time so that they could evaluate transload options and establish trucking options for lime shipments, and Thrasher offered to ask Union Pacific’s Operating Department for a limited extension of service by management personnel to Sherwin’s plant. Union Pacific ultimately agreed to extend service using management personnel until November 6, 2014.

Later on October 28, Britton sent me the Material Safety Data Sheets for two different alumina products Sherwin wanted to transload, and I contacted UPDS that day requesting help to develop a truck-to-rail transload option for Sherwin’s alumina. Between October 30 and November 4, I exchanged multiple emails with Britton as Union Pacific and UPDS identified and vetted possible options. On November 5, after we had indentified the best option, I provided combined truck, transload, and through rail rates for transloading alumina out of Bronco Rail Terminal in Corpus Christi to various destinations served by Union Pacific. The same transloading site could also be used for inbound lime. Sherwin never provided any feedback to me on any of the rates I provided in either September or November for transloading lime or alumina.

Sherwin expressed renewed interest in transloading options in the past month. I have had several conversations with Abbate and Waldhelm to help facilitate Sherwin’s interest in transloading alumina from locations near Corpus Christi to various destinations served by Union

Pacific, and I have provided rates requested by Abbate. Thus far, Sherwin has not shipped under any of the rates I have provided for transload options.

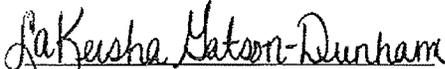
I recently reviewed Union Pacific's records regarding transportation of lime to Sherwin's plant. I understand that Sherwin stockpiled lime in rail cars before its labor disruption, but I was surprised that it had not stockpiled more lime while we were serving Sherwin using management personnel. {

} I assume that part of the reason they were not receiving as much lime by rail is that they were also receiving lime by truck during this period.

**VERIFICATION**

I, LaKeisha Gatson-Dunham, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on May 1, 2015.

  
LaKeisha Gatson-Dunham



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

SHERWIN ALUMINA COMPANY, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 42143
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Respondent.	)	

**REPLY VERIFIED STATEMENT OF ROBERT M. JOHNSON**

My name is Robert M. Johnson. I have been employed by Union Pacific Railroad Company and its predecessor, Southern Pacific, since 1979. In 1997, I became a supervisor of terminal operations in Gregory, Texas, and in 2001, I became the Manager of Yard Operations in Corpus Christi, Texas. I served in the latter capacity until 2010, when I became the Manager of Train Operations in Corpus Christi, the position I currently hold. As part of my responsibilities as the Manager of Train Operations in Corpus Christi, I am very familiar with Union Pacific's rail service to Sherwin Alumina's plant in Gregory. During the four weeks in October and November 2014 that Union Pacific served Sherwin using management personnel, I was a member of the management crew that served the plant.

In this statement, I describe Union Pacific's service to Sherwin's plant before and after Sherwin locked out its 450 unionized employees in October 2014. I also describe my interaction with picketing employees as a member of the management crew that served Sherwin. Finally, I describe the ways that my ability to perform my regular management responsibilities was hampered by the time I spent as part of the management crew serving Sherwin.

## **Union Pacific Service to Sherwin Before the Lockout**

Before Sherwin locked out its unionized employees, Union Pacific served the plant five days per week, Monday through Friday, using a three-person crew based in Gregory. The “regular crew” consists of one locomotive engineer, represented by the Brotherhood of Locomotive Engineers, a Division of the Teamsters, and one conductor and one brakeman, both represented by the Sheet Metal, Air, Rail and Transportation Workers – Transportation Division.

When Union Pacific serves Sherwin using the regular crew, we operate out of our New Gregory Yard, which is located just west of the Sherwin plant across U.S. Highway 361. The locations of the yard and Sherwin’s plant are shown in the map included as Counsel’s Exhibit B. On Mondays, which are the busiest days, the crew usually moves 15 to 25 cars into the plant and about the same number out of the plant. From Tuesday through Friday, the car count is usually 5 to 10 cars in each direction. The inbound cars include loaded cars of lime and empty cars to be used for loading alumina. The outbound cars include loaded cars of alumina and empty cars that transported the inbound lime.

To serve Sherwin, our crew makes up a train that includes cars for that plant and other industries we serve from the New Gregory Yard, including DuPont, Occidental Chemical, and Reagent, all of which are located east of Sherwin’s plant. The crew moves the train east to DuPont and switches that facility, first dropping off and then picking up cars, and then they work in the same manner at the other industries, finishing with the Sherwin plant.

To switch the Sherwin plant, the crew pulls the train west on Union Pacific’s line, past the turnout to Sherwin’s lead track, then cuts out the block of cars to be delivered to Sherwin. A conductor walks to the switch and aligns it so the train can enter the lead track. The conductor then walks across the highway and unlocks a derail mechanism that prevents cars on the lead

track from accidentally crossing the highway and entering Union Pacific's line. The other crew members then use the locomotive consist to shove the inbound cars across Highway 361, south onto the lead track, and stop to allow the conductor to get back onto the train. The crew then shoves the inbound cars onto designated Sherwin industry track.

After the crew separates the locomotive power from the final cut of inbound cars, they move the locomotive consist to the industry track where Sherwin has set out outbound cars for pick up. The crew then pulls the outbound cars from the industry track and travels north on the lead track back to Union Pacific's line, stopping to drop off the conductor to relock the derail. The conductor locks the derail mechanism, walks across Highway 361, and realigns the switch between the lead track and Union Pacific's line. The crew then picks up the waiting cars from the other industries and pulls all the outbound cars into New Gregory Yard where they are blocked for further transit.

#### **Union Pacific Service to Sherwin After the Lockout**

After Sherwin locked out its unionized employees on October 11, 2014, Union Pacific served the plant for four weeks using management personnel. We provided this special service with a three-person crew that switched the plant twice a week, on Tuesdays and Thursdays. We settled on Tuesdays and Thursdays based on Sherwin's request. In addition to the three-person management crew, a Union Pacific Special Agent and a trained canine were always present during the operations. After the lock out began, Sherwin installed a temporary guard office about one third of the way down the road leading into the plant, which is adjacent to Sherwin's lead track, but the guard house was not always staffed.

Instead of building a local train to serve four customers, our union-represented employees made up a special train comprised only of inbound cars for Sherwin, as well as a local train to

serve the other three customers in the area. The management crew then boarded the special Sherwin train and followed the same basic steps the regular crew followed to enter and leave Sherwin's plant (*e.g.* throw switches, walk across the highway, and unlock and then relock the derail). There was one operational difference when management personnel served the plant: on Tuesdays, there were as many as 40 inbound cars to deliver. This increased the time required to switch the plant for two reasons. First, there was not enough room at the plant to drop off that many inbound car before pulling the outbound cars. This meant that the management crew had to travel to the plant, pull the outbound cars, and take them back to New Gregory Yard before delivering the inbound cars. Second, none of the tracks at the plant could accommodate that many inbound cars, so more switching within the plant was required to fit the cars into the available tracks. On each day the Tuesday and Thursday service using management personnel took from 2 to 4 hours to complete.

### **The Sherwin Picket Line**

The first time our management personnel served Sherwin's plant, on Tuesday, October 14, 2014, I was part of the management crew, serving as a conductor. I observed approximately 35 people picketing the plant. The picketers were located along Highway 361, adjacent to the rail and motor vehicle entrances to Sherwin's plant and very close to the derail mechanism the conductor had to unlock and relock in order for us to serve the plant. *See* Counsel's Exhibit B. The workers, who are represented by the United Steelworkers, had erected tents, were feeding people, were giving interviews to the media, and were engaging motorists who traveled along Highway 361.

One of the picketers approached me as I was unlocking the derail and asked me why we were crossing their picket line. I explained that we were managers, and he said something like,

“So long as you’re managers, you can pass.” I asked him what he would have done had I been a union member, and he told me that he would have learned my name, what union I belonged to, and he would have contacted the president of my union to demand cooperation.

Another manager who was involved in serving the Sherwin plant in October and November was Adrian Ibarra, a Manager of Operating Practice, who was based in Brownsville, Texas. Ibarra was also stopped by the picketers and asked whether he was a union member.

### **Diversion of Managers from Their Safety and Customer Service Duties**

As Manager of Train Operations in Corpus Christi, I am responsible for the delivery of safe, reliable, and responsive service to the customers in my territory. This territory encompasses more than 100 miles of main line between Bloomington and Kingsville and nearly 30 miles of branch line and five yards. *See Counsel’s Exhibit C.* My responsibilities include managing seven different two- and three-person crews that operate trains in my territory.

As Manager of Train Operations, I spend more time in my car or in the field than in my office. To comply with Federal Railroad Administration rules, I am required to perform regular safety training, as well as safety observations and field testing of crews throughout my territory at different times of day and night and on different days of the week. Promoting a safe work environment and reliable customer service also requires that I conduct job briefings with the crews I manage before every shift. These job briefings allow me to reinforce our safety rules and ensure that our crews understand our customer’s expectations and how we will operate trains to meet those expectations. I also interact on a daily basis with the 15 customers these crews serve to discuss our plans for that day. In addition, if there is maintenance activity planned for track in my territory, I coordinate with our Engineering Department and with our dispatchers to ensure that my train crews are aware of the activity and how it affects train operations. If a derailment or

crossing accident occurs in my territory, I or one of my fellow managers respond and coordinate with local public safety personnel and the workers who restore the track and remove damaged equipment.

Using management personnel to serve Sherwin's plant diverted me and other managers with similar responsibilities from our regular duties while we were physically performing the service and afterwards. When I was working as a conductor on the Sherwin train, I could not brief crews, communicate with customers, or conduct safety training or inspections. Nor could my fellow management crew members—one of whom had to drive 170 miles from Brownsville, Texas, to Gregory the night before we operated the train and then drive back afterwards. During this time, other managers had to cover for us, or we had to make up the work we missed, adding to what are already very long days.

In addition, on days when management personnel worked on a Sherwin train, we became subject to federal railroad hours of service laws, just like any other railroad employee who works on a train. That meant we could not work for more than 12 hours in any day when we worked on the train, and after our shift, we were required to receive 10 hours of undisturbed rest. My own workday generally begins at 5:30 a.m., so I could not perform any of my management duties after 5:30 p.m. on Tuesdays and Thursdays, even if there were an accident, derailment, or another such incident in my territory to which I would ordinarily respond after regular hours.

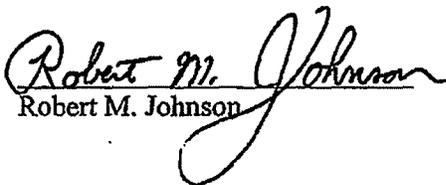
When I participated in discussions about whether and how Union Pacific could continue serving Sherwin if there were a strike or lockout, my supervisors and I were aware of the limited number of managers who could legally operate trains for Sherwin and the other demands on our time and physical presence. We committed in July 2014 to provide two-day-a-week service for just three weeks because we did not have resources to provide three managers to switch the plant

indefinitely. When the lockout occurred in October, even fewer qualified managers were available than we anticipated. One of the managers in the area had gone on medical disability in August, another went on medical disability after serving on the first train that we operated to Sherwin, and still another went on medical disability within the next week. Nonetheless, we kept our promise to Sherwin, bringing in Ibarra from Brownsville to join the management crew and even extending service using management personnel for an additional week. However, we could not serve Sherwin indefinitely with management personnel and still fulfill our responsibilities to operate a safe, reliable railroad.

**VERIFICATION**

I, Robert M. Johnson, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on May 4, 2015.

  
Robert M. Johnson



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

SHERWIN ALUMINA COMPANY, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 42143
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Respondent.	)	
	)	

**REPLY VERIFIED STATEMENT OF A. TERRY OLIN**

My name is A. Terry Olin. I have been employed by Union Pacific Railroad Company since 1978, working in Labor Relations since 1988. Since December 1, 2010, I have held the position of Assistant Vice President Labor Relations for Operating Crafts. My job duties include overall responsibility for ensuring that Union Pacific has a fair and positive relationship with our train and engine service employees and their labor union officials. My responsibilities include negotiating, interpreting, and administering collective bargaining agreements that govern wages, rules, and working conditions for Union Pacific’s train and engine service employees (e.g., engineers, conductors, brakemen, switchmen, etc.,) represented by the Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (“SMART,” formerly the United Transportation Union) and the Brotherhood of Locomotive Engineers and Trainmen (“BLET”). In addition, I have responsibility for the handling of grievances from Union Pacific’s train and engine service employees up through and including the statutory arbitration of such matters. I also coordinate Labor Relations efforts when a customer or vendor experiences a labor dispute that could potentially impact Union Pacific’s operations.

In this statement, I describe Union Pacific's general approach to labor relations and summarize the Labor Relations Department's involvement in responding to the request by Sherwin Alumina for service during the lockout of its employees at Sherwin's plant in Gregory, Texas, beginning in October 2014. In addition, I describe the safety and employee engagement concerns Union Pacific must address when a customer seeks service that would require our employees to cross a picket line. I also address a labor doctrine, known as the "ally doctrine," that leads Union Pacific to attempt to avoid becoming entangled in another employer's labor dispute.

### **General Approach to Labor Relations**

Nearly 85 percent of Union Pacific employees are represented by labor unions, and we devote significant time, effort, and resources to maintaining positive, constructive relationships with the 13 unions that represent these employees. Union Pacific and the unions share common interests in creating a safe working environment and safe operations and providing high quality service to our customers. In recent years, Union Pacific and the unions have successfully advanced these interests by fostering an atmosphere of mutual cooperation and trust, ensuring that employee safety is a top priority. We just achieved a record first-quarter safety performance, with a 23 percent injury rate improvement compared with the first quarter of 2014. Union Pacific values that cooperation, which ultimately contributes importantly to our ability to provide a high level of service to our customers. Positive relationships with our employees are especially important when cooperation and sacrifice are needed to deal with particularly challenging operating conditions, such as unusually heavy traffic volumes and natural disasters.

### **Discussions with Sherwin Alumina**

Union Pacific's Labor Relations Department was contacted about four months before the expiration of Sherwin's collective bargaining agreement with the United Steelworkers Local 235-A. On June 10, 2014, Assistant Director of Labor Relations Jennifer Powell participated on a phone call with Sherwin's George Gleditsch to discuss a contingency plan that Sherwin wanted Union Pacific to develop in connection with a potential labor disruption at the Gregory plant. During the call, Powell gathered information about the termination of the collective bargaining agreement, and she requested a diagram of the Sherwin plant and surrounding area. Powell understood that Sherwin was asking about the level of service Union Pacific could provide if the plant experienced a strike. She informed Gleditsch that she would discuss the question with her colleagues in Labor Relations and get back to him with more information. The diagram of Sherwin's plant that Gleditsch subsequently provided to Powell made clear that Union Pacific train crews would have to cross the anticipated picket line to deliver cars to and from the plant. *See Counsel's Exhibit F.*

Labor Relations Director Gary Taggart participated in a July 8, 2014, conference call with Gleditsch during which Taggart informed Gleditsch that Union Pacific generally does not force our union-represented train crews to cross picket lines. Taggart noted that, based on past experience, if we tried to order a union-represented crew to cross a picket line outside the Sherwin plant, the crew members would refuse to cross based on concerns for their physical safety. Taggart also explained that, based on prior experiences, Union Pacific would not be able to provide regular service in the event of a strike or lockout. Taggart told Gleditsch that limited service by certified management personnel might be possible for a short period of time, but that Union Pacific's operating managers for the Southern Region would have to make the final

decision on any service plan involving management crews. This idea of limited service was consistent with our previous practice. For example, when a Teamsters local picketed a customer facility in St. Joseph, Missouri, just a few years ago, Union Pacific's Operating Department approved a single switch performed by management personnel to the customer facility to protect the customer's operation while it set up a transload alternative. Because qualified management personnel in that area were scarce, the customer's subsequent request for a second switch was denied.

During the July 8th call, Gleditsch suggested a second option under which Sherwin would supply crews and locomotives to move cars across Highway 361 between its plant and Union Pacific's line. Taggart said that he would look into that alternative and would let Gleditsch know if such a plan was feasible. Union Pacific's Labor Relations and Operating departments later concluded that the proposed alternative was not feasible for at least two reasons. First, Sherwin would need to have locomotive engineers and conductors who were certified by the Federal Railroad Administration ("FRA") and a proper safety plan for shoving train across the public highway. Second, we were concerned that if Sherwin employees were allowed to enter onto Union Pacific's property, the picketers would feel justified in following the train from Sherwin's plant onto Union Pacific's property and picket our operations because Sherwin employees were performing Sherwin's work on our property. Rather than assume the risk of Sherwin picketers obstructing operations on Union Pacific property, we offered to serve the Sherwin plant using management personnel on two days a week for up to three weeks in the event of a strike or lockout. I understand that Union Pacific personnel communicated that commitment to Gleditsch on July 23, 2014.

## **Safety and Employee Relations Concerns**

Union Pacific's practice of not requiring union crews to serve a striking customer facility has evolved over time, and it has been influenced by developments in railroad safety law. Union Pacific and other railroads are bound by the Federal Railroad Safety Act, 45 U.S.C. § 20109. Under this statute, railroad employees may refuse to work when they are responding in good faith to a safety hazard or security concern related to the performance of their duties. A 2007 amendment gave employees a private cause of action to sue their employers if the employer retaliates against the employee for exercising this right.

In the past, our employees have repeatedly refused to cross a customer picket line, citing concerns for their personal safety. We believe we must treat these concerns seriously. We took this experience into account in considering Sherwin's situation.

In fact, after Sherwin filed its petition at the Board in March 2015, Union Pacific's Labor Relations General Directors Alan Weed and Michael Phillips approached the General Chairman of our BLET and SMART unions to tell them about the petition and the possibility that the Board might direct Union Pacific to ask our employees to serve the Sherwin plant. The General Chairmen told Weed and Phillips that they would instruct their members to refuse to cross the picket line because they would be jeopardizing their personal safety if they crossed the line. Within the last two weeks, I have confirmed the General Chairmen's position.

The General Chairmen's reaction was not surprising because, in our experience, union-represented train crews invariably express concern for their personal safety, their families' safety, and the security of their home and property when they are asked to cross picket lines at customer locations. Union Pacific's unions take the position that we cannot require their members to cross a union picket line, and they would instruct their members not to cross in such

situations. We should not be forced into a confrontation with the unions representing our employees, or be forced to sue our own employees to force performance under our collective bargaining agreements, simply because Sherwin decided to lock out its own unionized employees.

We recognize that our union-represented employees have valid personal safety concerns in light of reports of violence and threats made against union-represented employees that cross another union's picket lines.<sup>1</sup> For example, in connection with a recent labor dispute involving Columbia Grain and the International Longshoremen's Union in the Pacific Northwest, BNSF railroad employees complained of sabotage to the tracks and threats to their personal safety. When drayage drivers represented by the Teamsters were on strike in California, they threw rocks and yelled threats at anyone who came near their picket lines, including Union Pacific train crews. A few years ago, I suggested to a General Chairman that his members could serve a Midwest sugar plant that was experiencing a strike by using a facility entrance located some distance from the picket line. The General Chairman was adamant that, logistics aside, in a small town environment where the picketers knew the train crew members, the threat of violence to any person who crossed the picket line (even at a distance) was real and he would never allow his members to cross. {

} *See Counsel's Exhibits T & U.*

We believe the consequences are predictable if Union Pacific were to direct our union-represented employees to serve Sherwin. As described above, in the past, Union Pacific's train

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<sup>1</sup> In our experience, replacement crews made up of management personnel are not always subject to the same level of personal safety risks as union-represented crews when they cross picket lines.

and engine employees have expressed safety concerns about crossing picket lines, and the union leadership would advise their members not to cross picket lines based on their safety concerns. If Union Pacific persisted in directing employees to cross the picket line, the union would likely argue that Union Pacific has no contractual right to require members to cross the picket line or to discipline them for refusing, and the unions might even strike. In such a situation, the only way we could ensure that we would have crews available to serve the Sherwin plant would be to seek an injunction to force our union-represented employees to work the Sherwin job and enforce the injunction against them. We have good reason not to follow such a path.

Union Pacific has occasionally had to sue our employees to ensure that they performed their work under a collective bargaining agreement, but we have not done so to obtain service for a customer whose employees were on strike or locked out. The last time Union Pacific sued our employees to enjoin them to return to work was in 2001. The situation was extremely detrimental to our working relationship with labor: the hostility between management and labor continued for months. With such hostility, it becomes extraordinarily difficult to reach negotiated agreements on anything; local issues that had been easily settled before the lawsuit took enormous amounts of time and energy to resolve. These distractions led to disruptions in operations that adversely affected customer service. It took many months, the turnover of some union leadership, and extensive mutual effort to repair the working relationship and redevelop the trust needed to achieve the good faith negotiations required by the Railway Labor Act (“RLA”).

### **The “Ally Doctrine”**

There is another factor that affects Union Pacific’s response to demands for service made by customers like Sherwin that are embroiled in an active labor dispute. We believe that we need to consider the effect of a labor doctrine developed by U.S. courts, known as the “ally doctrine.” This doctrine applies to employers and employees covered by the National Labor Relations Act (“NLRA”). The “ally doctrine” addresses neutral employers that become embroiled in another employer’s labor dispute, allegedly by becoming an “ally” of the other employer. In general, secondary picketing, or extending a strike to a neutral employer, is considered an unfair labor practice under the NLRA. However, federal courts recognize the “ally doctrine” as an exception to that rule.

In the clearest cases, a secondary employer that claims neutral status during a primary employer’s labor strike can be picketed by the primary employer’s employees if 1) the two employers share a corporate identity and relationship, or 2) the neutral employer’s employees perform the work that would otherwise be performed by the primary employer’s striking employees. However, we understand that some courts conclude that if the secondary employer gives material economic support to the primary employer, or could be perceived as assisting the primary employer in “busting a union,” then the striking employees could reasonably consider the secondary employer to be an extension of the primary employer and the picketing of the “secondary” employer would be lawful primary picketing. If a union covered by the NLRA engaged in secondary picketing against Union Pacific, we would consider that picketing to be an unfair labor practice and would seek injunctive relief under the NLRA. However, it would take a long time to obtain that injunction.

Although railroads are covered by the RLA, and not the NLRA, many Union Pacific customers (including Sherwin) are covered by the NLRA. Under the RLA, the railroad may go directly to federal court to seek immediate, preliminary injunctive relief against an illegal strike by railroad employees. However, quick injunctive relief against secondary picketing of railroad facilities by a customer's union is not available to railroads under the NLRA. Only the Regional Directors of the National Labor Relations Board have authority to go into federal court to obtain injunctive relief under the NLRA, and they can do so only after they have fully investigated an unfair labor practice charge. We understand that it can take 30 days or more to obtain an injunction through this process, even on a fast track.

The prospect that a customer's union might picket Union Pacific's operation for 30 days or more—potentially leading to friction with our employees and even work stoppages—is not a risk that we can take. For that reason, Union Pacific wants to avoid any action that could be perceived by a customer's striking or locked-out employees as conduct of an “ally.” The adverse effects to Union Pacific of picketing by a large union with broad geographic reach like the United Steelworkers would be significant. For this reason, Union Pacific Labor Relations' guidance to our Marketing and Sales and Operating departments' managers is not to provide unusual commercial support that might be perceived as bestowing a material economic benefit upon a customer engaged in its own labor dispute.

We believe it is imprudent to invite disputes with union-represented workers of another employer or with our own employees and their unions unless there are very strong reasons to do so. Union Pacific's other customers have rarely put us in such a situation.

**VERIFICATION**

**I, A. Terry Olin, declare under penalty of perjury that the foregoing is true and correct.**

**Further, I certify that I am qualified and authorized to file this statement.**

**Executed on May 4, 2015.**



A. Terry Olin



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

SHERWIN ALUMINA COMPANY, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 42143
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Respondent.	)	
	)	

**REPLY VERIFIED STATEMENT OF BRAD A. THRASHER**

My name is Brad A. Thrasher. I am Vice President and General Manager for Industrial Products at Union Pacific Railroad Company, a position I have held since March 2012. In this position, I am responsible for managing Union Pacific’s Industrial Products business, which involves shipments of hundreds of commodities between thousands of shippers and receivers throughout North America. I began my career with Union Pacific in 1988, and I have held a number of management positions in Union Pacific’s Marketing and Sales Department and at Union Pacific subsidiaries. Before I was promoted to my current position, I served as Assistant Vice President and General Manager for Union Pacific Distribution Services (“UPDS”), a Union Pacific subsidiary that develops multi-modal transportation solutions for customers, including transload options for bulk commodities.

I am submitting this statement in order to describe my involvement with Sherwin Alumina during its lockout of its employees, including my recollection of certain conversations I had with Sherwin personnel, and to explain aspects of Union Pacific’s response to that lockout.

I first became personally involved in the issues raised by the lockout at Sherwin when I received a letter dated October 22, 2014, from Kent Britton, Sherwin's Chief Financial Officer. *See Counsel's Exhibit G.* I sent a letter in response to Britton on October 28, in which I described the steps Union Pacific had taken to that point to help Sherwin cope with the lockout and the history of communications on the subject dating back to May. The letter noted that, as early as July 23, 2014, Union Pacific personnel had informed Sherwin that, in the event of a labor disruption at Sherwin's plant, the railroad could serve Sherwin with management personnel twice weekly for up to three weeks. The letter explained the many reasons why neither regular service with union crews, nor long-term service with management personnel, were workable solutions. I noted that Union Pacific personnel had offered Sherwin information about truck and transload alternatives, and I offered Union Pacific's continued assistance in securing alternative transload options. *See Counsel's Exhibit H.*

On October 28, I participated in a follow-up telephone call with Britton, George Gleditsch, Sherwin's Procurement Manager, and LaKeisha Gatson-Dunham, Senior Business Manager for Industrial Products at Union Pacific. On that call, I reviewed the reasons why Union Pacific was unable to continue to serve Sherwin with regular union crews. I noted that serving the plant would require the crew to cross the picket line that Sherwin employees had established. I do not recall saying that Union Pacific had a "philosophical" position on this issue, but I did note that our union crew members invariably express concerns for their personal safety if they are asked to cross a picket line and that Union Pacific did not want to try to force our unionized employees to cross a picket line in those circumstances. I advised Britton and Gleditsch that I had been informed that a member of a management crew had been approached by picketers as that crew was serving Sherwin's plant and that our union crews' concerns were not just about

picket line violence, but also that they might face threats or intimidation at their homes or in other off-duty locations if they crossed a picket line.

During the October 28 call, I also explained that Union Pacific simply did not have the resources to continue serving Sherwin indefinitely with management personnel. These managers were already overstretched, and continuing to serve Sherwin's plant would force them to neglect important customer service and safety responsibilities, such as supervising, training, and testing operating crew members, especially new operating crew members who had been hired recently to keep pace with high system-wide traffic volumes. I did, however, indicate that, in an effort to give Sherwin more time to explore transload options, I would seek approval from Union Pacific's Operating Department for an additional week of management crew service to the Sherwin plant. Subsequently I reached out to Greg Workman, Union Pacific's Regional Vice President of Transportation for Southern Region Operations, and obtained approval to extend management crew service to the Sherwin plant through November 6.

On the call I also addressed several proposals Britton and Gleditsch offered. They wanted to have Sherwin pay for management crews to continue serving the plant, but I explained that we were very tight on personnel at that time, especially given the rapid growth of traffic in the region, and could not spare the management employees, regardless of who paid. I also explained that allowing a third party to move cars between Sherwin's plant and Union Pacific's line did not appear practicable. And, I explained that Union Pacific was limited in what we could do to assist Sherwin due to labor law principles that could potentially allow Sherwin employees to set up picket lines on Union Pacific property that our employees would honor, thus impairing our service to many other customers. I reiterated that Union Pacific frequently arranges transloading services for customers and that we were happy to do so for Sherwin. Union Pacific handles lime

and other bulk products via transload for shippers on a regular basis. At that time, however, Sherwin appeared more concerned with moving outbound alumina (which moves under contract) than inbound lime. Britton and Gleditsch told me that they could use trucks to move the lime, and I assumed they had also had an opportunity to build up their lime stockpiles during the period leading up to the lockout and while our management crews were providing service after the lockout had begun.

I wanted to help Sherwin, and I asked Gatson-Dunham to work with our affiliate UPDS to help us identify viable transload sites. I understand that UPDS rapidly identified and vetted several possible transload sites. We ultimately concluded that one site would be the best—a site served by Kansas City Southern Railway. In order to help Sherwin analyze the options, I personally reached out to a senior KCS counterpart to ask that she have her team expedite requested through rates for movements to and from the transload site. Again, Sherwin was primarily concerned about moving outbound alumina at that point, but the transload site could also have been used for transportation of the inbound lime as well.

In a statement filed in this proceeding, Britton says that I refused his attempt to set up a face-to-face meeting in Omaha in early December. I do not recall declining to meet face-to-face, but I do recall suggesting that it would save time and money for Sherwin if we could handle their concerns through a conference call. Britton responded that a call would be acceptable.

We had that call on December 9. I explained again why Union Pacific would not ask its unionized employees to cross the picket line at Sherwin's plant and why Union Pacific could not provide ongoing service with management personnel. I also restated that using a third party to move cars between Union Pacific's line and Sherwin's plant did not appear to be a practicable solution. Britton told me that Sherwin was still considering transloading. He expressed concern

about additional costs involved in a transload arrangement, and he quoted a figure that was significantly higher than what we usually encounter. UPDS advised that they could not verify the figure Sherwin cited, and Union Pacific and UPDS were able to come up with a transloading alternative that was significantly more economical. Gatson-Dunham provided all-inclusive rates for this transloading alternative to Sherwin.

On December 24, 2014, at 3:16 p.m., without explanation, Gleditsch sent me a letter from Britton requesting common carrier rates for movements of lime from McNeil, Texas, and Dittlinger, Texas, to Gregory, Texas (the location of the Union Pacific yard that serves Sherwin). *See Counsel's Exhibit I.* When I returned from my holiday vacation on January 2, 2015, I responded to Gleditsch, pointing him to the applicable tariff—the same tariff that had covered movements of lime to Sherwin prior to the lockout. I also noted in my email to Gleditsch that the rates should have been available to Sherwin through Union Pacific's online tool.

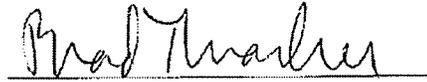
On January 20, Sherwin billed a single car of lime from one of its suppliers through Union Pacific's website. Sherwin billed a second car of lime from a different supplier on January 30. On February 10, Sherwin asked Union Pacific to spot the two cars at Sherwin's plant. Jack Nelson, who was covering for Gatson-Dunham while she was on leave, promptly informed Gleditsch that Union Pacific could not spot the cars unless the labor dispute had been resolved.

On February 10, I had an email exchange with Britton in which he indicated that Sherwin would again explore transloading options. Nelson replied to Britton, reiterating Union Pacific's willingness to provide further assistance and expertise in researching and arranging transloading options for Sherwin. *See Counsel's Exhibit J.*

**VERIFICATION**

I, Brad A. Thrasher, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on May 4<sup>th</sup>, 2015.

  
\_\_\_\_\_  
Brad A. Thrasher





alternatives suggested by Sherwin for continuing direct rail service to the plant were not practical.

### **Union Pacific's Approach to Labor Disruptions at Customer Facilities**

When we learn that a customer anticipates a labor disruption at a facility served by the Southern Region transportation team, my superintendents and service unit managers determine whether the disruption would affect operations to the facility using our union-represented crews. If they determine that we could not continue to operate with union-represented crews, they develop a recommendation for the level and duration of temporary service that a crew of management personnel could provide to the customer.

In evaluating the potential disruption and developing their recommendation, my team discusses the situation with the Marketing and Labor Relations departments and consults with legal counsel as necessary to evaluate the operations involved, the management resources available, and any legal or regulatory issues that might be implicated. We consider each customer's case individually, keeping in mind our responsibilities to other customers, our employees, and public safety. In our planning process, we consider, among other things:

- the physical layout of the facility and, if known, the location of any anticipated picket line relative to Union Pacific tracks, yards, and staging areas;
- the nature and level of the service we ordinarily provide to the facility during a normal week, including number of inbound and outbound cars, days on which service is provided, the customer's track capacity, and the complexity of the operations at the facility (*i.e.*, the number of switching moves required to set out and pick up cars);
- the availability of Union Pacific managers who are qualified and available to perform service;
- the potential impacts of the labor disruption and rail operations during the labor disruption on the safety of our employees, our customers, and the public, which is affected by the proximity of rail operations to roads and crossings and whether the operations involve shipments of hazardous materials;

- the availability of a customer's alternatives to direct rail service and the time required for the customer to put those alternatives in place; and
- the need for Union Pacific to remain neutral relative to another employer's labor unrest.

The anticipated length of the disruption is also a relevant consideration when we have that information.

### **Contingency Planning for Rail Service to Sherwin**

I became involved in contingency planning for the labor disruption at Sherwin's plant around July 14, 2014. Until that time, the planning process was being handled within the Operating Department by Jack Huddleston, General Superintendent of the Houston Service Unit, who was working closely with Robert Johnson, Manager of Train Operations in Corpus Christi, as well as members of the Marketing and Labor Relations departments.

Huddleston contacted me to discuss the alternatives. We concluded that, in the event of labor picketing at Sherwin's plant, Union Pacific could not operate using union-represented crews and would be able to provide Sherwin with limited service using management personnel twice a week for three weeks. He told me that Sherwin had suggested using its own locomotives and employees to move cars between Union Pacific's lines and Sherwin's plant, but we agreed that such an operation did not appear feasible.

### **Union Pacific Could Not Continue Serving Sherwin Using Union-Represented Crews**

Huddleston and I agreed that Union Pacific could not continue serving Sherwin using our union-represented crews in the event of labor picketing at the plant. Our conclusion was driven by the physical location of the rail lines used to serve the plant in relation to the anticipated picket line: our crews could not serve the plant without crossing the picket line.

Robert Johnson, Manager Train Operations in Corpus Christi, is the manager who is most familiar with our operations at Sherwin's plant. He is submitting a statement addressing those

operations in detail. However, a quick look at a map shows why we concluded that we could not continue using union-represented crews during labor picketing at Sherwin. As shown in the map provided as Counsel's Exhibit B:

- It was clear that picketing would take place at a location adjacent to the rail entrance to the plant. There is no other rail entrance to serve the plant so our union-represented employees would be forced to cross the picket line in order to drop off and pick up cars at the plant.
- Before and after our trains operate on Sherwin's lead track, a crew member must walk past the picketers to unlock and then relock a derail mechanism that prevents cars from rolling from Sherwin's lead track across the highway and on to our line.
- The only space on Sherwin's lead track where cars can be set out and picked up is within the plant's limits, inside the picket line.

Given these circumstances, it was clear to me that our union-represented train crews would refuse to operate over Sherwin's lead track to serve the plant in the event of picketing at the plant. Terry Olin, Assistant Vice President – Labor Relations, explains in a separate verified statement why asking our union-represented trains crews to cross this picket line would be futile and would be highly disruptive to Union Pacific's relations with its own employees. In fact, I do not recall any situation during my more than 30 years of experience at Union Pacific when we have tried to force our union-represented employees to provide service to a customer if it would require them to cross a picket line at a customer facility. I firmly believe that our approach to this issue is consistent with the strong safety culture we work hard to instill in all our employees.

### **Union Pacific Could Serve Sherwin Using Management Personnel for Only a Few Weeks**

Huddleston and I also agreed that we could serve Sherwin using management personnel on just a limited basis, twice a week for three weeks. We concluded that we did not have the resources to divert management personnel to serve as train crews for a longer period without compromising their critical safety and customer service responsibilities. The idea of serving Sherwin using management crews was to give our customer additional time to either arrange for alternative transportation or to resolve their labor dispute. We understood that Sherwin could receive lime by truck and even rail-to-truck transload, and thus it was not wholly dependent on having direct rail service. We also understood that Sherwin could transload its outbound alumina.

Serving Sherwin's plant requires a three-person train crew because of the amount and complexity of the switching involved. The management crew used to serve Sherwin consisted of a locomotive engineer and two conductors, all of whom were certified pursuant to regulations promulgated by the Federal Railroad Administration. In view of the complexity of the switching operation at Sherwin, we wanted to be sure that all three management personnel handling the switch were qualified and experienced.

Our closest management office to Sherwin's plant is in Corpus Christi, but we had only three managers in Corpus Christi. Of those three, two served on the management crew for Sherwin: one as a locomotive engineer and another as a conductor. The third manager was not available to work the crew because she was needed to cover nights and other times when the managers operating the Sherwin trains would not be available. Thus, to fill a three-person crew, we had to draw an additional manager from the next closest management office: Bloomington, which is approximately 70 miles north of Gregory. *See Counsel's Exhibit C.*

At the time we were developing our contingency plan for serving Sherwin's plant, we had four managers in Bloomington, but we knew our management resources would be even more limited than these numbers suggest. Of the seven managers in Corpus Christi and Bloomington, only one was qualified as a locomotive engineer. Moreover, when we started planning for the possibility of a labor disruption, we knew that one Corpus Christi manager had child birth leave scheduled for August. We had planned for one of the Bloomington managers to cover the child birth leave in Corpus Christi.

Nonetheless, Huddleston and I agreed that for a three-week period in October we could assign three managers to a management crew to serve Sherwin twice a week. The initial management crew consisted of the two available managers in Corpus Christi and one manager from Bloomington. After the first day of switching Sherwin's plant, the Bloomington manager assigned to the management crew left for an unanticipated medical leave, and he later resigned his management position. About a week later, another Bloomington manager had to take a short-term disability leave. These medical leaves reduced the number of managers available to work in Corpus Christi and Bloomington to four, two of whom were needed to cover nights and other times when the managers operating the Sherwin trains would not be available. Still, we kept our commitment to Sherwin, which meant using one of three managers from Brownsville, which is 170 miles south of Gregory. That manager had to make the approximately 3-hour drive to Corpus Christi the night before serving Sherwin's plant and then drive back to Brownsville afterwards.

We knew that serving Sherwin using management personnel would place a severe strain on management resources. As Johnson explains in his statement, it took from 2 to 4 hours for our management crews to switch Sherwin's plant, but serving Sherwin consumed even more of our

managers' time than that. All the managers spent time traveling to and from Gregory to operate the trains—including the manager 170 miles away in Brownville. In addition, on days they served Sherwin, the managers became subject to federal hours of service rules. That meant they could not exceed 12 hours on duty that day, which had to be followed by a minimum of 10 hours rest. So, for example, when the manager from Brownsville worked the Tuesday switch, he would drive up Monday evening, perform the switch on Tuesday morning, and then drive back on Tuesday afternoon. His mandatory rest period would make him unavailable to work again until Wednesday morning. He could perform his regular duties on Wednesday until he had to leave for Corpus Christi for the Thursday switch. He would return to Brownsville late Thursday and rest until Friday morning when he could resume his normal duties.

Providing just the two switches per week for this one customer effectively consumed the equivalent each week of at least four 8-hour days and imposed an additional 60 hours of mandatory rest time during which the managers serving Sherwin were prohibited from performing any duties. In turn, this required the remaining manager in Corpus Christi and Bloomington and the two in Brownsville to handle their own regular duties, which included responding to any other coverage needs, including emergencies or incidents in the 230-mile Brownsville Subdivision.

We knew that the time required to serve Sherwin plus mandatory rest periods would take our managers away from their regular responsibilities of ensuring safe operations and reliable service for our customers. Our managers have day-to-day responsibilities for supervising and providing guidance to engineers, conductors, and hostlers assigned to them to ensure these employees possess the necessary technical expertise to safely and efficiently operate trains and locomotives on their assigned territories and that they are complying with Union Pacific's FRA-

mandated operating procedures. Our managers fulfill this responsibility by observing, coaching and counseling their employees, as well as conducting field training, efficiency testing, and safety briefings with train crews, both in the yard and on the main line. One of the critical duties of Union Pacific's Managers of Operating Practices is to test our train crew members at various times and locations on their knowledge and compliance with safety and operating rules.

Conducting train crew tests often requires managers to travel many miles from their offices to observe train crews in the field. To satisfy the FRA-mandated Union Pacific certification program requirements, the managers have to conduct a certain number of tests per month.

Our managers are also responsible for execution of daily transportation plans to achieve customer satisfaction. They must coordinate train, yard, and terminal activities to ensure the highest level of safe and efficient service. In addition, they must maintain contact with customers to provide updates on service plans and address any issues that arise in day-to-day operations.

In short, we concluded that, while management personnel could serve Sherwin's plant for a limited period, we could not continue using management personnel to serve Sherwin indefinitely without impairing our ability to run a safe, efficient, and reliable railroad.

### **Communications with Sherwin and Extending Service Using Management Personnel**

When Huddleston and I met in July, Huddleston told me that others at Union Pacific had already told Sherwin that in the event of a labor disruption and picketing at the plant, we could likely provide no more than very limited service using management personnel. However, Sherwin was apparently eager to receive "official" word from Union Pacific, even though they were not facing a possible labor disruption until October.

On July 18, 2014, I learned from Randy Blackburn, Union Pacific's Vice President – Transportation, that George Gleditsch, Sherwin's Procurement Manager, had called Cameron

Scott, Union Pacific's Executive Vice President – Transportation, to ask about our contingency plan for serving Sherwin. I explained our proposal and our reasoning to Blackburn, who agreed with our approach. After Gleditsch called Scott again on July 23, Blackburn asked John O'Leary, Union Pacific's Assistant Vice President – National Customer Service Center, to call Gleditsch and explain our plan to serve Sherwin's plant twice a week for three weeks in the event a labor disruption led to picketing at the plant.

In the afternoon of July 23, O'Leary reported back that he had spoken with Gleditsch, and that Gleditsch said he understood the resource issue raised by committing managers to providing train service. Gleditsch asked O'Leary whether there was any flexibility in the end date for service by management crews and whether Union Pacific would consider allowing Sherwin to supply a locomotive and an engineer to operate on Union Pacific track. {

} O'Leary

told Gleditsch Union Pacific would consider those questions and respond.

I understand that Gleditsch called O'Leary approximately one week later. O'Leary gave Gleditsch contact information for Ramiro Barba, then Union Pacific's Director of Transportation Services for the Houston Service Unit, whom I had asked to act as a point of contact for Sherwin. O'Leary also explained our position with regard to the questions Gleditsch had asked—that we could not serve Sherwin's plant using management crews for more than three weeks or allow Sherwin's employees to operate trains on railroad property. I understand that Barba and other members of our Operating Department had additional communications with Gleditsch to settle on the details of the contingency plan, including the days of the week and time of day that we would operate the special service to Sherwin.

After Sherwin locked out its employees in October 2014, Union Pacific began serving Sherwin's plant two days a week with management personnel, as promised. As noted above, after the first run to the plant, the Bloomington manager assigned to serve on the train had to be replaced by a manager from Brownsville.

On approximately October 29, 2014, Brad Thrasher, Union Pacific's Vice President and General Manager, Industrial Products, asked the Operating Department whether management personnel could continue serving the Sherwin plant for an additional week. I was concerned about the strains that had already been placed on all the managers in the Brownsville Subdivision and that the inordinate amount of management time we were devoting to Sherwin would adversely impact other customers. In addition, Sherwin had control over its own circumstances—they had locked out their employees. Ultimately, however, I agreed to the extension of service because I understood another week would give Sherwin time it needed to establish a transloading alternative.

#### **Sherwin's Proposals to Assist Union Pacific**

In various discussions with Union Pacific personnel, Sherwin offered several proposals designed to assist Union Pacific in serving Sherwin's plant during the lockout without using union-represented crews. We considered those proposals, but we concluded that they did not appear practicable.

*Sherwin's proposal to pay for management crews.* At one point, Sherwin suggested that it was willing to pay Union Pacific's costs of serving Sherwin using management personnel, including the costs associated with transferring managers from other parts of our system. However, this proposal failed to address the underlying problem. Our inability to continue serving Sherwin's plant using management personnel was not based on financial concerns. As I

explained above, our ability to use management personnel to serve Sherwin was (and remains) constrained by the unavailability of management personnel and the inability of our managers to perform their regular duties when they are diverted to operating trains. Currently, Union Pacific has seven managers combined in Corpus Christi and Bloomington, the two closest management offices to Gregory. Only two of these managers are certified locomotive engineers (and one of them is receiving medical care that makes him unavailable to work on some days). Expanding the geographic scope to Brownsville would add only two more managers, neither of whom is qualified as a locomotive engineer—while consuming several hours the day before and the day of the switch for travel.

Transferring managers from other parts of the Southern Region or other parts of our network was not viable in 2014 and is still not viable. Transferring managers from more distant locations would leave other parts of our network shorthanded, a particular problem during this period. Union Pacific's 2014 traffic volumes surged 7% above the prior year, and volume growth in the Southern Region was even higher. While our system-wide volumes are running slightly lower in 2015, the Southern Region is experiencing higher volumes year-over-year. Moreover, numerous track projects for capacity expansion and maintenance were scheduled for the Southern Region during 2014, and more are scheduled for 2015. Such projects consume substantial field management resources before and during the actual project to coordinate engineering and transportation activities, to communicate adjustments to the normal transportation plans to train crews, and to keep customers advised about the effect on their service.

In addition, Union Pacific aggressively hired new train service employees and operating managers throughout 2014 in response to the increase in traffic and to replace retiring crew and

management personnel. During 2014, Union Pacific hired 183 employees in the Houston Service Unit, and of those, 10 were assigned to Brownsville, Corpus Christi, and Bloomington. We are still hiring and training in 2015 due to attrition. This influx of new employees has required more management oversight, and newly hired operating managers are not initially qualified to conduct a train or operate a locomotive.

Using management crews to serve Sherwin for even four weeks imposed a considerable strain due to the limited number of qualified managers. Providing management crew service indefinitely would be a serious burden on those managers and impose a substantial drain on resources critical to safe operations and customer service.

*Sherwin's proposal to use its own personnel.* At one point, Sherwin suggested using its own equipment and personnel to move trains to and from Union Pacific's lines. The proposal was not practicable for three reasons. First, Sherwin employees could not operate trains on Union Pacific's lines unless they were FRA-qualified engineers or conductors, and I am not aware that Sherwin had any FRA-qualified employees. Second, having inexperienced operators in our New Gregory Yard would increase safety risks. Finally, my understanding is that there were potential labor issues that might have arisen if we allowed Sherwin employees and equipment onto Union Pacific property because of laws that allow workers to picket locations where their employer is located. If Sherwin's labor dispute spread to Union Pacific locations and prevented our train crews from working, it would disrupt our ability to serve our other customers.

*Sherwin's proposal to use third party switching.* Sherwin also suggested using a non-union contractor to serve its plant from Union Pacific's New Gregory Yard. This proposal also did not appear practicable. I am not aware that Sherwin advised us of a particular contractor they wanted to use. We would have insisted on a highly experienced contractor with an excellent

safety record for this proposed operation over what the FRA considers to be main line, particularly in light of the safety issues associated with the movements of TIH and other hazardous materials shipments through New Gregory Yard and the public highway crossing required to access the plant. And even if Sherwin had identified a qualified firm with non-union employees that was willing to take on this job for an unknown period, we would have had to resolve difficult issues, in addition to those related to safety, before such an operation could begin.

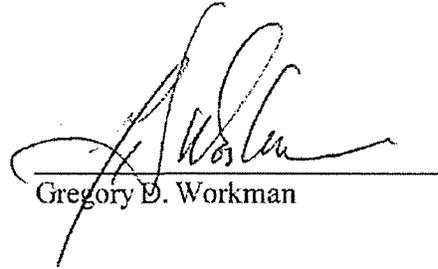
Sherwin, Union Pacific, and the contractor would have to agree on the commercial and liability terms of the arrangement and coordinate operations to avoid interfering with service to other customers. Union Pacific's experience is that even when the parties are eager to enter such arrangements and the commercial terms seem simple, the number and complexity of issues involved, especially the liability issues, mean that it may take months to negotiate, draft, review, and finalize such agreements. Sometimes the parties cannot reach an agreement at all.

Because of the time and effort involved, we ordinarily do not undertake to negotiate such agreements to cover short-term situations. Because Sherwin's situation is temporary (a lockout that Sherwin could end through its own actions) and in light the safety issues involved with the operation and Sherwin's ability to ship lime by truck or transload, the use of a third-party contractor did not appear to be a realistic option.

**VERIFICATION**

I, Gregory D. Workman, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on May 4, 2015.



Gregory D. Workman







# SHERWIN ALUMINA COMPANY, LLC

Contact: Yadie Gonzales  
Communications and Public Relations Coordinator  
[ycgonzales@sherwinalumina.com](mailto:ycgonzales@sherwinalumina.com)  
[www.sherwinalumina.com](http://www.sherwinalumina.com)

## **Sherwin Alumina: Committed to Reaching a Fair Deal with Factual Data on the Table**

GREGORY, Texas (March 9, 2015) — Sherwin Alumina (Sherwin) would like to clarify several inaccuracies in recent statements issued by the United Steelworkers (USW) regarding our operations. It should be pointed out that Sherwin Alumina Company, LLC, a Glencore owned company, is a stand-alone locally managed entity.

The USW, in their statement, incorrectly links Sherwin Alumina's financial results to those issued in a recent Glencore release. The financial results for Glencore under the aluminium/alumina segment contain the operating results for other entities besides Sherwin, and as such no financial information for Sherwin as a stand-alone entity can be derived from the Glencore results. It appears that much of the union's information has been improperly derived from the preliminary annual results issued by Glencore on March 3, 2015. Those results have been published on Glencore's website [www.glencore.com/investors/](http://www.glencore.com/investors/).

For the union to publicly use this information as a proxy for Sherwin is not only incorrect, but also reckless in its attempt to recast publicly released information in a manner other than how it has been presented.

Glencore directly addresses the reduced production at Sherwin in both their March 3 release of their preliminary annual results, and also in their February 11 Production Report 2014 release. As noted in those releases, "the reduction was due to a conscious decision to temporarily curtail one of the five digestion units throughout H2 2014 reflective of weak market conditions for Atlantic alumina, coupled with various power supply issues during the year caused by outages at the third party energy supplier." Sherwin's production since that decision in June 2014 and since the lockout of the hourly employees on October 11, 2014, remains on target with our expectations.

The USW's continued inability to accurately analyze public information and information provided to them during negotiations remains a contributing factor in the ongoing labor dispute. We remain committed to reaching a fair deal with the union that allows them to continue to grow their wages, have a competitive benefits package and also positions Sherwin for long-term success in order to continue to be a key partner in the economic growth of the communities in which we live and work. We are willing and ready to meet with the union in order to reach an agreement; however, it is more difficult to reach an agreement when the union not only promotes inaccurate data to its members and to the community, but itself relies upon it in negotiations.

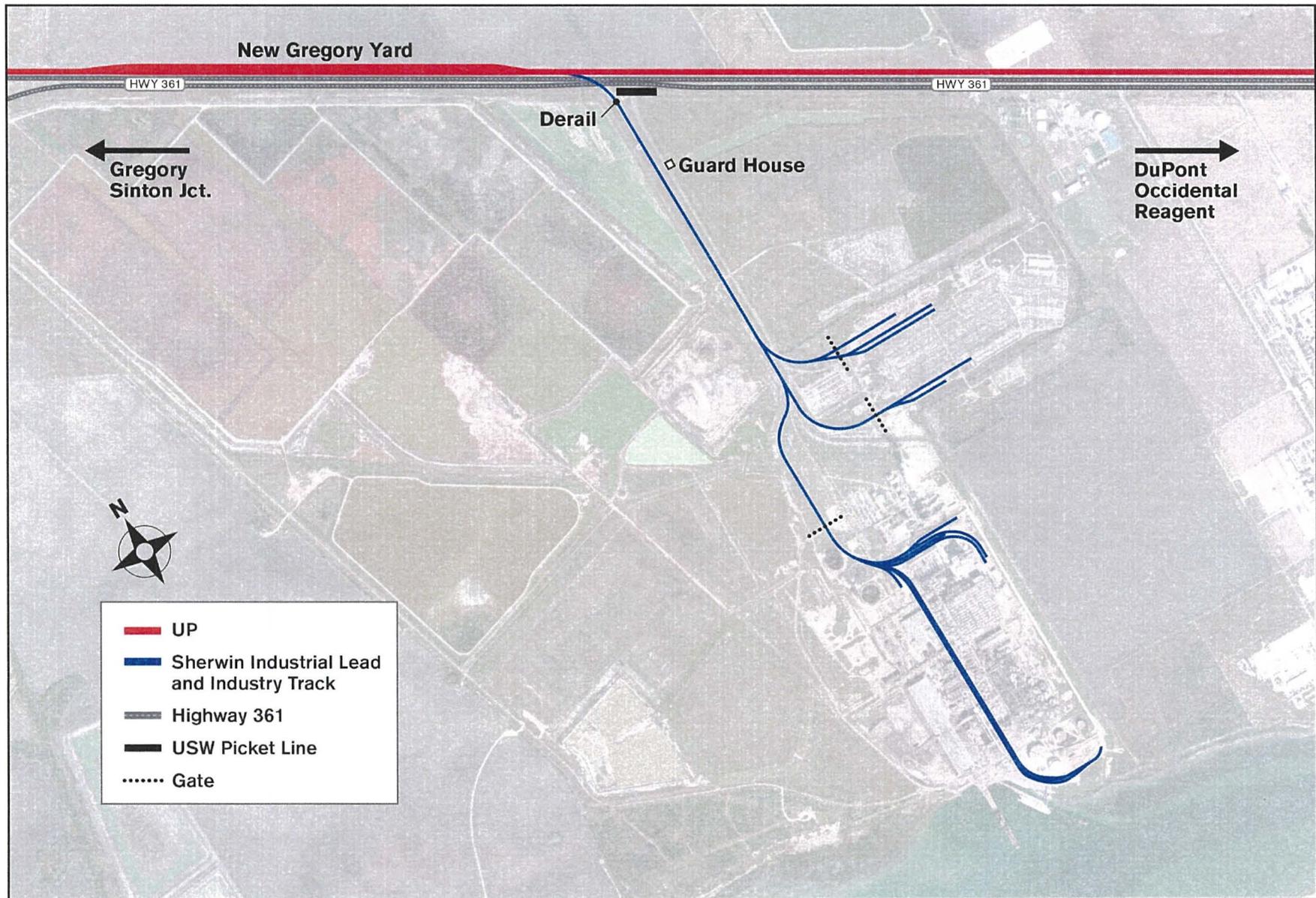
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*Business Info: The Sherwin plant has produced aluminum oxide, or alumina, at our Gregory, Texas location for more than sixty years beginning in 1953. Aluminum is a lightweight, durable and recyclable product used to make everyday products like smart phones, zippers, wiring, building materials and cars.*

*The primary function of the Sherwin plant is to extract aluminium oxide, called alumina, from bauxite ore. Sherwin, a "World Class" company, is ISO 9001 and ISO 14001 certified. The plant is capable of producing 1.65 million tonnes of smelter grade alumina per year. Situated on the Texas Gulf Coast, Sherwin Alumina is located near North American smelting operations. Our deep water port, accessible by vessels with displacements of up to 60,000 tonnes, is the primary transportation mode for incoming bauxite and outgoing alumina. We also ship to customers by barge, rail, and truck.*

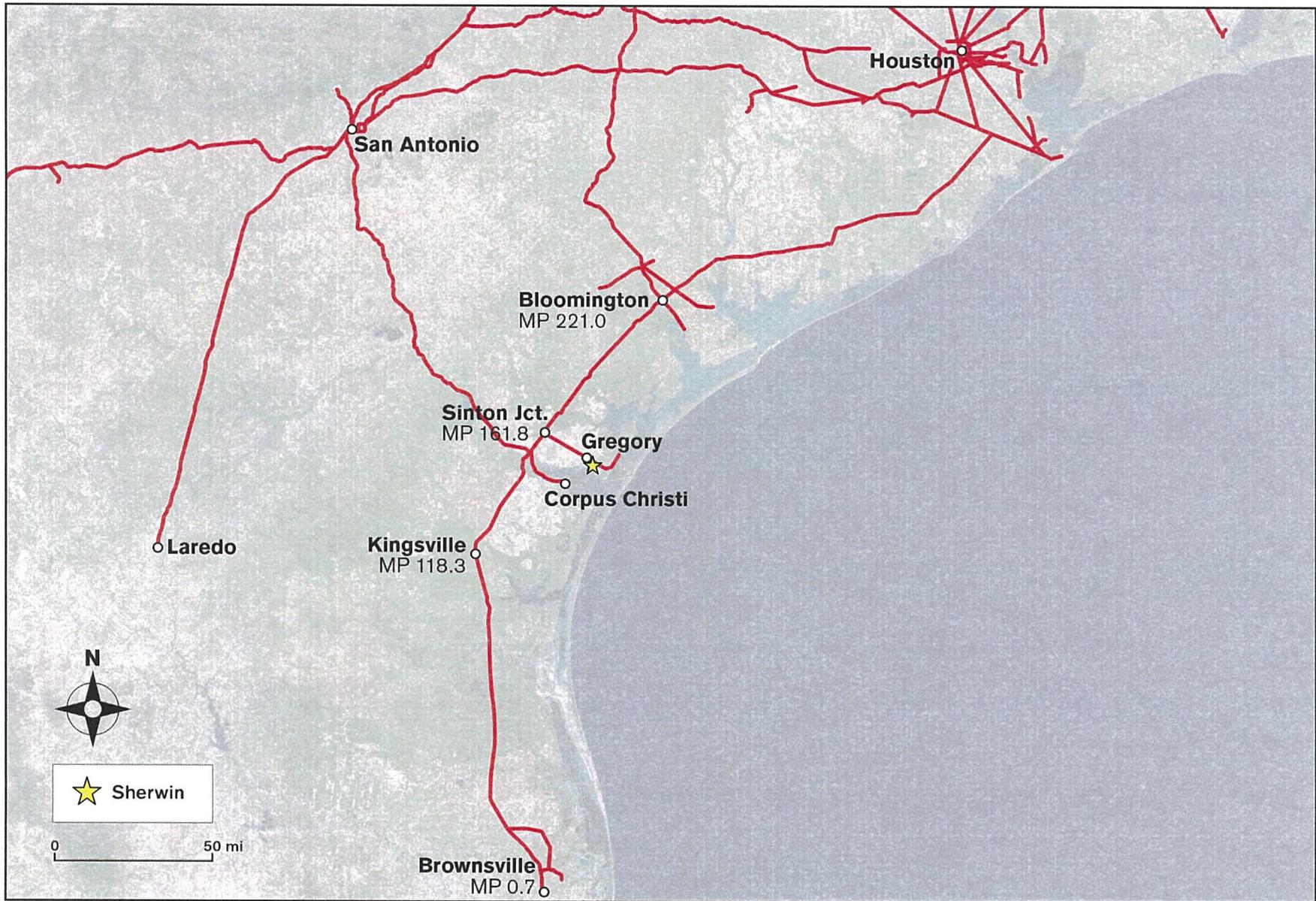


# Sherwin Alumina





# Union Pacific System in Texas Gulf





NEWS RELEASE  
Baar, 3 March 2015

## Preliminary Results 2014

### Highlights

US\$ million	2014 Reported	2013 Pro forma <sup>2</sup>	Change %	2013 Reported <sup>2</sup>
<b>Key statement of income and cash flows highlights<sup>1</sup>:</b>				
Adjusted EBITDA <sup>3</sup>	<b>12,764</b>	13,071	(2)	10,466
Adjusted EBIT <sup>3</sup>	<b>6,706</b>	7,434	(10)	5,970
Net income attributable to equity holders pre-significant items <sup>4</sup>	<b>4,285</b>	4,583	(7)	3,666
Earnings per share (pre-significant items) (Basic) (US\$)	<b>0.33</b>	0.35	(6)	0.33
Net income/(loss) attributable to equity holders <sup>5</sup>	<b>2,308</b>	2,473	(7)	(8,046)
Funds from operations (FFO) <sup>6</sup>	<b>10,169</b>	10,375	(2)	8,030
Capital expenditure (excluding Las Bambas of \$961 million and \$1,734 million in 2014 and pro forma 2013 respectively)	<b>8,566</b>	11,316	(24)	8,680
US\$ million	31.12.2014 Reported	31.12.2013 Pro forma <sup>2</sup>	Change %	31.12.2013 Reported <sup>2</sup>
<b>Key financial position highlights:</b>				
Total assets	<b>152,205</b>	154,862	(2)	154,862
Current capital employed (CCE) <sup>7</sup>	<b>21,277</b>	24,292	(12)	24,292
Net debt <sup>6</sup>	<b>30,532</b>	35,798	(15)	35,798
<b>Ratios:</b>				
FFO to Net debt <sup>6</sup>	<b>33.3%</b>	29.0%	15	22.4%
Net debt to Adjusted EBITDA	<b>2.39x</b>	2.74x	(13)	3.42x
Adjusted EBITDA to net interest	<b>8.68x</b>	9.12x	(5)	7.54x
Adjusted current ratio <sup>3</sup>	<b>1.23x</b>	1.18x	4	1.18x

1 Refer to basis of preparation on page 5.

2 2013 has been adjusted to reflect the updated fair value acquisition accounting for the acquisitions of Xstrata (see note 25).

3 Refer to note 2 of the financial statements for definition and reconciliation of Adjusted EBIT/EBITDA.

4 Refer to significant items table on page 7.

5 2013 reported, adjusted by \$(466) million as a result of the finalisation of the fair value adjustments relating to the acquisition of Xstrata and the resulting increase to the associated impairment (does not impact EBIT and EBITDA), see note 4 of the financial statements. Refer to page 122 for pro forma results and page 7 for reported results.

6 Refer to page 9.

7 Refer to glossary for definition.

- Adjusted EBITDA of \$12.8 billion in 2014 was modestly down on 2013 (2%), notwithstanding the weaker commodity price environment, reflecting:
  - Marketing Adjusted EBITDA up 15% to \$3.0 billion (Adjusted EBIT up 18% to \$2.8 billion), including significant earnings growth within Agriculture, on the back of strong results from Viterro.
  - Industrial Adjusted EBITDA lower by 7% to \$9.8 billion, due to generally lower prices, largely offset by the positive impacts of production growth, real unit cost savings and weaker producer currencies.
- Production growth consisted of:
  - Copper up 4% to 1.5 million tonnes, principally due to the ramp-up of Mutanda, up 31% to 197,000 tonnes, with the operation running at close to capacity throughout the year.
  - Higher zinc from Mount Isa, McArthur River and Perkoa as their expansion projects ramp-up, keeping overall zinc in line with 2013 at 1.4 million tonnes, despite lost production from the planned closures of the Perseverance and Brunswick mines in 2013.

## Metals and Minerals

### Australia

Australia produced 36,400 tonnes of own sourced nickel, down 9% (3,600 tonnes), reflecting the lost production from the Cosmos and Sinclair mines put on care and maintenance in 2013 (the Sinclair mine has subsequently been sold). Total nickel production (including third party material) at Murrin Murrin was 44,100 tonnes, up 7% over 2013, reflecting consistent plant availability during the year.

### Koniambo

Koniambo produced 12,600 tonnes of nickel in ferronickel as its commissioning and ramp-up phase continues. Production was suspended at the end of December 2014 after detection of a metal leak in Line 1 of the metallurgical plant. Line 2 received regulatory approval to restart on 18 January 2015 and investigation and repair work has commenced on Line 1.

### Ferroalloys assets

#### Ferrochrome

Attributable ferrochrome production was 1.3 million tonnes, a 5% increase over 2013, mainly reflecting the ramp-up of Lion phase 2.

The Lion phase 2 project is progressing to plan and is expected to reach full capacity by the middle of 2015.

#### Platinum Group Metals

PGM production was 157,000 ounces, comparable with 2013.

### Vanadium

Vanadium pentoxide production was 20.8 million lbs, down 4% on 2013. The decline relates to a planned longer annual maintenance shutdown (three weeks compared to the usual two weeks).

### Manganese

Total manganese production (ferromanganese and silicon manganese) was 224,000 tonnes, 17% higher than 2013. The higher production was driven by efficiency improvements in Norway (silicon manganese) and demand led production increases in France (ferromanganese).

### Aluminium assets

#### Sherwin Alumina

Sherwin produced 1.4 million tonnes of alumina, 14% down on 2013. The reduction was due to a conscious decision to temporarily curtail one of the five digestion units throughout H2 2014 reflective of weak market conditions for Atlantic alumina, coupled with various power supply issues during the year caused by outages at the third party energy supplier.



**[REDACTED]**



**[REDACTED]**





## SHERWIN ALUMINA COMPANY, LLC

October 22, 2014

Via E-Mail & FedEx

Mr. Brad Thrasher  
Vice President and General Manager - Industrial Products  
Union Pacific Railroad Company  
1400 Douglas Street, Stop 0310  
Omaha, NE 68179

Re: Transportation under UPCO 81351.018

Dear Mr. Thrasher:

Sherwin Alumina ("Sherwin") and its predecessors are long-time customers of the Union Pacific Railroad ("UP"). We transport approximately 3,500 shipper-supplied cars per year and spend \$3.5 million annually with UP, carrying both outbound customer product and inbound lime, which is a critical component of our production process. UP's rail service is essential to the operation of our facility, neighboring facilities and the community at large.

Sherwin has no feasible means of moving certain goods to market or receiving critical raw material inputs without UP rail service. Trucking is infeasible due to Texas environmental rules and the distances involved. Trucking and transloading is likewise of limited value given the added costs and purity requirements of our product and could only be used as a stop-gap measure. Thus, without regular and reliable service from UP, Sherwin could be forced into a range of options up to and including shuttering our operations, which would put more than 600 employees out of work and have cascading impacts throughout the Corpus Christi area.

For example, another large chemical company, located adjacent to the Sherwin plant, provides caustic soda, a raw material required in the production of alumina, and a significant portion of their output of that product is dedicated to serving our facility. That company, as well as others, would likely suffer economic disadvantage if Sherwin stops operating – even for a short time. Collectively, these facilities employ a large number of people in the region.

On October 10, 2014, the labor union representing 450 employees at Sherwin's Gregory, TX facility rejected the Company's final offer for a new labor agreement. As a result, these employees are currently locked out, and while we hope that an agreement will be reached in the near term that can end this dispute, operations at the plant must and are continuing. Sherwin has, therefore, made necessary arrangements to keep the plant operations running indefinitely.

Sherwin was in regular contact with UP regarding service contingencies in the event of a lockout. Sherwin repeatedly indicated that operations would continue normally and that UP's normal service to the facility would be required regardless of a potential labor dispute.

UP seemingly ignored Sherwin's communications. Only after contacting Mr. Cameron Scott's office did UP respond to our concerns. Regrettably, UP's response failed to address our concerns. UP stated verbally, and much later by email that it intended to provide only three weeks of reduced service following any lockout or strike condition at the plant. UP has never stated what level of service Sherwin can expect

Sherwin Alumina Company, LLC

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P. O. Box 9911 · Corpus Christi, Texas 78469 · [www.sherwinalumina.com](http://www.sherwinalumina.com)

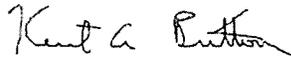
after the three week period of reduced service concludes on October 30, 2014, but Sherwin assumes that UP intends to cease operations to and from the plant at that point.

UP has no basis to cease or reduce service to the Sherwin facility. Sherwin and UP are parties to an agreement, UPCQ 81351.018. The fundamental purpose of the Agreement is to provide for the transportation of product from the Sherwin facility to specified destinations. UP's service obligation does not cease under the Agreement simply because a lockout condition exists at Sherwin. Moreover, UP faces no threat of violence from the locked out employees or even a picket line at the rail facility entrance. Thus, there is no difference in circumstances at the Sherwin facility than existed prior to October 11, 2014, and even if a picket line should exist, UP is still obligated to use reasonable efforts to meet its obligations under the Agreement.

In light of the circumstances, Sherwin has reasonable grounds for insecurity with respect to UP's willingness to continue its performance under the Agreement. Sherwin, therefore, requests that UP provide adequate assurances that it will continue normal operations to the Sherwin facility.

As time is of the essence, we would appreciate your written response by October 24, 2014, which can be emailed to me at [kabritton@sherwinalumina.com](mailto:kabritton@sherwinalumina.com).

Sincerely,



Kent Britton  
Chief Financial Officer



October 28, 2014

Via Email

Mr. Kent Britton  
Chief Financial Officer  
Sherwin Alumina Company

Dear Mr. Britton,

Thank you for contacting me about your current situation at the Sherwin Alumina plant in Gregory, Texas. As you stated, Sherwin Alumina and Union Pacific have enjoyed a longstanding relationship, and we very much appreciate your business as we do with all of our customers throughout the Corpus Christi area.

I understand that the labor agreement between Sherwin Alumina and the United Steelworkers Union expired on September 30, 2014, and that as a result, Sherwin Alumina locked out its union-represented employees from the Gregory plant on approximately October 11. Per previous communications between Union Pacific and Sherwin Alumina staff, Union Pacific indicated that we would be able to provide twice weekly service to the plant for up to three weeks with our limited resource of management crews from the onset of your labor disruption.

In May, George Gleditsch and LaKeisha Gatson-Dunham discussed the possibility of a strike and the potential impact a strike would have on Union Pacific's ability to serve the plant. In response, Union Pacific put your team in communication with our Operating and Labor Relations managers who reviewed the obstacles to service that strike situations present, including safety concerns that consistently arise in connection with labor picketing. Well in advance of the agreement's expiration, on July 23, 2014, Union Pacific communicated our contingency capabilities to service Sherwin Alumina. The contingency service plan was designed to provide Sherwin Alumina with sufficient time to arrange for alternative service options, including trucking and/or transloading options. UP personnel also provided contact information for those industries to your team as well as rates to various transload alternatives in the Corpus Christi area.

Based on the significant interactions between our employees at all levels within our company preceding the expiration of Sherwin's labor agreement, Sherwin Alumina cannot claim surprise that Union Pacific was not in a position to provide regular service following Sherwin's decision to lock out its employees. As previously explained to Mr. Gleditsch, normal service by Union Pacific's union-represented employees is not a practicable solution. Service to the facility may only be provided only by management crews during a labor dispute.

Our management staff in the Gregory area works extremely hard supporting our TE&Y team members, managing network flows throughout the area and are very focused on providing service to/from our entire customer base in the Corpus Christi in addition to Sherwin Alumina. As such, UP is simply not in a position based on our limited management personnel, safety considerations, and the press of service requirements across our entire customer base to continue serving Sherwin Alumina for an extended time with our limited management staff.

We very much value our relationships with Sherwin Alumina and while we ask that our managers go above and beyond their normal duties, they are also subject to the same Federal regulations for hours of service and at some point, simply do not have the capacity to perform switching in addition to their regular duties as management personnel.

UP's position has not changed; discontinuation of this level of service is consistent with what was communicated by our marketing, operating, labor relations and customer service personnel in conversations with Sherwin Alumina going as far back as May of this year. Union Pacific is simply just not resourced to extend management service at the current level past October 30, 2014.

Sherwin Alumina also indicated that transloading was not a viable alternative due to purity concerns for your products. I do not have a full understanding of your product requirements yet but we work with transloaders across the United States on a daily basis to transload and safely handle even food grade commodities such as plastics, perishables, flour, sugar, grain products, etc. and we remain very willing to work with Sherwin Alumina on alternative transload options in the area if you so desire.

I can assure you that when your Company has resolved its dispute with its union-represented employees, Union Pacific will be in a position to provide the plant with regular service. We are hopeful that Sherwin Alumina can come to a speedy resolution of the current labor dispute. If you desire, we are very willing to schedule a conference call with you and your team tomorrow to discuss our current capabilities and alternatives.

Best regards,

Brad Thrasher  
VP & General Manager – Industrial Products



**From:** Brad A. Thrasher [mailto:BRADTHRASHER@UP.COM]  
**Sent:** January 02, 2015 1:48 AM  
**To:** Gleditsch, George  
**Cc:** Daniel M. Jaffe (dmj@sloverandloftus.com); Britton, Kent  
**Subject:** Re: Common Carrier Rate Request for Lime

George, sorry have been out on vacation over the holidays and am just getting caught up on email. You should be able to find rates via our online rate tool as we strive to have comprehensive coverage for our commodities. Believe they are in our UP 3200 tariff. Here's a link--  
> [http://www.uprr.com/customers/price\\_inquiry.shtml](http://www.uprr.com/customers/price_inquiry.shtml)

Happy New Year.

Brad

From: "Gleditsch, George" <ggleditsch@SherwinAlumina.com>  
To: "Brad A. Thrasher" <BRADTHRASHER@UP.COM>  
Cc: "Britton, Kent" <kabritton@SherwinAlumina.com>, "Daniel M. Jaffe (dmj@sloverandloftus.com)" <dmj@sloverandloftus.com>  
Date: 12/24/2014 03:16 PM  
Subject: Common Carrier Rate Request for Lime

-----

Mr. Thrasher,

On behalf of Mr. Kent Britton, CFO for Sherwin Alumina Company, I am forwarding a letter and two UP 6007 Common Carrier Rate Request Forms (one for McNeil, Tx the other for Dittlinger, Tx.)

I have faxed the UP 6007 forms to UP as well.

Hard copies were sent via Fedex today as well

If you have any questions regarding this request please call either Mr. Kent Britton at 361-777-2442, or myself at the numbers shown below

Hope you have a great holiday season

Best regards,

George Gleditsch  
Procurement Manager  
Sherwin Alumina Company LLC  
361-777-2318 Desk  
361-549-3215 Cell

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December \_\_, 2014

Via E-Mail & FedEx

Mr. Brad Thrasher  
Vice President and General Manager - Industrial Products  
Union Pacific Railroad Company  
1400 Douglas Street, Stop 0310  
Omaha, NE 68179

Reference: Common Carrier Rate and Service Terms for Transportation of  
Bulk Crushed Quicklime from McNeil and Dittlinger, TX to  
Gregory, TX

Dear Mr. Thrasher:

In accordance with 49 U.S.C. § 11101 and 49 C.F.R. Part 1300, Sherwin Alumina Company, LLC (“Sherwin”) hereby requests that Union Pacific Railroad Company (“UP”) either (a) disclose the existing common carrier rates, charges and service terms that will apply to the transportation described in Attachment A to this letter; or (b) establish and disclose reasonable common carrier rates, charges and service terms for application to said transportation. Please provide the requested information, in writing, to the undersigned as soon as possible and, in any event, in compliance with the above-referenced requirements.

Also attached to this letter is a copy of the completed formal rate information request form set forth in Item 701 of UP Tariff 6007-B. The completed form is being faxed today to UP Pricing Services pursuant to Item 700 of Circular 6007-B.

If you require clarification of any aspect of our request, please contact me, and we will do whatever is necessary to resolve it as quickly as possible.

Sincerely,

Kent A. Britton

Commodity: Bulk Crushed Quicklime under STCC 3274110.

Origins: Austin White Lime Company quarry at McNeil, TX  
LHoist Quarry at Dittlinger, TX

Destination: Sherwin Alumina Company, LLC alumina plant at  
Gregory, TX

Route: UP direct.

Type of Service: Manifest (non-unit train) service.

Volume: Manifest service with annual volumes generally  
consistent with historic levels transported from McNeil  
and Dittlinger, TX to Gregory, TX

Equipment: Shipper and railroad-provided covered hoppers  
consistent with historic practices.

Expected Volume  
Per Car: 100 tons

Shipment size: 1-12 cars

Commencement  
of common carrier  
movements:: No later than January 1, 2015.

Loading and  
Unloading: Per applicable UP tariff requirements.



UP 6007-B

Item: 701  
FORMAL RATE INFORMATION REQUEST FORM

**FORMAL RATE INFORMATION REQUEST FORM**

**UNION PACIFIC RAILROAD**  
**Sec. 11101 Formal Rate Information Request**  
(Check one): New X Existing \_\_\_\_\_

SEND: FAX # 402-501-0162  
UP - Pricing Services  
1400 Douglas Street, STOP 1340  
Omaha, NE 68179-1340

-----  
**COMMODITY DESCRIPTION:** Bulk Crushed Quicklime

**STCC**(minimum 3 digits): 3274110

**ORIGIN STATION:** McNeil, TX (Austin White Lime Facility)  
Serving carrier(s), if known: Union Pacific Railroad Company

**DESTINATION STATION:** Gregory, TX (Sherwin Alumina Plant)  
Serving carrier(s) if known: Union Pacific Railroad Company

**EQUIPMENT TYPE(S):** Covered Hoppers

Name: Kent A. Britton, Chief Financial Officer  
Mailing Address: P.O. Box 9911, Corpus Christi, TX 78469  
Telephone: 361-777-2442  
FAX: 361-777-2347

**(REQUESTS RECEIVED AFTER 3:00 P.M. CENTRAL TIME WILL BE DEEMED AS RECEIVED THE FOLLOWING BUSINESS DAY. ALSO, UP RESERVES THE RIGHT TO REQUEST ANY ADDITIONAL INFORMATION NECESSARY TO CLARIFY THE CUSTOMER REQUEST.)**

-----  
**THIS SECTION FOR CARRIER USE ONLY**

Initial Receipt Date and Time:

Disposition Date:

Action Taken:



UP 6007-B

Item: 701  
FORMAL RATE INFORMATION REQUEST FORM

**FORMAL RATE INFORMATION REQUEST FORM**

**UNION PACIFIC RAILROAD**  
**Sec. 11101 Formal Rate Information Request**  
(Check one): New  Existing

SEND: FAX # 402-501-0162  
UP - Pricing Services  
1400 Douglas Street, STOP 1340  
Omaha, NE 68179-1340

-----  
**COMMODITY DESCRIPTION:** Bulk Crushed Quicklime

**STCC**(minimum 3 digits): 3274110

**ORIGIN STATION:** Dittlinger, TX (LHoist Quarry)  
Serving carrier(s), if known: Union Pacific Railroad Company

**DESTINATION STATION:** Gregory, TX (Sherwin Alumina Plant)  
Serving carrier(s) if known: Union Pacific Railroad Company

**EQUIPMENT TYPE(S):** Covered Hoppers

Name: Kent A. Britton, Chief Financial Officer  
Mailing Address: P.O. Box 9911, Corpus Christi, TX 78469  
Telephone: 361-777-2442  
FAX: 361-777-2347

**(REQUESTS RECEIVED AFTER 3:00 P.M. CENTRAL TIME WILL BE DEEMED AS RECEIVED THE FOLLOWING BUSINESS DAY. ALSO, UP RESERVES THE RIGHT TO REQUEST ANY ADDITIONAL INFORMATION NECESSARY TO CLARIFY THE CUSTOMER REQUEST.)**

-----  
**THIS SECTION FOR CARRIER USE ONLY**

Initial Receipt Date and Time:

Disposition Date:

Action Taken:



**[REDACTED]**



**[REDACTED]**





UNITY AND STRENGTH FOR WORKERS

Jan 07, 2015

# USW Charges Sherwin Alumina with Unlawful Lockout

## *Company Has Failed to Bargain in Good Faith, Threatened Workers*

Contact: Ben Lilienfeld: (832) 556-0370, [blilienfeld@usw.org](mailto:blilienfeld@usw.org)

GREGORY, Texas (January 7, 2015) — The United Steelworkers (USW) union filed unfair labor practice charges with the National Labor Relations Board (NLRB) in response to Sherwin Alumina's nearly three-month lockout of 450 workers at its Gregory facility.

"This company has repeatedly and unlawfully intimidated, threatened and discriminated against its own workers, all in an effort to divide the union," said USW District 13 Director Ruben Garza. "This lockout is nothing more than the act of a greedy company seeking to increase an already healthy bottom line, and that kind of irresponsible behavior must have consequences."

Sherwin locked its doors on its hourly work force in Gregory on October 11 after the workers there refused to accept substantial pay and benefit cuts. Glencore, Sherwin's corporate owner, is the world's 10th largest company with a net income of \$4.6 billion in 2013.

In addition to accusing Sherwin of an unlawful lockout of USW Local 235A members, the USW also alleges Sherwin has violated the National Labor Relations Act by failing to bargain in good faith, interfering in union activity, threatening and interrogating workers, removing union communications, engaging in unlawful surveillance, and failing to provide information to the union in a timely manner.

"This is a hugely profitable company, in an industry that has a positive outlook for the future. The workers have repeatedly offered to stay on the job while negotiations continue, but the company has continued this irresponsible lockout," Garza said. "There is simply no excuse for these actions, other than corporate greed."

*For more information, visit [www.usw.org/sherwin](http://www.usw.org/sherwin). USW District 13 represents more than 50,000 members in Texas, Arkansas, Louisiana and Oklahoma. The USW is the largest industrial union in North America, representing workers in a range of industries including metals, mining, rubber, paper and forestry, oil refining, health care, security, hotels, and municipal governments.*

# # #

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USW Political Action Fund - Five Gateway Center - Pittsburgh, PA 15222

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UNITY AND STRENGTH FOR WORKERS

Feb 11, 2015

# Illegal Lockout at Sherwin Alumina Costs Company Production, Productivity

## *Glencore Report Reveals Production Down 30 Percent*

Contact: Ben Lilienfeld: (832) 556-0370, [blilienfeld@usw.org](mailto:blilienfeld@usw.org)

GREGORY, Texas (February 11, 2015) — The United Steelworkers (USW) today responded to the production report issued by Sherwin Alumina's parent company, Glencore.

According to data released by Glencore, production at Sherwin's alumina refinery was 291,000 tonnes during the fourth quarter of 2014, down 8 percent from the previous quarter and down over 30 percent from the same quarter of 2013 when production reached a record 419,000 tonnes.

"The company's decision to illegally lock out its work force cost it 120,000 tonnes of lost production during the fourth quarter of 2014," said USW District 13 Director [Ruben Garza](#). "Although the company blamed weak market conditions and power supply issues, the fact is alumina prices reached their peak during the fourth quarter of 2014. Had Sherwin Alumina's production been at the same level as the prior year, at the average spot price for alumina during the quarter, the company would have an additional \$45 million in revenue."

"Sherwin Alumina's temporary replacement work force is apparently working more hours and producing less alumina," said Ben Lilienfeld, USW District 13 Sub-District Director. "Labor productivity at the refinery was down almost 40 percent from the fourth quarter of 2013, based on hours of work according to the Mine Safety and Health Administration."

"Again, the union calls on the company to end this illegal lockout, return its skilled, experienced employees to the plant, and to return to the bargaining table," said Garza.

On October 11, 2014, Sherwin locked out 450 USW members at its alumina refinery in Gregory, Texas. The union's unfair labor practice charges challenging the legality of the current lockout are being investigated by Region 16 of the National Labor Relations Board.

Click here for the [Glencore Corporate Update and Production Report](#)

*USW District 13 represents more than 50,000 members in Texas, Arkansas, Louisiana and Oklahoma.*

*The USW is the largest industrial union in North America, representing workers in a range of industries including metals, mining, rubber, paper and forestry, oil refining, health care, security, hotels, and municipal governments.*

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UNITY AND STRENGTH FOR WORKERS

Feb 17, 2015

# USW: Lockout Raises Safety Concerns at Sherwin Alumina

## *Company's Shoddy Record, Inexperienced Work Force a Dangerous Combination*

Contact: Ben Lilienfeld: (832) 556-0370, [blilienfeld@usw.org](mailto:blilienfeld@usw.org)

GREGORY, Texas (February 17, 2015) — The United Steelworkers (USW) union has issued a report that raises concerns about the safety of workers and the community around the Sherwin Alumina plant in Gregory, where 450 USW members have been locked out of their jobs since October 11.

“Refining alumina is a hazardous process, one that employs corrosive chemicals, high temperatures and intense pressure,” said USW District 13 Director [Ruben Garza](#). “When you force well-trained, experienced and highly skilled workers off the job, the dangers in a plant like this only increase. It’s a recipe for disaster.”

In its report, titled “[Sherwin Alumina: Too Great a Risk](#),” the USW cites an explosion during a 1999 lockout at an alumina plant in Gramercy, La., that injured 29 workers as an example of what can happen when experienced workers are forced into the street. The report also reveals a nearly 10-fold increase in “serious and substantial” citations and orders from the Mine Safety and Health Administration (MSHA) between 2006 and 2014.

“The risks are not only to the workers who are in the plant, but to the entire community,” Garza said. “In the case of an explosion, the effects could potentially spread far beyond the plant gates. It takes constant vigilance and attention to detail to ensure that the process goes smoothly.”

Sherwin locked its doors on USW Local 235A members in Gregory in October after the workers refused to accept the company’s contract proposal that included substantial pay and benefit cuts. To take their place, the company brought in temporary workers, many of whom never worked in an alumina refinery before.

*USW District 13 represents more than 50,000 members in Texas, Arkansas, Louisiana and Oklahoma. The USW is the largest industrial union in North America, representing workers in a range of industries including metals, mining, rubber, paper and forestry, oil refining, health care, security, hotels, and municipal governments.*

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# United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW") Local 13-1 (Shell Oil Co.)

Case Number: 16-CB-147139  
Date Filed: 02/22/2015  
Status: Open

Location: Pasadena, TX  
Region Assigned: Region 16, Fort Worth, Texas

## Resources

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## Docket Activity

Date	Document	Issued/Filed By
02/26/2015	Initial Letter to Employer in C Case*	NLRB - GC
02/26/2015	Initial Letter to Charging Party*	NLRB - GC
02/26/2015	Initial Letter to Charged Party*	NLRB - GC
02/23/2015	Signed Charge Against Union*	Charging Party

The Docket Activity list does not reflect all actions in this case.

\* This document may require redactions before it can be viewed. To obtain a copy, please file a request through our FOIA Branch.

## Allegations

- 8(b)(1)(A) Coercion, incl'g Statements and Violence

## Participants

Participant	Address	Phone
<b>Charged Party / Respondent</b> <i>Legal Representative</i> David Jury <i>United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC</i>	Five Gateway Center Room 807 60 Blvd. of the Allies Pittsburgh, PA 15222-1214	(412)562- 2545
<b>Charging Party</b> <i>Legal Representative</i> GLENN TAUBMAN <i>NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION</i>	8001 BRANDDOCK RD, SUITE 600 SPRINGFIELD, VA 22160	(703)321- 8510
<b>Charged Party / Respondent</b> <i>Notification</i> RICHARD BREAN <i>UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL WORKERS INTERNATIONAL UNION, AFL-CIO/CLC</i>	60 BOULEVARD OF THE ALLIES FIVE GATEWAY CENTER, RM 807 PITTSBURGH, PA 15222-1214	(412)562- 2530
<b>Charged Party / Respondent</b>	PASADENA, TX	

4/29/2015

NLRB

*Union*

77506-2358

*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial  
and Service Workers International Union, AFL-CIO, CLC*

**Charging Party**

*Individual*

**Involved Party**

*Employer*

*SHELL OIL COMPANY*

DEER PARK, TX

77536-2434

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# NEWS RELEASE

## Shell Oil Refinery Worker Files Federal Charge in Wake of Steelworker Union Strike Intimidation

### ***Union officials threatening workers who refused to abandon their jobs***

**Houston, TX (February 24, 2015)** – As the highly-publicized United Steelworker (USW) union-instigated strike against oil refineries continues, a Shell Oil Company refinery worker has filed a federal charge against a local Steelworker union for intimidating workers for refusing to abandon their jobs.

With free legal assistance from National Right to Work Foundation staff attorneys, Joseph Smith of Friendswood, Texas filed the unfair labor practice charge with the National Labor Relations Board (NLRB).

At Smith's plant in Deer Park, roughly 150 of the approximately 800-large workforce have continued to work during the strike, with many resigning their membership in the USW Local 13-1 union, as is their right under federal labor law and Texas' popular Right to Work law. As the stream of workers resigning union membership and returning to work grows every day, it was reported that USW Local 13-1 union officials turned off their fax machine in an attempt to stop workers from exercising their right to resign and return to work.

Smith's unfair labor practice charge alleges that USW Local 13-1 union officials are resorting to harassing, coercing, and threatening workers for refusing to abandon their jobs. Further, USW Local 13-1 union officials have allowed the union's website and Facebook page to be used to communicate threats against workers who continue to work during the strike.

"USW union bosses are trying to punish workers who have the courage not to toe the union boss line and instead provide for their families," said Mark Mix, President of National Right to Work. "It is indefensible that workers who resign their union membership and continue to work to support their families in defiance of the USW boss-ordered strike are now being harassed and threatened for exercising their rights."

In response to the high-profile strike, the National Right to Work Foundation recently issued a special legal notice to workers affected which lays out their rights under federal labor law: <http://www.nrtw.org/en/special-legal-notice-usw-refinery-strike-02032015>.

| [Strike Abuses](#) | [Union Corruption, Violence and Intimidation](#) |  
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*The National Right to Work Legal Defense Foundation is a nonprofit, charitable organization providing free legal aid to employees whose human or civil rights have been violated by compulsory unionism abuses. The Foundation, which can be contacted toll-free at 1-800-336-3600, is assisting thousands of employees in over 200 cases nationwide.*

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National Right to Work Legal Defense and Education Foundation, Inc.  
8001 Braddock Road / Springfield, Virginia 22160  
(703) 321-8510 | (800) 336-3600 / (703) 321-9613 fax - general (703) 321-9319 fax - legal department



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# United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 13-227 (LyondellBasell Industries)

**Case Number:** 16-CB-147888

**Date Filed:** 03/09/2015

**Status:** Open

**Location:** Pasadena, TX

**Region Assigned:** Region 16, Fort Worth, Texas

## Docket Activity

<u>Date</u> ▾	<u>Document</u>	<u>Issued/Filed By</u>
03/11/2015	Initial Letter to Charged Party*	NLRB - GC
03/11/2015	Initial Letter to Employer in C Case*	NLRB - GC
03/11/2015	Initial Letter to Charging Party*	NLRB - GC
03/10/2015	Signed Charge Against Union*	Charging Party

The Docket Activity list does not reflect all actions in this case.

\* This document may require redactions before it can be viewed. To obtain a copy, please file a request through our [FOIA Branch](#).

## Allegations

- 8(b)(1)(A) Coercion, incl'g Statements and Violence

## Participants

<u>Participant</u>	<u>Address</u>	<u>Phone</u>
<b>Charging Party</b> <i>Legal Representative</i> Matthew Gilliam <i>National Right To Work Legal Defense Foundation, Inc.</i>	8001 Braddock RD STE 600 Springfield, VA 22160	(703)321- 8510
<b>Charged Party / Respondent</b> <i>Notification</i> RICHARD BREAN UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL WORKERS INTERNATIONAL UNION, AFL-CIO/CLC	60 BOULEVARD OF THE ALLIES FIVE GATEWAY CENTER, RM 807 PITTSBURGH, PA 15222-1214	(412)562- 2530
<b>Charged Party / Respondent</b> <i>Union</i> UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 13-227	PASADENA, TX 77506	
<b>Charging Party</b> <i>Individual</i>		

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4/29/2015

NLRB

**Charging Party**

*Individual*

**Involved Party**

*Employer*

LYONDELLBASELL INDUSTRIES

HOUSTON, TX

77017-2799

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# United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union, Local 13-227 (LyondellBasell Industries)

Case Number: 16-CB-148453  
Date Filed: 03/17/2015  
Status: Open

Location: Pasadena, TX  
Region Assigned: Region 16, Fort Worth, Texas

## Resources

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E-File Documents

E-File Charge / Petition

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Related Agencies

## Docket Activity

Date	Document	Issued/Filed By
03/19/2015	Initial Letter to Charged Party*	NLRB - GC
03/19/2015	Initial Letter to Employer in C Case*	NLRB - GC
03/19/2015	Initial Letter to Charging Party*	NLRB - GC
03/18/2015	Signed Charge Against Union*	Charging Party

The Docket Activity list does not reflect all actions in this case.

\* This document may require redactions before it can be viewed. To obtain a copy, please file a request through our FOIA Branch.

## Allegations

- 8(b)(1)(A) Coercion, incl'g Statements and Violence

## Participants

Participant	Address	Phone
<b>Charging Party</b> <i>Legal Representative</i> Matthew Gilliam <i>National Right To Work Legal Defense Foundation, Inc.</i>	8001 Braddock RD STE 600 Springfield, VA 22160	(703)321- 8510
<b>Charged Party / Respondent</b> <i>Notification</i> RICHARD BREAN <i>UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL WORKERS INTERNATIONAL UNION, AFL-CIO/CLC</i>	60 BOULEVARD OF THE ALLIES FIVE GATEWAY CENTER, RM 807 PITTSBURGH, PA 15222-1214	(412)562- 2530
<b>Charged Party / Respondent</b> <i>Union</i> <i>UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 13-227</i>	PASADENA, TX 77506	
<b>Charging Party</b> <i>Individual</i>		

4/29/2015

NLRB

**Involved Party**

*Employer*

LYONDELLBASELL INDUSTRIES

HOUSTON, TX

77017-2799

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3/4/15 Hous. Chron. A1  
2015 WLNR 6547891

Houston Chronicle  
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March 4, 2015

Section: A

Strike battle turns nasty Company cites threats; union lashes at workers

L.M. Sixel

Strike stories

>> Workers share stories from both sides of picket line at [HoustonChronicle.com/strike](http://HoustonChronicle.com/strike)

Tensions on both sides of the picket line boiled over Tuesday as the United Steelworkers lashed out at members who have returned to their jobs and one of the companies beset by the sprawling refinery and chemical plant strike countered with allegations of intimidation tactics and social media threats by the union.

Early in the day, Steelworkers officials reminded members they had signed up to stand together and complained that "personal greed" was leading some to cross the picket line at LyondellBasell.

LyondellBasell went public later in the day in accusing the union of harassing members who have returned. The company said it had filed an unfair labor practice charge with the National Labor Relations Board.

And late Monday night, Shell Oil Co. announced plans to have operations back to normal by summer by hiring relief workers to run its refinery in Deer Park and a chemical plant in Louisiana.

"It seems like the intensity level has amped up on both sides," said A. Kevin Troutman, an employment lawyer at Fisher & Phillips who represents management in labor negotiations.

The strike has entered its second month, and Troutman said it's not unusual for emotions to heat up.

"People start to think, 'When is my next check coming?'" he said.

Picket lines

In this time of relative labor peace, there haven't been a lot of wide-scale disputes to compare to the Steelworkers strike. But Troutman said it is unusual for a union to come out so publicly against picket-crossers and others contemplating such a move. By taking such a public stand, he said, the union is trying to reassert its authority.

"They're usually more low-key about it," he said.

The Steelworkers strike that began Feb. 1 has expanded to 15 plants.

On Wednesday, the union is scheduled to resume negotiations with Shell, which is representing the industry in the talks.

The United Steelworkers union local that represents workers at LyondellBasell's refinery in a new letter accuses members who have crossed the picket line of greed and asks them to remember the unity pledge they took when they joined.

"It should be thought of and remembered that these Strikebreakers have thought of no one but their own situation and how to easiest remedy it short term," says the letter, which will be distributed to members of Steelworkers Local 13-227 in Pasadena.

The local reminded members that their initiation oath included a promise to "cease work when authorized and approved by the organization to do so."

For years, union leaders focused on corporate greed and its effect on members and the shrinking middle class, the letter says.

"Today we must focus on personal greed," it continues, citing those acting "without regard to the oath of membership or any other obligation they have to fellow workers."

#### NRLB complaint

The local believes the company's ultimate goal is to weaken the union and eventually break it by encouraging employees to defect. But when the strike ends, the letter says, the returning union workers will carry their memories.

"This should always be remembered by each Union member when these very people seek our assistance once we all return to work," the letter says.

In a broad rebuke, LyondellBasell alleges in its NLRB charge that union representatives have threatened returning employees and used abusive language in social media.

Kevin Brown, executive vice president of global manufacturing, refining, global engineering services and global projects, said in a letter to employees that the company has witnessed threatening behavior at the gates of its refinery.

"This action by the USW is extremely disappointing and the impact it has on individuals and families is saddening," Brown said. "We understand the hardships that have been placed on our employees due to the USW's actions. It is for this reason that we opened the gates and invited our represented employees to return to work at the Houston Refinery."

Brown said LyondellBasell management "respect(s) the rights of all of our employees, whether they decide to return to work or to remain out on strike." He said many have returned and, "We acknowledge that their decision was not easy."

In the NLRB charge filed Feb. 26, LyondellBasell said the union's policies and practices would cause a "reasonable employee to conclude that she will be discriminated against, harassed, or ostracized at work if she declines to or discontinues participation in a work stoppage or in other union activity."

'Relief employees'

Bill Bux, an employment lawyer at Locke Lord who represents management in labor management disputes, said a company typically doesn't have much to gain by filing a charge. But he said a company will do so if, for example, a handful of "bad actors" begin causing problems on the picket line. It puts a union on notice to make sure picketers obey the rules.

In the first few weeks of the strike, managers stepped in at Shell to keep its refinery and chemical plant running. The company now is training "relief employees" to operate its Deer Park refinery as well as its Norco chemical plant in Louisiana, Aamir Farid, manufacturing vice president, Americas, said in a letter to employees.

Shell said it expects to reach its goal of returning to normal by midsummer. At that time, it also expects managers to return to their regular duties.

"We are disappointed that the USW International Union seems unwilling to achieve a timely and reasonable agreement; but, we are also determined to continue running our business - this is in the best interest of our employees, our customers, the sites and the communities in which we operate," Farid said.

Lee Medley, president of Steelworkers Local 13-1 which represents the 800 Shell employees at Deer Park, called the letter "a scare tactic."

"They didn't get the numbers they wanted," he said, referring to union-represented workers to cross the picket line.

He also said that since the union is calling this an unfair labor practice strike, as opposed to an economic-driven strike, union-represented employees cannot be permanently replaced.

lm.sixel@chron.com

twitter.com/lmsixel

---- **Index References** ----

Company: SHELL OIL CO

News Subject: (Arbitration & Mediation (1AR68); Business Management (1BU42); Civil Rights Law (1CI34); Employment Law (1EM67); HR & Labor Management (1HR87); Labor Relations (1LA21); Labor Unions (1LA31); Legal (1LE33))

Industry: (Accounting, Consulting & Legal Services (1AC73); Legal Services (1LE31))

Region: (Americas (1AM92); Louisiana (1LO72); North America (1NO39); U.S. Southeast Region (1SO88); USA (1US73))

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Other Indexing: (Steelworkers Local 13) (Lee Medley; Bill Bux; Aamir Farid; A. Kevin Troutman; Emmet Kevin Brown; Emmet Brown)

Edition: 3 STAR

Word Count: 1027

## NewsRoom



**[REDACTED]**





# Portland Police Department

## Incident Report for 15P01548

Nature: Information

Address: 1902 Billy G Webb Dr

Location:

Portland TX 78374

Assigned To:

Detail:

Date Assigned: \*\*/\*\*/\*\*

Status:

Status Date: \*\*/\*\*/\*\*

Due Date: \*\*/\*\*/\*\*

### Complainant:

Last:

First:

Mid:

DOB: \*\*/\*\*/\*\*

Dr Lic:

Address:

Race:

Sex:

Phone:

City:

### Offense Codes

Reported:

Observed: INFO Information

Additional Offense: INFO Information

### Circumstances

LT13 Highway, Road, Alley

### Responding Officers:

Unit :

Cpl T Laughlin

121

Responsible Officer: Cpl T Laughlin

Agency: PPOL

Received By: Y Chapa

Last Radio Log: 13:42:51 02/04/15 CMPLT

How Received: T Telephone

Clearance: R Report

When Reported: 13:11:50 02/04/15

Disposition: CLO Date: 02/05/15

Judicial Status:

Occurred between: 13:10:49 02/04/15

Misc Entry:

and: 13:10:49 02/04/15

Modus Operandi:

Description :

Method :

### Involvements

Date	Type	Description	Reporting Party
02/05/15	Name	Barasa, Aaron	Reporting Party
02/05/15	Name	Green, Jessie Owen	Other

**Name Involvements:**

**Other : C1039210**

Green , Jessie Owen ( C1039210)  
132 W STAPP  
ARANSAS PASS , TX 78336  
(361)758-5054

**DOB: .**  
**DL:**  
**RACE: B**  
**SEX: M**

**Reporting Party : 10685**

Barasa , Aaron ( 10685)  
6533 Patty Dr #2001  
Corpus Christi , TX 78414  
(210)431-8508

**DOB: \_\_\_\_\_**  
**DL:**  
**RACE: L**  
**SEX: M**

**Supplement**

//Report by Cpl. T. Laughlin/121/1h

On 02-04-15 at 13:11 hours Aaron Barasa came into the station to file an information report.

Barasa advised that on 01-27-15 he was leaving work at Sherwin Alumina around 4:00 PM. He then began driving home to Corpus Christi. He was driving his black 2010 Toyota Tundra bearing AN79049(TX). Once he got past the turn in Gregory on US 181 a burnt orange colored Ford pickup had passed him up. He noticed that it had a USW sign in the back window, which is the sign of the subjects that are picketing the plant. Once at Buddy Ganem the truck slowed down and got next to Barasa. The truck had it's drivers side window down about four inches and the driver began to flip the bird at Barasa and was mouthing several obscene gestures at him. Barasa kept driving and did not pay attention to the driver. Barasa just drove in an attempt to move away from the truck. The truck kept going around other cars to purposely get next to him and continued the same behavior. This continued onto the causeway and the Harbor Bridge.

Once at the crosstown and 37 split Barasa did an evasive move and turned onto crosstown. The truck was unable to continue following at that time.

Barasa stated that the driver was either a black male or a dark Hispanic male. Barasa obtained a partial plate of CJC09...

On 01-28-15 Barasa reported this incident to his company.

On 02-03-15 Barasa was leaving work and noticed the same truck at the picket line outside the plant. Barasa reported to his company about the truck being at the picket line. Barasa was able to obtain the complete license plate of CJC0920.

This plate registered back to a 2011 Ford pickup registered owner Jessie Green. Green was in our system listed as a black male out of Aransas Pass. The same address listed on the registration.

Barasa just wanted and information report on file.





## **UP CIRCULAR 16-E**

(Revision 1)

Governing Rules Circular

**INDUSTRIAL PRODUCTS GOVERNING RULES**

Governed, except as otherwise provided herein, by UFC 6000, OPSL 6000, and  
UP 6004-series.

Issued By:

**E. A. HUNTER - MANAGER PRICING SERVICES**  
**B. A. ROMMEL - MANAGER PRICING SERVICES**

Union Pacific Railroad Company  
1400 Douglas Street Omaha, NE 68179

Issued: March 26, 2008  
Effective: April 1, 2008

**UP 16-E**



UP 16-E

Item: 45  
FORCE MAJEURE

### FORCE MAJEURE

If any party to any agreement referring to this rules circular is unable to meet its obligations under this agreement as a result of acts of God, war, insurrection, strikes, embargoes, derailments, or any like causes beyond its control, then the obligations of that party shall be suspended for the duration of the "force majeure", provided, however, that the party shall make all reasonable efforts to continue to meet their obligations during the duration of the "force majeure". For the purpose of determining "shipper" volume commitment, for a period in which "force majeure" is invoked, the volume requirement shall be reduced by 1/361 for each day that "shipper" is prevented by the "force majeure" from tendering traffic under this agreement. The party invoking "force majeure" shall also promptly give notice of the cessation of the "force majeure". The suspension of any obligations under this provision shall not cause the term of the agreement to be extended and shall not affect any rights accrued under the agreement prior to the occurrence of the "force majeure".



**[REDACTED]**