

Rebuttals of Portions of Arbitration Hearing Testimony

Verbatim record of Arbitration Hearing held before Irwin J. Dean, Jr., Arbitrator, at AK Steel, Butler Works, Services Building Meeting Room 100, and Days Inn, Butler Room, on Monday, August 20, 2001, 9:30 a.m.

The following are citations of portions of testimonies that contained omissions or misstatements. These are explained in chronological order throughout the transcript.

Page 7, line 17:

Jack Murtagh (Union Counsel) stated "three reasons" why I was discharged, but he never cross-examined Ed Tassey (Section Manager, Transportation) for stating (on the day he discharged me), "I'm not accusing you of stealing." However, that is exactly one of the 3 reasons I was discharged [Document # 13]. AK's accusation of this in their discharge letter was libelous toward me for this reason.

Page 10, lines 18-20:

Jim Haggerty (AK Steel Legal Counsel) states, "It is a matter that involves an incident of insubordination and an employee's resort to self help." However, it is a matter of being ordered to do a job using procedures that are in direct violation of company policy. (Refer to Documents #1,4, 12). Unfortunately, it was the company's lack of attention to the matter that led me to resort to so-called self-help.

Page 11, lines 5-8:

Haggerty states "This case has to do with work that has been done turn after turn, day after day, year after year, and nothing about the work changed." In this statement, AK Steel admits to verbally instructing the operators to haul overloaded and not to secure the loads, in direct violation of company policy [Documents #1,4, 12].

Page 12, lines 5-8:

Murtagh states, "However, the issue is whether or not the work was properly assigned to the grievant and whether, when assigned, the grievant acted in an insubordinate manner." Arbitrator Dean clearly did not render a ruling based on evidence in Documents #1, 4, 12. I complied with the company's written policy, to protect myself in the event of an incident or catastrophe. Document #1 also mentions that employees are to annually review that policy. The responsibility for providing the review lies with the company, who did not review it with employees. The Union, and Union Counsel Murtagh had a valid reason to appeal my case to federal court, but they have chosen not to do so. Refer to Document # 30, which states that "the union can do nothing further on my behalf." That is actually a misstatement because the Union can, indeed, do something further for me – they simply choose not to do so.

Page 16, lines 18-25:

Haggerty references the overloaded and unsecured truck I was instructed to operate, which is "...work that's performed exclusively within confines of the plant...." Documents #1, 4, and 12 clearly outline the written directive to follow state motor code both inside and outside the plant. Haggerty also stated "...access to the plant is strictly restricted to persons working in the plant and having business in the plant." While AK does maintain a guarded entrance, AK employees are not the only persons who readily enter the AK plant. Vendors, outside contractors, sales people, and the food service and uniform rental suppliers enter daily – and even the general public can enter the plant at any time to purchase slag from Heckett Slag, whose building is located within the gates on AK property.

This is one reason I wanted legal protection. My attorney to send letters via certified mail to Mr. Richard Wardrop (AK Steel CEO) and Mr. Bill Gonce (Manager-Industrial Relations) asking for a statement of indemnification for AK's truck drivers. [Document # 9.] Gonce testified that AK's legal department instructed him that there was no need to respond to me. [Document # 23, page 28, lines 4-25, and page 29, lines 1-20.] I sent letters listing unsafe conditions and retaliatory actions by AK Steel against me [Document # 11], via certified mail to Wardrop, Gonce, as well as to AK's Safety Department and various other AK supervisors.

Page 17, lines 9-23

Haggerty references the practice of hauling steel up to the capacity of the trailer. Not only is this practice against company policy [Documents # 1, 4, and 12], but there is also a hidden danger. The problem is that when the trailers become cracked from overloading – to the extent that they no longer pass PA state inspection – the trailers no longer have the manufacturer’s capacity rating in order to haul the excess loads that Haggerty references. Haggerty also states that the loads are not controlled by Pennsylvania Motor Vehicle Code, which completely contradicts company policy in Documents # 1, 4, and 12. AK replaced trailers because they would not pass PA State Inspection – although they were purchased for use solely within the plant gates. If the plant is not bound by PA State Motor Code, the company would not have been concerned whether the in-plant trailers could or would pass PA State Inspection. Ed Tassey testified to the fact that these new trailers were purchased solely for in-plant usage.

Page 18, lines 9-13

Haggerty states “The electrical steel is fragile, and chaining down the steel would damage the steel.” Haggerty neglects to mention, however, that these same exact coils are later trucked out of the plant with chains or strap bindings. [Refer to Document # 40.] According to one AK metallurgical engineer, there is no structural or chemical difference in product composition at the end stage than when it is hauled in-plant.

Page 19, lines 1-25

This entire section shows contradictions on the part of AK Counsel Jim Haggerty. In lines 23-25, Haggerty stated that I never went through any safety procedure to pursue any claim of a safety problem on this issue. In that statement, he contradicted his statements in line 1 when he testified that I took the issue to several AK officials he named. In fact, according to testimony on page 34, lines 5-25, I took the issue to Mike Seyler (Industrial Relations Manager) during an 8-hour company-required Safety Awareness Session, witnessed by 25-30 people in attendance at that meeting (page 35, line 25).

Page 20, line 10-12

Haggerty made a statement about my “resorting to self-help rather than going through required procedures.” In fact, I did ask my Union for help because AK management had told me that I could not resort to “self help” prior to my discharge. Yet, Union president Carl Nanni hesitated to offer assistance in any way prior to my discharge because he feared that AK would fire an officer as an intimidation tactic and an example to the rank and file because of upcoming contract negotiations. Union officials are on the AK payroll, and fear retaliatory discharge by AK. During the Arbitration, Union Counsel Jack Murtagh made no mention of the Union President’s refusal to help me.

Page 22, line 9

Gonce testifies that he “report[s] to the Middletown legal department.” This shows that the AK legal department is aware of the legal liabilities that drivers are forced to assume when ordered to drive overloaded and unsecured tractor-trailers.

Page 24, lines 3-9

Gonce testifies that I believed drivers were bound by CDL and Pennsylvania Motor Code. Gonce states that he had informed me that PA motor vehicle laws are not applicable on AK Steel property. His testimony contradicts Documents # 1, 4, and 12, which clearly states employees are to be in strict conformance of State Motor Code. Gonce testified that the overloading issue had been investigated more than once by AK Steel [page 24, line 11]. However, AK makes no written documentation available to drivers to substantiate AK’s investigations into the legal issues. Drivers are not protected and indemnified against this common practice – which is solely a verbal policy contradicting written policy.

Page 24, lines 9-21

Gonce testifies that AK Steel takes safety extremely seriously, yet testifies that AK Steel has been hauling unsecured and overloaded for many years. The company failed to present portions of Document # 1, page 4 which lists AK’s written policy that mandates that “Operators shall operate their vehicles in strict conformance with all the provisions of the State Motor Code, both inside and outside the plant...” [Refer to Document # 1, “SHSP-0035-28.” Emphasis mine.] Document # 4, page 68 clearly states, “persons who

operate... vehicles on company property or on local, state, or federal highways for business purposes must comply with all state and federal regulations.” [Emphasis mine.] Document # 12 states that operators shall “not overload trucks, haul within legal load limits, and secure all loads on all vehicles.” While AK Steel claims to take safety extremely seriously, the company has a general unwritten policy to continuously order its drivers to haul unsecured, overloaded tractor-trailers within the plant – against the company’s written policy.

Page 27, lines 1-14

Gonce testifies that the trucks are “thousands and thousands of pounds [overweight].” Gonce’s testimony reiterates AK’s unwritten policy for drivers to haul unsecured, overloaded tractor-trailers – against AK’s written policies. [Documents # 1, 4, and 12.]

**Page 28, lines 4-25 and
page 29, lines 1-20**

Gonce testifies to receiving a letter from my attorney [Document # 9] and one from me [Document # 11.] Gonce also testifies that the AK Steel legal department informed him there was no need to respond to me. Union’s Counsel, Jack Murtagh, failed to call attention to either letter, which contained the main issues and defense of my case.

Page 32, lines 9-12

Murtagh states that the Union will stipulate that the definition of “highway” does not refer to AK Steel in-plant roads. However, this seemed to be a gray area because, after contacting the PA Attorney General, the PA State Police, and OSHA, each authority gave me a different answer as to the definition. Also in question is the matter of the public’s easy access to the plant via Heckett Slag. Additionally, AK Steel receives PA state funding for its in-plant railroad crossings, which brings into question a true private property status.

Page 35, lines 1-25

Bill Seyler (Industrial Relations Manager, AK Steel) testifies that at a safety awareness session that he told me in front of 25-30 people that the plant was private property and Pennsylvania Motor Code did not apply. However, this contradicts AK’s written policies: “Operators shall operate their vehicles in strict conformance with all the provisions of the State Motor Code, both inside and outside the plant...” [Refer to Document # 1, page 4, “SHSP-0035-28.”] Also, Document # 4, page 68 clearly states, “persons who operate... vehicles on company property or on local, state, or federal highways for business purposes must comply with all state and federal regulations.” Document # 12 states that operators shall “not overload trucks, haul within legal load limits, and secure all loads on all vehicles.”

Page 41, lines 18-20

Ed Tasse (Section Manager, Transportation) states that I do not have a grievance pending. However, I did attempt to file a grievance for the referenced issue. However, I had to withdraw it because the Union would not address the proper aspect of the issue. In the incident on 7-17-00, I was involved in a safety infraction, with at least six other workers. In this incident, we had been installing a pump near railroad tracks when we failed to follow General Safety Order # 3 (GSO-0035-3) [a portion of Document # 4.] The GSO gives the safe procedures to be followed when performing work on or in the general vicinity of plant railroads and railroad equipment. According to the GSO, we called the Yardmaster for permission to work near the tracks, but we forgot the other two GSO provisions to install a de-railer and fluorescent cones. While I understood being disciplined for neglecting the cone and de-rail procedure [and did not wish to file a Grievance on that, as such], I questioned the reason that I was the only member of that entire crew to have received a 3-day suspension without pay for the infraction. [Refer to Document # 6, letter of suspension.]

I attempted to file a grievance on being singled out for discipline. I attended a Step I Investigation Meeting conducted by Bob Newcombe (Industrial Relations), with Jack Lewis (Union Vice-President), Greg Loverick and Don Monteleone (Union Representatives) in attendance. In this meeting, Newcombe admitted that he could not rule on my being singled out – he could only rule on my discipline. For that

reason I had to withdraw the grievance because I did not want to grieve the discipline, only being singled out.

Page 45, lines 1-2

Tassey testifies "That we have always hauled that way and that he would be expected to do the same." This verifies that AK Steel gives verbal orders for drivers to haul overloaded and unsecured tractor-trailers, which is against AK's written policy. [Documents # 1, 4, and 12.]

Page 46, lines 15-18

Tassey testifies that the plant roads are not open to the public. While AK does maintain a guarded entrance, AK employees are not the only persons who readily enter the AK plant. Vendors, outside contractors, sales people, and the food service and uniform rental suppliers enter daily – and even the general public can enter the plant at any time, claiming to purchase slag from Heckett Slag, whose building is located within the gates on AK property. In practice, the plant is open to the public.

Page 50, lines 16-25

Tassey testifies that Don Horstman, an hourly step-up foreman, reviewed with me a few changes to the JSHA-600B, a Job Safety and Health Analysis of the methods of hauling electrical steel coils in-plant [Document # 10]. In those changes, AK added notes that stated: "1. Do not exceed the weight capacity of the trailers. CRNO trailer is 60 ton and Hilltop trailer is 45 ton. 2. Do not chain or bind electrical coils. Set electrical coils in "V" trough in trailer or haul eye to the sky. 3. Driver will haul one full box of coils at a time unless exceeds weight capacity of number one."

Contrary to Tassey's testimony that Horstman "reviewed" the policy with me, Horstman, in fact, specifically asked my opinion on the changes. In reply I stated that those directives needed to indemnify the drivers, because the JSHA was given in direct conflict with AK's written policies to comply with State Motor Code both inside and outside the plant. [Refer to Documents # 1, 4, and 12.] Document # 4, page 6 mandates that in any discrepancies, the "higher standard of safety shall apply." State Motor Code, is of course, the higher standard of safety.

The Union was not able to call Horstman to the stand to testify on my behalf because, according to contractual Arbitration procedure, the Union cannot call a salaried employee as a witness unless the company puts him on the stand first

Page 58, lines 19-21

Tassey testified that he told me to haul up the capacity of the trailer. Again, this is contrary to company written policy in Documents # 1, 4, and 12.

Page 61, lines 1-25

Tassey testified I did not refuse an order on 3-22-01, yet according to my discharge letter (Document # 13) Tassey did claim I was insubordinate on 3-22-01. His claims in my discharge letter were libelous and defamatory. In the hearing, Tassey states that he ordered me to haul according to the weight of the trailer, which is contrary to company written policy in Documents #1, 4, and 12.

Page 64, lines 19-25 and page 65 lines 1-25

Tassey testifies to the disciplinary meeting that took place on 12-15-00 [Document # 7] about legal liabilities that I would assume in the event of an accident. This verifies that Tassey knew my concerns about possible legal liabilities, yet AK was not willing to be forthright to document in writing, that the drivers would not be held liable in an accident. If AK Steel believes that their unwritten policy of hauling overloaded and unsecured tractor-trailers is genuinely a safe practice, then they should include this in their written documentation, their Safety, Health, and Security Handbook and the Safety and Health Standard Procedures (SHSP-0035-28), in order to protect their operators. [Refer to Documents # 33 and # 1.] As it stands, AK Steel verbally orders drivers to haul overloaded and unsecured trucks, violating their written policy. In the event of any accident, AK has documentation to legally protect itself. In the process, the operator shall then be shown to have violated the company's written policies in hauling overloaded, unsecured trucks, also violating their PA Commercial Driver's License.

Page 67, lines 10-12

Tassey testified that in December 2000, I had been hauling coils 3 at a time, and he wanted me to haul six at once, in order to save time on the night shift. Hauling six would have been against AK's written documentation. In addition, Tassey stated that a customer specifically wanted an entire box hauled. (A "box" is six coils, not literally in a box.) His was a moot point because the customer does not know or care about the manner in which products are moved within the plant, they only care what is finally shipped to them.

**Page 68, lines 7-25 and
page 69, lines 1-19**

AK Counsel Haggerty argues that CDL requirements do not refer to weight capacities of the tractor-trailers. Only the PA State Motor Vehicle Code references weight limits. Haggerty's argument that the Motor Code governs weight limits establishes that AK's verbal orders are in violation of company written policy to follow state codes. [Documents # 1, 4, and 12.]

Page 74, lines 10-12

Tassey testifies to the fact that AK's tractor-trailers are licensed at the 73,280-pound weight limit. Tassey also testifies that 73,280 pounds is the legal load limit, validating company written policy in Documents # 1, 4, and 12.

Page 75, lines 1-25

Tassey's testimony validates Document # 12, the Daily Safety Contact which details "Do not haul overloaded trucks, haul within legal load limits, and secure all loads on all vehicles."

Page 78, lines 1-25

Tassey testifies that Document #12, the Daily Safety Contact was a company-generated document and that Tassey or another spell foreman generated. He also testifies that the document is for all truck drivers. In this testimony, Tassey clearly reveals that his verbal order is in violation of the document he produced. Tassey agreed that the Daily Safety Contact clearly orders drivers to secure all loads on all vehicles.

Page 83, lines 1-8

Tassey testifies that he did not confront me about insubordination on 3-22-01. Ed Tassey previously testified I did not refuse an order on 3-22-01, yet according to my discharge letter (Document # 13) Tassey did claim I was insubordinate on 3-22-01. His claims in my discharge letter were libelous and defamatory.

Page 86, lines 16-17

Tassey testifies I was not a troublemaker. His testimony is clear that I was simply trying to protect myself legally, and I did so in a respectful manner.

Page 93, lines 1-25

Tassey and Union Counsel Murtagh review Document # 1, paragraph 2.9, which states that the drivers should be in strict conformance to the State Motor Code both inside and outside the plant. This testimony is extremely clear, yet apparently Arbitrator Dean did not rule on the merits of this argument. AK Steel's verbal policy to haul overloaded, unsecured trucks is clearly in violation of its written policies in Documents # 1, 4, and 12.

Page 95, lines 13-17

Tassey testifies to seeing Document # 17, which requires supervision to report unsafe behavior and conditions. Tassey, in fact, gives the drivers verbal orders to commit unsafe acts, in operating overloaded and unsecured tractor-trailers, (which is also against company policy). [Refer also to Document # 21, suspension letter to Dave Masartis, which establishes that hauling unsecured loads is unsafe.]

Pages 96 and 97

Tassey testifies that he did not contact any higher authorities (outside AK Steel) – i.e. OSHA, PA State Police, PA Attorney General’s Office, Division of Motor Carrier Enforcement, U.S. Department of Transportation, or any attorneys – in order to receive information as to legal liabilities of the issues. By contrast, I had contacted these numerous outside agencies and was receiving conflicting information as to legal liabilities.

Page 98, lines 3-4

Tassey testifies to having a phone conversation with my former attorney, Dennis Moskal, who sent a certified letter [Document # 9] to the company, dated 3-1-01 on my behalf (which the company subsequently ignored). This shows my repeated attempts to clarify legal issues in order to protect myself. AK repeatedly ignored my pleas.

Page 101, lines 11-15

Tassey testifies about Document # 5 (“Notice,” a list of trailer combinations and their respective weight restrictions). This notice lists the limitations of 2 tractors with lists of trailers that can be used with these tractors. The document does not specify that these combination weight ratings are for outside hauls only, leading drivers to believe that they should be bound by weight limitations, regardless of location (inside or outside the plant). However, Tassey (in his testimony) claimed that the “Notice” refers only to trailers going outside the plant, on what he calls public roads. Yet this “Notice” lists 3 trailers that are not able to pass inspection – so they cannot legally be used to haul outside the plant. Therefore the “Notice” cannot be applicable solely to outside hauls. In effect, Tassey’s testimony is misleading.

Page 104, lines 19-25

Tassey testifies that truck wash employees have to have a CDL license to move the vehicles – even though they do not drive the trucks outside the plant. This shows AK’s policy to conform to state driver codes, even within the confines of the plant.

Page 160, line 4

In reference to Document # 1, Haggerty questioned me, asking “You never even knew it existed?” Yet, Haggerty failed to mention that the burden of ensuring that I had known about it rested with the company. Refer to Document #1, page 5, section 2.11, which states, “Annually, all employees who operate mobile equipment/vehicles must review this SHSP... [and other documents], and the section covering vehicles and mobile equipment in the Safety and Security Handbook.”

It is AK’s policy to use employee signatures to verify employee awareness and company notification of written policy. If AK’s sole defense of this SHSP was that I never knew about it, Haggerty should have mentioned AK’s neglect to ensure that employees had reviewed the SHSP. This SHSP requires drivers to “operate their vehicles in strict conformance with all provisions of the State Motor Code, both inside and outside the plant.” [Refer to Document # 1, page 4, section 2.9.]

Arbitrator Dean did not rule on the merits of the case because he ignored this portion of the document. The Union failed to establish this along with Document # 4, which gives the same directive. I was abiding by company policy all along and the company knew.

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Regarding the incident of driver Dave Masartis having a load shift and roll out of the trailer well (for which he received a 5-day suspension), AK Counsel Haggerty claimed that Masartis’ coils were shifting and he did not stop to identify the problem. In fact, during the loading Masartis’ knew the coils would shift because they did not span the sides of the square-bottomed trough of the trailer. However, Masartis was not permitted to chain or strap the coil because of the verbal order not to do so. (Masartis feared chaining the load because I had been fired for wanting to secure loads.)

In the Arbitration, AK repeatedly testified that the method of hauling unsecured loads is safe – and that it has been done this way for years.

IN THE MATTER OF ARBITRATION)
BETWEEN AK STEEL CORPORATION)
Butler Works AND) GRIEVANCE NO. BU-01-118
BUTLER ARMCO INDEPENDENT)
UNION)
Butler Works)

* * * * *

Verbatim record of hearing of the
above-entitled arbitration held
before IRWIN J. DEAN, JR., Arbitrator,
at AK Steel Corporation, Butler Works,
Services Building Meeting Room 100,
and Days Inn, Butler Room, on
Monday,
August 20, 2001
9:30 a.m.

* * * * *

PRESENT:

JAMES R. HAGGERTY, ESQ.
appearing on behalf of the Company

JOHN W. MURTAGH, JR., ESQ.
appearing on behalf of the Union

ALSO PRESENT:

Tom Ayres - Manager, Maintenance Shops & Refractory
Donna Beers - B.A.I.U.
Jerry Ehrman - B.A.I.U.
Jim Gallagher - B.A.I.U. Grievance Chairman
Bill Gonce - Manager, Industrial Relations
Garry L. Hunter - Security Consultant
Don Monteleone - B.A.I.U.
Jack Myers - Grievant's father
Joe Myers - Grievant
Sherry Myers - Grievant's wife
Carl Nanni - B.A.I.U. President
Robert Newcombe - Supervisor, Industrial Relations
Dave Oleksak - B.A.I.U.
Jim Panei - Union Representative
Bob Rajchel - B.A.I.U.
Michael Seyler - Manager, Industrial Relations
Bill Smith - Manager, Safety & Industrial Hygiene
Edward A. Tassej - Section Manager, Transportation
Repair and Trucks
John F. Vensel - Section Manager, MTC Services

I N D E X O F W I T N E S S E S

<u>WITNESSES:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Bill Gonce	21	25	31	
Michael Seyler	32	37		
Edward Tasse	40	60	99	103
Joseph Myers	117	141	161	
Jim Panei	166	169		
Robert Rajchel	174	177	178	180
			182	

E X H I B I T S

<u>JOINT:</u>	<u>Identified</u>	<u>Admitted</u>
1 - Collective Bargaining Agreement	4	4
2 - Grievance Form	5	5
3 - Step III Answer	5	5
4 - Grievance Record	5	5
<u>COMPANY'S:</u>	<u>Identified</u>	<u>Admitted</u>
1 - Letter dated 4/5/01 from Joe Myers	6	6
2 - Excerpt from Safety & Security Handbook	6	6
3 - Memo dated 7/9/98 to Joe Myers	41	41
4 - Letter dated 7/28/00 from Joe Myers	41	41
5 - JSHA dated 2/1/01	48	48
6 - JSHA dated 2/1/01 with revisions	99	99
7 - Sections of 75 Pa.C.S.A.	105	105
8 - Federal Motor Carrier Safety Administration, DOT Sections	105	105
9 - Opinion and Award, Arbitrator O'Connell, reference BU-00-052	186	186

	<u>UNION'S:</u>	<u>Identified</u>	<u>Admitted</u>
1			
2	1 - Letter dated 3/1/01 from Atty. Moskal	30	30
3	2 - Letter dated 3/21/01 from Joe Myers	30	30
4	3 - Notice for combined gross weights	70	70
5	4 - Daily Safety Contact	74	74
6	5 - Schedule for week ending 3/24/01	80	80
7	6 - Photographs of accident scene	89	89
8	7 - Monthly Safety Packet for July 2001	90	90
9	8 - Proposal drawing dated 9/28/99	103	103
10	9 - Proposal drawing dated 2/19/82	103	103
11	10 - Operator's Manual for International trucks	168	168
12	11 - Spec sheet for Hilltop and CRNO tractor-trailer	174	174
13	12 - Letter dated 6/21/01 from Edward Tasse	182	182
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Page 4

1 PROCEEDINGS OF AUGUST 20, 2001
 2 MR. HAGGERTY: This is the
 3 arbitration hearing in Grievance No. BU-01-118,
 4 and it involves the discharge of the grievant,
 5 Joseph Myers.
 6 Mr. Arbitrator, I believe you've been
 7 forwarded basic exhibits about the case?
 8 ARBITRATOR DEAN: Right.
 9 MR. HAGGERTY: The collective
 10 bargaining agreement?
 11 ARBITRATOR DEAN: Correct.
 12 MR. HAGGERTY: The grievance, the
 13 Step III Answer?
 14 ARBITRATOR DEAN: Right. Do you
 15 want those marked as exhibits and put into
 16 evidence?
 17 MR. HAGGERTY: Yes, sir.
 18 ARBITRATOR DEAN: Then I'll let
 19 you mark them as you see fit and present them,
 20 even though I have a copy. I guess we need one
 21 for the reporter.
 22 MR. HAGGERTY: I would suggest
 23 then we mark the collective bargaining agreement
 24 as Joint Exhibit 1.
 25 ARBITRATOR DEAN: And accepted.

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1 MR. HAGGERTY: The grievance form,
 2 which is dated April 12, 2001, as Joint Exhibit 2.
 3 ARBITRATOR DEAN: And accepted
 4 into evidence.
 5 MR. HAGGERTY: The Step III Answer
 6 as Joint Exhibit 3, and that's dated June 19,
 7 2001.
 8 ARBITRATOR DEAN: That's accepted
 9 into evidence.
 10 MR. HAGGERTY: And finally,
 11 there's a Grievance Record Form, which was
 12 provided to you without attachments, as
 13 Joint Exhibit 4. There would have been additions
 14 to that Grievance Record Form signed off on on
 15 August 13th, 2001, which you probably were not
 16 provided a copy of.
 17 ARBITRATOR DEAN: Correct.
 18 MR. HAGGERTY: And it is one page,
 19 and we'll get a copy of that for you and suggest
 20 that Grievance Record Form as amended be
 21 Joint Exhibit 4. That is a Grievance Record Form,
 22 again, without attachments.
 23 ARBITRATOR DEAN: Then Joint 3 and
 24 4 are accepted into evidence. Do you believe
 25 there are any other joint exhibits between the

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1 parties?
 2 MR. MURTAGH: No, sir.
 3 MR. HAGGERTY: Mr. Arbitrator, I
 4 would suggest, to give you some of the basic
 5 papers in this case, to provide you with a copy of
 6 the discipline letter with regard to the
 7 discipline that's at issue in this case, and I
 8 have had that marked as Company Exhibit 1, and
 9 also as Company Exhibit 2 an excerpt from the
 10 Safety and Security Handbook, pages 76 through 79,
 11 which set forth rules with regard to unsafe and
 12 improper behavior.
 13 ARBITRATOR DEAN: All right.
 14 MR. HAGGERTY: Mr. Arbitrator, the
 15 parties' practice here is that unless exhibits
 16 offered are objected to, that they go into the
 17 record.
 18 ARBITRATOR DEAN: Okay. I don't
 19 have to formally move them?
 20 MR. HAGGERTY: No, and neither do
 21 we.
 22 ARBITRATOR DEAN: All right. Does
 23 the union have anything to present in the way of a
 24 joint exhibit?
 25 MR. MURTAGH: Not for joint

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1 exhibits, sir.
 2 ARBITRATOR DEAN: Okay. Then do
 3 the parties care to make any kind of opening,
 4 however you want to proceed, a statement? You may
 5 go ahead, sir.
 6 MR. HAGGERTY: We do have an
 7 opening. I understood, Jack, you had a
 8 preliminary issue to raise with regard to --
 9 MR. MURTAGH: If the company's
 10 position hasn't changed, yes, we do, sir. Sir, as
 11 you indicated, this is a discharge case where the
 12 burden of proof is on the company, and we expect
 13 the company to proceed. However, based on the
 14 paperwork that has gone forth between the parties
 15 during the course of this grievance procedure
 16 leading up to the arbitration here today, the
 17 basic, although there are three reasons that the
 18 company gave for discharging the grievant, the
 19 basic, and I think the most substantial, issue to
 20 be addressed by the parties is the alleged
 21 insubordination of the grievant on or about
 22 March 23, 2001.
 23 The company's evidence, as we
 24 understand it, based on the papers that have been
 25 filed to date, will be that the grievant refused a

1 direct order to operate a vehicle within the
 2 plant. One of the principal defenses which we
 3 will raise today to that allegation is the good
 4 faith, honest, sincere belief of the grievant that
 5 this was a matter of great personal danger to
 6 himself, to other workers here, and to his future,
 7 both within the plant and outside as well, because
 8 of exposure to civil and criminal liabilities
 9 should any untoward incident or accident occur.

10 As you know, the general doctrine is,
 11 when you're dealing with questions of
 12 insubordination, you grieve something later, so to
 13 speak. You do the deed that you've been ordered
 14 to do and you grieve it, unless the question
 15 arises as to whether or not there is a sincere,
 16 honest, good faith, truly held belief as to
 17 imminent danger or the possibility of great
 18 exposure of the individual employee to personal
 19 risk or possible harm to others that he's working
 20 with.

21 In this case, you'll hear testimony,
 22 when the appropriate time comes, from the union
 23 and from the grievant himself as to the
 24 development of a belief that he had that the
 25 conduct he was ordered to undertake was of that

1 We would, therefore, ask the
 2 arbitrator, as a preliminary matter, to consider
 3 the union's request for a direction to the company
 4 that Jack Myers and Sherry Myers, the grievant's
 5 father and wife respectively, be allowed to enter
 6 the plant and attend this hearing as union
 7 witnesses.

8 ARBITRATOR DEAN: Does the company
 9 have -- go ahead, sir.

10 MR. HAGGERTY: Mr. Arbitrator,
 11 this was a matter that was discussed between the
 12 union and the company last week. It is the
 13 company's position -- it was discussed last week,
 14 and I believe the company's position was made
 15 clear to the union last week, that this is a
 16 private proceeding under the grievance procedure
 17 involving interpretation of the collective
 18 bargaining agreement. It is a matter which
 19 involves an incident of insubordination and an
 20 employee's resort to self-help instead of going
 21 through the contractually prescribed and required
 22 grievance procedure. It involves his refusal to
 23 do work which is done 16 to 18 times a day, seven
 24 days a week, year after year after year. The wife
 25 and father have no involvement in this incident

1 nature. Two individuals that he consulted during
 2 the course of several months prior to the day in
 3 question when he was discharged or ordered from
 4 the plant subject to discharge were his wife,
 5 Sherry Myers, and his father, Jack Myers. We have
 6 requested, therefore, that Mrs. Myers and
 7 Mr. Myers, the grievant's father and wife, be
 8 allowed to enter the plant in order to attend this
 9 arbitration proceeding this morning, because we
 10 intend to call both of them as witnesses in the
 11 union's case.

12 It is my understanding, although I
 13 haven't been officially advised of this, but it is
 14 my understanding that the company will not permit
 15 them to enter the plant. We believe that these
 16 two individuals are important to our case. We
 17 believe that they should be permitted to enter the
 18 plant. I note that on the company's side of the
 19 table, although we were not given notice of this,
 20 retired state trooper Garry L. Hunter is present.
 21 So they have brought an individual who is not
 22 directly associated or employed at the plant into
 23 this arbitration hearing, and we have been denied
 24 the opportunity to bring two witnesses whom we
 25 believe to be important to our defense.

1 whatsoever. The wife and father could not
 2 possibly provide any evidence which is relevant to
 3 the insubordination at issue in this case. This
 4 claim of sincere belief has nothing to do with
 5 this case. This case has to do with that this
 6 work has been done turn after turn, day after day,
 7 year after year, and nothing about the work
 8 changed.

9 It is the company's position, and the
 10 company made clear to the union, that it would not
 11 allow the wife and father onto company property
 12 and we continue to hold to that position.

13 MR. MURTAGH: Mr. Arbitrator, in
 14 that regard, may I indicate that although it is
 15 not our intention to argue the merits here,
 16 Mr. Haggerty's statement that the wife and the
 17 father have no direct involvement in this case is
 18 incorrect to the extent that as reflected in
 19 Joint Exhibit No. 4, the grievance record, there
 20 is a document dated March 21, 2001, which is
 21 identified as 7(k), a document which the company
 22 introduced into the grievance record, which was a
 23 letter that was signed by Mr. Myers but prepared
 24 by himself and his wife, and it is our intention
 25 to call her with respect to the composition of

1 that letter and the events that led up to it.

2 With respect to the allegation that
3 this work is done 16 to 18 times a day on a
4 seven-day-a-week basis and has been for years,
5 that may well be the case. However, the issue is
6 whether or not the work was properly assigned to
7 the grievant and whether, when assigned, the
8 grievant acted in an insubordinate manner. Our
9 evidence will show today that this issue came to a
10 head in March of 2001, and that for a long time
11 prior to that, this work was not assigned to the
12 grievant and that there were numerous discussions
13 between the grievant, his representatives, and
14 representatives of the company with respect to
15 this issue of being ordered to drive a particular
16 truck or one of two trucks. While I understand
17 Mr. Haggerty's statement that this work is done
18 routinely in the plant, it wasn't done routinely
19 by the grievant.

20 In the course of the conversations
21 between the grievant and the company officials and
22 the grievant's representatives and the company's
23 officials, there was ongoing discussion between
24 the grievant and his wife, the grievant and his
25 father with respect to his duties and

1 responsibilities not only under the contract but
2 also to his fellow workers, to himself, and to his
3 family. The only people who can testify, outside
4 of the grievant's own statement, with respect to
5 the nature of his beliefs and why he came to those
6 beliefs and what consequences he immediately
7 feared on March 23, 2001 are his wife and his
8 father.

9 Now, there is no question that this is
10 a private arbitration, but when the company feels
11 free to bring in outside individuals to testify,
12 who are not members of the plant forces, whether
13 they be salaried individuals or whether they be
14 salary exempt individuals, we feel that the union
15 has the right in presenting its defense to have
16 those individuals present to introduce as
17 witnesses. Since this grievance arbitration
18 hearing today is taking place in the plant, the
19 company controls access, and rightly so, because
20 this is their facility. However, we believe that
21 since these witnesses, in our opinion, are
22 essential to our defense, that if the company has
23 not directed to allow them to enter the plant,
24 then we would respectfully suggest that we adjourn
25 to a site outside the plant where the company will

1 have no security or safety concerns about the
2 presence of these individuals so that we be
3 allowed to have them present to testify on behalf
4 of the grievant.

5 ARBITRATOR DEAN: Is there any
6 reply to that, sir?

7 MR. HAGGERTY: I think I've stated
8 our case already, and we just don't think there's
9 anything to be served by turning arbitration
10 matters into circuses where husbands and fathers
11 come in to testify about what somebody was
12 thinking. It has nothing to do with this case.
13 This case is all about a refusal to do work that
14 had been done thousands of times in the past in
15 exactly the same manner. What his state of mind
16 is has no application under this contract.

17 ARBITRATOR DEAN: Gentlemen, can
18 we go off the record a minute? Can the three of
19 us meet for a moment?

20 (Discussion was held off the
21 record.)

22 MR. HAGGERTY: Mr. Arbitrator,
23 we've reviewed the situation and we stand by our
24 position, and we believe that to preserve the
25 integrity of the process, that the wife and father

1 should not be allowed to testify or to come in to
2 company property to testify in this case. Based
3 on our discussion outside, we understand that
4 based on that, you will move the hearing to a
5 neutral site and we'd provide the neutral site.

6 ARBITRATOR DEAN: All right, so I
7 guess that's the way it is going to have to be.
8 We can state the neutral site is the Days Inn.

9 MR. MURTAGH: We have a tentative
10 reservation in the Butler Room at the Days Inn.
11 Mr. Nanni will call now and inform them that at
12 the arbitrator's pleasure, we will be adjourning
13 to that site.

14 ARBITRATOR DEAN: I can't overrule
15 the company's position not to allow, and as I
16 stated out there, in a disciplinary case or a
17 discharge case, I want to be sure that there is
18 no -- there are no loose ends and that the
19 grievant has been able to present anything he
20 feels is relevant. Whether it is relevant, this,
21 that, and the other, I will make that
22 determination, and if it isn't, it won't have any
23 bearing on the case and we will have wasted our
24 time going across the street, but I don't really
25 seem to have any choice in the matter, so we'll

1 let it go at that. Go off the record.
 2 (Recess taken.)
 3 (Reconvening at the Days Inn,
 4 Butler Room at 10:40 a.m.)
 5 ARBITRATOR DEAN: We're on the
 6 record.
 7 MR. HAGGERTY: Thank you.
 8 Mr. Arbitrator, by way of opening statement, let
 9 me introduce this case to you. You will see
 10 through the evidence that we present here today
 11 that this is a classic case of insubordination
 12 wherein an employee in a very premeditated way
 13 decided to resort to self-help in refusing to do
 14 assigned work rather than to file a grievance and
 15 go through the contractually required grievance
 16 procedure.
 17 This case involves some in-plant
 18 trucking assignments within the Butler Plant. All
 19 of the work is work that's performed exclusively
 20 within the confines of the plant and does not
 21 require the grievant to take the truck outside the
 22 plant. As you have seen this morning, and we'll
 23 put in through testimony, access to the plant is
 24 strictly restricted to persons working in the
 25 plant and having business in the plant. All

1 with the hauling of electrical coils. They are
 2 hauled from the CRNO building -- CRNO stands for
 3 cold rolled nonoriented -- or the silicon
 4 department, to be processed at the 26 carlite
 5 line, a line that's in a different area of the
 6 plant. This electrical steel is moved to the
 7 carlite line between 16 and 18 trips a day, seven
 8 days a week, virtually every day of the year.
 9 The electrical steel is fragile, and
 10 chaining down the steel would damage the steel.
 11 Accordingly, the steel has always been hauled
 12 within the plant without being chained, either in
 13 an eye-to-the-sky manner or in specially designed
 14 trailer trucks that have a trough which the coils
 15 sit in to secure the steel.
 16 This grievant, for more than a year
 17 prior to the incident that led to his discharge,
 18 got in his head that he could not haul loads that
 19 were in excess of 73,280 pounds, the limit
 20 applicable on public highways, and that he could
 21 not haul loads within the plant that were not
 22 chained as though they were being transported on
 23 public highways. He took, over the course of this
 24 year, he took his issue to, several times, to his
 25 supervisor, Edward Tassej. He took the issue to

1 entrances to the plant are gated. People cannot
 2 come and go through plant property as they want,
 3 and the roadways within the plant are strictly
 4 within the control of AK Steel. Further, the
 5 speed limits in the plant are no higher than 25
 6 miles an hour, many places are 15 miles an hour,
 7 and certainly there is no minimum speeds any
 8 trucks have to travel in the plant.
 9 For many years, and our witnesses will
 10 take us back 25 years, the load limits of the load
 11 of steel that could be placed on a trailer was
 12 based on the designed carrying capacity or weight
 13 capacity of that trailer. For example, if the
 14 trailer was engineered to hold 120,000 pounds of
 15 steel, the loads that were placed on that trailer
 16 for a move could be up to that 120,000 pounds.
 17 The loads placed on a trailer were not controlled
 18 by the Pennsylvania Motor Vehicle Code, which has
 19 a limit of 73,280 pounds, and they were not
 20 controlled by the Pennsylvania Motor Vehicle Code
 21 because the Code on its face applies to public
 22 highways, not to private property or private roads
 23 like in a steel plant.
 24 A specific move that's at the center of
 25 this case, specific movement of steel, has to do

1 Bill Smith, the head of safety. He took the issue
 2 to Mike Seyler, the manager of industrial
 3 relations. He took the issue to Tom Ayres, the
 4 manager of the entire transportation, labor and
 5 various other departments in the plant. He took
 6 the issue to Bill Gonce, the director of
 7 industrial relations for the entire Butler Plant.
 8 He also wrote letters -- wrote a letter to the CEO
 9 of the company, Mr. Gonce and to others, dated
 10 March 21, which again carried on his crusade about
 11 these issues.
 12 In all of these cases, going to all of
 13 these people, the grievant was painstakingly told
 14 that this work had always been done this way, that
 15 it was necessary to do this work this way, and
 16 that the provisions of the Motor Vehicle Code did
 17 not apply to these moves within the plant. That's
 18 how it had always been and that's the way it was
 19 going to continue to be.
 20 The grievant was unconvinced on
 21 these points. Although he was unconvinced, he
 22 never filed a grievance claiming this work to be
 23 unsafe. He never went through any safety
 24 procedure to pursue any claim of a safety problem
 25 on this. Instead, he waited until he finally was

1 assigned to drive the truck for moves that
2 exceeded 73,000 pounds, and on the occasions when
3 he was assigned to do that type of work, which was
4 on March 22nd and 23rd, he did not perform the
5 work as required, and, in fact, on March 23rd,
6 refused a direct order to perform work in hauling
7 electrical steel to the 26 carlite area.

8 So we see this as a clear case of
9 insubordination, and we believe the facts will
10 prove that to be the case, the employee resorting
11 to self-help rather than going through required
12 procedures.

13 ARBITRATOR DEAN: Thank you,
14 Mr. Haggerty.

15 Mr. Murtagh, does the union wish to
16 make any kind of statement at this time?

17 MR. MURTAGH: We wish to reserve
18 until after the conclusion of the company's case,
19 sir.

20 ARBITRATOR DEAN: Okay. Then I
21 think I'll swear all the witnesses in now, I
22 guess. Are there any other matters prior to
23 testimony?

24 MR. MURTAGH: No, sir.

25 ARBITRATOR DEAN: If not, all the

1 folks who are going to testify or may be going to
2 testify, will you just raise your right hands.

3 (All witnesses severally sworn.)

4 ARBITRATOR DEAN: If we have
5 anybody come in that I haven't sworn in, remind me
6 in case I forget. I'll let the company go forward
7 with the evidence.

8 MR. HAGGERTY: Thank you.
9 Mr. Gonce.

10 We're going to take two witnesses
11 slightly out of order in hopes that they can get
12 back to the business of negotiating, if that's
13 possible.

14 ARBITRATOR DEAN: Certainly.
15 (Witness previously sworn.)

16 BILL GONCE, a witness herein,
17 called in behalf of the Company, having been
18 previously duly sworn, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HAGGERTY:

22 Q. Would you state your name, please.

23 A. Bill Gonce.

24 Q. And, Bill, what's your job at the Butler Plant?

25 A. Heading up industrial relations for the Butler

1 Plant, industrial engineering, those
2 responsibilities.

3 Q. Are you the highest ranking official in the
4 industrial relations capacity at Butler?

5 A. Yes.

6 Q. Do you report to anyone at Butler?

7 A. No, I don't.

8 Q. Who do you report to?

9 A. I report to the Middletown legal department.

10 Q. Is that where your corporate offices are?

11 A. Yes, it is.

12 Q. Just briefly, what's your work history, experience
13 in industrial relations matters?

14 A. For 28 years I worked with Bethlehem Steel and
15 headed up their Sparrows Point Division, and
16 worked through different positions there, got
17 contacted around March or April of 1994 when AK
18 was being formed right prior to the IPO and
19 decided to come with AK Steel. So I came in June
20 of 1994 with AK, worked in Middletown for about a
21 month and a half on different projects, and then I
22 went down to Ashland and headed up the industrial
23 relations, i.e., those facilities in Ashland,
24 Kentucky. Came here in October of 2000, been here
25 ever since.

1 Q. Now, Bill, prior to the incidents of March 22nd
2 and March 23rd of this year, did you have any
3 direct contact with the grievant concerning his
4 issues about weight limits and hauling steel
5 coils?

6 A. Yes, I did.

7 Q. When was that?

8 A. I believe it was either the third or the fourth
9 week of December. It was right around the
10 holidays, Christmas holidays.

11 Q. Of 2000?

12 A. Yes, yes. I had gotten a call from supervision
13 that they were concerned there was going to be an
14 employee who may refuse a job assignment. They
15 reviewed the job assignment with me. Being new at
16 the plant, I contacted the safety department and
17 was updated by the safety department. I also
18 called the legal department, was updated by the
19 legal department. I got back to the department of
20 supervision and informed them that normally I have
21 an open-door policy and I'd be more than happy to
22 meet with the employee and a member of management,
23 and that's what we did.

24 Q. Tell us about your meeting with Mr. Myers.

25 A. It lasted for about an hour. Mr. Myers indicated

1 to me that he felt as though it was unsafe to
 2 operate a truck that was hauling coils within the
 3 plant. He felt as though the CDL requirements
 4 were applicable and that AK Steel was violating
 5 those rules. He also indicated that he felt as
 6 though AK was under the guidelines set out by
 7 Pennsylvania motor vehicles. I told Mr. Myers
 8 that, on both of those issues, that he was wrong.
 9 That we felt, number one, it was safe. That AK
 10 takes safety extremely serious, it has been
 11 investigated more than once, and as far as private
 12 property and the applicability of Pennsylvania
 13 motor vehicle laws, they were not applicable on
 14 private property.

15 We talked more on that. I indicated to
 16 Mr. Myers that he should look elsewhere within the
 17 plant, bid out of the department; that that
 18 assignment was part of the position that he was
 19 on; that he should consider that; that it has been
 20 going on for years and years and other drivers
 21 have been doing the assignment and it is safe.

22 At that point in time, I believe I also
 23 indicated to Mr. Myers that in any industrial
 24 environment, we could not condone self-help; that
 25 there were other avenues he could take if he felt

1 A. Mr. Tassej.

2 Q. As I understand it, we're dealing with two
 3 different types of assignments, both involving the
 4 hauling of coils?

5 A. One assignment that I'm familiar with that
 6 Mr. Myers brought up to me.

7 Q. Which one was that, Bill?

8 A. Hauling coils up to the Hilltop, the electric
 9 coils.

10 Q. And the issues he raised to you were weight?

11 A. Yes, sir.

12 Q. Did he raise the chaining issue?

13 A. Yes, he did.

14 Q. And what was your response specifically on the
 15 chaining issue?

16 A. That, number one, the steel, the chaining of the
 17 steel would damage the steel, and that the vehicle
 18 was designed to haul the coils without chaining
 19 and it was safe.

20 Q. So you were concerned about the chaining issue and
 21 the weight issue?

22 A. Yes, sir.

23 Q. And what was the weight that was involved or that
 24 was in question?

25 A. Jack, I don't recall. I don't even know if

1 strong on the issue, but that we were not going to
 2 allow employees to pick and choose what assignment
 3 they liked or didn't like.

4 After that, the meeting ended. Joe asked us
 5 to come back and we talked on a couple other
 6 issues, and that was it.

7 MR. HAGGERTY: That's all I have.

8 CROSS-EXAMINATION

9 BY MR. MURTAGH:

10 Q. Bill, what contacts did you make to determine that
 11 the work in question was safe and legal?

12 A. I contacted Bill Smith from safety, and Bill gave
 13 me a little bit of the history, Jack, on the
 14 assignment, the design of the truck and that type
 15 of thing. In legal, I contacted a fellow by the
 16 name of John O'Connor. I don't know if you know
 17 him or not, but I was not -- I'm familiar with
 18 other states, but I wanted to make sure I had my
 19 bearings right in Pennsylvania.

20 Q. Did you review any General Safety Orders or Job
 21 Safety and Health Analysis?

22 A. No, sir.

23 Q. Did you speak to Mr. Tassej or Mr. Vensel about
 24 the specifics of the assignments that were
 25 involved?

1 Mr. Myers brought it up, but I do know, in my
 2 investigation, that the weight is extensive. I
 3 mean, it is thousands and thousands of pounds.

4 Q. Mr. Haggerty indicated in his opening that the
 5 Pennsylvania Motor Vehicle Code weight limit is
 6 73,280 pounds. Do you have any reason to dispute
 7 that?

8 A. No, I don't.

9 Q. Do you know if the weight in question that you
 10 were discussing with Mr. Myers was in excess of
 11 that, was greater than that?

12 A. I don't know, but I assume it was based on what
 13 Joe was saying, and in my investigation, the
 14 weights do go above that.

15 Q. Now, you also indicated that after this meeting in
 16 December, that you had some other contact or
 17 conversation with Mr. Myers? You said you spoke
 18 to him a couple of other times?

19 A. No, I'm sorry. If I said that, that was wrong.

20 Q. I may have misunderstood you.

21 A. I had one meeting with Mr. Myers. Then there was
 22 a Step III hearing. I sat in on that.

23 Q. That would be after his discharge?

24 A. Yes.

25 Q. But prior to the discharge, other than meeting in

1 December, you don't recall any other
2 conversations?
3 A.No.
4 Q.Did you receive any communications from him?
5 A.I believe I got a letter, yes.
6 Q.And would that be the letter that led to or was
7 part of the events during the week he was
8 discharged?
9 A.Yeah, it could be.
10 Q.We'll show you that in a minute, Bill. Did you
11 get any other letters from anyone acting or
12 speaking on Mr. Myers' behalf?
13 A.Yes. I got a letter sent to me by an attorney.
14 Q.Not this attorney?
15 A.No, not you. And then I got a couple phone calls
16 from the attorney on the outside.
17 Q.And what did you do when you received the letter
18 from the attorney, Bill?
19 A.Sent it to the legal department, and they got back
20 to me and indicated that basically, no response
21 was merited based on the letter.
22 Q.So you did not respond?
23 A.To that attorney.
24 Q.To the attorney?
25 A.That's correct.

1 plant when we made the move. We'll enter them in
2 the record officially through the grievant, but
3 the witness has testified as to document 7(c),
4 being the attorney letter of March 1, 2001, and
5 7(k) being the letter of March 21, 2001 from the
6 grievant.
7 ARBITRATOR DEAN: Are we going to
8 mark these as union exhibits?
9 MR. MURTAGH: 1 and 2, and we'll
10 bring them over.
11 ARBITRATOR DEAN: Which do you
12 want as 1? It doesn't matter.
13 MR. MURTAGH: The letter from
14 Mr. Moskal of March 1, and Union 2, Mr. Myers'
15 letter of March 21.
16 ARBITRATOR DEAN: Fine.
17 BY MR. MURTAGH:
18 Q.And, Bill, you had no further contact with
19 Mr. Myers until after his discharge, is that
20 right?
21 A.Correct.
22 Q.And just for the record, were you the official who
23 conducted either the works management or
24 investigatory meeting or Step III hearing?
25 A.At the Step III meeting, normally I don't go into

1 Q.And did you make any response to the letter that
2 you received from Mr. Myers?
3 A.No, sir.
4 Q.I believe those two documents are marked in the
5 grievance record as 7(c), certified letter to
6 Mr. Gonce dated March 1, 2001 from Dennis Moskal,
7 an attorney-at-law in Pittsburgh, document 7(k),
8 dated March 21, 2001 signed by Joe Myers. If we
9 could have a moment, sir, we would like to pass
10 those out to the parties.
11 ARBITRATOR DEAN: This will be a
12 union exhibit?
13 MR. MURTAGH: Yes, sir.
14 BY MR. MURTAGH:
15 Q.Bill, just identify document 7(c) for me. Tell me
16 if that's the letter you got from Attorney Moskal.
17 A.It appears to be, yes, yes.
18 Q.And legal told you that you didn't have to take
19 any action in response to that?
20 A.That's correct.
21 Q.And look at 7(k) and tell me again if that's the
22 letter that you got from Mr. Myers.
23 A.I believe so.
24 MR. MURTAGH: Sir, these documents
25 apparently didn't make the bus over here from the

1 those. I went in on that one only because I had
2 previously met with Mr. Myers and I felt as though
3 I should be there.
4 Q.And you were?
5 A.Yes.
6 Q.Thank you, Bill.
7 MR. HAGGERTY: Just a moment.
8 REDIRECT EXAMINATION
9 BY MR. HAGGERTY:
10 Q.Bill, I'm handing you a copy of what the union had
11 identified as Union 1, March 1, 2001 letter.
12 A.Yes.
13 Q.In the second full paragraph --
14 MR. HAGGERTY: Mr. Arbitrator, so
15 you're not the only person who doesn't have one of
16 these in front of you, we'll provide you a copy as
17 well.
18 ARBITRATOR DEAN: All right. This
19 is Union 1, in effect?
20 MR. HAGGERTY: Yes.
21 BY MR. HAGGERTY:
22 Q.In the second full paragraph, in the middle, does
23 it read, "Section 4941 specifies the maximum
24 weight permitted when a vehicle is operated on a
25 highway"?

1 A.I see it.
 2 Q.And what is the definition of "highway" that's
 3 given there in the next sentence?
 4 A."...is defined in part as the entire width between
 5 the boundary lines of every way publicly
 6 maintained when any part thereof is open to the
 7 use of the public for purposes of vehicular
 8 travel."

9 MR. MURTAGH: If it helps the
 10 company, the union will stipulate that under the
 11 definition of "highway" cited in the letter, the
 12 plant roads do not constitute a highway.

13 MR. HAGGERTY: It does help the
 14 company. We'll accept that stipulation.

15 MR. MURTAGH: All right.

16 MR. HAGGERTY: No more questions,
 17 Bill.

18 ARBITRATOR DEAN: Thank you.
 19 (Witness excused.)

20 MR. HAGGERTY: Mr. Seyler.
 21 (Witness previously sworn.)

22 MICHAEL SEYLER, a witness herein,
 23 called in behalf of the Company, having been
 24 previously duly sworn, was examined and
 25 testified as follows:

1 session at the community college.

2 Q. When did that session occur?

3 A. Late June of 2000.

4 Q. Tell us what happened at that session.

5 A. First of all, the safety awareness sessions were
 6 an AK Steel requirement, for all employees to go
 7 through an eight-hour intensive safety orientation
 8 to bolster the awareness of the employees, both
 9 hourly and salaried, to the importance and the
 10 priority of safety to AK Steel Corporation. So
 11 this was quite different. We had never done
 12 anything like that before.

13 One part of the meeting at the conclusion
 14 was to discuss changes in the procedures and rules
 15 for safety that would be going into effect in July
 16 of 2000. They were chiefly involved with personal
 17 protective equipment, no jewelry and so forth,
 18 that would be imposed on everyone, salaried and
 19 hourly, in the workforce. So my job, more or
 20 less, in that meeting was to come into the session
 21 and review with transparencies and discuss with
 22 the attendees those particular issues, and I did
 23 so.

24 At the end of that presentation, I asked for
 25 questions on the material covered, and at that

1 DIRECT EXAMINATION

2 BY MR. HAGGERTY:

3 Q. Would you state your name for the record.

4 A. Michael Seyler.

5 Q. And what is your job at the Butler Plant?

6 A. I'm Industrial Relations Manager at the Butler
 7 Works.

8 Q. Who do you report to in that capacity?

9 A. Bill Gonce.

10 Q. Are you the No. 2 guy in Industrial Relations here
 11 at Butler?

12 A. Yes, I am.

13 Q. And how long have you worked at the Butler Plant?

14 A. Since 1981.

15 Q. And how much of that time has been in an
 16 industrial relations capacity?

17 A. Since February of 1984.

18 Q. Now, Mike, prior to the incident of March 22 and
 19 March 23, did you have any direct contact with
 20 Mr. Myers concerning his issues on weight limits
 21 and electrical steel loads?

22 A. Yes, I did. I was initially involved in the issue
 23 from a safety awareness class that Mr. Myers had
 24 attended and for which I was the management
 25 representative that concluded that particular

1 time I had been alerted by Mr. Smith, who was
 2 attending that session for safety, that Mr. Myers
 3 had an issue that he wanted to discuss.

4 Q. Mike, the plant safety awareness session, did that
 5 session have anything to do with truck loading or
 6 load limits or anything like that?

7 A. No, sir, it did not.

8 Q. So what you're describing now happens after the
 9 formal session is over?

10 A. After the presentation is over.

11 Q. Okay.

12 A. But before adjournment of the session. It was in
 13 the question-and-answer period at the end.

14 Q. Okay.

15 A. And Joe asked if -- he had an issue with respect
 16 to hauling coils with respect to load limits and
 17 was questioning the application of the
 18 Pennsylvania load limit to AK Steel roads. At
 19 that time, I informed Joe that AK Steel, private
 20 property, was where the hauling was taking place
 21 and that those load limits did not apply, only the
 22 capacity of the equipment was the relevant safety
 23 concern.

24 Q. How many people did you say this in front of?

25 A. Oh, there were approximately 25 to 30 people

1 attending each session.
 2 Q. Okay.
 3 A. That was the essence of the interaction there.
 4 Q. Did you later have another meeting with the
 5 grievant concerning this load limits issue?
 6 A. Yes, I did. I was in the meeting that Mr. Gonce
 7 testified to in late December of 2000 where
 8 Mr. Myers had requested a meeting, and I was asked
 9 by Bill to attend that meeting, and I did so.
 10 Q. Anything else you remember about that meeting or
 11 from Bill's testimony?
 12 A. No, I think Bill captured what the essence of the
 13 review was. At the conclusion of the meeting, I
 14 believe that Joe and Bill met separately on
 15 another issue or issues that I wasn't a party to.
 16 But in the meeting that took place, Mr. Myers and
 17 Bill discussed the load limit issue.
 18 Q. After the safety awareness session you've
 19 described or the meeting with Mr. Gonce and the
 20 grievant, was any grievance ever filed challenging
 21 whether this work was safe or not?
 22 A. No, sir, no grievance was filed.
 23 Q. Did Mr. Myers ever file a grievance prior to
 24 refusing this work about the safety of this work?
 25 A. About the safety of this work, no, sir.

1 Q. You mean they have a groove from back to front?
 2 A. They have a groove, like a modified V groove.
 3 Q. So the coil sits in the groove?
 4 A. That's correct.
 5 Q. And it's not chained?
 6 A. That's correct.
 7 Q. Did you have any discussion with Mr. Myers about
 8 the chaining or nonchaining of electrical steel
 9 coils within the plant?
 10 A. I may have, Jack, but I don't recall that.
 11 Q. And were you involved in the disciplinary process
 12 that's brought us here today?
 13 A. Yes, sir. I heard this particular issue at the
 14 works management level, which would be after the
 15 investigation and the imposition of the
 16 discipline, which was the five days subject to
 17 discharge. I reviewed the facts of that and
 18 rendered a decision sustaining the discharge.
 19 Q. So if I understand the timeframe, it would be
 20 Mr. Tassej as the supervisor who would make the
 21 initial suspension subject to discharge, correct?
 22 A. Yes, sir.
 23 Q. And then you as the works management official
 24 would review that?
 25 A. That's correct.

1 Q. At any time, has Mr. Myers held a union office?
 2 A. Yes, sir. He ran and was elected a union employee
 3 representative position in 1998.
 4 Q. Was he a union rep at the time of this incident
 5 that led to his discharge?
 6 A. No, sir.
 7 MR. HAGGERTY: That's all I have.
 8 CROSS-EXAMINATION
 9 BY MR. MURTAGH:
 10 Q. Mike, where did you get the information that you
 11 conveyed to Mr. Myers at the safety meeting in
 12 June of 2000 that the private nature of the plant
 13 indicated that the load limits for a highway truck
 14 were not applicable within the plant?
 15 A. Through Gerry Hesidenz, who at that time was our
 16 Director of Safety and Risk Management.
 17 Q. And if I understood you, you said the only concern
 18 would be, for operation within the plant, the only
 19 concern would be capacity of the equipment?
 20 A. Yes, sir.
 21 Q. Did you know what equipment Mr. Myers was
 22 referring to?
 23 A. He was referring to coil trailers, I believe, that
 24 are used. Most of them are notched so that the
 25 coils are cradled in them for transport.

1 Q. And since you affirmed it and the union appealed
 2 it, it then went to Step III where Mr. Gonce
 3 issued a letter, Step III Answer?
 4 A. That's correct.
 5 Q. And then we come here today as the next step?
 6 A. That's the process.
 7 Q. Were you involved as a witness or participant in
 8 any of the underlying events of that week that
 9 culminated on Friday, March 23, 2001, the back-
 10 and-forth conversations between Mr. Myers,
 11 Mr. Tassej, and anyone else?
 12 A. No, sir, I was not personally involved.
 13 Q. Thank you, Mike.
 14 MR. HAGGERTY: No questions.
 15 ARBITRATOR DEAN: I have none.
 16 Thank you.
 17 (Witness excused.)
 18 MR. HAGGERTY: Maybe we should
 19 take a five-minute break. Our next witness, I'm
 20 sure, is going to take a half hour.
 21 ARBITRATOR DEAN: Sure. Who is
 22 your next witness?
 23 MR. HAGGERTY: Mr. Tassej.
 24 ARBITRATOR DEAN: Okay.
 25 (Short recess taken.)

1 MR. HAGGERTY: Mr. Tassey.
 2 (Witness previously sworn.)
 3 EDWARD TASSEY, a witness herein,
 4 called in behalf of the Company, having been
 5 previously duly sworn, was examined and
 6 testified as follows:
 7 DIRECT EXAMINATION
 8 BY MR. HAGGERTY:
 9 Q. Would you state your name, please.
 10 A. Edward Tassey.
 11 Q. And what was your job in March of 2001?
 12 A. Section Manager, Transportation Repair and Truck
 13 Services.
 14 Q. And in that job, how many employees work for you?
 15 A. Fifty-one, 52.
 16 Q. Do you hold the same job today?
 17 A. Yes, sir, I do.
 18 Q. How long have you worked at the Butler Plant?
 19 A. Twenty-seven years.
 20 Q. And for how long has your work been associated
 21 with the trucking operation at Butler?
 22 A. About 20 of those.
 23 Q. Now, Ed, does the grievant have a discipline
 24 record related to job performance?
 25 A. Yes, sir.

1 bus.
 2 Q. What zone or job class is that job?
 3 A. That would be Zone 6.
 4 Q. What kind of vehicles does that job operate?
 5 A. Pickup trucks, bus, stake trucks.
 6 Q. From crew cab operator, where do employees
 7 progress?
 8 A. The next move would be the Zone 7 block, which is
 9 the tractor-trailers.
 10 Q. Is that the job involved in making the hauls of
 11 electrical coils?
 12 A. Yes.
 13 Q. And what zone is that job?
 14 A. That's Zone 7.
 15 Q. Now, is there a job above the Zone 7 job?
 16 A. Yeah, the mobile equipment. You have to be a
 17 tractor-trailer operator and then promote out of
 18 there into the heavy equipment block, which is
 19 Zone 9.
 20 Q. And on the Zone 9 job, what types of equipment do
 21 people operate?
 22 A. Pyloaders, backhoes, mobile cranes.
 23 Q. Now, what was, in March of 2000, what was the
 24 grievant's incumbent job?
 25 A. His incumbent job was in the Zone 7 block. At

1 Q. I've handed you two documents marked
 2 Company Exhibits 3 and 4. Can you identify those,
 3 please?
 4 A. Yes, sir.
 5 Q. What is Company Exhibit 3?
 6 A. This was a letter that was written by Rich
 7 Bofinger, who in 1998 was the section manager or
 8 the area manager for Transportation Repair and
 9 Truck Services.
 10 Q. And looking at that letter, did this concern the
 11 movement of electrical coils?
 12 A. No, sir. This was in regards to a pinion gear
 13 that had come off of a truck outside the machine
 14 shop.
 15 Q. And what is Company Exhibit 4?
 16 A. It's a letter that I had given Joe on a violation
 17 of General Safety Order No. 3.
 18 Q. Is there a grievance pending on either of these
 19 pieces of discipline?
 20 A. No, sir, there is not.
 21 Q. Ed, describe for the arbitrator the line of
 22 progression in terms of jobs in the trucking
 23 department. What's the entry-level job?
 24 A. Entry-level job in the truck section would be a
 25 crew cab operator, commuter operator, which is a

1 that time, he was on an extended temporary bid to
 2 the Zone 9 block or the mobile equipment block.
 3 Q. So prior to March of 2001, what job did he
 4 normally work?
 5 A. He would either have been in the tractor-trailer,
 6 Zone 7 bracket, or if there was no work there,
 7 then he would pick up driving in the Zone 6 block,
 8 be it a stake truck or pickup truck.
 9 Q. In the year or so prior to March of 2001, how
 10 often did he work at the Zone 9 level?
 11 A. At the Zone 9 level?
 12 Q. Yes.
 13 A. Quite frequently.
 14 Q. This morning, did you hear Mr. Gonce and
 15 Mr. Seyler's testimony?
 16 A. Yes, sir.
 17 Q. Did you have any similar meetings with the
 18 grievant concerning his arguments about weight
 19 limits and electrical steel hauling?
 20 A. Yes, sir.
 21 Q. When did those meetings start with you?
 22 A. I can't give you an exact date. I would say
 23 sometime shortly after I took the section over.
 24 Q. And when did you take the section over?
 25 A. That would have been March 15 of 2000.

1 Q. And how often did the grievant bring up this claim
 2 with you?
 3 A. Probably three or four times, at least three or
 4 four times.
 5 Q. When he did that, was the discussion different
 6 each time or was it the same?
 7 A. Pretty much the same.
 8 Q. Tell me how it went.
 9 A. He discussed the chaining of coils, the load
 10 limits that we hauled in the plant versus what you
 11 would haul out on the highway.
 12 Q. Did he bring up that he was CDL licensed?
 13 A. Yes, sir, he did.
 14 Q. What does CDL stand for?
 15 A. Commercial driver's license.
 16 Q. And what was your response to the grievant on
 17 these issues?
 18 A. I told him that we weren't governed by those
 19 regulations and that we have always hauled, in the
 20 time I've been there, the way we're hauling at
 21 that time and today.
 22 Q. When you say "the time you've been there," how
 23 long a period of time are you talking about?
 24 A. Like I said, 27 years.
 25 Q. Go ahead. So you told him what?

1 are in excess of design capacity of the trailers?
 2 A. No, sir.
 3 Q. Now, the movement of these electrical steel coils,
 4 do they require the driver to take the truck
 5 outside the Butler Plant?
 6 A. No, sir.
 7 Q. What is the speed limit within the plant?
 8 A. 15 to 25 mile an hour.
 9 Q. Is there any minimum speed that a truck driver has
 10 to maintain?
 11 A. No, sir.
 12 Q. If the truck driver wanted to go 5 miles an hour
 13 all the way, could he?
 14 A. Yes, sir.
 15 Q. In terms of the roads that the drivers travel on
 16 these electrical steel moves, are any of these
 17 roads open to the public?
 18 A. No, sir.
 19 Q. How is access to these roads controlled?
 20 A. By security at various gates around the plant.
 21 Q. Ed, you raised that the grievant had raised with
 22 you that he was CDL licensed.
 23 A. Uh-huh.
 24 Q. Is the company required to have truck drivers CDL
 25 licensed who drive exclusively within the plant?

1 A. That we've always hauled that way and that he
 2 would be expected to do the same.
 3 Q. Now, this hauling of electrical steel coils, how
 4 often is that hauling performed?
 5 A. Daily. We run two trucks, one CRNO truck and one
 6 truck out of the silicon on daylight, normally a
 7 silicon truck on afternoon turn, and normally
 8 they'll call for a couple loads every night on
 9 midnight of silicon out of the regular silicon
 10 building.
 11 Q. So in total in a day, how many loads of this
 12 electrical steel are hauled up to 26 carlite?
 13 A. Ideally, somewhere between 16 and 18.
 14 Q. And how many days a week is that?
 15 A. Seven days.
 16 Q. Now, the 16 to 18 loads, are any of those loads
 17 chained down?
 18 A. No, sir.
 19 Q. What's the design of the trucks that are used to
 20 haul these coils?
 21 A. The two trailers that we use today are V shaped in
 22 design. They have coil welds in them and they
 23 are -- one is designed for a capacity of 65 ton
 24 and the other is designed for 45 ton.
 25 Q. Does the company require that loads be hauled that

1 A. No, sir.
 2 Q. For example, at the Middletown Works, did you
 3 inquire as to the Middletown Works with regard to
 4 CDL licensing?
 5 A. Yes, sir, I did.
 6 Q. Do any moves at Middletown require employees to
 7 leave the plant?
 8 A. No, sir.
 9 Q. Are truck drivers at Middletown CDL licensed?
 10 A. No, sir, they are not.
 11 Q. Are there contractors within the Butler Plant who
 12 operate trucks, large trucks, exclusively within
 13 the plant?
 14 A. Yes, sir, there are.
 15 Q. Can you give an example.
 16 A. Heckett Slag Division, Eichleay Corporation, SPC,
 17 to name a couple.
 18 Q. What kind of work does Heckett perform in the
 19 plant?
 20 A. Heckett has a contract to remove all of our slag
 21 products from the Melt Shop area.
 22 Q. What's the size of the vehicles that Heckett
 23 employees operate?
 24 A. Very large payloaders and very large Euclid
 25 trucks.

- 1 Q. Larger than anything our people would drive?
 2 A. Yes, sir.
 3 Q. Are Heckett employees CDL licensed?
 4 A. No, sir, they are not.
 5 Q. Now, at the Butler Plant, does the company require
 6 its truck drivers to have CDL licenses?
 7 A. I'm sorry, Counselor, could you please repeat
 8 that?
 9 Q. At the Butler Plant, does the company require its
 10 truck drivers to have a CDL license?
 11 A. Yes, sir, we do.
 12 Q. Why does the company have that requirement?
 13 A. We, on occasions, have a necessity to go to our
 14 other plant, which is up in the city, so we have
 15 to cross a public highway.
 16 Q. And what plant are you referring to?
 17 A. Plant 2, stainless processing.
 18 Q. How far is Plant 2 from the main plant?
 19 A. A mile and a half, two miles.
 20 Q. Ed, I've handed you a document marked
 21 Company Exhibit 5. Can you identify that, please?
 22 A. Yes, sir. That's a Job Safety and Health
 23 Analysis.
 24 Q. And what does that Job Safety and Health Analysis
 25 concern?

- 1 A. The hauling of electrical steel.
 2 Q. Now, when was this JSHA initially implemented?
 3 A. It would have been in February of this year.
 4 Q. Was this the only JSHA implemented at about this
 5 time?
 6 A. No, we have been probably, going on probably the
 7 last two years reviewing, revising and upgrading
 8 and adding JSA's where we see they are needed.
 9 Q. What work does this JSA relate to?
 10 A. This is the hauling of electrical steel coils,
 11 intraplant.
 12 Q. And is this the work that the grievant was
 13 assigned to do on either of the days involved in
 14 this grievance?
 15 A. Yes, sir.
 16 Q. Look at the fourth page of the document. It has a
 17 revision register there. Can you walk through the
 18 formulation and revision of this JSA for us,
 19 please.
 20 A. The JSA was written, like I said, the 1st of
 21 February. It was revised to Item 1C, the 14th of
 22 that month, and then there was a revision added
 23 again on 3-21, the notes that were added, I
 24 believe, on the bottom of the third page.
 25 Q. What specifically was the revision to the notes

- 1 that occurred on March 21st?
 2 A. At the direction of my supervisor -- when we do
 3 these, I would like to add, that these are
 4 written. Then they are sent for review to my
 5 boss. He called me in and said that he wanted
 6 them to be a little bit more defined as to what
 7 exactly was expected and the weight limits of the
 8 trailer, and if you will notice, there is a
 9 typographical error there on the CRNO trailer.
 10 That is a 65-ton trailer, not a 60 ton.
 11 Q. Well, what note or notes were revised on
 12 March 21st?
 13 A. The chaining, binding of electrical coils, the
 14 hauling of box of coils, and the weights of the
 15 trailer.
 16 Q. Now, was this revision reviewed with the grievant?
 17 A. Yes.
 18 Q. At whose direction?
 19 A. My supervisor.
 20 Q. Who actually reviewed this with the grievant?
 21 A. Don Horstman.
 22 Q. And who told Horstman to review it with the
 23 grievant?
 24 A. I did.
 25 Q. Is Horstman a supervisor?

- 1 A. He's an hourly step-up.
 2 Q. So is he a bargaining unit employee?
 3 A. He is a bargaining unit employee.
 4 Q. And was he a bargaining unit employee in March of
 5 2001?
 6 A. Yes, sir, he was.
 7 Q. Is he still a bargaining unit employee today?
 8 A. Yes, sir, he is.
 9 Q. Now, Ed, tell us with regard to March 22nd, the
 10 incident of March 22nd, what happened on that date
 11 related to this grievance.
 12 A. That morning, I was coming through the garage
 13 prior to leaving for a meeting, and Joe had
 14 brought in a No. 271 trailer. It is a trailer
 15 that we use to haul rolls, and it needed some
 16 items repaired, and I told him that that was fine,
 17 to go ahead and have the repairmen correct those
 18 problems, to see Dave Lawson and see if he could
 19 not secure another trailer and proceed with the
 20 job assignment that he had for that day.
 21 Q. What time was it that you saw him?
 22 A. Sometime around 7:00 or shortly thereafter.
 23 Q. What time would the truck drivers normally start
 24 work?
 25 A. 6:30.

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1 Q. Did the grievant get another trailer from Lawson
2 and start work right away?
3 A. David, I guess, told him that he wasn't sure which
4 one to take, so Joe went out and hooked onto
5 another trailer, took that trailer out and had it
6 weighed, and it would not meet the code weight
7 restriction -- or weight limits, so he come back
8 and hooked onto another trailer, took it out. It
9 did meet that number that he could haul, and he
10 then went to the steel yard and had to secure a
11 rack to carry the rolls.
12 Q. What is the code that you're referring to?
13 A. 72,280 -- or 73,280.
14 Q. Where does that number come from?
15 A. That's the combined vehicle weight and what you
16 can legally haul across a public highway.
17 Q. Was that public highway limit applicable to the
18 work he was assigned to do on March 22nd?
19 A. No, sir, it was not.
20 Q. Is the idea of getting a trailer and then taking
21 it to have it weighed a customary part of the job
22 that a truck driver does?
23 A. Not normally.
24 Q. Now, what was the specific assignment that he had
25 on March 22nd?

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1 A. He was to transfer rolls between, I believe, the
2 furnace aisle and the Hot Mill or vice versa.
3 Q. When you talk about "rolls," what are you talking
4 about when you say a "roll"?
5 A. Backup rolls, work rolls from the mills. I
6 believe this one in particular is probably at
7 least 60 inches in diameter, weighs an approximate
8 27,000 pounds, probably about 14 or 16-foot long,
9 between the roll and the necks on it.
10 Q. So you are talking about a piece of mill
11 equipment?
12 A. Yes.
13 Q. You are not talking about a coil of steel?
14 A. No, sir.
15 Q. You are agreeing with me, right? Are you agreeing
16 with me?
17 A. Yeah, it is mill equipment, not coils of steel.
18 Q. Now, when did the grievant actually start
19 performing the work of moving, transporting these
20 rolls?
21 A. By the time he got the trailer weighed, got the
22 rack, and got to the work site, it was
23 approximately 12:30, and then he had to wait on an
24 outside truck, I believe, or one of our trucks to
25 get into the building, so it was probably close to

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1 1:00 o'clock.
2 Q. And was he able to complete his work assignment
3 during his shift?
4 A. No, sir.
5 Q. What did the company have to do as a result of
6 that?
7 A. Well, we had received a call from the section
8 manager or area manager for the Roll Grinding
9 Department. He was very upset that he did not get
10 his rolls hauled all on the daylight turn and
11 wanted to know what we were going to do about it,
12 so we had to add a driver on the 3:00 to 11:00
13 turn to finish that work up.
14 Q. Do you know what driver was added?
15 A. Yes, I believe it was Dan Clark.
16 Q. Now, did you subsequently investigate this
17 incident with the grievant?
18 A. Yes.
19 Q. Did he deny any of the facts that you've just
20 walked through?
21 A. Not that I can recall.
22 Q. Now, the movement or the transportation of these
23 backup rolls within the plant, is this the first
24 time that work was ever done at Butler?
25 A. No, sir.

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1 Q. How long has that kind of work been done at
2 Butler?
3 A. Quite a few years. I can't tell you exactly how
4 many. It has really gotten heavy in the last ten
5 or 12 years, I guess.
6 Q. Is this work of transporting these backup rolls,
7 is this performed by all the truck drivers in the
8 Zone 7 job?
9 A. Normally that's a zone -- well, the roll truck, if
10 they were running the roll truck, we also haul
11 tandem mill rolls that we haul on the stake bed,
12 which is in the Zone 6 block.
13 Q. Now, Ed, with regard to the incident of
14 March 23rd, would you tell us what happened that
15 day.
16 A. I came in that morning. Again, I guess it was
17 probably around 7:00 o'clock. When I came into my
18 office, I seen that the CRNO trailer was still
19 sitting in the truck area and had not left the
20 building yet. I went to my office and changed
21 into my safety equipment. I then --
22 Q. When you refer to the CRNO trailer, what work does
23 the CRNO trailer perform?
24 A. That's the trailer that's used to haul the product
25 from the CRNO building to either the Hilltop or

1 87D or --
 2 Q. When you say the "Hilltop," is that where the 26
 3 carlite line is?
 4 A. 26 carlite processing line, yes, sir.
 5 Q. And describe this CRNO trailer.
 6 A. A CRNO trailer is a 65-ton trailer. It, again,
 7 has a V'd coil well in it. It also has an
 8 accordion cover on it that's used to protect the
 9 steel from inclement weather.
 10 Q. Now, is the CRNO trailer normally gone by
 11 7:00 o'clock?
 12 A. Yeah, normally by 6:30 or 20 to 7:00, that truck
 13 is on the road normally.
 14 Q. So when you arrived at 7:00 o'clock, it was still
 15 there?
 16 A. Yes.
 17 Q. What did you do when you arrived?
 18 A. Well, I changed into my safety equipment. I then
 19 went out to see if there was a problem with the
 20 truck, see if we were going to have to make other
 21 arrangements to haul product that day. When I
 22 went out, I asked my repairmen if there was a
 23 problem with it and they said no. I asked who was
 24 on it, and they said that Joe was on it that day.
 25 Q. Okay, what happened after that?

1 Q. He is another supervisor then?
 2 A. Yes, sir, he is.
 3 Q. What happened when Mr. Vensel and this security
 4 guard arrived?
 5 A. I went back out and again stated to Joe, you know,
 6 these are the requirements, this is what's
 7 expected. I asked his representative, I believe
 8 it was Andy Hahn, if he understood what I was
 9 asking of Joe and that if he realized that this is
 10 the way we have done this in this plant for years,
 11 and he said yes, that he understood that. At that
 12 time, Joe said that he couldn't do it. At that
 13 time, I asked Sam Oday, who was from security, if
 14 he would kindly see Joe to the locker room so he
 15 could get changed and exit him from the plant
 16 until which time we could have a meeting.
 17 Q. Did you give the grievant a direct order to
 18 perform this work?
 19 A. I told him directly of what I expected, and that
 20 was for him to haul up to the weight of the
 21 trailer.
 22 Q. And his response was?
 23 A. That he could not do it because he couldn't chain
 24 it down and that it would violate the 73,280
 25 weight limit.

1 A. I went to the restroom, and when I was coming back
 2 through the garage, I run into Joe and two of his
 3 representatives.
 4 Q. Who were the two representatives?
 5 A. Don Monteleone and Andy Hahn.
 6 Q. And what happened when you saw the three of them?
 7 A. They told me that Joe wasn't going to be able to
 8 haul the product that day the way we wanted it
 9 hauled because he needed to chain it down or he
 10 needed to -- and the weight problem. And I
 11 instructed them what was expected, that we would
 12 haul up to the weight of the trailers, and I asked
 13 him if he understood that, and he said he did
 14 understand it but he couldn't do it because it
 15 violated his CDL regulations.
 16 Q. Now, the -- well, go on. After he said he
 17 couldn't do it, what did you do?
 18 A. I asked to be excused for a couple minutes. I
 19 went in and called for John Vensel to come
 20 downstairs. I also called security and asked to
 21 have a security guard present. When John and the
 22 security guard both arrived --
 23 Q. Who is John Vensel?
 24 A. John Vensel is the area manager or section manager
 25 for labor and janitor.

1 Q. What is, again, the design capacity of this CRNO
 2 trailer?
 3 A. 65 tons.
 4 Q. Which is how many pounds?
 5 A. It would be 130,000.
 6 Q. And how many electrical coils at a time are hauled
 7 on this CRNO trailer?
 8 A. Quads, we haul two.
 9 Q. And what's the weight of a quad coil?
 10 A. They go roughly 48,000.
 11 Q. So you're hauling about 96,000 pounds?
 12 A. Around 96,000 pounds.
 13 Q. On a tractor rated for 130,000?
 14 A. On a trailer rated for 130,000 pounds, yes.
 15 Q. Now, was there anything different about this
 16 hauling than the hauling that's been done 16 to 18
 17 times a day for the past years?
 18 A. No, nothing out of the ordinary there.
 19 Q. Does every other Zone 7 driver in the department
 20 do this same hauling assignment?
 21 A. Yes.
 22 Q. Does that include some people who are union
 23 officials?
 24 A. Yes.
 25 Q. Over the years, Dewey Eagal, Don Clark, and Ken

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1 Crispin performed this work?
 2 MR. MURTAGH: Do you mean Dan
 3 Clark?
 4 MR. HAGGERTY: Thanks.
 5 THE WITNESS: Dan Clark.
 6 BY MR. HAGGERTY:
 7 Q. Do they hold any union office?
 8 A. Dan did at one time and so did Kenny. They were
 9 both ERP's at one time.
 10 Q. Dewey Eagal?
 11 A. He was also an ERP.
 12 Q. And they performed the same work that the grievant
 13 refused?
 14 A. Yes.
 15 MR. HAGGERTY: That's all I have.
 16 CROSS-EXAMINATION
 17 BY MR. MURTAGH:
 18 Q. Ed, do you have a CDL?
 19 A. No, sir.
 20 Q. And if you had one, you wouldn't be driving these
 21 trucks anyway because you're a supervisor, is that
 22 right?
 23 A. I would not be permitted in the plant, yes.
 24 Q. Now, if I understand, you had a contact on the
 25 22nd of March, is that right, with Joe?

1 Q. Which was, for that trailer, the 65-ton CRNO
 2 trailer, was 130,000 pounds on the trailer?
 3 A. Yes.
 4 Q. Now, does that take into account the tractor, the
 5 truck part?
 6 A. No, that is just what the trailer is rated for,
 7 sir.
 8 Q. So it can carry 65 tons on that trailer, then you
 9 got the weight of the trailer itself and you got
 10 the weight of the tractor, the power unit, is that
 11 right?
 12 A. Yes, sir.
 13 Q. Do you know what a fully loaded CRNO trailer
 14 weighs with the power unit and the trailer and the
 15 load itself?
 16 A. I can't recall ever having one weighed, Jack, that
 17 was loaded and fueled and the operator and
 18 everything in it, no, I can't tell you.
 19 Q. I would assume it would be above this
 20 130,000 pounds?
 21 A. I don't know that, sir.
 22 Q. I mean, if you fully load this trailer, it was
 23 rated for 130.
 24 A. If you maxed the trailer out at 130, well, then,
 25 everything --

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1 A. Yes, sir.
 2 Q. You had another contact on the 23rd of March?
 3 A. Yes, sir.
 4 Q. On the 22nd, are you saying he refused any order
 5 at that time?
 6 A. He did not refuse to haul the rolls, no, sir, he
 7 did not refuse that.
 8 Q. So your refusal that you're talking about relates
 9 to the 23rd?
 10 A. Yes, sir.
 11 Q. And you're saying he refused to do what?
 12 A. To haul the requirements of the weight of up to
 13 what the trailer is capable of hauling.
 14 Q. He did say, if I understood you correctly, that he
 15 could haul up to the CDL limit, is that right?
 16 A. Yes, that's what he stated.
 17 Q. So he wasn't saying I won't drive the truck, he
 18 was saying I can't drive the truck if it weighs
 19 more than the CDL limits, is that right?
 20 A. He stated that he could haul up to that limit but
 21 he wouldn't go over it.
 22 Q. And what you wanted him to do would go over that
 23 limit?
 24 A. To haul up to the weight of the trailer is what I
 25 expected him to do.

1 Q. Would be more than that?
 2 A. Yeah.
 3 Q. All right. Now, this exhibit that you identified
 4 as Company Exhibit 5, that's your signature on
 5 there?
 6 A. Yes.
 7 Q. And this says it was issued initially as a new
 8 JSHA on February 1st of this year, 2001, right?
 9 A. Yes, sir.
 10 Q. What JSHA, or was there a JSHA, that covered this
 11 job before that?
 12 A. Just a generic coil hauling JSHA.
 13 Q. And on 3-21, according to page 4 of this document,
 14 you revised the notes, and those are the notes
 15 that are at the bottom of page 3, is that right?
 16 A. Yes, sir.
 17 Q. The first one says do not exceed the weight
 18 capacity of the trailers. The CRNO trailer is 60
 19 ton -- and you already told us that should be 65.
 20 A. Right.
 21 Q. And the Hilltop trailer is 45 ton.
 22 A. Yes, sir.
 23 Q. Why did you put those notes on there on
 24 March 21st?
 25 A. After review of this JSHA by my supervisor, he

1 didn't feel that it was spelled out enough within
 2 the JSHA as to what was expected. He asked me to
 3 include those notes at the bottom at that point.
 4 Q. And who was your supervisor?
 5 A. I work for Tom Ayres.
 6 Q. And he is present today?
 7 A. Yes, sir, he is.
 8 Q. Now, your conversation with Joe Myers on the 23rd
 9 of March wasn't the first time that you talked
 10 about this issue with him, was it?
 11 A. No, sir.
 12 Q. But this was the first time during the time that
 13 you were speaking to him, you said three or four
 14 times going back to when you took over in March of
 15 last year, this was the first time when he was
 16 being asked to actually operate a vehicle that was
 17 over what he considered to be the CDL limits,
 18 isn't that right?
 19 A. No, there was another incident.
 20 Q. When was that?
 21 A. I believe that was in December of 2000.
 22 Q. In December of 2000, you had a conversation with
 23 Joe, and I think Dewey Eagal and Greg Loverick
 24 were present, is that right?
 25 A. Yes, sir.

1 instructed or try and get out, as Mr. Gonce has
 2 earlier told us he suggested to Mr. Myers?
 3 A. Yes.
 4 Q. Now, do you remember what prompted the discussion
 5 in December of 2000?
 6 A. A phone call that I had gotten from, I believe it
 7 was, Greg McAnallen about product being hauled on
 8 a night turn.
 9 Q. Did Joe discuss with you whether, in fact, he did
 10 haul that product on that night turn?
 11 A. He did.
 12 Q. And did he discuss with you whether it was snowy
 13 and icy?
 14 A. I don't recall that part of it, but he may have.
 15 Q. Do you recall a discussion with him about the
 16 number of coils that he was supposed to haul that
 17 night?
 18 A. Yes, sir.
 19 Q. Overall, was that ten?
 20 A. Ten coils total, yes.
 21 Q. And how many coils did he haul?
 22 A. I think it was, if I'm not mistaken, it was nine
 23 and they were missing one coil. I think that's
 24 where we were at with that one.
 25 Q. And did he haul them in sets of three?

1 Q. And did Joe question you at that time about
 2 whether or not there might be some concern on his
 3 part about whether he could be exposed to civil
 4 responsibility if there was an accident and even a
 5 criminal prosecution?
 6 A. Yes.
 7 Q. Do you remember what he talked to you about?
 8 A. Again, the weight, not being able to chain down, a
 9 fear for something happening where someone would
 10 be injured.
 11 Q. An accident?
 12 A. An accident.
 13 Q. And did he mention the fact that he was even
 14 concerned that he might go to jail if somebody
 15 were seriously hurt or killed?
 16 A. Yes, I believe he did.
 17 Q. And did he ask you at that time if he could indeed
 18 bump back from his job, take a reduction in zone,
 19 go to a Zone 6 job so he wouldn't have to operate?
 20 A. Yes.
 21 Q. What did you tell him?
 22 A. He wasn't allowed to regress.
 23 Q. He could not regress?
 24 A. He could not regress.
 25 Q. So the only option he had was to drive as

1 A. He did haul three, yes.
 2 Q. Three at a time?
 3 A. Three coils at a time, yes.
 4 Q. So he made three trips?
 5 A. Yes.
 6 Q. And do you remember Dewey Eagal asking you,
 7 "What's wrong with that, Ed?" and you responded,
 8 "It takes more time to haul three at a time than
 9 it does to haul six at a time"?
 10 A. Not only that -- yes, that is true, and that the
 11 problem with that is our customer wanted an entire
 12 box.
 13 Q. A box is six?
 14 A. Yes, sir.
 15 Q. So when Joe hauled these, I think it was the night
 16 turn December 14th, 2000, midnight turn, wasn't it
 17 true that he hauled everything you wanted hauled
 18 but he didn't haul as much at one time as you
 19 wanted hauled at one time?
 20 A. Correct.
 21 Q. Now, as he hauled it, was he within what he
 22 considered to be the load limits of the CDL
 23 license?
 24 A. Well, depending upon the size of those coils, he
 25 could have been way under.

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1 Q.From that time in December -- when you say "way
2 under," you mean under the weight?
3 A.Under the weight limit.
4 Q.From December until March 23rd, when you told him
5 that you wanted him to haul this CRNO trailer with
6 no regard to the CDL limits --
7 MR. HAGGERTY: Jack, let me
8 interrupt, because there's no proof in the record
9 that the CDL license has any load limit
10 requirements attached to it, and from my review of
11 the law, there are no load limits attached to CDL.
12 Load limits are part of the Pennsylvania Motor
13 Vehicle Code, not part of CDL licensing
14 requirements.
15 MR. MURTAGH: We'll stipulate that
16 the CDL does not specify weight limits. It varies
17 from state to state, and the CDL requires that
18 operators who operate in intra or interstate
19 commerce obey the limits of the state where they
20 are licensed.
21 MR. HAGGERTY: No, I don't agree
22 with the latter part of it. I agree with the
23 former.
24 MR. MURTAGH: We'll put the CDL
25 regulations in evidence as part of the union's

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1 case.
2 BY MR. MURTAGH:
3 Q.I'm using shorthand here, and let me make sure
4 that you understand it. Joe is talking about CDL
5 legal in many of his conversations with you, is
6 that correct?
7 A.Yes.
8 Q.You understand that the Pennsylvania Motor Vehicle
9 Code limit is 73,280, because you've testified to
10 that?
11 A.Yes, sir.
12 Q.So when Joe is talking about up to CDL, whether
13 he's relating that to specific CDL regulations or
14 whatever, you understood what he meant, 73,280, is
15 that right?
16 A.Yes, sir.
17 MR. MURTAGH: Is that okay with
18 you?
19 MR. HAGGERTY: Yes.
20 BY MR. MURTAGH:
21 Q.Now, between December when you had this
22 conversation with him that you've just recounted
23 and March 23rd of 2001 when you had this
24 discussion with him that you've already recounted
25 for us, did he drive either the Hilltop or the

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1 CRNO trailers or haul the Hilltop and CRNO
2 trailers -- because you can't drive a trailer --
3 to your knowledge?
4 A.Not that I can recall, sir.
5 Q.Ed, look at Union Exhibit 3. Do you recognize
6 that document?
7 A.Yes.
8 Q.Rich Bofinger you have already identified as a
9 supervisor, is that right?
10 A.Yes, sir, he was.
11 Q.Was he your predecessor?
12 A.Yes, sir, he was.
13 Q.And this is dated 7-12-99?
14 A.Yes, sir, it is.
15 Q.And what was the purpose of this notice being
16 issued by Mr. Bofinger, if you know?
17 A.To the best of my knowledge, this was done for if
18 you were using a specified truck and a combination
19 of a trailer there listed underneath for hauling
20 to Plant 2.
21 Q.Now, the Tractor L149, was that the CRNO tractor?
22 A.I'm not sure what tractor was under there at that
23 time.
24 Q.Do you know the number of the trailer for the CRNO
25 trailer?

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1 A.Today? The CRNO trailer today?
2 Q.Well, no, at the time --
3 A.At this time, sir, the new trailers were not in.
4 Q.That's what I'm trying to point out.
5 A.Right.
6 Q.The CRNO trailer that is listed on Exhibit 3 has
7 been replaced, is that right?
8 A.Yes, sir, it has been.
9 Q.We got a new trailer?
10 A.Yes, sir, we did.
11 Q.Actually, we got a couple of new trailers?
12 A.Yes, sir, we did.
13 Q.And the Hilltop trailer, has that been replaced,
14 too?
15 A.Yes, sir, it has.
16 Q.So Mr. Bofinger's exhibit listing these trailer
17 newspapers, the trailers have since been replaced?
18 A.Yes, sir.
19 Q.And we got what were called Rogers trailers, is
20 that right?
21 A.Yes, sir.
22 Q.That's the manufacturer?
23 A.Yes, sir, it is.
24 Q.We had these built to order?
25 A.Yes, sir, we did.

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1 Q. Do you remember when we took delivery of the
2 Rogers trailers?
3 A. It was early spring of 2000, I believe.
4 Q. Were you the supervisor then?
5 A. Yes.
6 Q. So it would be after March 15th of 2000?
7 A. Yes, sir.
8 Q. And they are still in use today?
9 A. Yes, sir, they are.
10 Q. And those are the trailers that you were referring
11 to on the 23rd of March -- or the CRNO trailer
12 that you were referring to on the 23rd of
13 March 2001?
14 A. Yes, sir.
15 Q. And are the new Rogers trailers -- when I say
16 "new," they came in sometime after March of
17 2000 -- are they registered with the Commonwealth
18 of Pennsylvania?
19 A. Yes, sir, they are.
20 Q. Do they have license plates on them?
21 A. Yes, sir, they do.
22 Q. Do they have inspection stickers -- or
23 registration stickers, pardon me, on the license
24 plate?
25 A. Yes, sir, they do. Well, the sticker on the plate

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1 itself?
2 Q. Yes.
3 A. No.
4 Q. And why is that?
5 A. Because it is a one-time license.
6 Q. That's why it says on the license "permanent
7 trailer," is that right?
8 A. Right.
9 Q. You register it once, is that right?
10 A. Yes, sir.
11 Q. And who was responsible for the registration?
12 A. Our fleet manager does all of that.
13 Q. Who is that?
14 A. J.C. Martin.
15 Q. And both of these new Rogers trailers were
16 registered, is that right?
17 A. Yes, sir, they were.
18 Q. Do you know at what weight they were registered
19 with the Commonwealth?
20 A. I don't know that right off the top of my head,
21 no.
22 Q. Is there any document that you could check?
23 A. Well, there would be the owner's card would have
24 that.
25 Q. The owner's card for the trailer?

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1 A. Yes.
2 Q. Kept in the trailer?
3 A. Yes, sir, it is.
4 Q. I guess you would keep it in the trailer per se,
5 wouldn't you?
6 A. Yes, sir. A lot of those are kept in the glass
7 enclosure on the trailer.
8 Q. Inside the trailer?
9 A. On the trailer.
10 Q. Would you have any reason to disagree with me that
11 both of them are licensed at 73,280 pounds, Ed?
12 A. Well, it's the legal limit you could haul in most
13 cases, so I couldn't argue that.
14 Q. But you could check?
15 A. Over the road.
16 Q. But you could check?
17 A. Yes.
18 Q. What is Union Exhibit 4?
19 A. That is a daily safety contact.
20 Q. From March 22, 2001, is that right?
21 A. Yes, sir, it was.
22 Q. Now, a daily safety contact, that doesn't imply
23 there's any kind of discipline on these employees,
24 does it?
25 A. No, sir.

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1 Q. You give them a safety hint or note or talk that
2 day?
3 A. Right.
4 Q. And then you keep a record of it so you know who
5 you talked to and what you talked about?
6 A. Right.
7 Q. So what was contact No. 1 about?
8 A. Contact 1 states, "Do not overload trucks. Haul
9 within the legal load limits."
10 Q. And when you say --
11 MR. HAGGERTY: Let me just note,
12 Mr. Myers isn't shown as being contacted on this
13 date, is that correct?
14 MR. MURTAGH: That's what I'm
15 going to get to, Jim.
16 MR. HAGGERTY: Unless there can be
17 some showing that this went to Mr. Myers, I don't
18 think it is relevant, and I'm just objecting
19 because that's how we do it here.
20 BY MR. MURTAGH:
21 Q. And safety contacts aren't special for one
22 particular employee and other employees are exempt
23 from it? I mean, they apply to everybody, don't
24 they?
25 A. Yes, sir.

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- 1 Q. Supervisors, hourly people, salaried people,
2 people who come in as contractors, they are
3 expected to all observe the same safety
4 regulations, aren't they?
5 A. Yes, sir.
6 Q. Now, these are all employees in the truck section?
7 A. Yes, sir, they are.
8 Q. And Mr. Myers -- it is listed in alphabetical
9 order, is that right?
10 A. Yes, sir.
11 Q. And there is no signature next to Mr. Myers' name
12 for this particular safety contact, is that right?
13 A. No, sir, there is not.
14 Q. Does that mean you didn't have a safety contact
15 with him on that day?
16 A. I don't normally make the contacts with the
17 drivers, my spell foreman does that.
18 Q. Who is your spell foreman that week?
19 A. Dave Lawson.
20 Q. When a contact is made, is the person who is
21 contacted expected to put his or her name down and
22 check number?
23 A. They are. They are supposed to, yes.
24 Q. I mean, it has happened that people who have these
25 safety contacts, their name doesn't get on the

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- 1 sheet?
2 A. It could happen.
3 Q. But because Mr. Myers' name isn't listed next to
4 his printed name, we don't know for sure whether
5 he had a contact or not, but the presumption would
6 be he probably didn't have a contact from
7 Mr. Lawson that day?
8 A. Yes, sir.
9 Q. Right?
10 A. I would assume that.
11 Q. How do you differentiate between these people, and
12 there are nine of them, whether they got Contact 1
13 or Contact 2, or did they get both contact?
14 A. Both of them are supposed to be given, sir.
15 Q. One relates to do not overload trucks, haul within
16 legal load limits, and the second one is secure
17 all loads on all vehicles?
18 A. Yes, sir.
19 Q. Now, you've told us -- and I believe I understood
20 your testimony correctly, but I think Mr. Gonce
21 echoed this before a little bit in his
22 testimony -- that there were customer instructions
23 not to chain the electrical coils?
24 A. True.
25 Q. But this says secure all loads on all vehicles,

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- 1 doesn't it?
2 A. That's what the contact states, but that is not
3 something we have ever done with the electrical
4 grade product.
5 Q. I understand. You're saying it has never been
6 done.
7 A. Yes.
8 Q. But this is a company-generated document, right?
9 A. This is one that was put together by my spell
10 foreman or myself.
11 Q. And you are listed as the foreman?
12 A. Right. It is my area, yes, sir.
13 Q. And it does say secure all loads on all vehicles,
14 right?
15 A. That's what it states, yes.
16 Q. And that would apply to all truck drivers?
17 A. It would apply to all truck drivers.
18 Q. And do not overload trucks, haul within legal load
19 limits. Now, what did you mean by legal load
20 limits there?
21 A. In the case of coil trucks, I expected them to
22 haul it to the limit of the trailer.
23 Q. And these coil trailers, they don't go out on the
24 highway?
25 A. No, sir.

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- 1 Q. Do you know, Ed, if you wanted to take them out on
2 the highway, is there a permit process you could
3 go through?
4 A. Don't need to. They are licensed. I can take
5 them out if I needed to.
6 Q. I'm sorry, if you wanted to take them out over
7 73,280 pounds?
8 A. Oh, well, then you would have to have special
9 permission to do that, sir.
10 Q. But they are ready to go on the highway? They are
11 licensed, they are permitted, and it is a
12 permanent license, correct?
13 A. Yes.
14 Q. So if you want to just take that trailer out,
15 assuming the weight is within the restriction, you
16 can do that?
17 A. Yes.
18 Q. But we don't take these trailers out, or we
19 haven't so far?
20 A. We haven't so far.
21 MR. HAGGERTY: Jack, on this
22 exhibit, can we just stipulate that what appears
23 to have been highlighting and then an underlining
24 of the word "all" was not on the original and was
25 added?

1 MR. MURTAGH: I didn't see the
2 original. I only saw the highlighted and the
3 underlined, but I can stipulate with you that it
4 is more than likely and probably a hundred percent
5 true that we put that on there and not you folks.

6 MR. HAGGERTY: Thanks.

7 BY MR. MURTAGH:

8 Q.Ed, we're going to hand out Union Exhibit 5. Just
9 take a look at that while we're doing that, if you
10 would, please.

11 (Brief pause.)

12 Q.Ed, what is Union Exhibit 5, please?

13 A.That's a copy of the schedule, weekly schedule.

14 Q.For the week in question?

15 A.Yes, sir.

16 MR. MURTAGH: Mr. Arbitrator, just
17 if I could indicate, our weeks schedule-wise run
18 from Sunday through Saturday.

19 THE WITNESS: Yes.

20 BY MR. MURTAGH:

21 Q.March 23rd was a Friday?

22 A.Yes, sir.

23 Q.Do you see Joe Myers' check number on here?

24 A.Yes, sir.

25 Q.What's his check number?

1 A.Right.

2 Q.Now, I want to make sure, before I pass off on the
3 22nd, you testified that Joe was given a specific
4 job on the 22nd, and we know from this schedule
5 that it would be the low boy, is that right?

6 A.Yes, sir.

7 Q.And that there was some jockeying back and forth
8 of different trailers, correct?

9 A.Yes.

10 Q.And you said it was around 12:30 or 1:00 o'clock
11 that he actually got out of the garage and picked
12 up a coil rack and had the truck weighed and went
13 to his assignment location to actually move the
14 material he was supposed to move?

15 A.Yes, sir.

16 Q.And then later on you said you put Danny Clark on
17 an extra turn to finish this work?

18 A.On the afternoon turn, yes, sir.

19 Q.I assume Danny would have gotten that because of
20 overtime eligibility?

21 A.Wherever, yeah.

22 Q.You said that you investigated that delay, if you
23 will -- and that's my word, not yours, so you
24 change it if you want to -- you said you
25 investigated that situation and had a conversation

1 A.14795.

2 Q.So if you look at the second circle, which has a
3 Xerox highlight over it for CRNO, that shows he
4 was scheduled on the CRNO job on Friday the 23rd,
5 is that right?

6 A.Yes, sir.

7 Q.And if you look at the circle below that that's
8 also highlighted "low boy," you see 14795 on the
9 day before, Thursday, the 22nd?

10 A.Yes, sir.

11 Q.And where do you see Mr. Myers scheduled prior to
12 Thursday and Friday of that week?

13 A.He had three days in mobile equipment.

14 Q.So when he was on mobile equipment -- and that's
15 the circle up top that doesn't have a highlight
16 over it?

17 A.Right.

18 Q.-- he didn't have to operate trailers there, is
19 that right?

20 A.No, sir, he did not.

21 Q.So the 22nd and the 23rd were the only two days
22 this week when he was involved in pulling a
23 trailer?

24 A.Yes, sir.

25 Q.Loaded or unloaded?

1 with Joe, and Joe didn't deny what happened, is
2 that right?

3 A.Not that day.

4 Q.Okay, that's what I wanted to clear up. You
5 didn't speak to Joe on the 22nd?

6 A.Just in the morning, sir.

7 Q.No, about this delay.

8 A.No, no, not at that time, no, sir.

9 Q>Your conversation with him came later, is that
10 right?

11 A.Yes, sir, it did.

12 Q.And when was that?

13 A.Which would have been the 23rd.

14 Q.And when you had this conversation with him, you
15 already told us that at one point you called in
16 Mr. Vensel?

17 A.Yes.

18 Q.Another supervisor?

19 A.Right.

20 Q.And you called in Sam Oday, a security person?

21 A.Right.

22 Q.But were there any other people with Mr. Myers,
23 any union people?

24 A.Yes, Don Monteleone and Andy Hahn.

25 Q.And they were present with Mr. Myers throughout

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1 your conversations with him?
 2 A. Both were there for the initial. When I came back
 3 out with Mr. Vensel and Mr. Oday, I believe Don
 4 had left. I think it was just Andy that was
 5 there, if I'm not mistaken.
 6 Q. Is Don here today?
 7 A. Yes, sir, he is.
 8 Q. Is Andy here today?
 9 A. No, sir, he is not.
 10 Q. After you had your conversation with Joe on the
 11 23rd, you suspended him subject to discharge, is
 12 that right?
 13 A. I informed him that I wanted him to go home until
 14 we could have an investigatory meeting.
 15 Q. I'm sorry, I didn't mean to short circuit. You
 16 sent him home?
 17 A. Yes.
 18 Q. And then you had an investigatory meeting?
 19 A. Yes.
 20 Q. And you suspended him five days subject to
 21 discharge?
 22 A. Yes.
 23 Q. And that's something that had to be reviewed at
 24 Mr. Myers' request by Mr. Seyler and Mr. Gonce at
 25 different steps?

1 A. Well, it is just standard procedure.
 2 Q. Right. So if you and I got into a discussion over
 3 in the mill and you thought that I should leave
 4 your area, you wouldn't take me by the hand and
 5 lead me out or tell me to go, you would call
 6 security and ask them to escort me?
 7 A. Yes.
 8 Q. So it is not unusual for you to do that in Joe's
 9 case?
 10 A. Right.
 11 Q. Now, how was he when he was working for you for
 12 just a little over a year from March of 2000 to
 13 March of 2001? I mean, did you get along with
 14 him?
 15 A. I guess the same as I did everybody else, yeah.
 16 Q. He wasn't a troublemaker, was he?
 17 A. I wouldn't say a troublemaker, no.
 18 Q. Would you say he was more of a gadfly about this
 19 issue?
 20 A. He was very adamant about this issue, very
 21 adamant.
 22 Q. I think Mr. Haggerty in his opening remarks said
 23 that Joe just wouldn't let it go, is that right?
 24 A. Yes, sir.
 25 Q. But he was concerned about the safety of hauling

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1 A. Yes, sir.
 2 Q. Now, Ed, in your conversations with Joe -- or your
 3 conversation with Joe on the 23rd, was he
 4 respectful to you?
 5 A. Yes, sir.
 6 Q. I mean, he wasn't obstreperous or acting up or
 7 threatening?
 8 A. No, sir.
 9 Q. You didn't call a security guard because Joe was
 10 misbehaving or throwing things or scared you or
 11 anything like that?
 12 A. No, sir.
 13 Q. Why did you call a security guard?
 14 A. Because I was going -- I knew with what Joe had
 15 already told me that he was not going to do as I
 16 had instructed and follow my orders for hauling of
 17 that day, so I knew he was going to have to be
 18 exited.
 19 Q. And the protocol is or what's supposed to happen
 20 is you call the security people to take somebody
 21 out, is that right?
 22 A. Yes, sir.
 23 Q. Even if they are behaving very well and there is
 24 not the slightest concern that they are going to
 25 cause any trouble?

1 over what he considered to be the legal or CDL
 2 limit, is that right?
 3 A. Yes.
 4 Q. And he was concerned about hauling something that
 5 wasn't chained down?
 6 A. Yes.
 7 Q. Now, the company has made reference to, and I
 8 think you did in your testimony actually, about an
 9 accident or an incident earlier in Joe's career,
 10 three years ago?
 11 A. Yes.
 12 Q. And that was an overturned truck, is that right?
 13 A. Yes, sir, it was.
 14 Q. And he was cited for not having something tied
 15 down, is that right?
 16 A. Yes, sir.
 17 Q. It was a pinion gear?
 18 A. Pinion gear, yes.
 19 Q. We're not talking about an electrical steel coil?
 20 A. No, sir, it was a pinion gear from the Hot Mill.
 21 Q. And his truck actually went over on its side?
 22 A. Yes, it did.
 23 Q. And he was given a warning about that, wasn't he?
 24 A. Yes.
 25 Q. And I think that's an exhibit that the company has

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1 already put in. I mean, he wasn't suspended or
 2 anything, he was given a warning?
 3 A. Yes.
 4 Q. Do you know if Joe made some safety suggestions at
 5 that point about how that accident could have been
 6 avoided in his instance and could be avoided for
 7 other people in the future after that accident?
 8 A. I'm not sure what all or who all he may have
 9 talked to in regards to that.
 10 Q. But you weren't his supervisor then?
 11 A. Not at the time of that incident, no, sir, I was
 12 not.
 13 Q. In the conversations you had with Joe after you
 14 took over as his supervisor and he brought up this
 15 issue of hauling over the limit and chaining down,
 16 did he give you any indication that the accident
 17 that he had in June of 1998 when his truck turned
 18 over was playing on his mind and formed part of
 19 his concern for safety?
 20 A. I won't say that he put it that way. He was upset
 21 that he had received the warning, and he told me
 22 he had talked with Mr. Ayres about that and that
 23 he didn't think it was right that he had received
 24 a form of discipline for that.
 25 Q. Which was a warning?

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1 A. Yes, sir.
 2 Q. He didn't grieve that, did he?
 3 A. No, sir.
 4 Q. We're going to hand out Union Exhibit No. 6.
 5 Would you take a look at that.
 6 MR. MURTAGH: I believe these,
 7 Mr. Haggerty, were documents identified by the
 8 company as 7(ee) in the grievance record.
 9 MR. HAGGERTY: That's correct.
 10 BY MR. MURTAGH:
 11 Q. Have you seen those pictures before?
 12 A. Yes, sir.
 13 Q. That's Joe's truck on its side, is that right?
 14 A. Yes, sir.
 15 Q. And there was a pinion gear that caused that truck
 16 to slide over on its right-hand side?
 17 A. Yes, sir.
 18 Q. As you're sitting in the cab?
 19 A. Right.
 20 Q. And Joe wasn't hurt?
 21 A. No, sir. Shaken up, I believe, but not hurt.
 22 Q. I would be, too.
 23 A. Yeah.
 24 MR. HAGGERTY: Jack, this relates
 25 to the 1998 incident, correct?

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1 MR. MURTAGH: June of 1998, and I
 2 think that relates to, what is it, Company 3 that
 3 you handed out before?
 4 MR. HAGGERTY: Yes.
 5 BY MR. MURTAGH:
 6 Q. This wasn't a weight accident or incident, this
 7 was a securing incident?
 8 A. Yes, sir.
 9 Q. I'm going to hand you what we're marking as
 10 Union Exhibit 7 and ask you to look at that.
 11 MR. HAGGERTY: With regard to this
 12 exhibit, Mr. Arbitrator, I would first note that
 13 on the cover it shows a date of July 2001, which
 14 is just last month, and would be four months after
 15 the incident involving this case.
 16 MR. MURTAGH: We agree it says
 17 July 2001 on it. However, if we go into it, we're
 18 going to see that the documents were issued in
 19 April of 2001, and the reference table will
 20 indicate that they have been prepared prior to the
 21 time of the discharge here on March 23, 2001. We
 22 recognize that it says July, but we're going to
 23 ask the witness, since his name appears on it, to
 24 explain the chronology, which we think we
 25 understand, indicating that these documents that

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1 we're concerned with herein were issued prior to
 2 the discharge of the grievant, if we may explore
 3 that.
 4 ARBITRATOR DEAN: That sounds
 5 acceptable.
 6 BY MR. MURTAGH:
 7 Q. Ed, do you recognize the document?
 8 A. Yeah. This is a Monthly Safety Packet.
 9 Q. And your name is on the front, is that right?
 10 A. Yeah.
 11 Q. And it is dated July 2001 on the first page,
 12 right?
 13 A. Yes, sir.
 14 Q. It talks about -- if we flip to the second page,
 15 it gives a table of contents?
 16 A. Yes, sir.
 17 Q. And this has a lot of safety information that you
 18 were, through your foreman and supervisors
 19 underneath you, going to get out to the men and
 20 the women who worked in your department, is that
 21 right?
 22 A. Yes, sir.
 23 Q. And a lot of information is contained in here, and
 24 if we go to the back, even magazine articles and
 25 things like that, isn't that right?

1 A. Yes, sir.
 2 Q. And I'm not concerned with that right now. I want
 3 to focus your attention on something earlier.
 4 Would you look at, it says qualifications -- this
 5 is the third physical page, right after the table
 6 of contents. I'm counting the cover there. It is
 7 marked at the bottom right-hand corner 2 of 10.
 8 Do you see that?
 9 A. Yes.
 10 Q. Qualifications for operators of mobile equipment,
 11 is that right?
 12 A. Uh-huh.
 13 Q. And then it says Procedure No. SHSP-0035-28. What
 14 is SHSP?
 15 A. Safety and Health Standard Procedures.
 16 Q. And it says effective 4-10-01?
 17 A. That was probably the revision date for changing
 18 it from Armco to AK.
 19 Q. Okay.
 20 A. Or from the previous works manager to the new
 21 works manager, I would guess.
 22 Q. Okay. And it talks about, if you look at it, it
 23 goes through a number of different pages, all
 24 relating to qualifications for operators of mobile
 25 equipment, is that right?

1 A. Uh-huh, yes, sir, it does.
 2 Q. And it has different paragraph numbers?
 3 A. Yes.
 4 Q. I want you to go to the page that's marked 4 of
 5 10.
 6 A. Yes, sir.
 7 Q. And I want you to look at paragraph 2.9. Would
 8 you read along with me: "Operators shall operate
 9 their vehicles in strict conformance with all the
 10 provisions of the State Motor Code, both inside
 11 and outside the plant, paying particular attention
 12 to the regulations covering:" and then it talks
 13 about seat belts, stop signs, speeding, reckless
 14 driving, overloading, and condition of vehicle.
 15 MR. HAGGERTY: Jack, can we again
 16 stipulate that the underlying was supplied by the
 17 union?
 18 MR. MURTAGH: Yes.
 19 BY MR. MURTAGH:
 20 Q. Is that what it says?
 21 A. Yes, sir.
 22 Q. So it is both inside and outside the plant, paying
 23 particular attention to, again, Paragraph 2.9.5,
 24 overloading?
 25 A. Yes.

1 Q. Now, if we go to the pages marked 9 of 10 and 10
 2 of 10, we'll see the revision register.
 3 A. Yes.
 4 Q. And if we look through there, we can see and we
 5 can determine when 2.9 and 2.5 were last revised,
 6 is that right?
 7 A. Yes.
 8 Q. I since I couldn't find 2.9 and 2.95 on the
 9 revision registered, that would mean to me that
 10 they were in existence prior to the revision date
 11 of 4-10-01, is that right?
 12 A. I would say prior to -- or back when the document
 13 was originally written.
 14 Q. When it was an Armco document?
 15 A. Yes, sir.
 16 Q. Which would have been prior to March of 2001?
 17 A. Right.
 18 Q. Ed, at any time did you receive any
 19 instructions -- forgive my phraseology here -- to
 20 catch people in safety violations?
 21 A. I was told to -- that we all had to be more
 22 observant and look for those. I wasn't told to
 23 catch people.
 24 Q. That's why I said excuse my phraseology. Were you
 25 given any quota? Were you told you had to find an

1 unsafe practice every week or month or day?
 2 A. No, sir, I was not told that.
 3 Q. Or shift?
 4 A. No, sir, I was not told that.
 5 Q. Do you know if other supervisors were?
 6 A. Possibly.
 7 Q. How about over in the Hot Mill?
 8 A. I don't know. I'm in the maintenance building. I
 9 don't know what all they -- other areas are doing.
 10 Q. Well, what possibly were you indicating by your
 11 answer? Did you know of other supervisors who
 12 were told to do that?
 13 A. I've seen documents where they were told.
 14 Q. To do what?
 15 A. To -- I can't quote it verbatim, but to be looking
 16 for unsafe conditions and unsafe behaviors and
 17 that they are to write them up.
 18 Q. But you weren't told that?
 19 A. No, sir.
 20 Q. And what you've accused Mr. Myers of here is not
 21 an unsafe action, it is an insubordinate action,
 22 is that right?
 23 A. Yes, sir.
 24 Q. Other than this dispute with Mr. Myers that you
 25 had over whether he could or should haul these

1 trailers loaded at or above the limit that we've
 2 talked about, did you find him to be an acceptable
 3 employee?
 4 A. He did his job.
 5 Q. Did you have any complaints about his job?
 6 A. No, not really.
 7 Q. And, Ed, where did you get your information that
 8 the CDL - I'm sorry, the state motor vehicle load
 9 limit of 73,280 pounds didn't apply in the plant?
 10 A. I had asked that question of safety for their
 11 input as to whether we were classified, because
 12 Joe had brought it up to me, as to whether we were
 13 classified as a public thoroughfare or not and did
 14 we have to abide by those weight restrictions, and
 15 they told me no, that we are private property.
 16 Q. Who did you talk to in safety, if you know?
 17 A. I talked to Bill.
 18 Q. Bill Smith?
 19 A. Yes.
 20 Q. Did you contact OSHA at all?
 21 A. No, sir, I did not.
 22 Q. Did you contact the Pennsylvania State Police?
 23 A. Personally, no, sir.
 24 Q. Did you contact the Pennsylvania Attorney
 25 General's Office?

1 1?
 2 A. He called.
 3 Q. That was Mr. Moskal?
 4 A. I believe it was, yes.
 5 Q. Did you talk to him?
 6 A. Somewhat, limited conversation.
 7 Q. Do you remember him asking you whether -- or what
 8 you would do if you were in Joe Myers' situation?
 9 A. I don't recall that, no, sir.
 10 Q. Do you remember if Joe himself asked you what you
 11 would do if you were in his situation?
 12 A. He may have. I don't recall.
 13 Q. Do you recall, on the day of March 23rd, you
 14 commenting to the -- do you need to stand up for a
 15 minute, Ed?
 16 A. That's all right, go ahead.
 17 Q. Do you recall commenting to the representatives or
 18 asking the representatives who were there with
 19 Joe, "Do you understand what I'm telling him?" or
 20 words to that effect?
 21 A. Yes, sir, I do.
 22 Q. Do you remember Joe then saying to the reps, "Do
 23 you agree with what he's telling me?" and you
 24 saying, "That's not what I'm asking"? Do you
 25 remember that exchange?

1 A. No, sir, I did not.
 2 Q. Or the Division of Motor Carrier Enforcement?
 3 A. No, sir.
 4 Q. Did you contact the United States Department of
 5 Transportation?
 6 A. No, sir.
 7 Q. Did you contact any attorney on your own?
 8 A. On my own, no, sir, I did not.
 9 Q. So you were relying on information provided to you
 10 by the company?
 11 A. Yes, sir.
 12 Q. And the safety department particularly, Bill
 13 Smith?
 14 A. Safety department and IR, industrial relations.
 15 Q. Who did you talk to in IR?
 16 A. I did talk with Mike Seyler and I believe Bob
 17 Newcombe.
 18 MR. MURTAGH: Mr. Arbitrator,
 19 could I have just a moment, please?
 20 ARBITRATOR DEAN: Certainly.
 21 (Brief pause.)
 22 BY MR. MURTAGH:
 23 Q. Ed, did you have a conversation with the attorney
 24 for Mr. Myers who had written the letter that's
 25 been introduced, I think it is Union Exhibit No.

1 A. Yes.
 2 Q. And so the reps didn't get to answer, is that
 3 right?
 4 A. The rep at that time, I believe, was Andy Hahn. I
 5 don't believe there was another rep there.
 6 Q. Andy said he understood what you were saying to
 7 Joe, right?
 8 A. Uh-huh.
 9 Q. Say yes or no.
 10 A. Yes.
 11 Q. But he didn't say he agreed with what you were
 12 telling Joe, is that right?
 13 A. No, he did not.
 14 Q. Thank you, sir.
 15 REDIRECT EXAMINATION
 16 BY MR. HAGGERTY:
 17 Q. Ed, I'm showing you what will be marked as
 18 Company 6. Can you identify that document for us?
 19 A. Yes. That is a JSHA for the intraplant hauling of
 20 electrical steels.
 21 Q. Now, looking at the fourth page, what iteration of
 22 this document is it?
 23 A. That is the revision register.
 24 Q. And what's the last revision date on there?
 25 A. 2-14-01.

1 Q. Looking at Company 5, what's the last revision
 2 date on Company 5?
 3 A. 3-21-01.
 4 Q. Now, on February 14th, 2001, what was the revision
 5 that was made?
 6 A. Revision to Item 1C.
 7 Q. Item 1C is on the first page?
 8 A. Right.
 9 Q. What I want to do is call your attention to the
 10 note on page 3. Are there any notes on this
 11 version of the JSHA?
 12 A. Just the one.
 13 Q. And what does that read?
 14 A. It says, "Do not exceed weight capacity of
 15 trailers. CRNO trailer is 60 ton and Hilltop
 16 trailer is 45 ton."
 17 Q. Would that note have existed when this document
 18 was first published on 2-1-01?
 19 A. Yes.
 20 Q. Just a couple of clean-up items. In your
 21 testimony, you mentioned the grievant not being
 22 allowed to regress from the Zone 7 job.
 23 A. Yes.
 24 Q. From your experience in the plant, is regression
 25 ever allowed?

1 A. No. The only way to regress is through another
 2 bid, to move somewhere else.
 3 Q. And does the union challenge that position?
 4 A. Never to me. Never have I had it challenged.
 5 Q. There was an exhibit offered by the union marked
 6 as Union 3, this document that has Rich Bofinger's
 7 name on it.
 8 A. Yes, sir.
 9 Q. Is Bofinger still working for the company?
 10 A. No, sir, he has retired.
 11 Q. Was the document, Union Exhibit 3, was this
 12 document posted at the time of the incident
 13 involved in this grievance?
 14 A. I believe some of the trucks still had those in
 15 it.
 16 Q. Now, you said that this notice applied to moves to
 17 Plant 2.
 18 A. Yes, sir.
 19 Q. What's the difference between moves to Plant 2 and
 20 moves within Plant 1?
 21 A. Well, within Plant 1, you're not leaving the
 22 confinement of the plant. Going to Plant 2, you
 23 have to go out onto Hansen Avenue, Armco Drive,
 24 and Bantam Avenue to get there.
 25 Q. And finally, Ed, the pictures that are contained

1 in Union Exhibit 6, did the move involved in
 2 Union Exhibit 6 involve the movement of the
 3 electrical coils?
 4 A. No, sir, that was a pinion gear that was coming
 5 out of the machine shop going to the Hot Mill.
 6 Q. Is the trailer that's shown in Union 6, is this
 7 one of these V-shaped trough trailers that are
 8 used for coils?
 9 A. No, sir, that's a stake truck.
 10 Q. Finally, Union Exhibit 7, the Monthly Safety
 11 Packet, who prepared that packet of material?
 12 A. That's put out monthly by the safety department.
 13 Q. Did you prepare this packet of material?
 14 A. No, sir, I did not. My name is on it because it
 15 is mailed to me.
 16 Q. Now, Mr. Tasse, from your dealings with
 17 Mr. Myers, was there any possibility that he did
 18 not understand that the company's requirement for
 19 loads hauled within the plant was to go by the
 20 load capacity of the trailer?
 21 A. He was well aware of that.
 22 Q. From your interactions with Mr. Myers, in your
 23 opinion, is there any possibility that he did not
 24 understand that the requirement for the movement
 25 of electrical coils was to not chain those coils

1 down?
 2 A. He was aware of that also.
 3 MR. HAGGERTY: That's all I have.
 4 RE-CROSS-EXAMINATION
 5 BY MR. MURTAGH:
 6 Q. Ed, I'm sorry, that prompts a few more questions.
 7 Do you need to stand up?
 8 A. No, go right ahead.
 9 Q. We're going to hand out Union Exhibit 8 and 9,
 10 because Jim just asked you about the pictures for
 11 the stake truck that was involved in the accident
 12 in June of 1998. Would you look at Union Exhibits
 13 8 and 9, they are diagrams of trailers, and tell
 14 us if those are the V-trough trailers you're
 15 talking about that are involved here in this
 16 matter today?
 17 A. No. 8 is.
 18 Q. No. 8 is which one?
 19 A. No. 8 is the CRNO trailer today.
 20 Q. Okay.
 21 A. No. 9 is the trailer that No. 8 replaced.
 22 Q. Right. So when you were talking about
 23 Mr. Bofinger's notice that Mr. Haggerty asked you
 24 about, No. 9 would be the old one?
 25 A. Yes, sir.

1 Q. And No. 8 would be the new one that was involved
 2 in Joe's situation?
 3 A. Yes, sir.
 4 Q. You talked a little bit about CDL's, all your
 5 truck drivers at Class 7 or above, they are CDL
 6 qualified, licensed?
 7 A. All the drivers are CDL.
 8 Q. Whether they go in or out of the plant, aren't
 9 they? I mean, you don't make a distinction for
 10 somebody who just stays within the plant, do you?
 11 A. No, sir.
 12 Q. So if Joe lost his driver's license, you wouldn't
 13 let him drive a truck anymore?
 14 A. No, sir.
 15 Q. Is that right?
 16 A. No, sir.
 17 Q. That's right or --
 18 A. That's correct.
 19 Q. Even the person who moves the trucks when they
 20 have to be washed and cleaned and serviced, that
 21 person is CDL qualified as well?
 22 A. Yes.
 23 Q. Even though you're not going out on Hansen or
 24 Bantam or any other street?
 25 A. Yes, sir.

1 Vehicle Code and what I'll loosely call commercial
 2 driver's license requirements.
 3 ARBITRATOR DEAN: Okay.
 4 MR. HAGGERTY: And with that, the
 5 company rests its case in chief.
 6 ARBITRATOR DEAN: Does the union
 7 need a few minutes before it commences? Whatever
 8 your desires are in the matter.
 9 MR. MURTAGH: I think we can
 10 proceed if you would like to proceed now, sir.
 11 ARBITRATOR DEAN: Sure.
 12 MR. MURTAGH: If I could just see
 13 the company's exhibits here that they are just
 14 passing out.
 15 ARBITRATOR DEAN: Certainly. Let
 16 us know when you're ready to go.
 17 MR. MURTAGH: Can I just ask a
 18 question of the company? My Exhibit 8 seems to
 19 have some highlighting on there. Were they added
 20 by the company?
 21 MR. HAGGERTY: They were added by
 22 the company. Actually, they were added by me.
 23 Jack, we also have the added page to
 24 the grievance record where the additional exhibits
 25 were listed.

1 Q. Thank you, Ed.
 2 MR. HAGGERTY: No redirect.
 3 ARBITRATOR DEAN: Thank you.
 4 (Witness excused.)
 5 MR. HAGGERTY: Can we take a
 6 break?
 7 ARBITRATOR DEAN: Let's go off the
 8 record for a moment.
 9 (Discussion was held off the
 10 record.)
 11 ARBITRATOR DEAN: Who will be the
 12 next witness for the company?
 13 MR. HAGGERTY: For the company, --
 14 we'll provide you the copies of Company Exhibit 6
 15 that was just testified to by Mr. Tasse.
 16 ARBITRATOR DEAN: All right.
 17 MR. HAGGERTY: And I would also
 18 propose to enter excerpts from the Pennsylvania
 19 Motor Vehicle Code that were listed in the
 20 grievance record by the company and excerpts from
 21 the Code of Federal Regulations pertaining to the
 22 federal motor carrier safety regulations which
 23 were listed by the union as an exhibit. We would
 24 offer those as Company Exhibits 7 and 8 just to
 25 provide some background information on the Motor

1 Mr. Arbitrator, this was part of Joint
 2 Exhibit 4.
 3 MR. MURTAGH: The union reserved
 4 opening. The union would like to open at this
 5 time, sir.
 6 ARBITRATOR DEAN: Sure.
 7 MR. MURTAGH: Mr. Arbitrator, this
 8 is not a complicated case. This is, however, an
 9 extremely heartfelt and important case to the
 10 grievant, Joe Myers. As you have heard through
 11 the company's own witnesses today and the
 12 documents introduced into the record so far, this
 13 issue of weight limits for hauling within the
 14 plant has been one that has been of great concern
 15 to Mr. Myers and to the members of his family,
 16 very, very much so since he has been discharged,
 17 obviously, but prior to that time, especially from
 18 December through March of 2000 and 2001 and yet
 19 before that.
 20 You will hear in a few moments from the
 21 grievant himself, and then thereafter you will
 22 hear, as you graciously allowed by your ruling
 23 this morning, testimony briefly from his wife and
 24 his father, the conversations, discussions, fears
 25 that went through Mr. Myers' mind, as he

1 articulated for his wife and his dad, what he was
2 concerned about.

3 What you will hear from the grievant is
4 essentially this: That in June of 1998, when he
5 had the accident, fortunately without injury, the
6 rollover of the stake truck, the pictures of which
7 the union introduced as an exhibit, the discipline
8 concerning which the company introduced as an
9 exhibit, Joe had a heightened awareness, and I say
10 "heightened awareness" because he always had a
11 safety consciousness, but a heightened awareness
12 of the dangers involved in not securing loads and
13 also concomitantly with that with weight limit
14 issues.

15 Joe did assiduously try to seek and
16 obtain an answer from the company with respect to
17 the weight limits, if any, which were going to be
18 articulated by Armco, and later AK Steel, with
19 respect to the trailers that Mr. Tassej testified
20 about, the Hilltop trailer and the CRNO trailer,
21 both of which were acquired in the spring of 2000.
22 Joe's concern was prompted by his recognition that
23 as a licensed driver in the Commonwealth of
24 Pennsylvania and a holder of a CDL, he was
25 restricted by federal and state law to operating

1 safety program and now the AK safety program,
2 outside contractors, service personnel. There are
3 numerous opportunities for accident and incident
4 where any one of these people or more could be
5 hurt.

6 Joe was legitimately, sincerely
7 concerned about that. He was concerned that if
8 there was an accident and he had not acted
9 consistently with what he understood the CDL
10 regulations and the State Motor Vehicle Code
11 requirements to be, that he might not have
12 insurance coverage under Armco's blanket policies;
13 that he indeed might be charged with recklessly
14 endangering another person or operating a vehicle
15 in a reckless fashion and perhaps, in the worst
16 case scenario, with vehicular homicide if one of
17 these coils which was not secured came off a truck
18 and crushed someone or if an overweight truck lost
19 its brakes and could not stop before coming into
20 contact with a person or another vehicle
21 containing a person.

22 His sincere concern in this regard was
23 articulated to his wife, was articulated to his
24 father, and more importantly, in the context of
25 what the company did and didn't do, it was

1 his vehicles within certain parameters and
2 according to certain requirements. He also knew
3 from his CDL training course that just because
4 your employer tells you to do something, if it is
5 in violation of the law, that does not make it
6 okay and it doesn't give you any type of
7 indemnification or immunity or freedom from
8 prosecution or civil responsibility if you are
9 acting, quote-unquote, just following orders.

10 Joe was very concerned, conscious of
11 the potential for accidents involving overloaded
12 vehicles which could result in injury, which could
13 even result in a tragic situation in death,
14 because the Armco Plant and now the AK Plant is a
15 busy little city. It has miles and miles of
16 roadways. It has numerous buildings that trucks
17 traverse From point A to Point B to Point C and
18 back again on a basically constant basis, 24 hours
19 a day, seven days a week. Intermixed with our
20 plant personnel are outside contractors, service
21 persons. We have trucks. We have cars. We have
22 railroad trains. I think on one occasion we had a
23 helicopter, but we haven't had one of those for
24 about 15 years. All of this activity brings into
25 the mix people who are trained under the Armco

1 articulated to Mr. Ayres, it was articulated to
2 Mr. Smith, it was articulated to Mr. Tassej, it
3 was articulated to Mr. Gonce, it was articulated
4 to Mr. Seyler, it was articulated to Mr. Winter in
5 the HR department, it was articulated to
6 individuals at the corporate level, particularly
7 Mr. Wardrup and a few members of the corporate
8 hierarchy, and indeed the board of directors, as I
9 understand it. He sought advice. He sought
10 assurance. He sought a way out of this situation.

11 As Mr. Tassej indicated, there was a,
12 quote-unquote, disciplinary meeting on Decembå
13 of 2000, and from that point on until the March22
14 and 23 of 2001, fortunately for all concerned,
15 Mr. Myers, by virtue of seniority and assignment,
16 wasn't listed or scheduled to drive any of the
17 vehicles in question. But seeing the schedule,
18 seeing the work that was going to be performed
19 during the week ending the 24th of March 2001,
20 Mr. Myers realized, and everyone who worked with
21 him realized, and his supervisors realized, that
22 this issue might come to a head on Thursday and/or
23 Friday because of the fact that he was assigned to
24 the low boy and assigned to the CRNO trailer on
25 those days.

1 Mr. Myers will testify that the step-up
 2 indicated to him as early as Wednesday, knowing
 3 that he would be the step-up, that would be the
 4 relief supervisor on Friday, that if Mr. Myers had
 5 a problem operating that CRNO trailer, he should
 6 go directly to Mr. Ayres with it. Please don't
 7 involve the step-up, the temporary supervisor in
 8 it. Mr. Myers knew from the schedule that this
 9 was coming. Mr. Myers and his wife sat down, I
 10 think on the evening of March the 20th, and wrote
 11 that letter, which has been introduced as
 12 Union Exhibit No. 2, dated March 21, 2001,
 13 expressing not only Mr. Myers' immediate concerns
 14 but also other concerns about past activities,
 15 which are not particularly relevant here and we
 16 won't dwell on unless the company chooses to go
 17 into them.

18 What he was trying to do on March 20th,
 19 21st, 22nd, and 23rd was to get a recognition and
 20 an understanding that even though the company took
 21 the position there was no limit except what might
 22 be the safe limit imposed by the manufacturer on
 23 the weights that could be placed on these
 24 trailers, that Mr. Myers respectfully disagreed
 25 and had a reason to disagree, because as he

1 understood the Pennsylvania Motor Vehicle Code,
 2 and he's not an attorney, with those trailers
 3 being registered as they were, they were limited
 4 to 73,280 pounds. The company disagrees with
 5 that.

6 The company has just introduced
 7 Company Exhibit No. 7, a definitional section of
 8 75 Pennsylvania Consolidated Statutes Annotated,
 9 Section 102, and Section 4901, general scope and
 10 application of the chapter, and Section 4941,
 11 maximum gross weight of vehicles. I will have
 12 more to say about the Pennsylvania statutes cited
 13 and the ones that are not cited by the company in
 14 my brief, but suffice it to say, the company hangs
 15 its hat and makes its argument, and it does have
 16 the burden of proof here, on the allegation that
 17 the roadways in the plant are not highways open to
 18 the public for purposes of traffic under the
 19 Pennsylvania Motor Vehicle Code and, therefore,
 20 the provisions relating to weight restrictions do
 21 not apply.

22 The union has stipulated that the plant
 23 roadways are not highways within the Commonwealth
 24 of Pennsylvania, nor are they open to travel by
 25 the public. All the entrances are gated. There

1 have been instances of people driving in, but
 2 security goes after them when that happens, and I
 3 think the company takes the position that their
 4 plant is private and nobody can drive through
 5 there except without permission, and we don't
 6 disagree with that. So for purposes of the
 7 Pennsylvania Motor Vehicle Code definition of a
 8 highway, we agree that the streets and the byways
 9 and the pathways and the cartage ways in the plant
 10 are not highways. We're not saying that there is
 11 any roadway in the plant that by definition is a
 12 highway or open to public travel under the
 13 definitional section of 75 Pennsylvania
 14 Consolidated Statutes Annotated, 101 and 102.

15 That does not end the issue, however,
 16 because the company cites to particularly 4901 and
 17 4941, the Pennsylvania statutes that say no
 18 vehicle shall, when operated upon a highway, have
 19 a gross weight exceeding 73,280 pounds, and no
 20 combination driven upon a highway shall have a
 21 gross weight exceeding 80,000 pounds, or the
 22 applicable weight set forth in Subsection (b),
 23 whichever is less, (b) or (c). 4901 says no
 24 vehicle combination or load, et cetera, et cetera,
 25 et cetera shall be operated or moved upon any

1 highway in this Commonwealth unless permitted by
 2 this title.

3 What the company overlooks is Section
 4 4942, which we will have more to say about in our
 5 brief, but Section 4942 clearly indicates that you
 6 do not have to be concerned with operations on a
 7 highway, merely with operations of a registered
 8 vehicle. The company has conceded advertently, or
 9 inadvertently, but admitted it because it was
 10 true, that these two trailers are registered,
 11 these two trailers are permanently registered in
 12 the Commonwealth of Pennsylvania. They're new
 13 trailers, they have license plates, and that they
 14 are registered at 73,280 pounds; therefore, under
 15 Section 4942, it would be unlawful for any
 16 individual to operate these registered trailers
 17 with an excess weight above 73,280 pounds or the
 18 registered weight of the trailers, regardless of
 19 whether or not they were operated upon the
 20 highway.

21 We believe that is a complete defense
 22 to the company's charge of insubordination,
 23 because the company recognizes that it cannot ask
 24 an individual to commit an illegal act. The
 25 company cannot instruct an individual to commit an

1 illegal act. And the company's own documents
 2 state that the drivers are instructed to obey all
 3 legal limits, both with respect to loads and with
 4 respect to securing loads, both the weight of the
 5 loads and the securement of the loads.
 6 The company can't have it both ways.
 7 If the company suggests that there is no limit,
 8 then the company must establish that there is no
 9 limit. The company chooses to rely on Section
 10 4941; however, as I said, they ignore Section
 11 4942. Section 4942 is not restricted to
 12 operations on a highway but merely operations of
 13 registered trailers. These were registered
 14 trailers. These weights are, by admission of
 15 Mr. Tasse's testimony, in excess of the
 16 registered weight when they are operated in the
 17 plant and, therefore, it was illegal for Mr. Myers
 18 to operate them.
 19 Be that as it may, which we think is a
 20 complete defense to the charge of insubordination,
 21 we also believe that because Mr. Myers was
 22 terminated, and as you indicated this morning,
 23 every individual in that situation should have an
 24 opportunity to express to an arbitrator all the
 25 factors which are relevant, I think it is

1 Q. So you have to keep your voice up. The court
 2 reporter has to hear you. The arbitrator has to
 3 hear you. People around the table have to hear
 4 you.
 5 A. Okay.
 6 Q. And we expect your testimony to be truthful.
 7 A. Yes.
 8 Q. Do you understand that?
 9 A. Yes.
 10 Q. Would you state your name for the record, please.
 11 A. Joe Myers.
 12 Q. And your check number?
 13 A. 14795.
 14 Q. Joe, how old are you?
 15 A. Thirty-nine.
 16 Q. Are you married?
 17 A. Yes.
 18 Q. What's your wife's name?
 19 A. Sherry.
 20 Q. Is she present here today?
 21 A. Yes, she is.
 22 Q. Is your dad also present?
 23 A. Yes.
 24 Q. What's his name?
 25 A. Jack.

1 important for you to hear from Mr. Myers as to
 2 what prompted him, what motivated him. And
 3 indeed, I think you'll see an individual who, as
 4 Mr. Tasse's has indicated, was not confrontational,
 5 was not threatening, was not someone who was
 6 trying to make a monkey out of his bosses, but who
 7 had a sincere concern that what he was being asked
 8 to do would violate civil and/or criminal laws of
 9 the Commonwealth and expose him and his family to
 10 jeopardy.
 11 So we would like to present Mr. Myers,
 12 and then we would like to briefly present his wife
 13 and his father to explain his reasoning and his
 14 thinking as expressed to them, sir. If we may
 15 proceed?
 16 ARBITRATOR DEAN: Yes.
 17 (Witness previously sworn.)
 18 JOSEPH MYERS, the grievant herein,
 19 called in behalf of the Union, having been
 20 previously duly sworn, was examined and
 21 testified as follows:
 22 DIRECT EXAMINATION
 23 BY MR. HAGGERTY:
 24 Q. Joe, you remember you were sworn, right?
 25 A. Yes.

1 Q. Do you have any children?
 2 A. Yes.
 3 Q. Who?
 4 A. Andrea and Alexis. Andrea is 15, and Alexis is
 5 12.
 6 Q. So they are both at home with you?
 7 A. Yes.
 8 Q. When did you first come to work at Armco, now AK
 9 Steel?
 10 A. 1984 of April.
 11 Q. And did you work consistently through until the
 12 time of your termination in -- well, technically
 13 April of this year?
 14 A. Yes.
 15 Q. And what were your assignments over those, I guess
 16 that would be, 16 or 17 years?
 17 A. I worked in the labor department. I worked out of
 18 the reserve section whenever I first was hired in,
 19 so you could have been scheduled anywhere. So I
 20 was in two aisle, labor. Then I took a crane bid
 21 in the Hot Mill for approximately ten years, bid
 22 into the Hot Mill production after that for about
 23 another couple of years, and then after that I had
 24 took a bid back in the labor section to attain a
 25 truck position.

1 Q. When did you attain a truck position?
 2 A. I should correct that. I went back to get a
 3 daylight position, and I wound up in trucks
 4 through that.
 5 Q. Okay.
 6 A. Approximately, I guess it was sometime in, I
 7 think, the spring of 2000 – or was it 1999? I'm
 8 not sure right now whether it was 1999 or 2000.
 9 I'm not real sure.
 10 Q. Well, we know you had an accident with your truck
 11 in June of 1998, I believe that was.
 12 A. Yes.
 13 Q. So you must have been in the truck section then,
 14 right?
 15 A. Yes, yes. Sorry. With going all through this, my
 16 dates are getting all confused.
 17 Q. That's all right. Take your time and testify to
 18 the best of your recollection.
 19 A. I believe it was approximately in 1997.
 20 Q. Who was your supervisor?
 21 A. Rich Bofinger.
 22 Q. And then later on Mr. Tassey became your
 23 supervisor?
 24 A. Yes.
 25 Q. What kind of trucks did you operate when you went

1 Q. And what vehicle do you use to take the test?
 2 A. I had to take a test in the passenger bus, stake
 3 truck, and a tractor-trailer.
 4 Q. And did you do that?
 5 A. Yes.
 6 Q. Did you pass?
 7 A. Yes.
 8 Q. And when you passed, were you then able to drive
 9 these vehicles for the company?
 10 A. Yes.
 11 Q. And when you drove, were you restricted to the
 12 plant, meaning the main plant, or did you also go
 13 to and from Plant 2?
 14 A. Yes, to and from Plant 2 as well.
 15 Q. But there were some vehicles, as Mr. Tassey has
 16 testified to, that were restricted to use in the
 17 main plant, is that right?
 18 A. Yes.
 19 Q. And those would be, after they were purchased in
 20 early 2000 of last year, March of last year, this
 21 CRNO trailer and the Hilltop trailer?
 22 A. Yes.
 23 Q. They didn't go out on the street?
 24 A. No.
 25 Q. But as Mr. Tassey has indicated, they have license

1 into the labor trucks section?
 2 A. You started out being trained in crew cabs, which
 3 is a four-door pickup; the stake trucks; and then,
 4 you know, you trained up through into the
 5 tractor-trailers from there.
 6 Q. When you went into the labor truck section, did
 7 you have a CDL, a commercial driver's license?
 8 A. No, I did not.
 9 Q. How did you get one?
 10 A. That was one of the requirements whenever you took
 11 a truck bid, you had to get a CDL license.
 12 Q. How do you do that?
 13 A. You go through an application, just as well as
 14 your normal driver's license. The company trained
 15 you to do that through – Jeff Stoner was the
 16 trainer in our truck section at the time and then
 17 trained numerous people other than myself. They
 18 took you through the plant, you know, driving the
 19 vehicles and training you on the tractor-trailer,
 20 all the vehicles, pickups, tractor-trailers, stake
 21 trucks.
 22 Q. Is there a test?
 23 A. Yes.
 24 Q. Where do you take the test?
 25 A. At the Pennsylvania driver's center.

1 plates?
 2 A. Yes.
 3 Q. I want you to start, if you would, back at the
 4 time you had that accident in June of 1998, and
 5 tell me about your concern for safety and your own
 6 individual responsibilities as you understood them
 7 as a CDL licensed driver.
 8 A. Okay. In 1998, at that time it was still Armco,
 9 and a lot of the safety issues weren't as
 10 stringent as they are today. AK has a zero
 11 tolerance policy. You know, there are just no
 12 grey areas. It is either right or wrong. In
 13 1998, as I stated, it was still Armco at the time
 14 whenever the truck had rolled over. After I
 15 climbed out of the truck, I was immediately taken
 16 down to the plant hospital to go through CDL
 17 regulation testing, Breathalyzer, blood and
 18 alcohol, you know, all the CDL regs.
 19 Then as the process went on, the
 20 investigation meeting and whatnot, you know,
 21 through the whole process I wound up getting a
 22 warning, a written warning, which stated continued
 23 behavior of this nature will lead up to and
 24 including discharge for not securing the load,
 25 which as the company had stated, no, I did not

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1 grieve that, because if I'm wrong, I'll take my
 2 licks. I don't have a problem if I'm wrong. My
 3 only concern was, at that time, was that I had
 4 stated that we had had instances where we're
 5 driving the tractor-trailers with not securing the
 6 loads and we're not allowed to chain them down. I
 7 couldn't understand why there was two standards
 8 there, because they had said I was under CDL
 9 regulations whenever the truck had rolled over.
 10 Q. And that was in the plant?
 11 A. In the plant, and I was not traveling outside the
 12 plant that particular day.
 13 Q. So you mentioned you were sent down for a required
 14 drug and alcohol test after this. I assume you
 15 passed those.
 16 A. Yes.
 17 Q. You didn't have any drugs or alcohol in your
 18 system?
 19 A. No, I did not.
 20 Q. That's routine after an accident for CDL?
 21 A. With a CDL, yes. Any other type of accident, it
 22 is just a urine test. It doesn't go through the
 23 whole situation like that, which led me more to
 24 believe that they were even ensuing that the CDL
 25 was more of a requirement.

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1 At that time, I had asked them -- during the
 2 course of that accident, through the investigation
 3 meetings, I had discovered that there was another
 4 truck driver that had lost a coil off one of the
 5 coil trucks. There was three other gentlemen that
 6 had the same incident happen with the same pinion
 7 gear that I did, and I asked Tom Ayres, which is
 8 Ed Tasse's supervisor, which would have been Rich
 9 Bofinger's at that time, his supervisor, I asked
 10 him, I said well, why don't we take -- I've
 11 already got my letter, I've already got the
 12 discipline, why don't we take a copy of those
 13 letters to make it safer and make an attached copy
 14 to put on that piece of pinion gear so it doesn't
 15 happen again. I said obviously, there is a
 16 deceiving factor with that. The answer was I was
 17 bound by CDL; I did not secure the load. Again,
 18 under Armco, there was situations where, you know,
 19 they weren't like they are today. I mean, AK has
 20 policies, and I don't have a problem with that,
 21 but you're going to do what we tell you to do now.
 22 Before, it wasn't that way under Armco.
 23 So after that incident, and I questioned Ed
 24 about that as well, we'd had conversations like he
 25 had stated about that issue, and he didn't even

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1 totally agree with the situation because of the
 2 dual standard there.
 3 Q. When you say "Ed," you mean Ed Tasse's?
 4 A. Ed Tasse's, yes. As I went on, it just seemed once
 5 AK acquired the plant, the restrictions became
 6 very, very stringent and there was, again, like I
 7 said, there was zero tolerance, and in July of
 8 2000, I was written up for not coding and
 9 derailing and received a three-day suspension.
 10 Q. When was that, Joe?
 11 A. July of 2000.
 12 Q. Wasn't that right after the new AK safety
 13 standards, if you will, or policy went into
 14 effect?
 15 A. Yes.
 16 Q. Was that about the time Mr. Seyler was talking
 17 about this morning when he said he had a meeting
 18 that you attended?
 19 A. Yes.
 20 Q. And wasn't it told to everybody at those meetings
 21 here is the new plan, this is what we're going to
 22 do, and by the way, we're going to do zero
 23 tolerance from this point on?
 24 A. Exactly.
 25 Q. Is that what you were referring to about no grey

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1 areas?
 2 A. Right.
 3 Q. Black or white?
 4 A. Right.
 5 Q. I'm sorry, pick up again.
 6 A. And again, as they stated, I didn't file a
 7 grievance on that, because I told them, if I'm
 8 wrong, I don't have a problem with that. At that
 9 time, though, I was not the only one that did not
 10 use the code and derail. I was not the only one
 11 in danger, but I was the only one -- there was
 12 about seven of us. I was the only one that got
 13 time off. So again, my question was, why was I
 14 the only one.
 15 And I talked to Ed Tasse's about that
 16 situation, and he even stated that he had asked
 17 the same question and he was told that's the way
 18 it was going to be, I was the only one that got
 19 time off. So that even further concluded to me
 20 that the CDL situation was a very serious
 21 situation; that if something did happen, AK was
 22 not going to assume the responsibility, it was
 23 going to be totally on the driver.
 24 Q. So what did you do?
 25 A. I contacted OSHA. I contacted DOT. I contacted

1 the state police. I contacted an attorney, my
 2 attorney to which Ed stated earlier all the things
 3 that transpired. He sent a letter. I was told by
 4 OSHA and DOT that it is a very grey area, and if
 5 something does happen, you could be putting
 6 yourself in jeopardy, and they felt that I had a
 7 very legitimate concern. I contacted -- I looked
 8 in the glove compartment of one of the trucks and
 9 found out the name of the insurance company for AK
 10 was Hartford Casualty Insurance, so I called that
 11 company.

12 MR. HAGGERTY: I would just object
 13 to the hearsay nature of all of this testimony,
 14 about the contacts with OSHA and insurance
 15 companies.

16 MR. MURTAGH: He hasn't said what
 17 they said other than it is a grey area, but I
 18 mean, he is entitled to recount what he did to
 19 demonstrate what his inquiries were so that --

20 ARBITRATOR DEAN: He has firsthand
 21 knowledge of that, sure.

22 MR. HAGGERTY: If you are putting
 23 it in just for the truth that he made contacts,
 24 I'm not objecting to that. I am objecting to him
 25 relaying what they said back to him. That is

1 hearsay.

2 MR. MURTAGH: I think you can
 3 legitimately claim it is hearsay. I don't have a
 4 problem with you making an objection. Just
 5 remember the objection for the future so that when
 6 the hearsay statements that Mr. Tassej made on
 7 direct as to what Mr. Bofinger did in 1998 or
 8 somebody else did in 1997, the next time you put a
 9 witness on like that who tries to bring in a whole
 10 panoply of testimony, we'll have to object for the
 11 record, just so you understand that. It is going
 12 to be sauce for the goose and the gander.

13 MR. HAGGERTY: Thank you for that.
 14 Okay.

15 BY MR. MURTAGH:

16 Q. You can tell us what you did. Go ahead.

17 A. I contacted the insurance company, and I was told
 18 that if there was not an indemnification, that
 19 there was a very good chance that the driver would
 20 not be covered under the insurance plan, which
 21 again just led me more to believe that I wasn't
 22 willing to take that chance. My most important
 23 thing, even other than civil, was I didn't want to
 24 go to jail.

25 Q. Why would you go to jail?

1 A. Well, if someone was hit and there was a fatality
 2 in that plant with one of those overloaded trucks,
 3 I chose to get behind that wheel knowingly that it
 4 was grossly overloaded and that I was not securing
 5 the load, and I just, you know, after talking to
 6 the attorneys, and that was even what the letter
 7 from Dennis Moskal to the CEO, Dick Wardrup, and
 8 Bill Gonce stated, that to indemnify the driver
 9 because it was such a grey area of what could
 10 happen. So those are the steps.

11 And I even asked on numerous occasions why
 12 don't we bring DOT, bring OSHA in here, bring
 13 corporate attorneys from AK, union attorneys to
 14 get together and find out exactly what this
 15 property is before a guy winds up in jail and has
 16 to sit there waiting while everybody hashes out in
 17 a court. To me, that guy is going to lose his
 18 family for that many years. He is possibly going
 19 to lose everything he has financially just
 20 fighting the case.

21 Q. That guy might be you, is that what you're saying?

22 A. Exactly, exactly. Through conversations with my
 23 dad and my wife, my wife and I chose that we were
 24 not -- we couldn't take that responsibility, and
 25 the company would not give a letter of

1 indemnification, which in the Step III hearing,
 2 Bill Gonce said the company would be crazy to give
 3 a letter of indemnification, you know, because
 4 what happens if somebody went out and was
 5 negligent or reckless. And I said but you're
 6 asking me to do the same thing, to assume your
 7 liability, and I think it is a one-sided street
 8 right now.

9 Q. Joe, let's back up. You had that conversation
 10 with Mike Seyler in June or July on safety. You
 11 told us about that. He said there were 35 or 40
 12 people there and you raised a concern to him.

13 A. Correct.

14 Q. Ed Tassej has testified about a meeting in
 15 December of 2000.

16 A. Yes.

17 Q. What was the conversation then with respect to
 18 your concerns? What did you tell Ed at that
 19 point?

20 A. I reiterated that I didn't want to go to jail. I
 21 said if they said that -- I wanted to regress, and
 22 he said, "You're not allowed to regress." I said,
 23 "You can disqualify me," because I know
 24 supervisors have disqualified people in the past,
 25 and I said, "I'll go back to pickup and just run

1 pickup and the stake truck," because then I can do
2 that and there wouldn't be a problem. It would
3 alleviate everybody's position, even though I
4 still held that something needed to be done about
5 what the property was termed at, whether it was
6 private property, limited access, whatever the
7 case may be. Ed said that I was required to haul
8 the six coils, and I stated that the company has a
9 safety program. I said, "What is safer, six coils
10 or three coils?" I said, "If you're going up the
11 Hilltop hill and you lose power on your tractor
12 and you would start free-wheeling down the hill
13 and jackknife, what's better, to have three coils
14 running down the hill or six coils?" I said, "If
15 they are secured, there might be a chance that
16 they might stay attached to the trailer and not go
17 anywhere even if the trailer would flip over, or
18 strapped, chained or strapped, whatever."

19 To my knowledge, I believe that they used to
20 strap coils, those electrical coils at one time,
21 but they quit doing that process because they were
22 going through straps because it was cutting them.
23 They just didn't have a -- find a better way to
24 keep the straps from being cut on a constant
25 basis.

1 A. Yes.

2 Q. He said there were supposed to be ten coils but
3 one was lost. You didn't lose a coil, did you?

4 A. No.

5 Q. Would you just explain what he meant by "lost."

6 A. Sometimes, when a coil goes through a unit, it
7 rips apart and now that one big coil becomes two,
8 so that was what constituted a tenth coil. So
9 they either missed a part -- I believe, if I
10 recollect, I actually hauled three coils, three
11 coils, and four coils I think is how it was. So I
12 did haul all the steel that night. Now, they
13 might have lost it on the other end whenever it
14 was taken off, you know, they couldn't find the
15 other half of that single coil, but that's what
16 had happened.

17 Q. He wasn't saying you drove down a hill somewhere
18 and one bounced off and rolled away?

19 A. No, no.

20 Q. Let's go back to March now of 2001, the last week
21 that you worked here at the plant before you were
22 terminated. Mr. Tassej was talking about
23 March 22nd and how you were supposed to be out at
24 6:30 but nothing really happened until 12:30. Did
25 you hear that testimony?

1 Q. Joe, from December when you had that conversation
2 with Mr. Tassej until March, the week ending
3 March 24th, you by luck of the draw, so to speak,
4 weren't assigned to drive any of these heavy
5 trailers, were you?

6 A. No, I was not.

7 Q. I want to focus your attention on that week in
8 March, particularly the 22nd and 23rd of March.
9 You knew from the schedule that you were going to
10 be involved in driving these trailers on those
11 days?

12 A. Yes.

13 Q. Did you still have the same concerns that you
14 articulated to Mr. Seyler back in June of the
15 previous year or July of the previous year and
16 Mr. Tassej in December of 2000, did you have those
17 concerns in March?

18 A. Yes, even more so.

19 Q. You had had your attorney write a letter to the
20 company in the beginning of March. We've had that
21 introduced into evidence. Is that right?

22 A. Yes, I did.

23 Q. What were your concerns -- oh, there is one thing
24 I wanted to clear up. In Mr. Tassej's testimony
25 he was talking about the incident in December.

1 A. Yes.

2 Q. I want you to just briefly recount for the
3 arbitrator what you did that day with respect to
4 trailer movement and garage work.

5 A. Whenever you go out, you do your walk-around and
6 check the trailer out. The first trailer that I
7 had -- the first truck that I had gotten into,
8 there was brake lights that did not work. It
9 needed another chain. It didn't even have the two
10 chains that you need to even chain -- that they
11 even require you to use to chain down the roll
12 that I was going to haul that day. I brought it
13 in the truck garage --

14 Q. You are required to do this checklist before you
15 operate the truck, isn't that correct?

16 A. Correct, which is part of CDL regulations as well.
17 Q. Go ahead.

18 A. So I brought that truck in. The truck garage was
19 working on it. They said it was going to take
20 some time. Ed Tassej walked by at the time. I
21 asked him what he wanted me to do. I said this
22 truck -- you know, I listed to him all the
23 problems with the truck, and he said, "Well, if it
24 doesn't have backup lights or brake lights or tail
25 lights," he said, "you're not going to drive no

1 truck like that in here." If somebody would come
2 down the road and your brake lights don't work and
3 they slam into the back of you, which even
4 constituted more of my belief that they had more
5 in writing pressing the issue of the CDL
6 regulations, that that's what they were going to
7 press for.

8 I went out. He instructed me to go talk to
9 Dave Lawson, which I did. Once I contacted him, I
10 ended up getting another truck. I went through
11 the checklist on that again. I had a problem
12 with, I believe, a turn signal and some marker
13 lights, brought it in the truck garage. They
14 fixed it. I took it up to weigh it to make sure I
15 was going to be within the legal limit, found out
16 it was not going to be, come back, got another
17 truck, went through the same process, took it up,
18 weighed it, and from every indication, I was going
19 to be okay.

20 I took it down to the steel yard to pick up
21 the roll rack that I needed to set on the truck to
22 put the roll on, and through all of that, that's
23 why it took me so long to get down to do the job.
24 Once I did get down to the Cold Mill bearing shop
25 to pick up the rolls, the shop repairmen that were

1 in there that are supposed to load the rolls, they
2 were in a safety meeting. So the craneman and I
3 went ahead and loaded them ourselves. I went over
4 and hooked the cables up and put the rolls on and
5 continued to get the job done.

6 I believe I got approximately four rolls
7 hauled that day, and at about 25 after 2:00, which
8 the shift ends at 2:30, I headed back up to the
9 maintenance building to park the truck to head up
10 to go home. Again, I was never contacted by Ed,
11 Ed Tasse, in any way that there was a problem
12 that day, other than the conversation I had with
13 him earlier in the morning where he instructed me
14 not to drive a truck that was not legal. That day
15 ended and --

16 Q. You came out the next day to work again?

17 A. Correct.

18 Q. You never actually drove the truck the next day,
19 though?

20 A. No, I did not.

21 Q. Because you were escorted out of the plant?

22 A. Exactly.

23 Q. Ed said it was very clear to you, in his opinion,
24 that you were to drive that CRNO trailer on
25 March 23rd without securing the coils and that you

1 were supposed to haul it above what you've
2 described as the CDL limits. Now, Mr. Haggerty
3 has made the point that CDL itself doesn't have
4 any limits, but the Pennsylvania Motor Vehicle
5 Code does, correct?

6 A. Correct, yes.

7 Q. Is Mr. Tasse right, that you understood what he
8 wanted you to do?

9 A. Yes.

10 Q. Did you say no, I'm not going to do that, or how
11 did you respond?

12 A. No. I stated to Mr. Tasse -- he said, "I'm
13 directing you to get in the truck," and I said, "I
14 told you I will haul according to CDL
15 regulations." I was not refusing to do the job,
16 and as it was stated earlier in December, I hauled
17 according to legal load limit that night and got
18 the job done.

19 Q. And that's what you were doing the day before,
20 Thursday, with the other job assignment, isn't
21 that right?

22 A. Yes.

23 Q. You found a trailer that would be within the legal
24 limits as you understood them?

25 A. Right.

1 Q. You waited, and you took it out, and you with the
2 individual over there loaded that truck because
3 the other guys weren't available to do it?

4 A. Yes.

5 Q. Joe, let me ask you a question. You were lucky in
6 the sense that between December and March, you
7 didn't run into these assignments, is that right?

8 A. Yes.

9 Q. That's not completely true, though. Didn't you
10 get an assignment once that you traded with?

11 A. Yes. Mike DeFrancis, I'm not sure, it might have
12 been a month before that, I'm not sure, and he
13 agreed to trade with me, and at the end of the
14 day, I apologized to him, because I told him I was
15 putting you in the same position that I don't want
16 to be in or don't want any of us to be in. I said
17 if something would have happened to you, I said I
18 would never forgive myself if he would have went
19 to jail if something would have happened, and I
20 wouldn't trade after that. That's why I decided
21 that I had to just do what I had to do. The only
22 thing that I knew to do, because I tried to seek
23 every remedy that I knew through attorneys,
24 through the company, through outside agencies, and
25 I still don't know what else I could have done.

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1 Q. Well, the company is going to suggest to you that
 2 on March 23rd, you should have filed a grievance
 3 and then gotten in the truck and driven it.
 4 A. Well, that would have been fine had on the 23rd or
 5 any other time you go out and hit and kill
 6 somebody and then you have to sit in jail for God
 7 knows how long, if that's what takes place
 8 criminally, until they sort out the mess. To me,
 9 that's not worth it. Now I've lost my family for
 10 however many years you're sitting in jail,
 11 possibly going to lose everything you have
 12 financially. It to me doesn't seem like a very
 13 wise decision, and I even explained that to
 14 Mr. Tasse, Mr. Gonce, everybody I talked to. I
 15 said I've got two choices, I either haul according
 16 to what you're telling me to do, and I said
 17 possibly assume civil and criminal liability, or I
 18 haul according to CDL. And I said from what I'm
 19 understanding, you know, you're going to do what
 20 you have to do, and this is what I figured was
 21 probably going to wind up happening, but I didn't
 22 know what else to do. I tried to seek out every
 23 other remedy before that time.
 24 Q. What about bidding out of the department?
 25 A. I like to drive the truck and I would continue to

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1 like to drive the truck, but I cannot haul it
 2 under those manners if I'm going to assume
 3 liability and have the potential to do that
 4 whenever -- you know, if it is not a problem, I
 5 guess I'm still not clear on why the company does
 6 not want to indemnify a driver. I don't
 7 understand.
 8 Q. Do you think there was anything else you could
 9 have done, Joe?
 10 A. Nothing, nothing.
 11 Q. Did you talk to your wife and to your dad about
 12 this?
 13 A. Yes.
 14 Q. Did you receive counsel and ideas from them?
 15 A. Yes. They felt that I really didn't have much of
 16 a choice either. If you hit somebody, the
 17 ramifications could cripple our family and then
 18 I'm going to be out -- I'm going to be possibly
 19 sitting in jail and missing more of my family's
 20 time, you know, the kids and wife. So to me,
 21 there was no choice.
 22 MR. MURTAGH: Cross-examine.
 23 CROSS-EXAMINATION
 24 BY MR. HAGGERTY:
 25 Q. Mr. Myers, you said you bid into trucking sometime

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1 in 1997?
 2 A. Yes.
 3 Q. And the training or the process to get a CDL
 4 license takes about 45 days, is that right?
 5 A. Well, approximately. You are required to -- the
 6 bid states you have to obtain CDL within 45 days.
 7 Q. And you did that?
 8 A. Yes.
 9 Q. Part of CDL would be to learn how to back up a
 10 tractor-trailer?
 11 A. Yes.
 12 Q. Learn how to drive a tractor-trailer?
 13 A. Yes.
 14 Q. Learn how to drive all the other trucks in the
 15 department?
 16 A. Yes.
 17 Q. So were you CDL licensed in 1997?
 18 A. Yes. Like I said, whenever I was bid in, after I
 19 went through the training, yes.
 20 Q. Now, in 1997, 1998 and/or 1999, there were
 21 occasions where you drove a tractor-trailer making
 22 these electrical coil runs, weren't there?
 23 A. Yes.
 24 Q. You did that work for a while?
 25 A. Yes. That was under Armco.

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1 Q. There were also occasions where you -- and I'm
 2 just talking about moves that are completely
 3 within the plant, not outside the plant.
 4 A. Yes.
 5 Q. There were also occasions where you would have
 6 hauled heavy, like, backup rolls or spindles where
 7 the total weight of the vehicle plus the load
 8 would have been in excess of 73,000 pounds?
 9 A. Yes.
 10 Q. To be more precise, 73,280 pounds.
 11 A. Yes.
 12 Q. In fact, part of the time that you were a truck
 13 driver, you were also a union rep, right?
 14 A. For about three months.
 15 Q. Had you been a union rep in the department before
 16 you bid into trucking?
 17 A. No, I was not.
 18 Q. So did you run in an election to be an elected
 19 union rep?
 20 A. Yes.
 21 Q. But you only stayed a union rep for three months?
 22 A. Yes.
 23 Q. Now, as a union rep, you would go through certain
 24 safety training as a union rep, wouldn't you?
 25 A. I would not -- I missed it, and they wouldn't

1 offer it to me again. The company refused to
 2 offer it again.
 3 Q. But you were only a union rep for three months?
 4 A. Correct.
 5 Q. Now, Mr. Tassej testified that from the time he
 6 became the supervisor directly responsible for the
 7 trucking department, from that time, you were
 8 complaining to him about the load limits and about
 9 the transportation of electrical steel without
 10 chaining, is that right?
 11 A. Yes.
 12 Q. And had you complained to his predecessor,
 13 Mr. Bofinger?
 14 A. Well, I don't know if you would call it
 15 complaining, but I was trying to find out, as I
 16 stated before, why did we wait this long before
 17 this happened, why didn't everybody get their
 18 heads together before this, before a situation
 19 like this took place. I guess I'm confused on why
 20 we don't want to get to the bottom of something
 21 before either somebody gets discharged or whatever
 22 the case may be.
 23 Q. But you weren't raising this issue back at least
 24 to the beginning of the year 2000, right?
 25 A. 1998, whenever the truck rolled over on me, is

1 whenever that issue started, yes.
 2 Q. So you started with when the truck rolled over?
 3 A. I brought that up at that time. Again, that was
 4 where it was still under Armco and the tolerance
 5 was not what it is today with AK with the zero
 6 tolerance.
 7 Q. Now, there is an obvious difference between the
 8 trailer that was involved on the truck that rolled
 9 over and the trailer that is used to haul
 10 electrical coils, isn't there?
 11 A. Yes.
 12 Q. And that is that the trailer that's used to haul
 13 electrical coils has this V design on it, this
 14 trough, to hold the coil, right?
 15 A. Yes, but my question would be then --
 16 Q. I'm sorry, my question was, there is a difference
 17 in the design of the two trailers?
 18 A. Yes.
 19 Q. And the trailer that had the spindle that rolled
 20 over did not have a trough on it?
 21 A. No, it did not.
 22 Q. And even though it didn't have a trough, you had
 23 not chained down that spindle, correct?
 24 A. No, I did not.
 25 Q. Now, even though you were raising this issue back

1 prior to -- you're saying back in 1998, you never
 2 filed a grievance and a grievance procedure saying
 3 you want a determination as to whether this is
 4 unsafe, correct?
 5 A. No, because talking to the union at that time, it
 6 was a tough thing of how to grieve or something
 7 had to happen. So where I'm at today is what
 8 transpired.
 9 Q. So you are saying even the union didn't encourage
 10 you to file a grievance on your issue?
 11 A. No. They were not opposed to the grievance, it is
 12 just -- you know, I went through all the process
 13 there. If you don't want to get together on
 14 something, how was I supposed to write up a
 15 grievance?
 16 Q. But you never did write up a grievance saying that
 17 this move is unsafe, correct?
 18 A. No, as far as filing an actual grievance, no, I
 19 did not. But I felt I did more than file a
 20 grievance by what I did.
 21 Q. On March 22nd, your assignment was to haul these
 22 backup rolls, is that correct?
 23 A. Yes.
 24 Q. Now, the first trailer you tried to use when you
 25 inspected it, lights were out and there were other

1 problems with that trailer, correct?
 2 A. That trailer is not able to be inspected, period.
 3 That's why they got new trailers. Those trailers
 4 are cracked so bad, I don't even know why they are
 5 using them now, to tell you the truth.
 6 Q. Well, you felt the trailer needed to be repaired,
 7 right?
 8 A. Correct.
 9 Q. And you put it in for repairs?
 10 A. Correct.
 11 Q. And you told Mr. Tassej you put it in for repairs?
 12 A. Correct.
 13 Q. And Mr. Tassej said that was fine?
 14 A. Yes.
 15 Q. But he also told you to go through is it the
 16 dispatcher, Lawson?
 17 A. Yes.
 18 Q. And get another tractor?
 19 A. Yes, which I did.
 20 Q. Well, you actually got a tractor and then took
 21 that tractor and trailer to a weigh station and
 22 weighed it, correct?
 23 A. Yes.
 24 Q. Because you wanted to get the total weight of that
 25 tractor and trailer and then add on the weight of

1 the backup roll to see if it exceeded
 2 73,280 pounds, right?
 3 A. Yes.
 4 Q. And when you weighed the first tractor and trailer
 5 and did the math, you concluded it would weigh
 6 more than 73,280 pounds?
 7 A. Yes.
 8 Q. So you went and got another trailer, is that
 9 right?
 10 A. Yes.
 11 Q. And you took that tractor and trailer and weighed
 12 it?
 13 A. Yes.
 14 Q. And again did the math?
 15 A. Yes.
 16 Q. And what, concluded it would not exceed the
 17 73,280 pounds?
 18 A. Yeah. I was going to be legal to haul those
 19 rolls.
 20 Q. Now, hauling of these backup rolls is not an
 21 unusual assignment for a truck driver at the
 22 Butler Plant, is it?
 23 A. No, they do that. Yes.
 24 Q. A lot of truck drivers do it?
 25 A. Yes.

1 Q. And you're the only truck driver who would have
 2 gone and weighed the tractor and weighed the
 3 trailer and did the math to see if it exceeded
 4 73,280 pounds?
 5 A. I don't know if I'm the only one who did that or
 6 not.
 7 Q. You don't know of anyone else who did, do you?
 8 A. Not personally, no.
 9 Q. And the backup roll did not exceed the designed
 10 weight capacity of the trailer, of either trailer
 11 you took over to weigh, did it?
 12 A. I'm sorry, repeat that, please.
 13 Q. The trailer that you were first -- the first
 14 trailer you took over to the weigh station, the
 15 design capacity of that trailer, that could haul
 16 more weight than a backup roll weighs, correct?
 17 A. No, because it is not even licensable right now.
 18 They can't even license it because the truck
 19 garage cannot even inspect that trailer anymore.
 20 Q. I'm not talking about the trailer you put in for
 21 repairs, I'm talking about the first trailer you
 22 took over to the weigh station to weigh.
 23 A. That was it, the one that was not inspectable.
 24 Q. Why did you take it over to the weigh station?
 25 A. That's why I -- I took it over -- as far as the

1 73,280, but that was my question whenever I even
 2 brought it back in. If you can't inspect the
 3 trailer, it shouldn't even be in service.
 4 Q. So you're saying you took the trailer over that
 5 you were going to refuse to work -- to use anyway?
 6 A. That was going to be my question once it got ready
 7 to roll, how can I use that trailer whenever they
 8 took it out of service from using to haul the
 9 coils.
 10 Q. So you were going to go through all of this
 11 weighing and then bring it back and say I can't
 12 use it anyway?
 13 A. I was doing my job to do the walk-around, yes.
 14 Q. But I guess you never got that far, because once
 15 you weighed that trailer, you decided that if you
 16 put a roll on that trailer plus the weight of the
 17 tractor, that the total weight would exceed
 18 73,280 pounds?
 19 A. Right.
 20 Q. So you went and got Trailer No. 2?
 21 A. Right.
 22 Q. And Trailer No. 2 is designed to hold more weight
 23 than the weight of a backup roll, correct?
 24 A. Designed to haul the -- repeat that, please.
 25 Q. It is designed to hold more pounds than a backup

1 roll weighs?
 2 A. I'm not sure I'm clear on your question there. As
 3 far as -- are you talking in regulation or --
 4 Q. I'm talking about the design of the trailer
 5 itself. A backup roll weighs about 27,000 pounds,
 6 correct?
 7 A. Yes, sir.
 8 Q. And the trailer that you used to haul backup rolls
 9 that day is designed to carry as much as 50 tons,
 10 isn't it? When you actually started hauling
 11 backup rolls on the 22nd, you were using a trailer
 12 that was designed by the manufacturer of that
 13 trailer to be able to hold more weight than
 14 27,000 pounds, is that correct?
 15 A. And that I cannot tell you, because I was going by
 16 the CDL. That's what I'm bound by, so I don't
 17 know what it is rated for.
 18 Q. Now, I think from your testimony, by all the back
 19 and forth with your weighing the trailers, and the
 20 first one didn't work for you and you weighed a
 21 second one, and once you were ready to go to work,
 22 people were in a safety meeting, you weren't able
 23 to actually start hauling rolls until about 12:30?
 24 MR. MURTAGH: Just object to the
 25 form of the question, "ready to go to work." He

1 had been at work and working for six hours at that
 2 point. You mean commenced his assignment to move
 3 the backup rolls.
 4 MR. HAGGERTY: He didn't start
 5 moving backup rolls until about 12:30.
 6 BY MR. HAGGERTY:
 7 Q. Did you?
 8 A. Yeah, 12:00, 12:30, in that timeframe.
 9 Q. Now, on the 23rd, your assignment was to move
 10 electrical coils on this new CRNO trailer,
 11 correct?
 12 A. Yes.
 13 Q. Now, there has been testimony in the company's
 14 case that that CRNO trailer runs three turns a
 15 day, seven days a week, correct?
 16 A. Yes.
 17 Q. And this is a move, not to be redundant, this same
 18 exact move that you were being asked to do on the
 19 day turn of March 23rd is a move that is done
 20 every day at the Butler Plant by a truck driver in
 21 your seniority?
 22 A. Yes.
 23 Q. And we mentioned the names of three individuals,
 24 Mr. Eagal, Mr. Crispen, and Mr. Clark, who are
 25 all, are or have been, union representatives who

1 do that very same assignment, correct?
 2 A. Yes.
 3 Q. Have done that very same assignment?
 4 A. Yes.
 5 Q. And there are five or more other truck drivers in
 6 the seniority unit who do that same exact
 7 assignment?
 8 A. Yes.
 9 Q. Hauling the electrical coils on the CRNO trailer?
 10 A. Yes.
 11 Q. And they do it without chaining down the coils,
 12 correct?
 13 A. Yes.
 14 Q. And they do it loading the total tractor, trailer,
 15 and coils with loads that exceed 73,280 pounds?
 16 A. Yes.
 17 Q. And the design capacity of this CRNO trailer is
 18 130,000 pounds, isn't it?
 19 A. Yeah -- like I said, I didn't concern myself with
 20 those weights because I was bound by CDL, so if
 21 that's what you say it is, then yes.
 22 Q. Let me go with you up kind of the chain of
 23 command. When you initially started raising this
 24 issue about the weight limits and the chaining of
 25 electrical coils, did you first raise it with

1 Mr. Bofinger?
 2 A. I'm not sure. It was either him or Mr. Ayres, one
 3 or the other. I'm not sure.
 4 Q. Now, Mr. Bofinger would have been your immediate
 5 supervisor?
 6 A. Correct.
 7 Q. And Mr. Ayres is an area manager at the plant?
 8 A. Yeah. That would have been Rich Bofinger's
 9 supervisor.
 10 Q. Now, at that time, did Mr. Ayres report directly
 11 to the plant manager?
 12 A. I'm not sure what the chain of commands are there,
 13 to tell you the truth. I don't know.
 14 Q. But he was a high-level supervisor, manager in
 15 this plant?
 16 A. Yes.
 17 Q. Now, isn't it correct that both Mr. Bofinger and
 18 Mr. Ayres told you that this is the way we've
 19 always hauled electrical coils here in the plant?
 20 A. Yes.
 21 Q. And that the weight limits applicable on public
 22 roads don't apply within the plant?
 23 A. Yes.
 24 Q. And that we can't chain these electrical coils
 25 because it will damage the coil?

1 A. Yes.
 2 Q. And we have a specially designed trailer to haul
 3 the electrical coils in this V trough?
 4 A. Yes.
 5 Q. And that wasn't good enough for you?
 6 A. From the information I received outside, from
 7 attorney's advice and the DOT and OSHA, I didn't
 8 see how -- I also asked them a question; so you're
 9 guaranteeing me if something happens, I'm not
 10 going to go to jail, and they couldn't do that.
 11 Q. But even though Mr. Ayres, who is a pretty big
 12 boss here, told you that's the way we do it,
 13 that's the way you have to do it, that wasn't good
 14 enough for you?
 15 A. No, I'm not saying that wasn't good enough for me.
 16 That's not what I'm saying at all. I'm looking
 17 out for my well being. You know, I can't afford
 18 to go to jail.
 19 Q. After Mr. Bofinger, you also made the same
 20 complaint to Mr. Tasse, correct?
 21 A. Yes.
 22 Q. And Mr. Ayres?
 23 A. Yes.
 24 Q. After going to them, you raised it with Mr. Smith
 25 and Mr. Seyler, correct, at this safety awareness

1 meeting?
 2 A. Yes, yes.
 3 Q. Now, this safety awareness meeting was before your
 4 discipline, correct?
 5 A. Yes, sir.
 6 Q. And at the time you raised this issue with
 7 Mr. Seyler, he was the highest ranking industrial
 8 relations rep at the Butler Plant, wasn't he?
 9 A. That I don't know. I'm not sure.
 10 Q. But he stood up in front of 25 or 30 people and
 11 said the way we haul electrical coils in this
 12 plant is in this V-trough truck without chaining
 13 them down, correct?
 14 A. Yes.
 15 Q. And that the weight limits under the Pennsylvania
 16 Motor Vehicle Code don't apply to hauls that are
 17 solely within the plant, correct?
 18 A. That's what they were saying, yes.
 19 Q. And he stood up in front of a room full of people
 20 and said that?
 21 A. Yes.
 22 Q. And Mr. Smith told you the same thing?
 23 A. Yes. But also the instructor that AK hired to do
 24 those week-long safety meetings had also stated to
 25 me that it was an issue that needed to be

1 addressed. That's why he had told me to talk to
 2 Mr. Seyler and Bill Smith.
 3 Q. And they addressed it, didn't they?
 4 A. But this --
 5 Q. But not to your satisfaction, right?
 6 A. Well, you know, I'm not an attorney, and neither
 7 were any of those fellows, and the legal advice
 8 that I was seeking, I just couldn't -- you know, I
 9 just didn't think it was the right thing to do.
 10 Q. So you didn't get the answer you were looking for
 11 from Smith or Seyler, right?
 12 A. No.
 13 Q. You were looking for them to agree with you, "Joe,
 14 you're right"?
 15 A. No, I was asking that we at that time -- and I
 16 believe even at that time I said why don't we get
 17 union attorneys, company attorneys, OSHA, DOT to
 18 try to determine what is the right thing to do.
 19 Q. As an employee and as a former union officer, you
 20 know that you're not able to resort to self-help
 21 when you have an issue, namely, refusing to do the
 22 job? You know that, right?
 23 A. No. We've been told in the past if you feel it is
 24 unsafe, you don't do the job.
 25 Q. You never filed a grievance saying it was unsafe,

1 did you?
 2 A. I went to superiors. I went through every command
 3 that I knew.
 4 Q. And you knew on March 23rd that the stand you were
 5 going to take that day was going to result in
 6 discipline of you, didn't you?
 7 A. Well, I didn't know what to expect. I was hoping
 8 maybe there would be some resolution.
 9 Q. But you thought it was going to result in
 10 discipline, didn't you?
 11 A. I did not know.
 12 Q. You also took your complaint to Mr. Gonce, right?
 13 A. Yes. I didn't take it to him; he called me in.
 14 Q. And Mr. Gonce works in the main office building
 15 for this plant?
 16 A. Yes.
 17 Q. Did you ever have a meeting with a company
 18 official in that building before?
 19 A. I don't recall if I did or not.
 20 Q. Mr. Gonce is a very high-ranking official at this
 21 plant, isn't he?
 22 A. Yes.
 23 Q. And Mr. Gonce told you very clearly again that you
 24 had to do the work the way it had been done over
 25 the years here at the Butler Plant, right?

1 A. Yes.
 2 Q. Now, Mr. Myers, this Job Safety and Health
 3 Analysis was entered into the record here --
 4 MR. MURTAGH: Which one is it?
 5 MR. HAGGERTY: This is No. 5,
 6 Company 5.
 7 BY MR. HAGGERTY:
 8 Q. This document was reviewed by Spell Foreman
 9 Horstman with you?
 10 A. It was not reviewed. He came to me and said this
 11 is what they're proposing to put on there. He
 12 asked my opinion of it, and I said the only thing
 13 that I see, the thing that was a problem there, is
 14 that they are not indemnifying the driver.
 15 Q. And what you're saying about being put on there,
 16 it would be Notes 2 and 3, is that correct?
 17 A. Yes.
 18 Q. Ed, the union also put into the record here this
 19 Monthly Safety Packet dated July 21?
 20 A. Yes.
 21 Q. Now, obviously, this packet wasn't published prior
 22 to March 22nd and 23rd, correct?
 23 A. Right.
 24 Q. And the safety and health standard procedure that
 25 is included in here, you never, prior to March 22

1 or 23 of 2001, took this procedure to Mr. Ayres or
 2 Mr. Tassej or Mr. Smith, did you?
 3 A.No, because I never had it, no.
 4 Q. You didn't even know it existed?
 5 A. Not unless we had had it in a previous book like
 6 that and I just had forgotten about it. I don't
 7 know if I seen it prior to that or not, to tell
 8 you the truth.
 9 Q. Now, this -- these two incidents occurred on
 10 Thursday, March 22nd, and Friday, March 23rd,
 11 correct?
 12 A. Correct.
 13 Q. Now, on the preceding Wednesday, Wednesday,
 14 March 21, you met with Tom Ayres, correct?
 15 A. Yes.
 16 Q. And at that meeting, isn't it correct that Tom
 17 told you that if you refused to do the coil
 18 hauling, that you would be disciplined up to and
 19 including discharge?
 20 A. To be honest with you, I don't recall. He may
 21 have said that. I don't recall that.
 22 Q. Toward the end of your direct examination, there
 23 was a question about bidding off the job.
 24 A. Yes.
 25 Q. You had, you're saying, this concern about the

1 A. Yes.
 2 Q. Did it bounce off and hit the rail?
 3 A. He was using one of the trailers -- the one I was
 4 going to use was CRNO, I believe, and he was using
 5 the Hilltop.
 6 Q. The Hilltop was the one that Mr. Tassej testified.
 7 There were two different ones we were concerned
 8 with?
 9 A. They both have a V trough. They are both similar.
 10 Q. In fact, this coil wasn't chained down, bounced
 11 out of the trough, and hit the side rail, didn't
 12 it?
 13 A. Yes.
 14 MR. HAGGERTY: Objection.
 15 MR. MURTAGH: Thank you.
 16 ARBITRATOR DEAN: Sustained.
 17 MR. HAGGERTY: Is that all?
 18 MR. MURTAGH: Yes.
 19 MR. HAGGERTY: No recross.
 20 (Witness excused.)
 21 MR. MURTAGH: Sir, could we have a
 22 few minutes, please?
 23 ARBITRATOR DEAN: Sure.
 24 (Short recess taken.)
 25 MR. HAGGERTY: Do you want to

1 coil hauling and load aspects of driving a
 2 tractor-trailer since back into 1998 and 1999,
 3 right?
 4 A. Uh-huh.
 5 Q. But you never did bid out of the truck department,
 6 did you?
 7 A. No, no.
 8 Q. And you didn't bid out of the department because
 9 you wanted to stay on a daylight job, right?
 10 A. Yes.
 11 Q. That's all I have.
 12 A. And I did like driving truck.
 13 MR. HAGGERTY: Okay.
 14 REDIRECT EXAMINATION
 15 BY MR. MURTAGH:
 16 Q. You know Dave Masartis?
 17 A. Yes.
 18 Q. Did he lose a coil?
 19 A. Yes.
 20 Q. When did that happen?
 21 A. After I was discharged, sometime in May of --
 22 MR. HAGGERTY: Objection on
 23 relevance. It happened after this.
 24 BY MR. MURTAGH:
 25 Q. Was he using the same trailer you were using?

1 offer that stipulation?
 2 MR. MURTAGH: Mr. Arbitrator,
 3 Mr. Haggerty and I spoke over the -- I was going
 4 to say brief intermission but it turned out to be
 5 a more extensive intermission than we planned.
 6 The union, as you know, wished to present the
 7 testimony of Sherry Myers, the wife of the
 8 grievant, and Jack Myers, the father of the
 9 grievant. I've suggested to Mr. Haggerty,
 10 although we're prepared to do that, that I'll make
 11 an offer of proof and if it's acceptable to
 12 Mr. Haggerty, then we may be able to shorten the
 13 time for the hearing if you wish, sir.
 14 The offer of proof would be that both
 15 witnesses, if called to testify, and they would be
 16 called to testify in the absence of an acceptance
 17 of this offer of proof, would state under oath
 18 that from as early as December 2000 in the case of
 19 Mr. Jack Myers, the father, that he had a number
 20 of discussions with his son which intensified in
 21 early March and throughout March of 2001 relating
 22 to Joe Myers' concerns about hauling overweight
 23 vehicles and hauling vehicles where the loads were
 24 not chained down, because Joe Myers had expressed
 25 to Jack Myers his concern that an accident might

1 ensue, that someone might be hurt, that he
2 himself, Joe Myers, might be arrested and charged
3 with a crime or at least exposed to civil
4 liability. That Mr. Jack Myers had encouraged his
5 son to speak to different people to get
6 information about this and to communicate his
7 concerns to the company, and that in his opinion,
8 it was a sincere belief on his son's part that
9 this was a matter that had to be addressed and
10 taken care of.

11 Sherry Myers will testify to the same
12 extent, although she will also add that her
13 husband's concern was particularly exacerbated
14 during the last week that he was employed because
15 he knew that he was now going out on that schedule
16 to operate these two trailers on Thursday and
17 Friday of that week, and that she and her husband
18 had a discussion on the evening of March 20th,
19 2001 in which they went over their concerns again
20 and both agreed that there was too much of a risk
21 of civil and criminal responsibility and
22 punishment for Joe if an accident occurred, and
23 that Joe should communicate to his bosses yet
24 again his willingness to drive according to the
25 CDL limits as he understood them, but his concern

1 MR. HAGGERTY: Jack, you had also
2 given me a one-page document earlier. We don't
3 know the accuracy of the information on this piece
4 of paper, it is not a company document, so we
5 cannot stipulate to the factualness of the
6 information.

7 ARBITRATOR DEAN: Is that a union
8 exhibit?

9 MR. HAGGERTY: It is not in the
10 record yet.

11 MR. MURTAGH: It is not yet.
12 After we do this witness, I'll speak to
13 Mr. Haggerty and we'll make a determination on
14 that, if I may.

15 JIM PANEL, a witness herein,
16 called in behalf of the Union, having been
17 previously duly sworn, was examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HAGGERTY:

21 Q. Jim, you were sworn this morning?

22 A. Yes, I was.

23 Q. Keep your voice up. Identify yourself for the
24 record, please.

25 A. My name is Jim Panel.

1 that in the absence of indemnification from the
2 company that he would be in jeopardy if he drove
3 and there was an accident.

4 That would be the proffer on both
5 witnesses.

6 MR. HAGGERTY: In response to
7 that, with the clarification that this reference
8 to overweight vehicles means over the
9 73,280 pounds in the Motor Vehicle Code and with
10 the restatement of our position that we don't
11 think that testimony is really relevant to your
12 decision in this case, we would agree with that,
13 that they would testify that way. So we don't see
14 the need to call them or cross-examine them on
15 those points.

16 ARBITRATOR DEAN: That's fine,
17 gentlemen, if you have arrived at that
18 stipulation. That covers anything the testimony
19 would, I'm sure.

20 MR. MURTAGH: Yes, sir.

21 ARBITRATOR DEAN: Do you have any
22 other witnesses?

23 MR. MURTAGH: Yes, Mr. Panel very
24 briefly, if we may.

25 ARBITRATOR DEAN: Yes.

1 Q. And where are you employed, Jim?

2 A. AK, Melt Shop.

3 Q. How long have you been employed at Armco or AK
4 Steel?

5 A. Armco, AK Steel, approximately 20 years.

6 Q. Do you hold any position with the Butler Armco
7 Independent Union?

8 A. Yes, sir, I do.

9 Q. What's that?

10 A. I'm a representative for the Melt Shop maintenance
11 department.

12 Q. That's not the grievant's department, is that
13 right?

14 A. True.

15 Q. In your capacity as a representative, did you have
16 occasion to attend what's known as a general
17 meeting in which Mr. Mike Seyler, who testified
18 for the company this morning, made statements
19 concerning safety?

20 A. Yes, sir, monthly.

21 Q. Do you recall the meeting in which Mr. Seyler
22 discussed the concept of self-help?

23 A. Yes, sir, I do.

24 Q. Would you please tell the arbitrator what
25 Mr. Seyler said about self-help at that union

1 general meeting.
 2 A. There was a major concern millwide about doing
 3 unsafe jobs, and Mike Seyler quoted – Mike Seyler
 4 stated that if you feel that you're in danger of
 5 being injured or death, you can refuse to do the
 6 job.
 7 Q. And to whom did he state that?
 8 A. The general committee, which is the
 9 representatives of every department and the rules
 10 committee.
 11 Q. How many individuals are involved in these general
 12 meetings from the union?
 13 A. Approximately between 75 and 80.
 14 Q. Jim, I'm going to give you what has been marked as
 15 Union Exhibit No. 10, and ask you to just look at
 16 that document for a minute, if you would, please.
 17 Jim, is this a copy of the cover and two pages
 18 from the operator's manual for the International
 19 tractors that were utilized by the grievant's
 20 department?
 21 A. Yes.
 22 Q. At my request, did you request from the trucks
 23 department the operator's manual so that we could
 24 copy these excerpts?
 25 A. Yes.

1 in the vessel, tap them out of the vessel, pick
 2 them up at cast, cold water casting, yes.
 3 Q. Now, let me just try to work through an example
 4 with you. How much molten metal is in one of
 5 these ladles, typically?
 6 A. Oh, approximately 275 ton, I believe.
 7 Q. And is that about the maximum these ladles hold?
 8 A. Yeah.
 9 Q. And so you've been lifting up with a crane these
 10 ladles with 275 tons of molten metal in them for
 11 years, is that right?
 12 A. Ladle crane, actually, probably the last four
 13 years.
 14 Q. Now, if some day you decided, hey, you know,
 15 275 tons is too much, I think we ought to stop at
 16 two and a quarter so we have more room for error
 17 here, you couldn't refuse to do the work on that
 18 basis, could you?
 19 MR. MURTAGH: Mr. Arbitrator, just
 20 the technical objection once stated and then I'll
 21 leave Mr. Haggerty to his line of questioning with
 22 Mr. Panei. The hypothetical asked to this witness
 23 is irrelevant to the state of mind and conditions
 24 under which the grievant operated, but having said
 25 that.

1 Q. And was that because the safety notice that was
 2 identified as issued in July of 2001, which
 3 Mr. Tassej has testified to, made reference to
 4 refer to your operator's manual with regard to
 5 operation of the trucks?
 6 A. Yes.
 7 Q. Thank you, sir.
 8 MR. MURTAGH: Cross-examine.
 9 CROSS-EXAMINATION
 10 BY MR. HAGGERTY:
 11 Q. Jim, how long have you worked at the Butler Plant?
 12 A. About 20 years.
 13 Q. How long have you been a union rep, or are you a
 14 union rep?
 15 A. Yes, I am right now. On and off between the two
 16 departments, I've been in probably six, seven
 17 years as a union rep.
 18 Q. How long have you worked in the Melt Shop?
 19 A. Oh, since probably about 1992, I believe.
 20 Q. And what unit do you work on in the Melt Shop?
 21 A. I'm a ladle crane operator.
 22 Q. Now, as a ladle crane operator, you pick up ladles
 23 after they've been tapped out of No. 1, 2, or 3
 24 furnace, is that right?
 25 A. I tap them out of 2, 3, and 4 furnace, charge them

1 THE WITNESS: Would you repeat it,
 2 please?
 3 BY MR. HAGGERTY:
 4 Q. You couldn't just decide one day, hey, 275 tons is
 5 too much molten metal in these ladles, I think we
 6 ought to keep them below 225 tons so we have more
 7 room at the top, you couldn't refuse to do the job
 8 on that basis, could you?
 9 A. If I felt the crane was in danger of picking up
 10 275 tons, basically that's one of the questions I
 11 asked Mike Seyler at the general meeting. If I'm
 12 a crane operator and I know that crane has
 13 problems, could I refuse to operate, run that job.
 14 Q. I'm not saying the crane has problems. I'm saying
 15 the only thing that changed is you decided one day
 16 that 275 tons is too much, it ought to be two and
 17 a quarter.
 18 A. If I feel it is because the crane is unsafe, yes.
 19 Q. But if there's nothing – no problem with the
 20 crane – I'll even give you your change. You're
 21 saying it because you now believe there is
 22 something about the crane that is causing it to be
 23 unsafe to make that lift. Something changed about
 24 the crane that you're saying is now unsafe to lift
 25 275. But if everything stays exactly the same,

1 you can't just walk in there one day and say, "I
 2 think this is unsafe. I'm not doing that job?"
 3 A.No, sir.
 4 Q.You are agreeing with me, right?
 5 A.Yes, sir, I am.
 6 Q.This meeting that you're saying that Seyler
 7 attended, when did that occur, are you saying?
 8 A.Sometime this year. It is a monthly meeting.
 9 Sometime after January, I believe. I couldn't
 10 tell you the exact month.
 11 Q.So you don't know if it was before or after March?
 12 A.No, I don't know that.
 13 Q.Do you know where this meeting was?
 14 A.It's held at Meeting Room 100 where we were this
 15 morning.
 16 MR. HAGGERTY: That's all I have.
 17 Thanks.
 18 MR. MURTAGH: Sir, the last break
 19 to see if we want to put on one final witness, if
 20 we may.
 21 ARBITRATOR DEAN: Sure. You have
 22 no more redirect?
 23 MR. MURTAGH: No, sir.
 24 (Witness excused.)
 25 MR. HAGGERTY: To try to wrap this

1 surrebuttal on with respect to that.
 2 MR. HAGGERTY: Okay.
 3 (Witness previously sworn.)
 4 ROBERT RAJCHEL, a witness herein,
 5 called in behalf of the Union, having been
 6 previously duly sworn, was examined and
 7 testified as follows:
 8 DIRECT EXAMINATION
 9 BY MR. MURTAGH:
 10 Q.Bob, would you keep your voice up. State your
 11 name for the record.
 12 A.Robert Rajchel.
 13 Q.Bob, were you sworn this morning?
 14 A.Yes, I was.
 15 Q.I've handed you a document -- it is getting late
 16 in the day -- and would you look at it. It is
 17 Union Exhibit No. 11. Before I ask you questions
 18 about it, I believe copies have been passed out to
 19 the parties. For the record, are you a
 20 representative in the labor department?
 21 A.Yes, I am.
 22 Q.What is your job?
 23 A.I'm the chairman of five representatives in the
 24 labor department.
 25 Q.And what is your assignment working for Armco, now

1 up, let me make an offer of proof, that if Mike
 2 Seyler --
 3 MR. MURTAGH: But I'm still on my
 4 case.
 5 MR. HAGGERTY: But if you don't
 6 accept the offer of proof, we'll get Seyler to
 7 come down. I'm just trying to save time.
 8 MR. MURTAGH: Okay.
 9 MR. HAGGERTY: I think we're at
 10 the loose-end stage. We would make an offer of
 11 proof that if Mike Seyler came down, he would
 12 testify that at this general meeting, he did not
 13 say that an employee could refuse to do the job.
 14 He said that an employee could have supervisory
 15 review of the assignment, and if not satisfied
 16 with the supervisory review, that he would have
 17 the safety department review the assignment. That
 18 is what Mike would testify if he came down. We're
 19 not asking you to -- we're making a proffer just
 20 as you made a proffer about the testimony of
 21 Mrs. Myers.
 22 MR. MURTAGH: I will not stipulate
 23 that the testimony is true. I will stipulate that
 24 if called, that is what he will say according to
 25 his recollection, and reserve the right to put

1 AK Steel?
 2 A.I'm a truck repair leader.
 3 Q.Did you help me prepare for this case?
 4 A.Yes, I did.
 5 Q.Did I request that you get me documents with
 6 respect to the trailers that were involved in this
 7 case?
 8 A.Yes, you did.
 9 Q.For example, did I ask you to help me see a copy
 10 of Union Exhibit No. 10?
 11 A.Yes, you did.
 12 Q.That's the owner's manual for the International
 13 tractors.
 14 A.Yes, you did.
 15 Q.Would you please tell me what Union Exhibit No. 11
 16 is and where you got it.
 17 A.Union Exhibit No. 11 is taken from the trailer
 18 manual, owner's manual. The trailers have an
 19 owner's manual just as we showed you there.
 20 Union Exhibit 11 is a particular page, I'm not
 21 sure what page it is, out of that document.
 22 Q.Now, these are the Rogers trailers?
 23 A.Yes.
 24 Q.Rogers made these to order?
 25 A.Yes.

1 Q. This piece of paper, wherever it came from
 2 initially, you found in the manual for the
 3 trailers?
 4 A. Yes.
 5 Q. And where was that manual contained?
 6 A. In the truck garage.
 7 Q. And whose office or whose location is that?
 8 A. The truck garage is not an office, it is just a
 9 garage area, but they keep a file of all the
 10 tractor manuals, all the trailer manuals, all the
 11 pertinent information as far as inspections and
 12 things of this nature. They have a file cabinet
 13 there.
 14 Q. This is a company record?
 15 A. Yes.
 16 Q. Or a copy of a company record?
 17 A. Yes.
 18 MR. MURTAGH: Cross-examine,
 19 Mr. Haggerty.
 20 MR. HAGGERTY: Jack, this is being
 21 offered as a rebuttal exhibit to Mr. Tasse's
 22 testimony, I assume?
 23 MR. MURTAGH: Not so much rebuttal
 24 to Mr. Tasse's testimony. He was unsure with
 25 respect to the registered weights of the trailers.

1 I believe that's his testimony. That was, with
 2 all due respect, so far ago in terms of hours, I'm
 3 not completely certain, but this was to satisfy a
 4 specific number with respect to the registration.
 5 It says licensed at 73,280, might be licensed at
 6 80,000.
 7 CROSS-EXAMINATION
 8 BY MR. HAGGERTY:
 9 Q. Mr. Rajchel, you personally do not know the
 10 accuracy of any number on this piece of paper, do
 11 you?
 12 A. No.
 13 Q. You heard the testimony earlier today that many
 14 different truck drivers in the trucking department
 15 have made this move of electrical coils from the
 16 CRNO up to 26 carlite line, correct?
 17 A. Yes.
 18 Q. And many drivers have made that exact same move
 19 that Mr. Myers was asked to do on the 23rd, right?
 20 A. I'd say a few, not many.
 21 Q. Well, eight or ten?
 22 A. Four or six.
 23 Q. Okay. And this work is done three turns a day,
 24 seven days a week?
 25 A. To my knowledge, yes.

1 MR. HAGGERTY: That's all I have.
 2 REDIRECT EXAMINATION
 3 BY MR. MURTAGH:
 4 Q. Bob, was one of the drivers who had been asked to
 5 do work like Mr. Myers was asked to do in this
 6 case Dave Masartis?
 7 A. Yes, sir.
 8 Q. Did Dave Masartis have an incident where he had a
 9 loose coil going up to the Hilltop on one of the
 10 very same trailers we've talked about here today?
 11 MR. HAGGERTY: Object. I think
 12 again you're referring to an incident that
 13 happened in July of this year, is that correct?
 14 MR. MURTAGH: Yes. Does that mean
 15 coils roll more in July than they do in March?
 16 MR. HAGGERTY: It means anything
 17 that happened after the date of this incident is
 18 irrelevant to this case, particularly when your
 19 case is built on Mr. Myers' belief.
 20 MR. MURTAGH: Right, but this
 21 shows that Mr. Myers' belief is correct, that
 22 these coils can roll if they're not secured. Here
 23 is one that on June 14, 20 --
 24 MR. HAGGERTY: It doesn't show
 25 that, and we have an objection to this document.

1 I would ask for a ruling on the objection.
 2 ARBITRATOR DEAN: I'll let you go
 3 forward with this, but I'll note your objection
 4 and I'll consider it when the record is in.
 5 MR. MURTAGH: Thank you, sir.
 6 BY MR. MURTAGH:
 7 Q. Bob, look at Union 12, please. Do you see that?
 8 A. Yes, sir.
 9 Q. You're addressed at the bottom as receiving a copy
 10 because you were a representative for
 11 Mr. Masartis?
 12 A. Yes, sir.
 13 Q. Does this incident allege or this letter allege,
 14 this letter of June 28th, from Mr. Tasse, Edward
 15 Tasse, to Mr. Masartis, that while operating the
 16 tractor-trailer hauling coils to the Hilltop, one
 17 of the coils rolled out of the weld and ended up
 18 against the truck railing? Is that what it says
 19 in the first paragraph?
 20 A. Yes.
 21 Q. Did you, in fact, show me this trailer that was
 22 involved?
 23 A. Yes, I did.
 24 Q. And is the railing bent?
 25 A. Yes, it is.

1 Q. This coil didn't bounce off and roll a hill
 2 or anything, did it?
 3 A. No, sir.
 4 Q. It stayed on the truck?
 5 A. Yes, sir.
 6 Q. But did it come out of the trough?
 7 A. Yes, sir.
 8 Q. And by this letter of June 21, 2002,
 9 Mr. Tassej imposing discipline on Masartis?
 10 A. Would you rephrase that, please?
 11 Q. Yes. If you look at the third full graph,
 12 Bob, was Ed Tassej giving Dave Masartis a
 13 suspension for five days?
 14 A. Yes, sir.
 15 Q. Thank you.
 16 MR. MURTAGH: CROSS-EXAMINATION
 17 RE-CROSS-EXAMINATION
 18 BY MR. HAGGERTY:
 19 Q. Were you part of the investigation on
 20 this?
 21 A. Yes, sir.
 22 Q. Now, in regard to this incident, is it correct
 23 that a piece of the padding that was on the side of
 24 the trough was actually not on the side of the
 25 trough but down in the bottom of the well?

1 incident was he had some sideward movement, but it
 2 was because the size of the coil didn't match up
 3 to the trough. He was unaware of the fact that
 4 the trough was broken and down inside the hole.
 5 Q. So as he was driving, he did notice there was
 6 movement of the coil, correct?
 7 A. Yes, he did.
 8 Q. And he didn't stop to inspect what the cause of
 9 that movement was, correct?
 10 A. There's movement all the time on those, daily.
 11 Q. My question is, he didn't stop to inspect it,
 12 right?
 13 A. No, he didn't.
 14 Q. Now, finally, the trailer involved in this
 15 incident that's involved in Union Exhibit 12 is a
 16 different trailer, it is not the CRNO trailer that
 17 Mr. Myers was assigned to haul coils on on
 18 March 23, correct?
 19 A. That's correct.
 20 MR. HAGGERTY: That's all.
 21 FURTHER REDIRECT EXAMINATION
 22 BY MR. MURTAGH:
 23 Q. It was the Hilltop trailer?
 24 A. Yes.
 25 Q. Which is the other trailer we've talked about

1 A. Yes, sir.
 2 Q. And even though that padding was on Mr. Masartis
 3 didn't stop his truck to identify if the coil was
 4 moving in his truck? That's the question?
 5 A. Rephrase that.
 6 Q. You agreed that this padding was in the
 7 trough of the well in the truck.
 8 A. Yes, I agree with that.
 9 Q. And in the investigatory meeting, the grievant
 10 admitted that, as he was driving, he noticed that
 11 the coil was moving but he didn't stop his truck
 12 to inspect why the coil was moving, correct?
 13 A. Let me answer that in my own words, if I may.
 14 Mr. Masartis did notice the coil was moving, but it
 15 wasn't because he knew that the trough was
 16 broken. When you haul these coils on the Hilltop,
 17 they come in numerous sizes, when you have a
 18 single in there, a single coil being 10,000-
 19 pound coil, it fits in that trough pretty well and
 20 there's no back and forth movement, but at the
 21 time he was hauling these, out of the seven coils,
 22 three of them were off size. So consequently,
 23 when you have a smaller size coil, you have the
 24 leeway in that trough to see some movement. What
 25 that truck driver noticed at the time of this

1 today?
 2 A. Yes.
 3 MR. MURTAGH: Thank you very much.
 4 MR. HAGGERTY: That's all.
 5 (Witness excused.)
 6 MR. MURTAGH: With regard to the
 7 company's stipulation -- or proffer rather with
 8 regard to Mr. Seyler's testimony, I just need to
 9 check with two of the reps about the accuracy vel
 10 non of that proffer so we can see if we have
 11 anything further, sir.
 12 ARBITRATOR DEAN: Okay.
 13 (Short recess taken.)
 14 MR. MURTAGH: Mr. Arbitrator, with
 15 regard to the company's proffer with regard to
 16 Mr. Seyler's testimony as to what he recalls
 17 saying or not saying at that meeting, with all due
 18 respect, we disagree and we're prepared to put
 19 Mr. Panei on again. Mr. Panei would state, if
 20 he's called, under oath, that that was not said by
 21 Mr. Seyler and Mr. Panei stands by the description
 22 that he gave of Mr. Seyler's comment earlier this
 23 afternoon.
 24 MR. HAGGERTY: I didn't expect
 25 that Mr. Panei would say anything other than what

1 you've just said, that he stands by his testimony.
 2 MR. MURTAGH: That would be our
 3 proffer, that if we recall him now, that's what
 4 he'll testify to.
 5 MR. HAGGERTY: I hope he would.
 6 MR. MURTAGH: He certainly would.
 7 MR. HAGGERTY: That's fine.
 8 ARBITRATOR DEAN: Okay, then we're
 9 agreed on that matter.
 10 MR. MURTAGH: The union has
 11 nothing further in its case in chief,
 12 Mr. Arbitrator.
 13 ARBITRATOR DEAN: Does the company
 14 have any recall or anything of any sort?
 15 MR. HAGGERTY: We have no rebuttal
 16 evidence. We would offer one prior arbitration
 17 award here at the Butler Plant. It's regarding a
 18 discharge of a C. D. Clark, Grievance No. BU- --
 19 I'm sorry, it is a three-day suspension, BU-00-52.
 20 ARBITRATOR DEAN: Do I understand
 21 from what I heard earlier that it is your practice
 22 to file briefs?
 23 MR. HAGGERTY: It is our practice
 24 to file briefs, correct.
 25 ARBITRATOR DEAN: Okay. Is there

1 specifically?
 2 MR. HAGGERTY: Of the day that
 3 we'll mail the briefs to you.
 4 ARBITRATOR DEAN: That's fine. I
 5 sometimes have questions on affirmative remedy, as
 6 some cases get very complex and involved, but I'm
 7 sure here you want reinstatement and reimbursement
 8 for all lost benefits, et cetera, et cetera?
 9 MR. MURTAGH: Yes, as indicated on
 10 the face of the grievance.
 11 ARBITRATOR DEAN: Sometimes you're
 12 surprised at the answers you get. I've learned to
 13 ask that question.
 14 MR. MURTAGH: Mr. Arbitrator, just
 15 before you finally close the record, if you want
 16 the copy of the statutory section I made reference
 17 to, 4942?
 18 ARBITRATOR DEAN: Sure.
 19 MR. HAGGERTY: The award the
 20 company has entered in the record would be
 21 Company Exhibit 9. Mr. Arbitrator, the parties'
 22 practice here is if they're going to cite a
 23 company award, that it is cited at the hearing and
 24 copies are provided.
 25 ARBITRATOR DEAN: I see.

1 going to be anything further than the briefs?
 2 I'll just close the record.
 3 MR. MURTAGH: No. The union
 4 wishes to file a brief, sir, and it is our
 5 practice to do that within 30 days after receipt
 6 of the transcript. We would like to know your
 7 preference as to whether you would like us to
 8 exchange briefs directly or through you.
 9 ARBITRATOR DEAN: I prefer,
 10 because then there is no argument who got what
 11 first and so forth and so on, it seems to be the
 12 better practice.
 13 MR. HAGGERTY: Mr. Arbitrator, if
 14 it is all right with you, why don't we just leave
 15 it that we will shoot for 30 days, because
 16 sometimes the company gets -- sometimes the
 17 company lawyer and the union lawyer get the
 18 transcripts at different times because they go
 19 through our clients.
 20 ARBITRATOR DEAN: If you have any
 21 problem --
 22 MR. HAGGERTY: We'll advise you of
 23 the day.
 24 ARBITRATOR DEAN: Yes, if there's
 25 any problem. You're going to advise me,

1 MR. HAGGERTY: The parties are
 2 free to cite other precedents in their brief,
 3 attaching a copy to that I --
 4 ARBITRATOR DEAN: Including you,
 5 even --
 6 MR. HAGGERTY: Other precedents
 7 being from other companies, any other published
 8 decision.
 9 MR. MURTAGH: It has to be
 10 published, that's the only caveat.
 11 ARBITRATOR DEAN: I got it.
 12 The hearing is closed.
 13 (Hearing concluded at 3:30 p.m.)

C E R T I F I C A T E

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2
3 I, Nancy M. Malia, do hereby certify that
4 I took the foregoing proceedings in stenotype at
5 the time and place and hereinbefore set forth
6 and thereafter reduced the same to typewritten
7 form, and that the foregoing is a true, full,
8 and correct transcript of my said stenotype
9 notes.

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13 Nancy M. Malia, RPR
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