

STATE OF ILLINOIS     )  
                                   ) SS  
COUNTY OF McHENRY    )

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL  
CIRCUIT, McHENRY COUNTY, ILLINOIS

JAMES M. SWEENEY, AND	)	
INTERNATIONAL UNION OF OPERATING	)	
ENGINEERS, LOCAL 150, AFL-CIO,	)	
Plaintiffs,	)	
vs.	)	17 CH 482
ALGONQUIN TOWNSHIP ROAD DISTRICT,	)	
Defendant.	)	
- - - - -	)	
ANDREW GASSER, ALGONQUIN TOWNSHIP	)	
ROAD COMMISSIONER, ALGONQUIN	)	
TOWNSHIP ROAD DISTRICT,	)	
Third-Party Plaintiff,	)	
vs.	)	
INTERNATIONAL UNION OF OPERATING	)	
ENGINEERS, LOCAL 150,	)	
Third-Party Defendant.	)	

REPORT OF PROCEEDINGS of the above-entitled  
cause before the Honorable DANIEL JASICA, Judge  
of said Court, at the Lake County Courthouse,  
18 N. County Street, Waukegan, Illinois, on  
Thursday, January 10, 2019, at the hour of  
1:30 o'clock p.m.

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1 APPEARANCES:

2  
3 INTERNATIONAL UNION OF OPERATING ENGINEERS  
4 LOCAL 150 - LEGAL DEPARTMENT, by  
5 MR. ROBERT A. PASZTA and  
6 MR. BRYAN P. DIEMER,  
7 appeared on behalf of the Plaintiff and  
8 Third-Party Defendant;

9  
10 LAW OFFICES OF ROBERT HANLON & ASSOCIATES by  
11 MR. ROBERT HANLON,  
12 appeared on behalf of the Defendant and  
13 Third-Party Plaintiff.  
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1 THE COURT: Good afternoon. This comes  
2 before the Court on Sweeney and Local 150 versus  
3 Andrew Gasser and the Algonquin Township Road  
4 District, 17 CH 482. I'm going to ask counsel to  
5 go ahead and announce themselves for the record.

6 MR. PASZTA: Rob Paszta on behalf of the  
7 plaintiffs.

8 MR. DIEMER: Brian Diemer, also on behalf of  
9 the plaintiffs.

10 MR. HANLON: Robert Hanlon on behalf of  
11 defendants.

12 THE COURT: So the case was set today for  
13 hearing on a number of pending motions. I'm  
14 going to go through them all, naming them to make  
15 sure I've got them all correct.

16 There is Plaintiff's Petition for  
17 Attorneys' Fees Pursuant to the Freedom of  
18 Information Act, which is pursuant to an order I  
19 previously entered granting them leave to file  
20 their petition for attorneys' fees. There is  
21 Plaintiff's -- and by the way, I have the  
22 petition, the response and a reply to that  
23 motion.

24 There is the Plaintiff's Petition

1 for Attorneys' Fees under the Open Meetings Act.  
2 Again I do have the motion, the response and the  
3 reply to that.

4 There's also the Plaintiff's Motion  
5 for Sanctions, which is seeking as a sanction  
6 attorneys' fees under Supreme Court Rule 137. I  
7 have the motion, the response and the reply to  
8 that.

9 There's also the Algonquin Township  
10 Road District and Mr. Gasser's Motion to Stay  
11 Enforcement Pending Appeal of the Court's prior  
12 orders. I have the motion. I didn't receive any  
13 response, so I don't know if one was filed.

14 MR. HANLON: They filed a response, Judge.

15 MR. PASZTA: We sent it over with courtesy  
16 copies on --

17 THE COURT: Okay. Was there a reply filed  
18 as well then by Mr. Hanlon?

19 MR. HANLON: No, I did not file a reply to  
20 the response.

21 THE COURT: Well if you don't have an extra  
22 copy, I can go online and get an extra copy --

23 MR. DIEMER: I have one, your Honor.

24 THE COURT: -- and read it. And then I also



1 have a hearing on the Petition for Indirect Civil  
2 Contempt is up, where a Rule to Show Cause was  
3 previously issued and set for hearing today. I  
4 have what I'll call the response by Mr. Gasser to  
5 why he should not be held in contempt, and then  
6 Local 150's, they call it a response, but it's  
7 basically your reply brief in support of why I  
8 should hold Mr. Gasser in indirect civil  
9 contempt.

10 To me the most logical way to  
11 proceed is proceeding in the order in which I  
12 just called the cases, or excuse me, announced  
13 the motions that are pending, taking the  
14 attorney's fee petitions first, then the motion  
15 to stay, because obviously if the motion to stay  
16 were granted, it would probably moot the petition  
17 for the indirect contempt. So the contempt would  
18 be what I would hear last. Sounds like you do  
19 have a copy of that?

20 MR. PASZTA: May I approach?

21 THE COURT: Thank you. So what I propose is  
22 I'll hear the motions, the three attorney fees  
23 motions first, I'll take a break, I will read the  
24 response to the motion to stay enforcement, and

1 depending on how I feel after I've read that, we  
2 will continue the hearing on that, or if I need  
3 to continue that to another date I will do that.  
4 What I'd like to do -- anyone have a problem with  
5 the manner in which I'm proposing to proceed?

6 MR. HANLON: Sounds reasonable, Judge.

7 MR. PASZTA: I do have a file stamped copy,  
8 though, so I'll trade with you, if that's okay.

9 MR. HANLON: Judge, acknowledge they timely  
10 filed.

11 THE COURT: Thank you. All right. I want  
12 to start with the Petition for Attorneys' Fees  
13 under the Freedom of Information Act. I don't  
14 know if Mr. Paszta, if you're preparing to argue  
15 that. I've read the motion, I've read the  
16 response, I've read the reply, I've looked at the  
17 time sheets that were attached, as well as the  
18 affidavits in support of the motion, but I'm  
19 certainly willing to entertain any supplemental  
20 argument you'd like to make.

21 MR. PASZTA: Your Honor, no supplemental  
22 argument. Just to summarize, we feel Local 150  
23 is entitled to fees under the Illinois Freedom of  
24 Information Act. Section 11(i) uses the word

1 "shall". It's a mandatory provision, as Gasser  
2 has recognized in his brief.

3 I think that the biggest, the most  
4 significant argument that Gasser makes in his  
5 response is the citing the Uptown case, the  
6 proposition that in-house attorneys are not  
7 entitled to collect fees under the Freedom of  
8 Information Act. Those cases and the cases that  
9 Uptown relies upon speak in terms of when a party  
10 becomes pro se, or an attorney representing its  
11 own law firm, or the legal work is being  
12 performed gratuitously. That is not the case  
13 with Local 150.

14 Prior to 2002, Local 150 retained  
15 attorneys from several firms, most recently Baum  
16 Sigman, and three other partners. Those fees  
17 from the Baum Sigman attorneys were paid with  
18 members' union dues. In 2002, it was decided to  
19 bring attorneys on staff from that firm. The  
20 salaries of those attorneys were still paid and  
21 are still paid today with members' union dues.

22 This isn't a case where Local 150  
23 Legal Department is a firm representing itself  
24 pro se, it's representing its client, Operating

1 Engineer's Local 150 and is being paid by its  
2 members' union dues.

3 In Uptown and the other cases which  
4 deny pro se or attorneys themselves pursuing FOIA  
5 actions talk about the concerns where this may  
6 just be a fee generation matter, and that the  
7 attorneys' fees didn't intend to serve that  
8 purpose. It was intended to provide parties or  
9 relive parties from the burden of paying  
10 attorneys' fees, or the burden of attorneys' fees  
11 when attempting to get public records from a  
12 public body.

13 That's exactly what happened in  
14 this case, that Local 150's members sought  
15 records from the Algonquin Township Highway  
16 Commissioner, were denied those records, and  
17 after consultation with its legal department  
18 decided to pursue legal action. To deny  
19 Local 150 fees simply because it has salaried  
20 attorneys does not change the fact that those  
21 attorneys were paid by member dues, and those  
22 costs were incurred.

23 Had Local 150 attorneys not been  
24 representing the local in that matter or other

1 clients that it performs fee work for, it would  
2 not go to serve the purpose that was stated in  
3 the Uptown case to deny attorneys' fees, but  
4 would rather deter Local 150 from pursuing FOIA  
5 lawsuits, or I think to then feed into the turn  
6 affect by then farming out all of its FOIA and  
7 Open Meetings Act work to private attorneys, who  
8 would then run these cases down and incur costs,  
9 because they know they were getting those  
10 attorneys' fees back.

11 Local 150 doesn't pursue every FOIA  
12 matter that it comes across, doesn't pursue every  
13 Open Meetings Act violation that it comes across,  
14 but when it impacts the members like it did now,  
15 Local 150 makes a decision to pay its attorneys  
16 to pursue those cases.

17 If we are denied fees in this case  
18 Local 150 would just farm all of its FOIA work  
19 out, probably to some firm who would love to get  
20 it and collect fees at the market rate, and I  
21 think that's the concern that Uptown was trying  
22 to prevent, which doesn't exist in this case and  
23 could exist if Local 150 were denied reasonable  
24 fees for its attorneys on this work.

1           We cited the cases that stand for  
2     the proposition that in-house attorneys can still  
3     collect fees, and that the appropriate method to  
4     determine reasonable fees for either in-house or  
5     hire attorneys is the Lodestar method, reasonable  
6     hours times reasonable rate. We think we've  
7     demonstrated that our hours and rates are  
8     reasonable and request that this Court grant  
9     Local 150's fee petition.

10        THE COURT: Thank you. Mr. Hanlon?

11        MR. HANLON: Judge, first thing I'd like to  
12     address is the issue of whether or not they're an  
13     in-house law department. Their letterhead says  
14     Law Department.

15                The LM-2 Report that's attached to  
16     the response is a sworn statement by the  
17     plaintiff in this case, Mr. Sweeney, that says  
18     that they're salaried employees of their  
19     organization.

20                If you look at the language of the  
21     Uptown case, they talk about incurring additional  
22     expenses beyond the salaries of their in-house  
23     counsel, and the reason they denied it is they  
24     weren't incurring any in-house counsel. But in

1 the LM-2 Report, here's something that's  
2 particularly of interest that I see is that  
3 Mr. Diemer is listed as a business agent. The  
4 argument that was presented in their motion is  
5 that he has a standard rate for his services.  
6 He's not in their law department, he's a business  
7 agent who happens to be an attorney.

8 Now I've known Mr. Diemer for many  
9 years. He's a very smart, competent attorney. I  
10 would never tell anyone that he's anything but  
11 that. However, in this particular case the law  
12 creates mandatory third-party attorneys' fees.  
13 It does not -- because if you read the Uptown  
14 case, it's very clear that the in-house attorneys  
15 don't create an additional expense. They're  
16 salaried.

17 We just heard an admission that  
18 they're salaried employees that are, you know,  
19 present, and we want to -- the argument that's  
20 presented is a fact of 2002 before they had a law  
21 department. My response then is generally who  
22 cares why they formed a law department. They  
23 formed a law department, it's in-house, it's a  
24 sum cost.

1           Within the body of the reply brief  
2 they talk about well, there's the office rent.  
3 There's no office rent paid, because the LM-2  
4 report, the sworn statement from the plaintiff  
5 doesn't have any office rent being paid. Why is  
6 that? Because they're sitting in a building  
7 that's owned by the plaintiff, so they're not  
8 incurring any additional expenses in connection  
9 with this. A straw argument that says we're  
10 really -- we should get some fees here, use the  
11 Lodestar method, even though we're not actually  
12 incurring the fees.

13           Now many years ago I raised an  
14 argument which I lost in opposition to Local 150  
15 because I referred to them as pro se attorneys.  
16 Now if you look at the Uptown case, the Court is  
17 clear that they recognize they are not pro se  
18 attorneys. They are in-house, legal department  
19 attorneys for the Uptown Law center, and that's  
20 the distinguishing factor here.

21           The reason that that is such a  
22 critical case here is because the fees are  
23 mandatory in the setting of actually paying some  
24 third party. But they didn't incur any expense.



1 They just had the sum cost they already had. Now  
2 they spent time on this as in-house people, but  
3 they didn't write a check to some third person.

4           Importantly, they claim that they  
5 have these standardized rates. Underneath the  
6 Lodestar method, a standardized rate is a  
7 presumptive hourly rate for an attorney, because  
8 it's obtained in the open free marketplace. You  
9 don't have an open free marketplace between an  
10 in-house law department and its in-house entity  
11 that it's representing.

12           So when Local 150 asserts that  
13 these are their rates, No. 1, Mr. Diemer's rates  
14 can't possibly have a rate, because he's not even  
15 in the law department. He's a business agent,  
16 according to the sworn statement of his president  
17 business manager. So where do these other rates  
18 come from? It's what they've represented to  
19 other people as reasonable for their services.  
20 Now because they're not paying it, they shouldn't  
21 be entitled to it.

22           One other point that I wanted to  
23 address -- one second, Judge.

24       THE COURT: Sure.

1 MR. HANLON: Oh, in the LM-2 Report, I  
2 printed off the 2017 LM-2 report, which is where  
3 there's a substantial amount of one third-party  
4 attorney, who it's so important that he's not  
5 here today, whose entire work is predicated upon  
6 reading what anybody else had done, where he  
7 didn't actually do any independent briefing and  
8 filing of the work, and his billing records don't  
9 reflect that, and it all comes from a period of  
10 time when any objective observer of this case  
11 would know that in 2017, there was a complaint  
12 filed by Local 150 before they hired  
13 Mr. Gummerson, and we went through a long period  
14 of time where we litigated points and issues, and  
15 then we had a discussions about the Freedom of  
16 Information Act.

17 There was no briefing on it, there  
18 was no discovery on it, no nothing on that. And  
19 they looked towards that as an additional basis  
20 for fees. It wouldn't have been necessary and  
21 proper underneath the Lodestar method, because  
22 those fees weren't incurred in connection with  
23 the actual FOIA issue.

24 So underneath the authority that I

1 cited, the admissions that are contained in the  
2 record at least at this point in time, they can't  
3 obtain attorney fees pursuant to the Uptown  
4 decision. That's it, Judge.

5 THE COURT: Thank you. Anything you want to  
6 say in reply?

7 MR. PASZTA: Just quickly, your Honor.  
8 Again, we talked about it in our briefing, but  
9 the Uptown case involves a not-for-profit legal  
10 defense group who was represented by its own  
11 attorneys for the records itself requested, which  
12 isn't the case here.

13 As far as Mr. Diemer's title, title  
14 doesn't matter. He's still an attorney and can  
15 seek attorneys' fees for the work he's obviously  
16 done in this case and demonstrated by the  
17 affidavits and the billing records provided.

18 In addition, the rent and the other  
19 overhead costs be provided or paid to a third  
20 party, and we've provided an affidavit  
21 accordingly in our reply to prove those expenses  
22 are in fact incurred.

23 We do other work for fees, and we  
24 do have rates, and we've been awarded fees in

1 other cases, and in addition to that, there's an  
2 opportunity clause for again for Local 150 taking  
3 on these types of cases, that it can't perform  
4 other work for its client or other clients for  
5 fees when it's doing this work.

6 And regarding the final point made  
7 by counsel, with the fees for the FOIA case and  
8 the fees for the Open Meetings Act, I think it's  
9 pretty obvious from the fee petitions that the  
10 work was and the billing was divided accordingly  
11 when it was the FOIA matter that was accounted  
12 for in the FOIA petition, and when it was an  
13 Opening Meetings Act, that was accounted for in  
14 the Open Meetings Act lawsuit.

15 And as a final point your Honor,  
16 the 7th Circuit has previously rejected the  
17 argument on both in-house counsel not being  
18 awarded fees and the actual costs versus market  
19 rate approach.

20 MR. HANLON: One more comment on that,  
21 Judge. You mentioned the 7th Circuit Court of  
22 Appeals.

23 THE COURT: I will let you respond just to  
24 that case, those two cases.

1 MR. HANLON: It's not binding on the  
2 authority of this Court, and binding authority is  
3 the Uptown case.

4 THE COURT: Thank you. All right. Starting  
5 position of course is the Freedom of Information  
6 Act itself under Section 11(i) does direct that  
7 the Court is to award attorneys' fees, at least  
8 the way I interpreted it, the prevailing party is  
9 entitled to recover their attorneys' fees. That  
10 is why I authorized the plaintiffs to file their  
11 petition.

12 I do think the Uptown case is  
13 distinguishable from this case, largely for the  
14 reasons that Mr. Paszta has argued, that it's not  
15 a pro bono organization, that these are not  
16 attorneys representing themselves, so they are  
17 entitled to recover their attorneys' fees.

18 I think they are also entitled to  
19 recover the reasonable market cost of those  
20 attorneys' fees. So I don't have a problem with  
21 the amount of \$350 an hour that they are  
22 charging. I think from a practical standpoint,  
23 as an employee there's salary, there's benefits,  
24 there's all sorts of other components that would

1 make it somewhat difficult to exactly identify.  
2 If I was going to allow them to be reimbursed for  
3 the actual cost that the Union incurred based on  
4 what it cost to have them as an employee, I think  
5 it would make -- I think it would be a very  
6 difficult road to go down and to try to come up  
7 with an appropriate number.

8           So I find the 350 an hour to be  
9 reasonable for attorneys with the experience and  
10 expertise that these attorneys had. I do note  
11 that in the affidavits and in the supporting time  
12 sheets, first I will recognize that I've gone  
13 through them, and it does appear to me that the  
14 plaintiffs have done a good job of identifying  
15 only those tasks that were related to the  
16 complaint and not to the counterclaim. So I  
17 acknowledge and recognize it would appear to be  
18 submitted are only those costs that relate  
19 directly to the FOIA claim.

20           I also noticed, however, that I'm  
21 seeing fairly extensive time from four different  
22 attorneys, and certainly during the course of  
23 this proceeding, at most of the court hearings I  
24 think the Local 150 had at least three attorneys

1 here, Mr. Paszta, Mr. Diemer and Mr. Gummerson  
2 were here. It's also time that's related to  
3 Mr. Pearson.

4 I certainly don't have any problem  
5 with law firms and companies staffing or using  
6 staffing however they want to staff a particular  
7 case, but when it comes to awarding attorneys'  
8 fees, I am going to look what I think is  
9 reasonable, and in my mind, you know, it appeared  
10 to be to me that Mr. Paszta took the lead on most  
11 of these items, and I wouldn't award attorneys'  
12 fees for multiple attorneys showing up for a  
13 hearing.

14 I also don't award attorneys' fees  
15 for time spent traveling for attorneys, because  
16 obviously you could always hire an attorney  
17 closer to the jurisdiction that you're litigating  
18 if you want to.

19 So what I have actually done is  
20 gone through Mr. Paszta's time, and I notice I  
21 think there is, it looks like three hearing  
22 dates, and it looks like I'm assuming that time  
23 was billed for travel. Some of it makes it  
24 explicit that travel time is being charged. The

1 others is based on the amount of time it appears  
2 to me implicit that travel time is being charged.

3 So for the dates of October 2nd,  
4 2017, September 20th, 2018, and October 23rd,  
5 2018, I'm subtracting a total of two hours from  
6 each of those three days. So instead of 92 hours  
7 of Mr. Paszta's time, I'm finding reasonable  
8 86 hours at the rate of \$350 an hour, and by my  
9 calculation that comes to \$30,100.

10 I'm not awarding attorneys' fees  
11 for any time spent by Mr. Pearson or Mr. Diemer.  
12 Again I understand they had a team working on  
13 this, but in awarding attorneys' fees I have to  
14 do what I think is necessary and reasonable, and  
15 so I will not be awarding their time.

16 As to Mr. Gummerson's time, I know  
17 that there are certain court appearances where he  
18 showed up, and I know this case got bounced  
19 around between McHenry and then Lake County and  
20 then several Lake County judges, so it appears he  
21 made several court appearances at points in time  
22 when other attorneys were not showing up. So  
23 these are not -- these are different dates, not  
24 dates when anybody else from the Local was



1 showing up, but obviously needed to be there for  
2 the purpose of figuring out who the judge was  
3 going to be on this case.

4 So in terms of Mr. Gummerson's time  
5 on August 1st, 2017 there's 1.25 hours for a  
6 court appearance, I will award that. On  
7 August 14, 2017, there's .5 hours for  
8 conversations with the Clerk's administrative  
9 office, where they're trying to figure out what  
10 judge is going to be hearing their case, I will  
11 award that.

12 On August 15, 2017 there was one  
13 hour spent for a court appearance by  
14 Mr. Gummerson. Does not appear that's  
15 duplicative or that there were any other  
16 attorneys billing to that time, so I will award  
17 that.

18 September 21st, 2017, telephone  
19 conversation with Mr. Gummerson had with the  
20 court clerk's administrative office concerning  
21 what judge was going to hear the case, .25 hours,  
22 I will award that.

23 September 25th, 2017, similar call  
24 to the clerk -- to the court administrator, .5

1 hours, I will award that.

2 On November 8th, 2017, there was  
3 another court appearance, and it appears some  
4 travel time and a conference call was involved in  
5 that, so instead of 1.75 hours, I will award 1.0  
6 hours for the court appearance on that date.

7 And then on May 15, 2018, there was  
8 another court appearance, and I did not see any  
9 duplication of that, but it appears to include  
10 also some phone calls, also some travel time, so  
11 I will award 1.0 hours for May 15, 2018.

12 In total, I am awarding 5.0 hours  
13 of Mr. Gummerson's time at \$350 an hour for a  
14 total of \$1,750. So the total amount I'm  
15 awarding as reasonable attorneys' fees for  
16 violation of Freedom of Information Act --

17 MR. HANLON: 31,850, Judge.

18 THE COURT: 31,850, correct.

19 MR. HANLON: May I inquire, Judge, with  
20 respect, since you've allocated that, do you want  
21 it to be -- the order to reflect collectively or  
22 in the component parts?

23 THE COURT: I mean I think we'll probably  
24 have the transcript. If either party needs to

1 challenge that and figure out how I arrived at  
2 that, I would simply say that attorneys' fees in  
3 the total amount of \$31,850 are awarded to the  
4 plaintiffs.

5 MR. PASZTA: Your Honor, if I could quickly  
6 make a motion to have this court reporter be the  
7 official court reporter for today's hearing.

8 THE COURT: Any objection to that?

9 MR. HANLON: Yes, your Honor. The reason I  
10 have an objection to that is one of the prior  
11 hearings in which she was selected to be the  
12 official court reporter, and there was no  
13 transcript ordered. Opposing counsel when I  
14 asked him for a copy of the transcript, he didn't  
15 have a copy of the transcript, and I couldn't get  
16 a copy of the transcript before I filed my  
17 response. And based upon that, Judge, I have --  
18 that's my objection.

19 Also, if the Court were to conclude  
20 that the private court reporter be the official  
21 reporter, I would ask for a copy of the  
22 transcript.

23 THE COURT: All right. In the absence of an  
24 agreement on that issue, I'll simply say that for

1 the reasons with the details stated on the  
2 record, that is the basis for my findings today.  
3 If either side therefore determines that they  
4 need to challenge the ruling, they can always  
5 order and get a copy of the transcript.

6 So I will deny the motion with  
7 respect to having this court reporter -- and  
8 again in Lake County we don't have the  
9 distinction between an official court reporter --  
10 the court reporter being the official recordation  
11 of what's transpiring in a hearing or not. So I  
12 don't think my denial of that motion prejudices  
13 either party in any way. If it does, speak up.  
14 Okay.

15 Next I would like to consider the  
16 Plaintiff's Petition for Attorneys' Fees under  
17 the Open Meetings Act. Again I have all three  
18 briefs, I have read them and reviewed them, but I  
19 will entertain any supplemental arguments that  
20 either side wishes to make starting with the  
21 plaintiffs.

22 MR. PASZTA: Your Honor, Local 150 should be  
23 awarded attorneys' fees pursuant to its petition  
24 for fees under the Illinois Open Meetings Act.

1 Section 3(d) of the Illinois Open Meetings Act  
2 makes it permissible for this Court to award  
3 attorneys' fees to the prevailing party and that  
4 includes any party.

5 So with respect to Mr. Gasser's  
6 argument that it's a public body, and this isn't  
7 the way that these are intended to work I think  
8 maybe speaks more to the motion for sanctions,  
9 that this isn't the way Open Meetings Act claims  
10 are supposed to be brought, but because Local 150  
11 has prevailed, every step of the way has had to  
12 defend the TRO, three separate counterclaims,  
13 full briefing, oral arguments on each, that it is  
14 entitled to fees in this case.

15 Again the Uptown case is cited. We  
16 believe it's applicable because it's limited to  
17 the FOIA cases where pro se attorneys are  
18 representing, whether the individual party or  
19 entity, which is not the case here. And for  
20 reasons previously stated we think we are  
21 entitled to market rate.

22 THE COURT: Mr. Hanlon?

23 MR. HANLON: I'll stand on the response I  
24 already filed, Judge.

1 THE COURT: All right. 5 ILCS 120/3(d),  
2 unlike FOIA, provides that the Court may assess  
3 against any party the reasonable attorneys' fees.  
4 So the Court does have discretion in an Open  
5 Meetings Act context as to whether to award fees  
6 or not.

7 I'm not going to be awarding  
8 attorneys' fees under the Open Meetings Act for  
9 several reasons. While I ruled against the  
10 defendant on the counterclaim, I don't believe  
11 that the counterclaim was frivolous or brought in  
12 bad faith. As a practical concern, the Open  
13 Meetings Act was one of I think five counts in  
14 the counterclaim. The other four counts  
15 obviously are not -- do not have the fee shifting  
16 provisions that the Open Meetings Act, the  
17 discretionary fee shifting provisions that the  
18 Open Meetings Act does.

19 From a practical standpoint, I  
20 don't really see how I could go about in  
21 determining which of those time spent by the  
22 plaintiff's attorneys was in response to the Open  
23 Meetings Act issue versus the other four  
24 counterclaims that were brought. So in my

1 discretion, I'm not going to be awarding  
2 attorneys' fees under the Open Meetings Act to  
3 the plaintiffs.

4 That leads to the Plaintiff's  
5 Motion for Sanctions under Rule 137. Again I  
6 have all three briefs, I have read them, but I  
7 will let the parties make any supplemental  
8 arguments that they wish to make, starting with  
9 the plaintiffs.

10 MR. PASZTA: Your Honor, this Court should  
11 award Local 150 attorneys' fees in conjunction  
12 with its motion for sanctions, because  
13 Mr. Gasser's claims on the Open Meetings Act were  
14 frivolous both at the time of filing and to this  
15 day. The claims have always been frivolous that  
16 Local 150 was never a public body. The  
17 Algonquin --

18 THE COURT: To be clear, I've already ruled  
19 on the Open Meetings Act, I'm going to your  
20 Motion for Sanctions under Rule 137. I don't  
21 know, I just want to make that clear.

22 MR. PASZTA: Correct, your Honor, and maybe  
23 I'll save my time, but the Motion for Sanctions  
24 did include the Open Meetings Act claims. There

1 were arguments regarding the Algonquin Municipal  
2 Code being the basis for the Open Meetings Act  
3 claim. Arguments that there was a two-year  
4 statute of limitations under the Illinois Open  
5 Meetings Act which appear to come from thin air.  
6 And throughout the filings, Mr. Gasser claimed  
7 that they sought separate invalidation of the  
8 collective bargaining agreement under the  
9 Illinois Open Meeting Act claim.

10 There was never any legitimate  
11 basis or good faith argument to change the law,  
12 and the statutory language is clear, if there was  
13 going to be a change in law, it would be with the  
14 General Assembly, not through this Court as the  
15 application of the Illinois Open Meetings Act.  
16 Therefore, Local 150 requests that this Court  
17 grant its motion for sanctions.

18 THE COURT: Mr. Hanlon?

19 MR. HANLON: Yes, Judge. When this case  
20 originally started, I had a co-counsel. His name  
21 was Michael Avakian. Mr. Avakian was a labor  
22 attorney for over 40 years before accepting an  
23 appointment to the U.S. Department of Labor.  
24 Both he and I have had extensive experience in



1 dealing with Local 150.

2 I don't believe that I've been in a  
3 case where I didn't get a motion for sanctions.  
4 And motions for sanctions are supposed to be for  
5 things that are patently frivolous, and at this  
6 point in time we have a set of facts and  
7 circumstances that are so unique and so different  
8 than anything I can find in the judicial records  
9 of the appellate court, that we brought our  
10 claims in good faith.

11 In fact, the Court in articulating  
12 its order as the Open Meetings Act just made a  
13 finding that the case was not frivolous. If the  
14 case was not frivolous, then the plaintiffs are  
15 not entitled to sanctions. But to have two  
16 attorneys look at a particular problem, and of  
17 course Mr. Avakian is no longer here in this  
18 case, there has to be a remedy for an issue, and  
19 if the law isn't clear enough, that's where the  
20 good faith basis that comes to seek a remedy for  
21 it.

22 My argument may not have prevailed  
23 with your Honor, but it would seem to me that it  
24 didn't cross the threshold of doing something

1 just to harass another party. And the threshold  
2 for sanctions, which should be reserved for  
3 egregious conduct, has not been done in this  
4 case. I don't believe they should be entitled to  
5 sanctions, especially in light of your earlier  
6 finding.

7 THE COURT: Thank you. Mr. Paszta?

8 MR. PASZTA: Your Honor, in the response  
9 brief and in the argument we just heard, there  
10 was never an explanation as to why the Open  
11 Meetings Act claims were brought in good faith or  
12 to change the law. It's a unique set of facts  
13 that doesn't give parties the right to plead off  
14 the wall claims that clearly don't apply and  
15 force us to waste our resources responding to  
16 them.

17 There was no good faith basis  
18 articulated. There was never an explanation  
19 that, you know, your Honor here's the current  
20 state of the law. We get that and we're trying  
21 to change it. These were argued as if the law  
22 currently applied and required Local 150 to  
23 conduct all of its meetings in the light of day,  
24 as I think was repeated in multiple

1 counterclaims.

2 Even after this original claim was  
3 denied, we had to deal with shifting arguments,  
4 new theories under the Open Meetings Act, argued  
5 repeatedly that Mr. Gasser wasn't a State's  
6 Attorney, that the two-year statute of  
7 limitations that was argued came from nowhere,  
8 and there was at the very least 20 paragraphs in  
9 each of the counterclaims, and one of the counts  
10 in each of the counterclaims, even though the  
11 first counterclaim was just sort of one count.

12 We cite authority in our reply  
13 brief that says that this Court can unravel or  
14 distinguish time between the frivolous or fee  
15 shift cases between counts in the counterclaim,  
16 that it's appropriate to award attorneys' fees  
17 for the entire amount. That's what we would  
18 request, and again, request this Court grant  
19 Local 150's motion for sanctions.

20 THE COURT: All right. Well, for many of  
21 the reasons that I articulated for why I wasn't  
22 going to award attorneys' fees under the Open  
23 Meetings Act, I will also decline to award  
24 attorneys' fees under the Rule 137.

1           Again as Mr. Hanlon said, while his  
2       claims may not have prevailed, I don't believe  
3       that they were frivolous or brought in bad faith.  
4       And again the Open Meetings Act claim was one of  
5       I think five counterclaims that were brought. So  
6       for those reasons respectively I will decline to  
7       award -- or decline the motion -- deny the motion  
8       for sanctions that was filed by plaintiffs.

9           That brings me to the Motion to  
10      Stay, and I apologize for not having read the  
11      response from the plaintiffs on the motion to  
12      stay, so what I'd like to do now is just take a  
13      few minutes and read it, and then hear argument  
14      on it.

15      MR. HANLON: Judge, do you mind if I step  
16      out?

17      THE COURT: You're relieved for at least 10  
18      or 15 minutes.

19      MR. HANLON: Thank you.

20      THE COURT: Off the record.

21  
22                   (Off the record at 2:04.)

23                   (On the record at 2:27.)  
24

1 THE COURT: Back on the record. So the next  
2 motion to consider is the Defendant's Motion to  
3 Stay Enforcement Pending Appeal. It is your  
4 motion. I have read the motion and the response.  
5 Mr. Hanlon, if you'd like to make any  
6 supplemental arguments you may.

7 MR. HANLON: Yes, Judge. You just ordered  
8 monetary damages that goes to the heart of the  
9 position the defendants took. I stand on my  
10 pleadings.

11 THE COURT: Anything you'd like to say in  
12 response?

13 MR. PASZTA: Yes, your Honor. Not to rehash  
14 the brief that you just read, but I want to make  
15 a point that Gasser's had his day in court. He's  
16 had a chance to fully brief all his arguments and  
17 has not been successful.

18 Prior to Mr. Gasser's conduct, the  
19 status quo was a valid collective bargaining  
20 agreement which governs the terms and conditions  
21 of employment for the employees of the Road  
22 District. That is the status quo that has to  
23 preserve or that should be preserved with the  
24 effect of the stay. The stay that's requested

1 here today doesn't preserve that status quo, it  
2 preserves the status quo of Mr. Gasser unlawfully  
3 repudiating a valid collective bargaining  
4 agreement.

5 If the stay is granted, these  
6 employees are going to be forced to work under  
7 terms and conditions that weren't negotiated for  
8 by their exclusive bargaining representative, and  
9 will have to deal with that until Mr. Gasser's  
10 crusade ends at whatever point, whether it be the  
11 Appellate Court or the Illinois Supreme Court.

12 In addition, there's four employees  
13 that have been terminated by Mr. Gasser that  
14 remain employed elsewhere or underemployed or  
15 unemployed. Those employees deserve their day in  
16 court. There is no reason why we can't proceed  
17 on parallel tracks here. That Mr. Gasser can  
18 continue his crusade up to the Supreme Court if  
19 that's what he chooses, but at the same time we  
20 can go to arbitration, we can select arbitrators,  
21 we can have these employees have their day in  
22 court, which isn't a process that happens  
23 overnight.

24 The longer that the appellate

1 process is delayed, the longer it's going to be  
2 until these employees are going to have their day  
3 in court, and at the same time the possible  
4 exposure for the Road District and the taxpayers  
5 is going to continue to increase. These  
6 employees --

7 THE COURT: I'm sorry.

8 MR. PASZTA: These employees will be  
9 entitled to back pay. We think that there's no  
10 way that they could have been terminated for just  
11 cause. They were fired the minute they arrived  
12 to work the first day Mr. Gasser took office.

13 Now that's not an issue that's  
14 presented before this Court, but I think  
15 considering the harm faced by the employees who  
16 are represented by plaintiffs, the increasing  
17 cost to the taxpayers, and the fact as we've  
18 argued that there's no likelihood of success in  
19 the merits of any of their five counts or the  
20 FOIA matter, we don't think there's any reason to  
21 stay this case, stay the judgment pending appeal,  
22 that they continue on parallel tracts, and these  
23 employees can have their day in court while  
24 Mr. Gasser continues to have his.

1 THE COURT: Since I do have two experienced  
2 labor attorneys on either side of this matter,  
3 how long would you anticipate the arbitration  
4 proceeding would take before some conclusion  
5 would be reached, wherein your clients, if they  
6 prevailed, and if this wasn't -- my decision  
7 wasn't reversed on appeal, would be ordered back  
8 to work or allowed to go back to work? I mean,  
9 it's a process that's going to take some time, I  
10 assume.

11 MR. PASZTA: Yes, your Honor. It's tough to  
12 say. I mean assuming Mr. Gasser was cooperative  
13 in selecting arbitrator scheduling dates, then  
14 you know, you're sort of at the mercy of the  
15 arbitrator. It depends. Typically, correct me  
16 if I'm wrong, but from the time you select an  
17 arbitrator until the day it's scheduled is maybe  
18 one to three months, and then a day, probably  
19 less than a day hearing based on the facts that  
20 we have here. The turnaround time for the  
21 decision is typically one to four months, but  
22 again given the, I think, simple matter that's  
23 going to be presented before an arbitrator, it  
24 will probably be on the shorter spectrum of that.



1 So you're probably going to be looking at like a  
2 three to six-month, three to eight-month process,  
3 is that fair?

4 MR. DIEMER: Yes. I mean I think there's  
5 some variables in terms of arbitrator, you know,  
6 the availability of dates, but typically once the  
7 hearing is conducted, there's generally a  
8 two-week turnaround on a transcript. The parties  
9 typically take 30 days to submit post-hearing  
10 briefs, again if people aren't playing games and  
11 are trying to move the case along.

12 I will say that in our experience,  
13 especially in a discharge case, the employer is  
14 just as anxious to get to the decision as the  
15 employee, because the longer the time lingers  
16 that the employee is out of work, the back pay  
17 mounts.

18 So there's always -- Now obviously  
19 the Union wants to progress the case as quick as  
20 possible to get the member back to work, but a  
21 savvy employer recognizes that there's a risk the  
22 longer it goes out. So we don't typically  
23 experience much push back from employer in terms  
24 of scheduling.

1 THE COURT: And I was just really trying to  
2 get an idea of the impact of whether, if I didn't  
3 grant a stay, the employer would have to  
4 participate in the arbitration proceeding, but  
5 it's not like next Monday these employees are  
6 coming back to work and he has to take them back.

7 MR. DIEMER: I think when I counsel a  
8 member, my rule of thumb is eight to twelve  
9 months on a discharge, from discharge to  
10 decision, and shorter or longer depending on  
11 variables, you know, but that's a good rule of  
12 thumb.

13 MR. HANLON: May I address it as well?

14 THE COURT: Yes, anything else you wanted to  
15 say in opposition, and then I'll give Mr. Hanlon  
16 the last word.

17 MR. PASZTA: Just that -- No, your Honor.

18 THE COURT: Okay.

19 MR. HANLON: Your Honor, I appreciate the  
20 arguments about some third parties not involved  
21 in this lawsuit, and what may happen with respect  
22 to those employees or not with those employees,  
23 but they're not parties to this lawsuit. And the  
24 precedent which I cited speaks to the presence

1 of, you know, the parties' interest, the interest  
2 of the Union and the interest of the Road  
3 District here.

4 But if what they say is true, that  
5 they're going to win, and at the end of the day  
6 their employees are entitled to all the back pay,  
7 if we take that and accept that as true, they  
8 have a public body with the power to tax, you  
9 know, to ultimately make whole any of those  
10 employees. So whatever inconvenience they have  
11 is trumped by the fact that there's a substantive  
12 question that the Road District wants a ruling  
13 from the Appellate Court to be heard upon.

14 And the time frames that my  
15 opposing counsel has suggested is substantially  
16 longer than my experience in doing arbitrations  
17 with them. I can think of one in particular that  
18 we went to arbitration and we were over and done  
19 in 35 days.

20 So upon the conclusion of what is  
21 likely to take place, and the burden upon any  
22 former employee, the questions of the validity of  
23 their claims is not before the Court. It's not  
24 before the Court how they may have an impact.

1 They could have intervened in the case if they  
2 wanted to. They didn't. They're not here. And  
3 what's here is a simple question. Is this  
4 contract, you know, lawful or not.

5 The Court has said it is a  
6 contract, we're going to have to have enforcement  
7 with respect to the thing. The Road District on  
8 the other hand is saying we wish to have the  
9 Appellate Court render an opinion about this  
10 particular issue. And I believe that the  
11 arguments that, you know, can be made on an  
12 appellate level could go either way, and because  
13 of that, that's why we're asking for it to be  
14 stayed. That's it, Judge.

15 THE COURT: Okay. All right. So on a  
16 motion to stay pending appeal, one of the factors  
17 the Court is to consider is whether the stay is  
18 necessary to secure to the appellant the fruits  
19 of the appeal in the event the appellant is  
20 successful, the hardship that will befall the  
21 nonmovant in this case if I was to grant the  
22 stay, and then the movant's likelihood of success  
23 on the merits.

24 As to the first issue, I think it

1 weighs against the issuance of a stay. If I  
2 don't stay it, and if the Township Road District  
3 participates in the arbitration proceeding, I do  
4 think there's -- it's possible the decision will  
5 come out before the Appellate Court will rule on  
6 any appeal, but I think it makes more sense for  
7 those two proceedings to go forward on a parallel  
8 track, rather than staying it all, and then a  
9 year from now, you know, not having advanced it.  
10 It's not like an employee is going to be directed  
11 to come back to work for your client within the  
12 next week, month, several months. And if and  
13 when you do prevail, you will be able to take  
14 whatever steps you wish to take outside of the  
15 collective bargaining agreement, so I don't think  
16 anything is lost from your client's standpoint if  
17 you went down the road on appeal, even if I don't  
18 stay the enforcement of my decision.

19 In terms of likelihood of success  
20 on the merits, I don't think at this point it's  
21 likely to succeed. Hardships that will suffered.  
22 Obviously each side has some hardships, but I  
23 think the hardship on the Union and on the  
24 employees outweighs the hardship that will, if I

1 was to grant the stay, would outweigh the  
2 hardship on the Road District if I deny the stay.  
3 So for those reasons I'm denying the motion to  
4 stay the enforcement pending appeal.

5 That leads to the hearing on the  
6 Petition for Indirect Civil Contempt. I've  
7 gotten the answer, what I'll call it, from  
8 Mr. Gasser and the Township Road District as well  
9 as the response from Local 150. I've read those.  
10 So at this point, Mr. Hanlon, do you wish to call  
11 any witnesses?

12 MR. HANLON: With respect to the cause,  
13 simply Mr. Gasser. Mr. Gasser is the one who is  
14 subject to this. Certainly --

15 THE COURT: So you want to call him as a  
16 witness?

17 MR. HANLON: Yes, your Honor.

18 THE COURT: That's fine. Come on up to the  
19 witness chair.

20  
21 (Witness duly sworn.)  
22  
23  
24

1                   ANDREW GASSER,  
2  
3   having been first duly sworn, was examined and  
4   testified as follows:

5  
6                   DIRECT EXAMINATION  
7                   BY MR. HANLON

8  
9           Q     Mr. Gasser -- Judge, may I approach?  
10          THE COURT:   You may.

11   BY MR. HANLON:

12          Q     Mr. Gasser --  
13          THE COURT:   Sir, can you just state your  
14   full name for the Court?

15          THE WITNESS:   Andrew Gasser.

16          THE COURT:   Thank you.

17   BY MR. HANLON:

18          Q     Can you spell your last name for the  
19   court reporter?

20          A     G-a-s-s-e-r.

21          Q     And are you the Algonquin Township  
22   Highway Commissioner?

23          A     I am.

24          Q     Okay.   And how long have you held that

1 position?

2 A Since May 15, 2017.

3 Q Okay. When you received a copy of the  
4 Court's order compelling arbitration, what did  
5 you believe that your obligation was with respect  
6 to that order?

7 A When I read the order, it just said  
8 that -- it didn't have any dates or any times or  
9 when we were to start any process, start anything  
10 like that.

11 Q And are there any dates or times that  
12 are set forth within the collective bargaining  
13 agreement referenced in the court order?

14 A No, sir.

15 Q Okay. And did that agreement, the  
16 document referenced in the court order, did that  
17 document indicate what you were supposed to do  
18 first versus what Local 150 was supposed to do  
19 first?

20 A No, sir.

21 Q So did you believe you had an obligation  
22 to do anything at that point in time?

23 A No, I did not.

24 Q Okay. And as you sit here today, do you



1 understand any clear order of the Court of what  
2 it is that you're supposed to do?

3 A No, sir.

4 MR. HANLON: No other questions, Judge.

5 THE COURT: Cross-examination?

6 MR. DIEMER: Yes, your Honor.

7

8 CROSS EXAMINATION

9 BY MR. DIEMER

10

11 Q Good afternoon, Mr. Gasser.

12 A Good afternoon, sir.

13 Q Your term of office began on May 17,  
14 2017?

15 A May 15, sir.

16 Q May 15, I'm sorry. And you have  
17 authorized litigation in this case?

18 A I have.

19 Q You've monitored the litigation of this  
20 case?

21 MR. HANLON: Objection, beyond the scope.

22 THE COURT: Overruled.

23 THE WITNESS: As best I can, yes.

24

1 BY MR. DIEMER:

2 Q You've reviewed the filings in this  
3 case?

4 A Yes, I have.

5 Q You've verified content of the temporary  
6 restraining order that was filed in this case?

7 A I've reviewed files. I'd have to look  
8 at each individual file to see.

9 MR. DIEMER: May I approach, your Honor?

10 THE COURT: You may.

11 MR. HANLON: Judge, before he asks the  
12 question, could I take a moment to look at the  
13 document?

14 THE COURT: Okay.

15 BY MR. DIEMER:

16 Q Are you familiar with this document,  
17 sir?

18 A I've seen it, yes.

19 Q Okay. And the last page contains a  
20 verification?

21 MR. HANLON: Objection, Judge, relevance.  
22 We're not here on enforcement of the TRO that  
23 wasn't granted.

24 THE COURT: Overruled. Cross-examination.

1 THE WITNESS: That's my signature.

2 BY MR. DIEMER:

3 Q And you verified this document?

4 A I have.

5 Q That the statements therein are true and  
6 correct?

7 A I do.

8 Q You also verified --

9 THE COURT: Are you moving to admit?

10 MR. DIEMER: Please.

11 THE COURT: Any objection to Plaintiff's 1?

12 MR. HANLON: No, Judge.

13 THE COURT: Plaintiff's 1 is admitted.

14 BY MR. DIEMER:

15 Q You verified the content of the  
16 complaints filed or the counterclaims filed by  
17 Mr. Hanlon in this case?

18 A I have.

19 Q Upon taking office, you immediately  
20 fired three employees?

21 A That's correct.

22 Q And you immediately notified Local 150  
23 that you were repudiating the CBA entered into  
24 previously by Local 150 and the Road District, is

1 that correct?

2 MR. HANLON: Objection. This isn't a  
3 discovery deposition for some subsequent  
4 proceeding and arbitration. We're here on  
5 whether or not Mr. Gasser --

6 THE COURT: All right. The objection, a  
7 one-word objection would be?

8 MR. HANLON: Overly broad and irrelevant.

9 THE COURT: How is what he verified in his  
10 counterclaim relevant to whether he's willfully  
11 and contumaciously violated the order compelling  
12 arbitration?

13 MR. DIEMER: I'm trying to get to his  
14 understanding of the case generally, the issues  
15 that are before the Court. I think the case law  
16 says that when you're interpreting an ambiguous  
17 order, which Mr. Gasser believes it is, it's  
18 appropriate to take into consideration the  
19 pleadings and the context of the case.

20 THE COURT: All right. Objection will be  
21 overruled.

22 MR. DIEMER: Thank you, your Honor.

23 BY MR. DIEMER:

24 Q So last question. You immediately

1 notified Local 150 that you were repudiating the  
2 collective bargaining agreement, is that correct?

3 A That's correct.

4 Q You understand that Local 150 filed  
5 grievances challenging those initial terminations  
6 and other contract violations?

7 A That's correct.

8 Q None of the grievances were resolved  
9 pursuant to the grievance procedure?

10 A None.

11 Q You understand that Local 150 demanded  
12 arbitrations in order to resolve those pending  
13 grievances?

14 A I do.

15 Q And you refused to arbitrate those  
16 grievances?

17 A No, I challenged them in court.

18 Q You refused to arbitrate those  
19 grievances?

20 A No, I chose to take them to court.

21 Q The question before you, sir, is you  
22 refused to arbitrate those grievances?

23 MR. HANLON: Asked and answered.

24 THE COURT: Are you asking him to answer a

1 question yes or no?

2 MR. DIEMER: Correct.

3 THE COURT: All right. Then you can phrase  
4 it as yes or no, ask the question, and then you  
5 have the option of answering yes, no, or I cannot  
6 answer that question yes or no.

7 BY MR. DIEMER:

8 Q Yes or no, you refused to arbitrate the  
9 grievances?

10 A I cannot answer that question as yes or  
11 no.

12 Q Okay. No arbitrations occurred in those  
13 cases?

14 A None.

15 Q And in fact, you tried to enjoin the  
16 arbitration process, correct?

17 A I believe I have.

18 Q Pardon me?

19 A I believe we did.

20 Q You tried to stop the arbitrations?

21 A I didn't try to stop them. Again I  
22 can't answer that yes or no. I contacted with my  
23 attorney, and we moved forward.

24 Q And you directed him to file the

1 document that's in front of you that's entitled  
2 Verified Petition for Temporary Restraining Order  
3 enjoining all arbitration pursuant to the  
4 purported collective bargaining agreement until  
5 the invalidity of the purported agreement is  
6 determined with notice. That's the document you  
7 directed your counsel to file?

8 A That's correct.

9 Q And you understand that you were filing  
10 this document to stop the arbitrations from  
11 proceeding?

12 A That is not how I understand it.

13 Q What did you understand the document to  
14 be trying to accomplish?

15 MR. HANLON: Objection, calls for a legal  
16 conclusion.

17 THE COURT: Overruled.

18 THE WITNESS: It was meaning we were going  
19 to court, that's what it meant.

20 BY MR. DIEMER:

21 Q What was the result you wanted to  
22 accomplish by authorizing that document?

23 A I wanted to have my day in court, and  
24 make sure that our arguments were heard.

1 Q And what arguments were those?

2 A The arguments that have been already put  
3 forth to the Court.

4 Q What was the relief you were requesting?

5 A We've always had an open agreement to  
6 renegotiate the contract. It's open and  
7 standing, we've put it out several times, and  
8 that it's always been denied.

9 Q So isn't it true that the relief sought  
10 included a request to enjoin or stop Local 150  
11 from taking any further steps to enforce the  
12 purported collective bargaining agreement?

13 A That's correct. We wanted to  
14 renegotiate the contract.

15 Q And you did not want arbitrations to  
16 proceed?

17 A We wanted to take that before the court  
18 before --

19 Q Yes or no, sir? You did not --

20 A I cannot answer that question yes or no.

21 Q You understand that Local 150 had  
22 requested panels of arbitrators from the Federal  
23 Mediation and Conciliation Service in this case?

24 A Yes, I have.



1           Q     As a matter of fact, in your  
2 counterclaim you indicated that the FMCS panels  
3 that are at issue here, you were expecting to  
4 receive them within a month of filing that  
5 counterclaim, isn't that the case?

6           A     No, it is not.

7           Q     Okay.

8           A     Actually, Judge, can I reanswer that?

9           THE COURT: There's no question pending.

10          MR. DIEMER: May I approach, your Honor?

11          THE COURT: You may.

12          BY MR. DIEMER:

13          Q     Showing you, sir, what I've marked as  
14 Union Exhibit 2 for identification. Are you  
15 familiar with that document?

16          A     Not at the moment, no.

17          Q     Would you take a moment to familiarize  
18 yourself with that? Actually I'm going to go  
19 back to the first document I handed you for the  
20 next question. I apologize. So I'd ask you to  
21 look at the Union Exhibit No. 1.

22          A     Okay.

23          Q     So you just told us that you were not  
24 expecting panels from the FMCS when you filed the

1 initial pleadings?

2 A No. Actually what I wanted to say is I  
3 don't remember.

4 Q Okay. So on Page 2 of your Verified  
5 Petition for TRO, Paragraph 3 states, "On or  
6 about June 9, 2017, Local 150 filed a request for  
7 arbitration with the Federal Mediation and  
8 Conciliation Service. Said request typically  
9 result in appointment of arbitration panel within  
10 30 days." Do you see that?

11 A I do.

12 Q And that's accurate, because you  
13 verified this?

14 A It says appoint a panel. It didn't say  
15 anything about when I was supposed to start  
16 striking or who was going to do what.

17 Q There's no question pending. So you  
18 were expecting a panel within 30 days of  
19 June 9th, isn't that correct?

20 A No, I was expecting, reading that, that  
21 there would be some process in place to start  
22 that.

23 Q You were not -- so your testimony is you  
24 were not expecting a panel within 30 days of

1 June 9th?

2 A I was expecting that there would be a  
3 process in place that would be taken by that  
4 point.

5 Q Okay. So just so the record is clear,  
6 you were not expecting FMCS panels within 30 days  
7 of June 9th, that's your testimony?

8 A No, I'm not saying that at all.

9 Q I'll ask it one more time. Yes or no,  
10 you were expecting FMCS panels within 30 days of  
11 June 9, 2017?

12 A I cannot answer that question in a yes  
13 or no answer, Judge.

14 Q Fair enough.

15 A Respectfully.

16 Q The response to Local 150's Petition for  
17 Rule to Show Cause, it was -- your counsel  
18 provided import -- I'll get the date for the  
19 record. I believe that was October 23rd.

20 MR. DIEMER: Your Honor, my co-counsel just  
21 advised me that Mr. Hanlon is signaling answers  
22 to the witness.

23 MR. HANLON: Judge, I'm not signaling. I  
24 did make a hand gesture when I didn't have the

1 exhibit or whatever he was talking about. It  
2 wasn't a signal, and there was no question  
3 pending to the client.

4 MR. PASZTA: Your Honor, it's been done  
5 while questions have been pending.

6 THE COURT: I apologize, I was not focused  
7 on that. I haven't noticed it. I'm not saying  
8 it occurred. Mr. Hanlon, obviously you're not to  
9 be signaling in any fashion or telling your  
10 client how to answer these questions. You  
11 understand that, right?

12 MR. HANLON: Yes, Judge.

13 THE COURT: All right. Go ahead.

14 MR. DIEMER: May I approach?

15 THE COURT: You may.

16 BY MR. DIEMER:

17 Q Mr. Gasser, I'm showing you what I've  
18 marked as Union Exhibit No. 3 for identification.  
19 Have you seen this document before?

20 A I have.

21 Q This is a document that was filed on  
22 your behalf by Mr. Hanlon on October 23rd?

23 A It was.

24 Q Okay. Now I'd ask you to look at Page 3

1 of the document. Unfortunately, the document  
2 itself is not paginated, so you'll have to hand  
3 count to Page 3.

4 A I'm there, sir.

5 Q Are you on Page 3?

6 A Yes, sir.

7 Q Okay. And I'd ask you to look at the  
8 second or the first full paragraph, the third  
9 sentence. It says, "On October 17, 2018 for the  
10 first time the FMCS served a request for  
11 striking -- for selection/striking of an  
12 arbitrator upon the Road District." Do you see  
13 that.

14 A I do.

15 Q Is that accurate?

16 A It is.

17 Q It is accurate?

18 A It is.

19 Q Okay. So it's your position that  
20 neither you nor the Road District received any  
21 arbitration panels prior to October 17, 2018, is  
22 that correct?

23 A Can you please repeat the question?

24 Q Is it your position that neither you nor

1 the Road District received any arbitration panels  
2 from the FMCS prior to October 17, 2018?

3 A No, I may have. I honestly don't  
4 remember right now.

5 Q Okay. So the pleading says that  
6 October 17 was the first time you received a  
7 panel.

8 A That's what I'm -- that's what's showing  
9 right here, yes, sir.

10 Q And I'm asking you to confirm the  
11 accuracy of that for us.

12 A I'm confirming that it's accurate.

13 Q That's accurate. So before that, you  
14 had never seen a panel?

15 A No, sir.

16 Q Okay. And you're aware generally of the  
17 lawsuit Local 150 filed under the Freedom of  
18 Information Act?

19 A Yes, sir.

20 Q And you're aware that Local 150  
21 prevailed in the FOIA lawsuit, isn't that  
22 correct?

23 A I'm aware, yes, sir.

24 Q Okay. You're aware that on

1     October 23rd, 2018 this Court ordered you to  
2     produce documents responsive to the request for  
3     the period May 15, 2017 through June 12, 2017,  
4     are you aware of that?

5         A     It was my understanding that the  
6     original FOIA request was for before May 15th,  
7     and then judgment was entered for May 15th moving  
8     forward.

9         Q     To June 12th?

10        A     Correct.

11        Q     Okay.

12        A     Which was -- we responded to within --

13        Q     There's no question pending right now.  
14     So you were aware of the order?

15        A     Yes, sir.

16        Q     Okay. You understood it was important  
17     to comply with your Honor's order?

18        A     I understood it was important to comply  
19     with FOIA law.

20        Q     And once the Court issued the order, you  
21     understood it was important to comply with that  
22     order, correct?

23        A     Absolutely. The order said  
24     specifically --

1 Q Okay.

2 A Can I answer the question, sir.

3 Q The answer was -- called for a yes or  
4 no.

5 THE COURT: Your attorney will have a chance  
6 to ask you any follow-up questions he wants.

7 BY MR. DIEMER:

8 Q So you gathered documents in order to  
9 comply with the order, sir?

10 A Yes, sir.

11 Q Okay. And you reviewed all the  
12 documents prior to disclosing them?

13 A Yes, sir.

14 Q And you in fact produced a large volume  
15 of documents, isn't that correct?

16 A We produced a large -- our staff did,  
17 yes, we did.

18 Q 1,302 documents, does that sound right?

19 A We had our IT staff go through all our  
20 emails and compile them together. I'm not sure  
21 of the number.

22 Q Okay. But you were involved in that  
23 process?

24 A Absolutely.



1 Q And reviewed the documents?

2 A We reviewed the documents.

3 Q And you shared those documents at some  
4 point with your lawyer?

5 A That's correct.

6 Q Okay. And each document was labeled on  
7 the bottom right-hand corner, was it not?

8 A I'm not aware of exactly how we marked  
9 them and labeled them.

10 Q So you were not involved in the labeling  
11 of the documents?

12 A No, sir.

13 Q Just the gathering of the documents?

14 A That's correct.

15 MR. DIEMER: Okay. And your Honor,  
16 Exhibit 3 was the Petition for the Rule to Show  
17 Cause, which is already in the record, but I  
18 guess we move for introduction of that.

19 THE COURT: Any objection to admitting or  
20 asking the Court to take judicial notice of  
21 Plaintiff's Exhibit 3?

22 MR. HANLON: No, your Honor.

23 THE COURT: All right. Plaintiff's 3 is  
24 admitted, or I guess it's Union 3 is what you're

1 referring to it as.

2 MR. HANLON: Your Honor, if it will speed up  
3 the process today, anything that's of record in  
4 this case I have no objection to it being  
5 admitted in this proceeding, and certainly the  
6 Court can take judicial notice if it's already  
7 been filed.

8 THE COURT: Thank you, Mr. Hanlon.

9 BY MR. DIEMER:

10 Q Now again earlier you told us you never  
11 received a document from FMCS prior to  
12 October 17, 2018, do you recall that testimony?

13 A I recall for that in joining a panel I  
14 believe is what you said.

15 Q Documents from the FMCS. Panels.

16 A I believe that's correct.

17 Q Okay. That's your testimony?

18 A Yes, sir.

19 Q Never received a panel from the FMCS  
20 prior to October 17?

21 MR. HANLON: Objection asked and answered.

22 THE COURT: Overruled.

23 THE WITNESS: I don't remember. I don't.

24

1 BY MR. DIEMER:

2 Q You don't remember that now?

3 A No, I don't remember ever seeing a  
4 panel. I don't even remember what it was.

5 Q Okay. So you don't remember seeing a  
6 panel prior to October 17, 2018, is that correct?

7 A No, I don't remember.

8 MR. DIEMER: Okay. May I approach, your  
9 Honor?

10 THE COURT: You may.

11 BY MR. DIEMER:

12 Q I'm showing you what I've marked as  
13 Union Exhibit No. 4. I'd ask you to look at the  
14 bottom right-hand corner of the document. It's  
15 identified as Gasser Documents -- Gasser Docs Per  
16 Court Order, Bates No. 000678, do you see that?

17 A I do.

18 Q And then the following documents are  
19 numbered serially Gasser Docs Per Court Order  
20 Bates Nos. 000679 and 000680.

21 A I see that.

22 Q Okay. So this is a document that you  
23 provided to the Union in response to the FOIA  
24 request?

1 A Correct.

2 Q Okay. And this is, in fact, an FMCS  
3 panel?

4 A You know what, this is the first time  
5 I'm realizing what this is.

6 Q Oh. So this is an FMCS panel dated  
7 June 9, 2017, isn't that correct?

8 A Yes, sir.

9 Q Okay. And this is an arbitration panel  
10 for the Nick Chiricos termination dispute?

11 A Yes, sir.

12 MR. DIEMER: Okay. Your Honor, I move to  
13 admit Union Exhibit No. 4.

14 THE COURT: Any objection?

15 MR. HANLON: No objection, your Honor.

16 THE COURT: It's admitted.

17 MR. DIEMER: May I approach again?

18 THE COURT: You may.

19 BY MR. DIEMER:

20 Q Mr. Gasser, I'm handing you what I've  
21 marked as Union Group Exhibit No. 5 for  
22 identification, and these are panels from the  
23 Federal Mediation and Conciliation Service for  
24 the various grievances?

1           A     Yes, sir.

2           Q     I'd ask you to look at these. Let me  
3 know when you're done reviewing them.

4           A     Yes, sir.

5           Q     Okay. So the letter from the federal  
6 government is addressed to both you and me. You  
7 on the left side, me on the right, correct?

8           A     Yes, sir.

9           Q     And you're identified as the Highway  
10 Commissioner, and that's your current title?

11          A     Yes, sir.

12          Q     And it says the Algonquin Township Road  
13 District, and that's your place of business?

14          A     Yes, sir.

15          Q     And 3702 US Highway 14 is the street  
16 address?

17          A     Yes, sir.

18          Q     And Crystal Lake, Illinois is the town  
19 in which the place of business rests?

20          A     Yes, sir.

21          Q     Okay. So this letter from the federal  
22 government was properly addressed to you?

23          A     Yes, sir.

24          Q     Okay. And as you flip through, all the

1 documents are addressed to the same person,  
2 yourself at the same address, 3702 US Highway 14?

3 A Yes, sir.

4 Q And did you receive any of these  
5 documents?

6 A Yes, sir.

7 Q When did you receive these documents?

8 A I would say on or about the -- I would  
9 have to look at my email. I couldn't say.

10 Q It's roughly the dates that are --

11 A Yes, sir.

12 Q Is that a yes?

13 A Yes, sir.

14 Q Okay. So roughly the dates, each one is  
15 dated differently. A couple of them actually  
16 don't have a date unfortunately, but --

17 A They're different dates, sir.

18 Q They're different dates, but you would  
19 receive these serially via email?

20 A I believe -- I don't know. Some of them  
21 came in fax, some of them came in regular mail,  
22 some of them via email. I would have to go back  
23 and look.

24 Q But you acknowledge receipt of these

1 panels from the Federal Mediation and  
2 Conciliation Service?

3 A I do.

4 MR. DIEMER: Okay. I would move, your  
5 Honor, for the admission of Group Exhibit 5.

6 THE COURT: Any objection?

7 MR. HANLON: Yes, Judge. No authentication.

8 THE COURT: Overruled. They are admitted  
9 based on your client's testimony that he received  
10 them.

11 MR. DIEMER: May I approach again, your  
12 Honor?

13 THE COURT: You may.

14 BY MR. DIEMER:

15 Q Mr. Gasser, I'm showing you what I've  
16 marked as Union Exhibit No. 6 for identification.  
17 This is a letter from me to you dated June 30,  
18 2017. Do you see that?

19 A Yes, sir.

20 Q Okay. So this letter is sent via fax,  
21 email and U.S., certified U.S. mail, do you see  
22 that?

23 A Yes, sir.

24 Q Okay. The fax number is 847-639-4529.

1 Is that your fax number?

2 A If that's what it says, then that's what  
3 it is. I don't know my fax.

4 Q Okay. And the email  
5 agasser@algonquintownship.com, that's your email  
6 address?

7 A That's correct.

8 Q And the street address is properly noted  
9 here, 3702 US Highway 14, Crystal Lake, Illinois?

10 A Yes.

11 Q 60014?

12 A Yes, sir.

13 Q Did you receive this letter?

14 A I did.

15 Q When did you receive this letter?

16 A I couldn't tell you on or about the  
17 date.

18 Q That it was mailed or sent to you?

19 A Correct.

20 Q Identifying at that point which was the  
21 first five FMCS panels?

22 A Yes.

23 MR. DIEMER: Okay. I'd ask that Union  
24 Exhibit No. 6 be admitted into evidence.



1 THE COURT: Any objection?

2 MR. HANLON: Yes, Judge. This particular  
3 letter is a communication from Mr. Diemer, an  
4 attorney, to a representative, an individual  
5 outside of the context of the attorney after the  
6 appearance of counsel in the case, and it's proof  
7 of a violation of the Rules of Professional  
8 Conduct, and I would object on that basis.

9 MR. DIEMER: Your Honor, these were separate  
10 proceedings. No attorney had appeared in any of  
11 these legal proceedings, and as a matter of fact  
12 it's quite often the case that the attorney  
13 appearing in litigation does not handle the  
14 day-to-day labor relations, including labor  
15 arbitration.

16 THE COURT: All right. Well the document is  
17 admitted. The witness has identified it,  
18 identified that he received it and the date upon  
19 which he received it on or about the date it was  
20 dated, so it's admitted.

21 MR. DIEMER: And we move for the admission,  
22 and that is admitted?

23 THE COURT: It is admitted.

24 MR. DIEMER: May I approach again, your

1 Honor?

2 THE COURT: You may.

3 BY MR. DIEMER:

4 Q Mr. Gasser, I'm showing you an email  
5 that I've marked as Union Exhibit 7 for  
6 identification. This is an email that I drafted  
7 to your counsel, Mr. Hanlon, with copies to  
8 Mr. Pearson, our general counsel, and Mr. Paszta,  
9 my colleague to my right here. Did Mr. Hanlon  
10 ever share this email with you?

11 A Honestly I can't remember. Mr. Hanlon  
12 and I have shared a lot of documents together.

13 Q Okay. Were you aware, did Mr. Hanlon  
14 ever tell you that we had proposed an order for  
15 striking arbitrators for the pending panels?

16 A I don't recall. I can remember turning  
17 over documents and reviewing them with my  
18 attorney and saying we would talk about it as  
19 soon as the -- as soon as the case went forward.

20 Q So the question pending is did  
21 Mr. Hanlon ever share this document with you,  
22 that you can recall?

23 A I can't recall.

24 Q Local 150 filed a motion to compel

1 arbitration on July 26, 2017, are you aware of  
2 that?

3 A I am. I remember taking that and  
4 delivering it to Mr. Hanlon.

5 Q You remember taking it to Mr. Hanlon?

6 A I remember getting paperwork for  
7 arbitration, and as with every time I got  
8 paperwork from Local 150 or from any federal  
9 judge or wherever it came from, I would always  
10 deliver it to Mr. Hanlon. So, if it was -- if it  
11 was sent to me, it was delivered to Mr. Hanlon.

12 Q So anything -- let me just follow up on  
13 this for just a moment. So anything you got  
14 regarding the arbitrations from, for example, the  
15 Federal Mediation and Conciliation Service you  
16 gave it to your counsel?

17 A I did.

18 Q Okay. And any grievance documents you  
19 got from Local 150 you gave those documents to  
20 your counsel?

21 A Yes, sir.

22 Q And you would get documents from time to  
23 time from Mr. Fahey, the business agent,  
24 grievances, letters advancing grievances in the

1 steps they arbitrated the grievance process?

2 A I remember only seeing Mr. Fahey on the  
3 first day.

4 Q But everything you got regarding  
5 arbitration you gave to your counsel?

6 A Yes, sir.

7 Q So he was in receipt of the Federal  
8 Mediation and Conciliation panels?

9 A Yes, sir.

10 MR. DIEMER: Okay. May I approach again,  
11 your Honor?

12 THE COURT: You may.

13 BY MR. DIEMER:

14 Q Mr. Gasser, I'm showing you Union  
15 Exhibit No. 8 marked for identification. This is  
16 Plaintiff's Motion to Compel. Have you ever seen  
17 this document?

18 A I believe I have.

19 Q I'd ask you to look at Paragraph 9.

20 THE COURT: It's admitted, Mr. Hanlon, no  
21 objection?

22 MR. HANLON: No objection, your Honor.

23 THE COURT: Thank you.

24

1 BY MR. DIEMER:

2 Q I'd ask you to look at Paragraph 9 on  
3 Page 3.

4 A Yes, sir.

5 Q Okay. Paragraph 9 says, "On July 14,  
6 2017, counsel for Local 150 sent an email to  
7 counsel for the Road District regarding the  
8 selection of arbitrators for five of the  
9 grievances filed against the Road District.  
10 Specifically, this email proposed a system for  
11 striking/selecting arbitrators from the panel  
12 provided by the Federal Mediation and  
13 Conciliation Service as required by Section 8.3  
14 of the CBA. Counsel for the Road District did  
15 not respond to this email."

16 So you've seen this before. Were  
17 you aware of this July 14 letter via the motion  
18 here?

19 A I honestly right now can't recall if I  
20 did or not.

21 Q Did your counsel ever tell you that the  
22 Union had tried to propose a system to strike  
23 arbitrators for these?

24 A I honestly can't remember.

1 MR. DIEMER: Again Union Exhibit 8 is  
2 obviously a court document, so.

3 THE COURT: Yes, it's admitted.

4 MR. DIEMER: May I approach, your Honor?

5 THE COURT: You may.

6 BY MR. DIEMER:

7 Q Mr. Gasser, I'm showing you Union  
8 Exhibit No. 9 that's been marked for  
9 identification purposes. This is the order  
10 entered by the Court on September 20, 2018  
11 granting, among other things, Local 150's Motion  
12 to Compel. I've got a couple questions about  
13 this document. First of all, did your counsel  
14 tell you the motion was granted?

15 A I honestly --

16 MR. HANLON: Objection. Privilege, Judge.

17 MR. DIEMER: Privilege protects  
18 communication from the client to the lawyer, and  
19 especially given the very odd circumstances of  
20 this case, I think it's important to  
21 understand -- I mean Mr. Gasser's made  
22 representations about what he thought the order  
23 meant. I think it's appropriate -- again, I  
24 recognize there's boundaries, and I certainly

1 can't ask Mr. Gasser what he told his counsel,  
2 but in terms of communicating the content of the  
3 order and specifically to the extent that he's  
4 offered his -- Mr. Gasser's offered his  
5 interpretation of the order into the record, I  
6 think I'm entitled to inquire, and I don't think  
7 they're able to use the privilege as a shield to  
8 prevent me from inquiring into the basis of his  
9 interpretation.

10 THE COURT: That's not the question you  
11 asked, though. So sustained as to the question  
12 you asked. I'm not saying the topic is out of  
13 bounds, but I'm saying that question asks for  
14 attorney-client communication.

15 BY MR. DIEMER:

16 Q Anybody ever tell you the order -- the  
17 Local 150's Motion to Compel was granted?

18 MR. HANLON: Objection, calls for hearsay.

19 THE COURT: Overruled.

20 THE WITNESS: I can't remember.

21 BY MR. DIEMER:

22 Q You don't?

23 A No, I don't.

24 Q Do you know if Local 150's Motion to

1 Compel was granted?

2 A I do now, I just read it, but --

3 Q Let me -- before you saw this document,  
4 did you know Local 150's Motion to Compel  
5 Arbitration had been granted?

6 A I can't answer that in a yes or no  
7 question.

8 THE COURT: He didn't ask it as a yes or no  
9 question.

10 THE WITNESS: No, if I knew if the court  
11 proceedings were ongoing.

12 BY MR. DIEMER:

13 Q So before you walked in the door today,  
14 you did not know that Local 150's motion to  
15 compel arbitration had been granted?

16 A When I got an email on November 19th,  
17 two days before Thanksgiving, saying that I was  
18 in contempt of court, and here is what I needed  
19 to have, that's when I realized I had this issue.

20 Q Well, we'll talk about contempt in a  
21 moment. I'm focused now on the Motion to Compel.  
22 Let me ask the question. Prior to walking into  
23 this door today, did you know that Local 150's  
24 motion to compel had been granted?



1 A Yes.

2 Q Okay. When did you know that?

3 A A month and-a-half ago, maybe two.

4 That's my best guess. I can't remember the exact  
5 date. It might have been around this, it might  
6 not. There's been a lot of motions and a lot of  
7 hearings.

8 Q Okay. Did anybody ever send you this  
9 order?

10 A I can't remember.

11 MR. HANLON: Objection, calls for hearsay.

12 THE COURT: Overruled.

13 THE WITNESS: I don't remember.

14 BY MR. DIEMER:

15 Q You don't remember ever seeing this  
16 order?

17 A No, I don't.

18 Q Now I don't want to -- I don't want you  
19 to tell me what was said. I want you to listen  
20 to my question carefully. Did you have any  
21 discussions, I don't want to know the content,  
22 but did you have any discussions with your  
23 counsel about this order that's in front of you?

24 A We may have. I remember discussing -- I

1 remember discussing the issue. I don't remember  
2 if we used that exact piece of paper.

3 Q So you don't remember if you had a  
4 specific conversation about this order?

5 A That's not what I'm saying. I'm saying  
6 we talked about it, but I can't remember --

7 Q You talked about what?

8 A About --

9 MR. HANLON: Objection. Privilege, Judge.

10 THE COURT: No, you can answer not what was  
11 said, but the subject matter of any discussion.

12 THE WITNESS: We of course we talked about  
13 arbitration and the subject of it, but I'm  
14 not -- I don't want to get into discussions of  
15 that any more than that.

16 BY MR. DIEMER:

17 Q So you had a discussion with your  
18 counsel about arbitration?

19 A The topic of it, yes.

20 Q When was that?

21 A I don't remember. We talked about it a  
22 lot. We actually tried to renegotiate the  
23 contract. I'm answering the question. I offered  
24 to do this or to find a resolution. So what

1 exactly came up in those conversations, can't  
2 pull them out date per date or what was said, but  
3 that was brought up.

4 Q Similarly I don't want to know what your  
5 counsel told you, but did your counsel ever tell  
6 you that you needed to take any affirmative steps  
7 to comply with the Court's order?

8 MR. HANLON: Objection. He's asking for  
9 actual the communication between an attorney and  
10 a client.

11 THE COURT: Sustained.

12 BY MR. DIEMER:

13 Q Mr. Gasser, did you do anything upon  
14 learning, whenever it was, that Local 150's  
15 motion to compel arbitration was granted?

16 A Absolutely. Any time that there was any  
17 legal movement, I always had a meeting with my  
18 attorney, and we always discussed what was going  
19 on.

20 Q I'm not talking about internally. I'm  
21 talking about did you take any steps -- did you  
22 do anything publicly, outside of communications  
23 with your counsel, outside of discussions with  
24 friends, did you in your relationship with

1 Local 150, whatever that may be, did you take --  
2 did you do anything after this Court issued its  
3 September 20th order?

4 A The only thing I did was I received it,  
5 and I know that when I got any legal documents in  
6 this case I would always immediately go to  
7 Mr. Hanlon and review it.

8 Q But you can't identify any affirmative  
9 conduct or affirmative steps you took in response  
10 to the Court's order of September 20, 2018?

11 A Only that we identified it was kept  
12 ongoing through the court system.

13 Q Let me put it this way. Outside of  
14 talking to your lawyer, you didn't do anything at  
15 anytime once this Court issued its order of  
16 September 20, 2018, is that correct?

17 A Anything publicly. You asked me if I  
18 did anything publicly. No, I didn't go to the  
19 papers or anything like that, no.

20 Q Did you take any steps to attempt to  
21 comply with the order?

22 A Again outside of talking to my attorney  
23 about the order, that's all I did.

24 Q Did you have an understanding that you

1 were going to need to comply with the order in  
2 any way?

3 A I knew eventually I would have to, when  
4 something happened, that when the final order  
5 came in, we would have to do something, but it  
6 was my understanding that as long as the  
7 attorney -- as long as the Court was -- or the  
8 case was working through the process, that we're  
9 still moving forward.

10 Q So it was your understanding you didn't  
11 need to do anything to comply with the order?

12 A I'm very aware that at some point I do  
13 have to do something, but never received anything  
14 after that order to say hey, this is what I'd  
15 have to do. I don't remember anything like that.  
16 I don't remember ever even talking about that.

17 MR. DIEMER: Bear with me for a moment, your  
18 Honor.

19 THE COURT: Plaintiff's 9's admitted,  
20 because it's a court order?

21 MR. HANLON: Yes, Judge.

22 THE WITNESS: Can I get a sip of water?

23 THE COURT: How much longer do you have?

24 MR. DIEMER: Maybe like five, ten minutes.

1 MR. HANLON: I have his bottle of water  
2 here.

3 THE COURT: Yeah, if you just want to give  
4 him his water, that'd be great.

5 THE WITNESS: I appreciate it.

6 THE COURT: Of course. Off the record.

7

8 (Discussion held off the record.)

9

10 MR. DIEMER: Your Honor, I apologize, I'm  
11 kind of working off -- this is the affidavit that  
12 Mr. Gasser attached to the recent filing from  
13 Mr. Hanlon, the cause as to why Andrew Gasser  
14 should not be held in contempt.

15 THE COURT: I've got a copy of that.

16 MR. DIEMER: So it's in the record?

17 MR. HANLON: It's in the record.

18 MR. DIEMER: It's in the record.

19 THE COURT: We'll mark it as Union 10?

20 MR. DIEMER: Yes.

21 THE COURT: No objection to its admission,  
22 Mr. Hanlon?

23 MR. HANLON: No, Judge.

24 THE COURT: It's admitted.

1 MR. DIEMER: May I approach?

2 THE COURT: You may.

3 BY MR. DIEMER:

4 Q So this is a little clip I've got on it,  
5 but is that the affidavit you submitted in this  
6 case? You're obviously familiar with that?

7 A I am.

8 Q So in your affidavit, you state, "At no  
9 time did I understand the Court's order to mean  
10 that I was to strike a name of an arbitrator from  
11 a list of arbitrators."

12 A No, sir, I did not.

13 Q So what was your interpretation of the  
14 order?

15 A My interpretation of the order was that  
16 we were working through the court system, and  
17 until a final judgment came in, that we were just  
18 moving forward.

19 Q Who told you you don't need to comply  
20 with it until there's a final order?

21 MR. HANLON: Objection, it calls for  
22 privileged communications.

23 MR. DIEMER: Let me ask it this way.

24 THE COURT: Withdrawn. Reask the question.

1 BY MR. DIEMER:

2 Q Why do you think you don't have to do  
3 anything until there's a final order?

4 A Because I communicate with my attorney,  
5 and we talk about the things that we need to do  
6 moving forward.

7 Q And so what is your understanding of  
8 what a final order is?

9 A My final -- the final order is when  
10 we're told that the case has been dismissed or  
11 it's been confirmed, and I'm told that I have to  
12 comply with something, whether that be present  
13 documents or do whatever it is.

14 Q Told by who?

15 A My attorney.

16 Q I see. So you complied with the FOIA  
17 order, correct?

18 A Correct.

19 Q But you didn't do anything to comply  
20 with the Court's September 20th order, correct?

21 A When I got the email with that, it had  
22 no dates on it at that time. There was nothing  
23 in there that I need to do.

24 Q Yet you knew you would have to do



1 something once there was a final order, even  
2 though there were no dates on the order?

3 A That's how it was communicated to me.  
4 There was no, nothing in what I read that said  
5 you have to do -- you have to act first, or there  
6 were no dates. It was ambiguous to me. It  
7 didn't make any sense.

8 Q That's the way it was explained to you?

9 A No, that's what it said in the email,  
10 that on November -- November 19, plus or minus.

11 Q Email from whom?

12 A I don't have it in front of me, but  
13 that's -- that's the date that sticks out in my  
14 head.

15 Q Regardless of the date, who sent you the  
16 email?

17 A I don't recall. I just know it's in my  
18 email. That's when this whole thing kicked off.

19 Q So you got an email in November. So the  
20 Court's order issues on September 20th -- So the  
21 order issued on September 20th, you get an email  
22 from somebody in November telling you not to  
23 worry about it?

24 A No. I got an email in November saying

1 that I had to comply and provide FOIA documents,  
2 and that I had a certain amount of time to get  
3 that, and that was it.

4 Q Well the FOIA documents were disclosed  
5 before that, weren't they?

6 A That's the date that sticks in my head.

7 Q Okay. So you have reviewed the  
8 collective bargaining agreement?

9 A I viewed it.

10 Q And you don't believe that the CBA  
11 requires you to progress any grievances to  
12 arbitration in any timely fashion?

13 A I'm repudiating it.

14 Q You're repudiating it, I see. As you  
15 sit here today are you repudiating it?

16 A I am.

17 Q And what does that mean to you?

18 A It means I reject the agreement that was  
19 set before I took office.

20 Q Do you reject the Court's finding that  
21 it was a valid contract?

22 A I'm just saying that I'm repudiating it.  
23 I have to follow what the Court says, and I know  
24 we have the right to appeal.

1           Q     There is no question pending. So the  
2 contract says, "The parties shall alternately  
3 strike the names of arbitrators, taking turns as  
4 to the first strike." Are you familiar with that  
5 language?

6           A     I am.

7           Q     And you're also aware that in the State  
8 of Illinois, the Labor Relations Act imposes a  
9 duty on all parties to act in good faith?

10          A     I do.

11          Q     You understand that concept?

12          A     I do understand that.

13          Q     And so in your affidavit you were hung  
14 up on being required to strike first?

15          A     It didn't say who was supposed to strike  
16 first, or there wasn't any dates put on there or  
17 anything.

18          Q     And you don't think -- I mean, you  
19 talked earlier about you wanted to renegotiate  
20 things?

21          A     I do. In fact that's open right now. I  
22 would love to renegotiate it.

23          Q     So you're a reasonable guy?

24          A     I am.

1           Q     Okay. And so language like this, "The  
2 parties shall alternately strike names taking  
3 turns as to the first strike", that's not  
4 something you could figure out a way to  
5 negotiate?

6           A     There was no process that was put in  
7 that place. And I also remember reading  
8 something that -- well I just remember reading  
9 that there was alternative language or  
10 alternating.

11          MR. DIEMER: May I approach, your Honor?

12          THE COURT: You may.

13          BY MR. DIEMER:

14          Q     Mr. Gasser, I'm showing you Union  
15 Exhibit 11 that I've marked for identification.  
16 This is a letter that I drafted on October 2nd  
17 and sent to your counsel, Mr. Hanlon, regarding  
18 what was at that point the eight pending  
19 grievances, and asking him to contact me at his  
20 earliest convenience but no later than  
21 October 12, ten days later, so that we could  
22 finalize arbitrator selection for each of the  
23 above cases. Did Mr. Hanlon ever share this  
24 letter with you?

1           A     We talked about this letter.

2           THE COURT:   The question was did he ever  
3     give you a copy of it.

4           THE WITNESS:   Actually I think it's in our  
5     records at the township, so yes.

6     BY MR. DIEMER:

7           Q     When would he have given you that  
8     letter?

9           A     Sometime after it was given.

10          Q     Okay.  At any point did you direct him  
11     to contact the Union to finalize arbitrator  
12     selection for the pending grievances?

13          A     I can't talk about that.  It's something  
14     we talked about privately.

15          MR. HANLON:  Privilege, Judge.  He's asking  
16     the witness what the witness said to his lawyer.

17          THE COURT:  Can you read the question back  
18     for me?

19

20                     (Question read.)

21

22          THE COURT:  Overruled.  You can answer.

23          THE WITNESS:  We discussed it.

24

1 BY MR. DIEMER:

2 Q The question is did you direct him to  
3 contact the Union so the parties could finalize  
4 arbitrator selection?

5 A Yeah. Yes.

6 Q You directed him to do that?

7 A We talked about -- again, I can't answer  
8 it in a yes or no actually. I can't answer it in  
9 a yes or no.

10 Q You can. Did you direct him to contact  
11 the Union to finalize arbitrator selection on the  
12 pending grievances. It's a yes or no.

13 A I can't answer that, Judge. There's no  
14 way. It was a full conversation about the  
15 letter.

16 THE COURT: Why can't you answer that yes or  
17 no?

18 THE WITNESS: Because it was a full  
19 conversation, sir, where we walked through the  
20 different -- it was legal strategy, and talking  
21 about with my attorney about everything that was  
22 going on with respect to this. That's the truth.  
23 There is no -- there is no simple yes or no.  
24 It's not a yes or no answer to me, sir.

1 BY MR. HANLON:

2 Q What was the outcome of that discussion?

3 A We would continue on with court  
4 proceedings.

5 Q And not contact the Union to engage in  
6 arbitrator selection?

7 A I don't remember ever saying that, and I  
8 don't remember directing that.

9 Q You did not direct that?

10 A No, I never said do not talk to 150. In  
11 fact, I've told my attorney many times --

12 MR. HANLON: Objection. Privilege, Judge.

13 THE COURT: You don't have to continue.

14 BY MR. DIEMER:

15 Q Would you like a representative to  
16 have -- would you have preferred your  
17 representative, not necessarily your counsel,  
18 contact Local 150 to finalize arbitrator  
19 selection?

20 MR. HANLON: Objection, vague and ambiguous.

21 THE COURT: Overruled on that objection.  
22 You can answer.

23 THE WITNESS: Can you please repeat the  
24 question?

1 MR. DIEMER: Could you read it?

2

3 (Question read.)

4

5 THE WITNESS: I would always want my counsel  
6 to be the one to do that, and I would love to  
7 renegotiate.

8 BY MR. DIEMER:

9 Q Did any agent or representative of  
10 yourself or Algonquin Township Road District ever  
11 contact Local 150 to engage in the arbitrator  
12 selection process for the eight pending  
13 grievances?

14 A Did any agent from Algonquin? No.  
15 Everything that has ever come up with the labor  
16 issue has always been a discussion between myself  
17 and my attorney, except the board is actually  
18 interested in doing that.

19 Q Doing what?

20 A Getting involved with the labor issue.

21 Q And --

22 A And Mr. Kelly.

23 Q And where does that stand right now?

24 A I don't know. I don't even see how they



1 can be a part of it. They're a completely  
2 separate unit of government, and I don't  
3 understand why they're trying to do that, so.

4 Q You believe the township is a separate  
5 body of government?

6 A The Highway Department and the Township  
7 -- the Road District, the Algonquin Township Road  
8 District and the Algonquin Township Board are two  
9 separate units of government.

10 Q They have nothing to do with one  
11 another?

12 A They have an auditing function, and  
13 that's it.

14 Q So they can't -- the Board can't  
15 overrule a decision by the Highway Commissioner  
16 like yourself?

17 A It's my understanding no, they can't.

18 Q Okay. Did you understand that this  
19 litigation, in this litigation you took the  
20 opposite position?

21 A No.

22 Q Okay. You didn't understand that?  
23 Okay. Put aside your counsel for a moment. You  
24 didn't direct anybody else associated with the

1 Road District to contact Local 150 to engage in  
2 arbitrator selection, correct?

3 A No, sir.

4 Q Is that a correct statement?

5 A It is.

6 MR. DIEMER: Move for the admission of Union  
7 Exhibit 11.

8 THE COURT: Mr. Hanlon?

9 MR. HANLON: No objection, Judge.

10 THE COURT: All right. Plaintiff's 11 is  
11 admitted.

12 MR. DIEMER: May I approach?

13 THE COURT: You may.

14 BY MR. DIEMER:

15 Q Mr. Gasser, I'm showing you what I've  
16 marked as Union Exhibit 12 for identification.  
17 Now the parties have clear-cutted forests by  
18 copying the collective bargaining agreement, so  
19 this is a redacted copy with just basically the  
20 grievance arbitration procedure, the cover page  
21 and the signature page.

22 My question is going to relate to  
23 Section 8.5 of the grievance procedure, and  
24 that's found on Page 16 of this redacted portion

1 of the collective bargaining agreement.

2 I'd ask you to look back at the  
3 affidavit that's already in evidence that you  
4 submitted in support of your brief establishing  
5 cause. In that affidavit you stated, "I believe  
6 the default section in 8.5 of the CBA renders any  
7 further action on my part a nullity." Do you see  
8 that in your affidavit?

9 A Which exhibit is that again?

10 Q That's the Exhibit 10.

11 A I do. I do remember that.

12 Q Okay. Can you explain that?

13 A Absolutely. It's any grievance not  
14 appealed to the next step in writing within the  
15 appropriate number of work days means that we  
16 don't have to -- it's considered settled. My  
17 answer it would be settled.

18 Q Do you understand that Local 150  
19 advanced all the grievances to the last and final  
20 step of the process?

21 A No. We were in the middle of a -- as I  
22 understand it, we were in the middle of a case  
23 that had been being litigated.

24 Q You told us earlier that you had

1 received panels of arbitrators from the Federal  
2 Mediation and Conciliation Service?

3 A I received documents. I did not know  
4 they were panels, or did not know what they were.  
5 I would take them and I would bring them to my  
6 attorney and we would discuss it privately.

7 Q So you're disputing whether Local 150  
8 has made arbitration demands?

9 A I'm disputing that I did not know I had  
10 to respond to anything, because we were still in  
11 the legal process.

12 Q I see. But my question relates to your  
13 interpretation of this section of the grievance  
14 procedure. And so my question to you is you  
15 understand that Local 150 has advanced all the  
16 pending grievances to the last step of the  
17 process which is arbitration, that's correct,  
18 right?

19 A No. As I understood it, it was working  
20 through the court process, and the court process  
21 was separate from the arbitration process.

22 Q The court process is separate from the  
23 arbitration process. So the whole -- the thing  
24 that started the dispute as it were was Local

1 150's filing of grievances and demanding  
2 arbitration. You recall that, correct?

3 A I do.

4 Q Okay. So you recall that Local 150 made  
5 arbitration demands, correct?

6 A I remember them processing that, and  
7 then I remember taking it into the judicial  
8 system, and at that time that was put on hold.

9 Q And we talked earlier in June of 2017,  
10 June 9th as a matter of fact, you filed a  
11 pleading where you said Local 150 has filed  
12 arbitration demands. They requested FMCS panels,  
13 and we expect the FMCS panels within 30 days, do  
14 you remember that testimony, right?

15 A I also remember saying that we were  
16 taking it to the court system, and at that point  
17 it would be -- we'd go through the legal process  
18 first before going back to arbitration. That's  
19 my understanding of it.

20 Q I mean, there is no dispute you got  
21 served with the Rule to Show Cause on October 26?

22 MR. HANLON: Stipulate that we did, Judge.

23 THE COURT: They don't have to accept your  
24 stipulation if they don't want to.

1 BY MR. DIEMER:

2 Q Well I mean if they're going to  
3 stipulate that they received it -- the question  
4 pending, you received the rule. What did you  
5 understand that to be?

6 A I understand it to be that we were still  
7 going through the proceedings, and that we were  
8 still in the judicial system, and we were not in  
9 anything else.

10 Q Did you understand that you were going  
11 to have to show up in court and explain why you  
12 shouldn't be held in contempt of court?

13 A I did.

14 Q And so I'm reading from the rule. The  
15 rule required you to appear in court for your  
16 failure to obey the court order entered on  
17 9-20-18 regarding Algonquin Township Highway  
18 Commissioner Andrew Gasser to arbitrate the  
19 grievances of Local 150 filed under the  
20 collective bargaining agreement dated April 25th,  
21 2017.

22 So you understood that you were  
23 going to come to court and explain why you hadn't  
24 arbitrated the pending grievances?

1           A     It's because my understanding that it  
2     was in the judicial system, not in the  
3     arbitration system.

4           Q     But this is the judicial system, is it  
5     not?

6           A     I'm just telling you what it is, sir.

7           Q     That was your understanding?

8           A     That's my understanding.

9           Q     Even though --

10          A     Yes, sir.

11          Q     -- you were served with contempt papers,  
12     you still thought that there was nothing you  
13     needed to do to comply with the Court's  
14     September 20th order?

15          A     As soon as I got those contempt papers,  
16     I immediately took them to my attorney, and we  
17     started working to fix that process.

18          Q     And you didn't do anything in your  
19     relationship with Local 150 to address this  
20     issue?

21          A     No, sir. Everything I do with 150 I  
22     work through with my attorney.

23          Q     Mr. Hanlon?

24          A     Yes, sir.

1           Q     Okay. And is there anybody else that  
2     you would rely on?

3           A     No, sir.

4           Q     So all of your -- so there's nobody  
5     other than Mr. Hanlon that have counseled you on  
6     any actions taken in this case?

7           A     No, sir.

8           Q     And at this point you don't intend to do  
9     anything specific to comply with this Court's  
10    order, do you?

11          A     I would not say -- no, I would not agree  
12    with that statement. I don't know right now.

13          Q     I mean sitting here right now, you don't  
14    have any plans to do anything affirmative to  
15    comply with the Court's September 20th order?

16          A     That's -- there's nothing concrete. I  
17    would immediately talk to my attorney,  
18    absolutely.

19          Q     As you sit here, you can't think of  
20    anything you're going to do to comply with this  
21    Court's September 20th order?

22          A     I think I would sit down and talk with  
23    my attorney while we're here and figure out what  
24    we're going to do.



1 Q Talk to your attorney. Okay.

2 A Absolutely.

3 Q You know, that's all we have, Judge.

4 THE COURT: Redirect?

5

6 REDIRECT EXAMINATION

7 BY MR. HANLON

8

9 Q Mr. Gasser.

10 A Yes, sir.

11 Q You've had occasion to send me emails,  
12 is that correct?

13 A Yes, sir.

14 Q What does my email address begin with?

15 A "R".

16 Q Okay. Well could you give me the first  
17 say seven --

18 A Robert.

19 Q Robert. The whole name Robert, right?

20 A Yes.

21 Q I'd like to draw your attention to Union  
22 Exhibit No. 7. Would you look at Union Exhibit  
23 No. 7?

24 THE COURT: That one hasn't been admitted.

1 MR. HANLON: Yes, I know. I was going to  
2 ask to have it admitted in just a few seconds.

3 THE COURT: Okay.

4 MR. HANLON: But for a different purpose  
5 than Local 150 might do.

6 THE WITNESS: I see it.

7 BY MR. HANLON:

8 Q That's not my email address is it?

9 A No.

10 Q Okay. And so what is the correct email  
11 address for me, if you know?

12 A Robert@rhanlonlaw.com.

13 Q Is it possible it's  
14 robert@robhanlonlaw.com?

15 A Honestly I can't answer that question.  
16 I know I hit "R" and your name populates into my  
17 email and away it goes.

18 Q Okay. So with respect to this document,  
19 you testified earlier that you didn't recall  
20 receiving it. This document is purportedly dated  
21 Friday, July 14, 2017. Do you know what you ate  
22 for breakfast that day?

23 A No.

24 Q Do you know what other documents you

1 read that day?

2 A No.

3 Q With respect to the court proceedings,  
4 the order of September 20, 2018 was more than a  
5 year after this document shown in Union Exhibit  
6 No. 7, is that correct?

7 A Yes, sir.

8 Q Lots of litigation papers went back and  
9 forth, correct?

10 A Thousands of pages.

11 Q And you would regularly meet with me at  
12 my office with respect to those papers, is that  
13 correct?

14 A Yes, sir.

15 Q Now, there's a collective bargaining  
16 agreement that is Union Exhibit No. 12. Can you  
17 take a look at Union -- wait, before I go to  
18 Union 12.

19 MR. HANLON: Judge, Local 150 has presented  
20 you an Exhibit 7 but did not offer it into  
21 evidence. I wish to offer it into evidence to  
22 show non-receipt based upon improper email  
23 address.

24 MR. DIEMER: May I respond, your Honor?

1 THE COURT: Well the only question is are  
2 you objecting to its admission.

3 MR. DIEMER: Yeah, we'll approve its  
4 admission.

5 THE COURT: Or not object to its admission.  
6 All right. Plaintiff's 7 is admitted.

7 MR. DIEMER: Well just for point of order  
8 here, two points I'd like to make.

9 THE COURT: I don't want -- I didn't like  
10 him arguing what the significance of the document  
11 is. That's for closing or for argument that  
12 we're going to have in a few minutes. So if you  
13 were going to -- so let me just say you're moving  
14 to admit 7. Are you objecting to the admission  
15 of 7?

16 MR. DIEMER: No.

17 THE COURT: It's admitted. You can make  
18 whatever arguments you want to make about the  
19 exhibits when I give you a chance to make  
20 whatever arguments you want to make after we  
21 close testimony.

22 BY MR. HANLON:

23 Q Mr. Gasser, you understood that the  
24 court order of September 20th ordered you to

1     comply with Article 8 of the grievance procedure,  
2     correct?

3           A     Yes, sir.

4           Q     Is there any time set forth in the  
5     grievance procedure specifically telling you what  
6     you had to do?

7           A     No, sir.

8           Q     Is there anything that tells you who  
9     goes first with respect to striking the names as  
10    it relates to the actual grievance procedure?

11          A     No, sir.

12          Q     And with respect to -- strike that.  
13    Mr. Diemer asked you about article -- I'm sorry,  
14    Section 8.5 Settlements and Time Limits, and he  
15    only read a portion of the sentence that was  
16    there.

17                   The full sentence reads, "Any  
18    grievance not appealed to the next succeeding  
19    step in writing and within the appropriate number  
20    of work days of the employer's last answer will  
21    be considered settled on the basis of the  
22    employer's last answer and shall not be eligible  
23    for further appeal." Do you see that within the  
24    body of Union Exhibit No. 12?

1           A     I do.

2           Q     Okay. What was your last answer as it  
3 relates to the grievances associated with these  
4 individuals?

5           A     I've only done all my communication  
6 through you.

7           Q     Well, what was the last communication  
8 you had with any of those employees?

9           A     Specifically which employees.

10          Q     Well, how about Mr. Rosencrans?

11          A     He has contacted me through Facebook,  
12 but I've never contacted him.

13          Q     When was the last time you had a word to  
14 say to Mr. Rosencrans?

15          A     Face-to-face was May 15, 2017.

16          Q     The same with Mr. Lee?

17          A     Yes, sir.

18          Q     Was it the same with -- is it Chirikos?

19          A     Chirikos, yes, sir.

20          Q     And you terminated them, right?

21          A     Yes, sir.

22          Q     Are you familiar with what capitalized  
23 terms means in legal documents?

24          A     No, sir.

1 Q All right. With respect to this, the  
2 activity that took place in 2017?

3 A Yes, sir.

4 Q Did you receive a notice from the  
5 Federal Mediation and Conciliation Service after  
6 the Court issued its order?

7 MR. DIEMER: Objection, vague.

8 THE COURT: Which order?

9 BY MR. HANLON:

10 Q The 9-20 order compelling arbitration.

11 A I would have to go back in my email and  
12 look. I don't believe I did.

13 Q One second, Judge. I'd like to draw  
14 your attention to Union Exhibit No. 3, which has  
15 previously been entered into evidence in this  
16 case.

17 A No. 3 you said, sir?

18 Q No. 3.

19 A I have it.

20 Q Okay. Now within that document will you  
21 look at Exhibit A.

22 A Yes.

23 Q It says Wednesday, October 17, 2018  
24 2 p.m., is that correct?

1           A     Yes, sir.

2           Q     Okay. And it has another one of these  
3     Federal Mediation and Conciliation Services  
4     letters that was similar to before the court  
5     order, correct?

6           A     Yes, sir.

7           Q     Okay. And do you know -- I'm sorry.  
8     Then I'd like to refer you to Page 1 of the Union  
9     Exhibit No. 3, where it reads, "On October 17,  
10    2018 at 3:38 p.m., Mr. Gasser forwarded the  
11    request to his attorney at 3:35 p.m. or  
12    thereabouts."

13          A     I do see that.

14          Q     Was it 3:35 or 3:38?

15          A     I do not remember.

16          Q     But sometime shortly after you got it,  
17    you forwarded it to me, right?

18          A     Yes, sir.

19          Q     And do you know what time that you  
20    received the first Petition for Rule to Show  
21    Cause?

22          A     At 4:38 p.m.

23          Q     So at the time that you received the  
24    request that's shown in Exhibit A, at that point



1 in time did you think that you had to do anything  
2 that very moment?

3 A No, sir, other than just to pass it  
4 forward.

5 Q Okay. And you know we're here several  
6 months afterwards, correct?

7 A Yes, sir.

8 Q And being here several months afterwards  
9 this Petition for Rule to Show Cause entered, did  
10 you understand why the Rule to Show Cause  
11 entered?

12 A I understand now, but I didn't  
13 understand then. I just forwarded it.

14 Q Well when it comes to this striking of  
15 panels and picking of panels, what's shown in  
16 Exhibit A to Union Exhibit No. 3, what's shown in  
17 that exhibit is a new panel, right?

18 A Yes, sir.

19 Q Did you get a letter from Mr. Diemer  
20 asking you to strike any of these names?

21 A No, sir.

22 Q Did you get a letter from Mr. Diemer  
23 proposing how to change those at that point in  
24 time?

1           A     No, sir.

2           MR. DIEMER:  Objection, relevance, that  
3     Mr. Hanlon has already admonished me for  
4     communicating with his client.

5           MR. HANLON:  Judge, he raised relevance.  
6     It's already admitted into evidence, and how it's  
7     relevant is the understanding of Mr. Gasser.  And  
8     Mr. Diemer has repeatedly referred to what  
9     Mr. Gasser knew or didn't know and how.

10          THE COURT:  The objection is overruled.  He  
11     can answer the question.

12          MR. HANLON:  Can you repeat the question to  
13     the witness?

14  
15                     (Question read.)

16  
17          THE WITNESS:  No, sir.

18     BY MR. HANLON:

19          Q     And there's an instructions to FMCS  
20     that's attached to Union Exhibit No. 3, correct?

21          A     Yes, sir.

22          Q     All right.  I'd like to draw your  
23     attention to those instructions where it says  
24     Termination Dispute Andrew Rosencrans.  It says

1 "No. 1, the parties mutually selected an  
2 arbitrator."

3 A I'm looking for --

4 Q If you look at Exhibit A, it would be  
5 the 1, 2, third page, top of the page.

6 A I see Mr. -- I see the page referencing  
7 Mr. Rosencrans.

8 Q Okay. Did Local 150 agree to a --  
9 mutually agree to an arbitrator?

10 A No, sir.

11 MR. DIEMER: Your Honor, I'm going to  
12 object. This is a charade.

13 MR. HANLON: No, Judge --

14 THE COURT: No, stop. Objection is  
15 sustained. Next question. You can't on the one  
16 hand use your attorney-client as a shield and  
17 then start using it as a sword.

18 MR. HANLON: That question wasn't directed  
19 to a privileged communication, Judge, it was  
20 directed to --

21 THE COURT: No, but you --

22 MR. HANLON: -- what the Union had done in  
23 connection with this as it relates to what the  
24 parties' obligation are, Judge. So the term

1 charade as used by Mr. Diemer --

2 THE COURT: The objection is sustained.

3 Next question.

4 BY MR. HANLON:

5 Q As you sit here today and read the  
6 arbitration provision of the collective  
7 bargaining agreement, do you have an  
8 understanding of when you're supposed to do  
9 anything?

10 A As I read Section 8.5 it doesn't have  
11 any timelines of when I'm supposed to do  
12 anything.

13 MR. HANLON: No further questions, Judge.

14 THE COURT: Recross.

15 MR. DIEMER: Can I take two minutes?

16 THE COURT: Yes.

17

18 (Off the record at 4:03.)

19 (On the record at 4:04.)

20

21 RECROSS EXAMINATION

22 BY MR. DIEMER

23

24 MR. DIEMER: What are we up to, Union 13?

1 THE COURT: Yes.

2 MR. DIEMER: May I proceed?

3 THE COURT: You may.

4 BY MR. DIEMER:

5 Q Just a few follow-up questions for you,  
6 Mr. Gasser.

7 A Yes, sir.

8 Q Mr. Hanlon asked you about his email  
9 address. Do you recall a point in time getting  
10 an email from his secretary advising that the  
11 email addresses from Mr. Hanlon's law firm had  
12 been changed? Do you remember getting that  
13 email?

14 A I don't remember getting an email.

15 Q Now you believe in transparency as a  
16 public official?

17 A Sir, I do.

18 Q And you post online things, for example  
19 like Mr. Hanlon's invoices? Those are all posted  
20 online?

21 A They are. They're in Google drop box on  
22 the Township Highway Department web page.

23 Q And those are public records?

24 A They are.

1 Q Transparency, no secret, they're there  
2 for everybody to see?

3 A Correct.

4 Q And you review his invoices obviously?

5 A I do.

6 Q Just as you would review any vendors  
7 invoices, correct?

8 A I do.

9 MR. DIEMER: May I approach?

10 THE COURT: You may.

11 MR. DIEMER: I apologize, your Honor. We  
12 kind of did these on the fly, so I don't have any  
13 staples. I don't know if the clerk has a  
14 stapler.

15 BY MR. DIEMER:

16 Q So you will see this is an invoice from  
17 Mr. Hanlon dated August 8, 2017?

18 A Yes, sir.

19 Q Okay. And you approved this invoice?

20 A Yes, sir.

21 Q And paid it?

22 A We did, sir.

23 Q Now I ask you to look at Page 3, the  
24 billing entry on September 14, 2017 -- or excuse

1 me, that's my sister's birthday. July 14, 2017.

2 Do you see that?

3 A Yes, sir.

4 Q RTH is presumably Robert T. Hanlon?

5 A Yes, sir.

6 Q So that's -- this is a billing record of  
7 his, and he says received email from B. Diemer of  
8 Local 150?

9 A Yes, sir.

10 Q And he charged .25 and billed the  
11 Township \$93.75 to read an email from B. Diemer?

12 A Yes, sir.

13 Q Which is me?

14 A Yes, sir.

15 Q And then it looks like he had a  
16 telephone conversation with you on that same day,  
17 .25, same amount 93.75, do you see that?

18 A Yes, sir.

19 Q And the email that we've been discussing  
20 from me to Mr. Hanlon is dated July 14, 2017, do  
21 you see that?

22 A I do.

23 Q Okay. So it seems like this is the  
24 email that he billed the township \$93 to read?

1 MR. HANLON: Objection, calls for  
2 speculation.

3 THE COURT: Sustained.

4 BY MR. DIEMER:

5 Q Do you believe that this is the email  
6 that he billed the township for?

7 A No, I do not.

8 Q You don't think it's the email?

9 A I have no idea to know. I can't  
10 speculate on that. Mr. Hanlon calls me at all  
11 different times with different emails and  
12 different things.

13 Q Has Mr. Hanlon ever forwarded an email  
14 he received from me?

15 A I'm sure he has. I can't point to one,  
16 though.

17 Q And you would expect that if I send  
18 Mr. Hanlon an email about this case and he reads  
19 it, that he'll bill you for that?

20 A I can't say that he bills for every  
21 single email he reads in my case. I don't know.

22 Q You would not have a problem if  
23 Mr. Hanlon billed the township for reviewing an  
24 email?



1 MR. HANLON: Objection, vague and ambiguous,  
2 use of the term township.

3 THE COURT: Billed the Township Road  
4 District.

5 THE WITNESS: If it was a relevant email,  
6 absolutely. I get so many emails, and many of  
7 them are not relevant to township business, it's  
8 spam, just get rid of it. So no, I would hope he  
9 wouldn't call me on every single one.

10 BY MR. DIEMER:

11 Q Union Exhibit 7, is this, now that  
12 you're looking at it, do you think that would  
13 have been a relevant email?

14 A I would.

15 Q Would you believe it would justify a  
16 billing entry?

17 A It could, yeah.

18 MR. DIEMER: That's all I have.

19 THE COURT: All right. Thank you, sir. You  
20 may step down.

21

22 (Witness excused.)

23

24 THE COURT: I will let Mr. Hanlon, you may

1 make any argument you wish to make, whether it's  
2 summarizing his testimony, whether it's arguing  
3 why he should not be held in contempt, to cover  
4 both your brief and the testimony that we've  
5 heard here today.

6 MR. HANLON: Judge, I'll incorporate all the  
7 arguments that are made within the body of the  
8 brief, but I think when it comes to Mr. Gasser's  
9 testimony here today, one thing is clear, that  
10 Mr. Gasser has articulated a certain degree of  
11 confusion about what the obligations that he had  
12 and didn't have.

13 With respect to the documents  
14 themselves, and in particular Union Exhibit  
15 No. 7, Mr. Gasser testified that it's not my  
16 correct email address, and although there's a  
17 billing entry on there, what my opposing counsel  
18 failed to do is exclude any other possible  
19 communications that they put the correct email  
20 address on.

21 So and he also indicated in his  
22 testimony that he had no recollection of this  
23 particular document, where Local 150 is making a  
24 proposition, a proposal to in essence change the

1 terms of the agreement, not necessarily the  
2 enforcement of the agreement, and this of course  
3 came a year and-a-half before the entry of the  
4 Court's order.

5 THE COURT: So I'm not sure why any of  
6 that's relevant if it came a year and-a-half  
7 before my order.

8 MR. HANLON: Well the application of the  
9 order says to comply with Section 8 of the  
10 arbitration provision, and if you look at the  
11 language of the arbitration provision, it doesn't  
12 tell Mr. Gasser what it is that he's supposed to  
13 do.

14 And if he's supposed to do  
15 something and the Court is going to hold him in  
16 contempt for not doing it, if it's that he's to  
17 participate in arbitration, does that mean appear  
18 at the arbitration or follow the procedure in the  
19 collective bargaining agreement.

20 If the procedure articulated within  
21 the response in showing cause why he should not  
22 be held in contempt, there is no clearcut  
23 procedures. And since there was just a new panel  
24 that was set forth by the FMCS, any reasonable

1 person looking at the combination of the FMCS  
2 document and looking at what is it that they're  
3 supposed to do next, there isn't anything for him  
4 to do. And if we believe that the testimony of  
5 Mr. Gasser, which is uncontroverted in this case  
6 here with respect to his understanding of what  
7 was his obligation underneath the various  
8 provisions, then he hasn't willfully and  
9 contumaciously violated the Court's order.

10 THE COURT: Let me interrupt you. I forgot  
11 to ask you, do you have any other witnesses that  
12 you wanted to call?

13 MR. HANLON: No, Judge.

14 THE COURT: And I forgot Local 150, were  
15 there any witnesses that you wish to call?

16 MR. DIEMER: No, your Honor.

17 THE COURT: And I apologize, I should have  
18 done that before. All right. The testimony is  
19 now closed. Thank you.

20 MR. HANLON: I believe that goes under the  
21 no blood, no foul rule.

22 THE COURT: Hopefully.

23 MR. HANLON: So with respect to what it is  
24 he's supposed to do, if the Court were to hold

1 him in contempt, the civil contempt requires the  
2 keys to his own freedom by doing some thing. And  
3 since this Court has never articulated to  
4 Mr. Gasser what that one thing it is that he's  
5 supposed to do, he wouldn't be in a position to  
6 purge the contempt.

7 So it would seem to me that the  
8 ambiguity that's created in the arbitration  
9 provision is an area that's left to the  
10 arbitrator ultimately to determine. I know we  
11 have to get to an arbitrator at that point in  
12 time, and this is somewhat of a nuance of law,  
13 but you know there is a procedure by which  
14 Local 150 can, you know, advance this to  
15 arbitration. They chose not to do that. They  
16 could have.

17 THE COURT: Well, what is that?

18 MR. HANLON: They could have struck a panel,  
19 and then said okay, we've struck this panel, you  
20 choose, you make the next step. Because they --

21 THE COURT: Then we wouldn't be here if they  
22 had done that?

23 MR. HANLON: No, I don't think we -- I think  
24 that we'd have to look at it from the perspective

1 that since the arbitration provision doesn't say  
2 who has to do what and when, then it isn't all on  
3 Mr. Gasser. You know, if the arbitration  
4 provision contained in that agreement said you  
5 will strike the first one, the Union will strike  
6 the second, and then take alternating turns, it  
7 doesn't say that. It says the parties, being the  
8 Road District and the Union, are going to take or  
9 alternate turns in striking panels and so forth.

10 Because it doesn't say who does  
11 what when, to hold my client in contempt for his  
12 noncompliance would be to hold him in contempt  
13 for something that wasn't ordered, and that's the  
14 fundamental problem, Judge. And if the keys to  
15 his freedom are the purging of the contempt by  
16 doing some act, that act should have been  
17 articulated with some degree of specificity in  
18 the court order.

19 And so I would ask that the Court  
20 not hold Mr. Gasser in contempt and allow the  
21 respective parties to proceed pursuant to the  
22 terms, which may require declaratory relief as to  
23 what that means. But the Union's never sought  
24 declaratory relief as to what that provision

1 means, and they haven't filed a request for  
2 arbitration as to what that arbitration provision  
3 means. It seems a little confusing that you have  
4 this ambiguous term, but the whole issue that  
5 we've been before this Court on is whether or not  
6 the power of that prior Highway Commissioner  
7 allowed the execution and entry into a valid  
8 contract. If the contract is valid, that's  
9 great, but the question then becomes if there is  
10 an ambiguity in it, how do you resolve the  
11 ambiguity, and this Court's never approached that  
12 issue.

13 THE COURT: Thank you. Anything Local 150  
14 wants to say in response?

15 MR. DIEMER: We do. We have things to say.  
16 Your Honor, there is no ambiguity. This case  
17 started out with three discharged employees that  
18 were looking for their day in court.

19 We have been round and round the  
20 barn on this one. We filed arbitration demands,  
21 we moved for FMCS panels, we moved to compel  
22 arbitration. The relief we sought in the motion  
23 to compel arbitration couldn't have been clearer.  
24 The prayer for relief, we asked for a ruling in

1 favor of Local 150 on the motion -- excuse me.  
2 "Plaintiffs respectfully request the Court enter  
3 an order for the parties to participate in the  
4 contractual arbitration selection process, take  
5 all other contractual steps to progress each  
6 pending grievance to arbitration." It's plain as  
7 day.

8 The Court ruled from the bench,  
9 followed up with a written order. The  
10 arbitration provision provides steps to get to  
11 the FMCS panels. Once the FMCS panels are  
12 released from the agency, the contract imposes an  
13 obligation on the parties to strike individual  
14 names from an individual panel until you arrive  
15 at one last name. It's not that complicated.

16 Smith and Jones enter into a  
17 contract to sell a horse for \$100. Smith shows  
18 up with his \$100 to gets his horse. It's not a  
19 defense to say you lose because we never put a  
20 time on it, the day of the transaction. Any  
21 question about the timeliness is decided by the  
22 Court's issuance of the order to compel.

23 The Court compelled the parties to  
24 arbitration, plain as day. The next step was to



1 strike arbitrators. We've taken efforts that are  
2 shown in the record.

3 You know, we had some discussion  
4 about this July 14 email from Mr. Hanlon, where I  
5 proposed an order to strike arbitrators. I will  
6 tell the Court, I'll make this public  
7 representation, I know because we have dealings  
8 with Mr. Hanlon, at one point his email address  
9 changed. We received notice from his office and  
10 changed things accordingly.

11 In any event, the July 14 email  
12 from me to Mr. Hanlon is reflected in his billing  
13 records. I can advise the Court that Mr. Hanlon  
14 and I do not communicate all that often, so there  
15 is not an onslaught of emails to pick through.  
16 The billing record is reflected -- or the excuse  
17 me, the email is reflected in his billing record.  
18 More importantly it's memorialized in our motion  
19 to compel, Paragraph 9, where I reference the  
20 July 14 email that I sent to Mr. Hanlon proposing  
21 a system for striking, selecting -- striking and  
22 selecting arbitrators.

23 THE COURT: So what about his position that  
24 the order that I entered says motion -- I think

1 what it says is, "The motion to compel  
2 arbitration is granted", period.

3 MR. DIEMER: So a couple things. First, the  
4 Court ruled from the bench, and the words from  
5 the Court were, "So I do think that the Illinois  
6 Uniform Arbitration Act does compel me to order  
7 the parties to arbitrate the dispute under the  
8 CBA pursuant to the grievance procedure set forth  
9 in the CBA."

10 The order reflected that all  
11 questions go back to the CBA. I mean, you're  
12 ordering the parties to arbitrate the dispute.  
13 The next step to be performed is arbitrator  
14 selection. I mean, that's the order. Smith and  
15 Jones enter into the contract to sell the horse,  
16 there's a dispute, they go before the judge. The  
17 judge says perform on the contract, I mean, now.  
18 We're ready to move forward.

19 I mean, this language is in -- we  
20 have 3,000 public sector employees. This  
21 language is in all our public sector contracts.  
22 Nobody ever has had a problem with understanding  
23 that once the panels arrive, the parties engage  
24 in the striking process. I mean that's the way

1 the game is played, as it were.

2 Again, we're all under the  
3 obligation of a duty to bargain and act in good  
4 faith with one another in the labor relations  
5 realm. I don't see it any other way to read the  
6 order other than your order -- we were ordered to  
7 arbitrate the grievances pursuant to the CBA.  
8 The next step to be performed under the CBA is to  
9 strike arbitrators from the panels.

10 The other point that is obvious to  
11 anybody that sat through this is in the initial  
12 document Mr. Hanlon filed, he says on  
13 October 17th for the first time FMCS served  
14 selection/striking of arbitrators upon the Road  
15 District. Well we heard from Mr. Gasser, he had  
16 been in receipt of all the panels from the FMCS  
17 and forwarded them on to his counsel. I mean,  
18 that's -- that's not an accurate statement that  
19 bolstered their entire opening brief.

20 On October 2nd, I sent a letter  
21 after the -- it's in our brief -- after the order  
22 is entered, I sent a letter to Mr. Hanlon, all  
23 the FMCS numbers, asking him to contact me so we  
24 can finalize the arbitration selection process.

1 This is how this works. Lawyers do this all the  
2 time. The next step once you get the panel is to  
3 strike arbitrators. That's how this game is  
4 played, and that's where we're at.

5 So your order to compel arbitration  
6 can't be -- there's two interpretations, I  
7 suppose, of the order. No. 1, our position is  
8 you read it in the context not only of the relief  
9 requested in the case, you also need to read it  
10 in light of the extraordinary remedy that he  
11 sought insofar as the TRO.

12 The TRO was designed to stop FMCS.  
13 I mean, the June 9 allegation in the TRO is they  
14 demanded arbitration, we expect panels in  
15 30 days, we're coming to the court to stop this  
16 process now. I mean, so this is a bit of a ruse,  
17 respectfully. This has always been about FMCS  
18 panels and picking arbitrators, because that's  
19 the next step.

20 So I mean again we point out in our  
21 brief, if it was so easy that all you had to do  
22 was get an arbitration demand and sit on an FMCS  
23 panel until your term ran out, nobody would  
24 arbitrate a case in the State of Illinois. I

1 mean that's their position, and if that's their  
2 position, then there was no need for the TRO,  
3 there was no need for the hundred of thousands of  
4 dollars in litigation costs.

5           If their interpretation of the  
6 contract is correct, the Union demands  
7 arbitration, gets a panel from the FMCS, and the  
8 public body doesn't have to do anything. And if  
9 the Court compels them to arbitrate, the answer  
10 is, sorry, I've got no obligation on the  
11 contract. That's just not, respectfully, the way  
12 that the contract -- again common contract  
13 language across the state, this is the way the  
14 game is played, and that can't be the answer.

15           Alternatively, we came in with a  
16 motion to compel. The specific relief we sought  
17 was to engage in the next step of the arbitration  
18 selection process. Our motion was granted in its  
19 entirety without limitation. Counsel didn't even  
20 file a brief on the motion to compel. All these  
21 arguments about what this language meant arguably  
22 are waived. The motion sought that relief, the  
23 motion was granted in its entirety, and we  
24 believe that that order reflects the next step in

1 the process is to arbitrate these grievances. I  
2 mean, essentially those are the two  
3 interpretations you're faced with.

4 Does the order have any effect, as  
5 we say in our brief? I mean their position is it  
6 can neither be enforced or violated. It just is.  
7 Our position is this has been real life  
8 litigation with real ammunition about real lives  
9 that we're seeking to have their claims brought  
10 before neutral arbitrators.

11 Everybody knew the FMCS panels were  
12 imminent when they filed their TRO. They set it  
13 June 9. We expect these panels in 30 days. We  
14 want to shut this whole process down, that's what  
15 it was all about.

16 In this brief they say we never  
17 heard anything from FMCS until October 2017, and  
18 Mr. Gasser testified credibly on the stand that  
19 he got all the notices and just forwarded it on  
20 to his counsel.

21 MR. HANLON: Final word, your Honor?

22 MR. DIEMER: I don't know that I'm finished.  
23 With respect to the -- just so the record is  
24 clear, and we talked about this previously, the

1 panels that were generated in October were at my  
2 direction. When I had asked my secretary in  
3 preparing this letter to Mr. Hanlon to get the  
4 proper FMCS case numbers, my secretary contacted  
5 FMCS, and they just regenerated the FMCS forms.  
6 They're the same panels. Mr. Gasser was the  
7 contact information from the employer.

8               So the only thing that, I mean  
9 again, I characterized that line of testimony as  
10 a ruse earlier. That whole event in October,  
11 there was nothing nefarious, there was nothing  
12 that FMCS was doing under my direction. I think  
13 the record is clear these FMCS panels existed in  
14 the record. They're referenced in various places  
15 since June of 2017.

16               That event that, you know, our  
17 opponents tried to capitalize on was nothing more  
18 than a ministerial act to just confirm that the  
19 FMCS case numbers matched the individual  
20 grievances, and FMCS just kicked those files back  
21 to the parties. So that was nothing more than a  
22 ministerial act, doesn't demonstrate anything  
23 nefarious.

24               Like I said, these FMCS panels have

1 been known entities. They generated and started  
2 the litigation back in June of 2017 when they  
3 alleged that the panels were pending and would be  
4 available in 30 days. The case numbers have been  
5 in the record for months now. So that October  
6 event is a red herring, we would respectfully  
7 suggest.

8           Again, we don't believe there's any  
9 ambiguity in the record, and unfortunately we  
10 believe that the record is clear that Mr. Gasser  
11 has willfully -- I mean again as your Honor  
12 observed, they've used attorney-client privilege  
13 as a weapon and a sword here.

14           We believe the order is clear. We  
15 don't believe -- we believe the violation is  
16 willful and contumacious, and we believe that  
17 contempt is appropriate in these circumstances.  
18 The employees want to appear before an arbitrator  
19 to have their cases heard. That's what this is  
20 about. That's what the case has always been  
21 about.

22       THE COURT: And what about the issue that  
23 Mr. Hanlon raises in his brief is that if they're  
24 held in contempt, you know, because they want the



1 opportunity to take this issue up on the appeal,  
2 it's not contumacious or disrespectful of the  
3 Court for them to try to pursue the appeal, and  
4 so the Court should be taking that into account  
5 in whatever purge or whatever terms it includes.

6 MR. DIEMER: I think there was a way to do  
7 that. Mr. Hanlon filed a notice of appeal I  
8 believe in July, or billed for it. Started  
9 working on it. I think there was a way to do it.  
10 I mean the stay right now did not issue.

11 THE COURT: Well presumably his appeal after  
12 today is ripe, and his prior notice of appeal  
13 becomes -- I'm using the wrong word, but active  
14 again. So basically as soon as we write an order  
15 today that I sign, he has a valid notice of  
16 appeal.

17 MR. DIEMER: I think that frankly there was  
18 a way to -- I mean they had remedies available  
19 under 304(a). I think that there was a way to  
20 preserve that issue.

21 THE COURT: Well in his defense, I think he  
22 asked for 304(a) language when I granted the  
23 motion to dismiss.

24 MR. DIEMER: I believe we asked for it and

1 they objected to that.

2 THE COURT: Oh, okay. Anything else you'd  
3 like to say?

4 MR. DIEMER: I think just that again going  
5 back to -- this letter goes out in October to  
6 Mr. Hanlon, contact me for arbitrator selection.  
7 Again good faith and fair dealing is I guess the  
8 watch words in labor relations land. There was a  
9 way to handle this.

10 I suppose that if I got a phone  
11 call saying we're going to file a notice of  
12 appeal and move -- request a stay, that's one way  
13 to handle it. Instead it was crickets. We heard  
14 nothing, and then end up litigating this case,  
15 and again the first move out of the gate is a  
16 brief that counsel for Mr. Gasser filed saying  
17 that they don't know what we're talking about,  
18 they never heard of FMCS panels. First time they  
19 heard of them was October 17, 2018, which flies  
20 in the face of direct testimony from Mr. Gasser  
21 that he received all these.

22 I mean the whole thing has been  
23 underhanded. I mean there's a way -- we play the  
24 game between the 40's most of us. There's a way

1 to play this game. I mean, to say that look, I  
2 get you, you know, we lost the battle, we're  
3 going to take this shot on appeal, we're going to  
4 move for stay. We have that conversation,  
5 there's a way to do it then. Instead we spend  
6 the next three months litigating this question,  
7 and spend tremendous resources filing these  
8 briefs, demonstrating that these objectively  
9 false statements are indeed false, and now we go  
10 to a hearing on this. This was all unnecessary.

11 I think that speaks -- I mean, I  
12 think that that's the final prong of this test,  
13 the willful and -- I always mess up the word.  
14 Contumacious. It's not used in my regular  
15 day-to-day, but this I think speaks directly to  
16 this. We spent three months on this issue when a  
17 simple phone call or a letter at least puts this  
18 on ice for awhile, and here we are. The stay  
19 doesn't issue, and we think the contempt, under  
20 these extremely novel and extremely rare  
21 circumstances, we think the order of indirect  
22 civil contempt is appropriate.

23 THE COURT: Mr. Hanlon, I will give you the  
24 last word, and in fact if your client wishes to

1 make any sort of statement in mitigation, I will  
2 allow him to do that. That's totally his call  
3 and your call.

4 MR. HANLON: Yes, your Honor. First I want  
5 to address a couple of things that Mr. Diemer  
6 articulated, that included things that were not  
7 based on facts in the evidence in this case.

8 For instance, he articulated the  
9 way that the game, he referred to it as the game  
10 is played, is under a particular way that he  
11 decides it ought to happen. That he can send to  
12 me an email, and therefore that becomes a binding  
13 part of the game. Not in the court order, not in  
14 the court record.

15 And he refers to 3,000 public  
16 service sector employees. I didn't hear any  
17 evidence about any 3,000 public sector employees  
18 in this hearing today.

19 He took the liberty to talk about  
20 how this last three months would be unnecessary,  
21 we could have put them on ice. Judge, the day  
22 that they filed that Petition for Rule to Show  
23 Cause, the day that I appeared in this court, I  
24 articulated to them that there was an intention

1 to file the notice of appeal. You were present.  
2 I asked for 304(a) language. It wasn't the Union  
3 who asked for it, because it wouldn't make any  
4 sense for the Union to ask for 304(a) language.  
5 Judge, we want 304(a) language, so we don't get  
6 an order? I mean no way would we make that  
7 argument.

8 THE COURT: So your recollection is that --

9 MR. HANLON: That I made the request for  
10 304(a) language. And not only did I make the  
11 request for 304(a) language, we had a discussion  
12 with respect to whether or not that would muddy  
13 up the waters.

14 THE COURT: That was my recollection. I  
15 don't have transcript in front of me.

16 MR. HANLON: And clearly right now, you  
17 know, in November, we filed a notice of appeal.  
18 So if all this was unnecessary, when they got the  
19 notice of appeal, using Mr. Diemer's logic that  
20 this wouldn't have been willful and contumacious  
21 if I just simply called him and told him that we  
22 intended to appeal, the notice of appeal by  
23 itself should be sufficient, ample evidence to  
24 Mr. Diemer that we intended to take it on appeal.

1 I articulated many, many months ago  
2 throughout this case that both parties approached  
3 this case, and it was very unlikely this would  
4 end without an appeal. If the Road District  
5 prevailed here below it would be up on appeal.

6 Now I've been dealing with  
7 Mr. Diemer for at least 13 years now, And in that  
8 13-year period of time, I have yet to see a case  
9 that Local 150 has lost that they didn't file an  
10 appeal. We've been in appeals opposing each  
11 other previously.

12 So I think it's disingenuous to  
13 articulate to this Court the whole thing would  
14 have been put on ice but for Mr. Gasser's willful  
15 and contumacious behavior. It's not willful,  
16 it's not contumacious. He came to court and  
17 asked for a remedy. He didn't get his remedy.  
18 He's asking the Appellate Court for that remedy.

19 The Court says okay, we're not  
20 going to stay remedy that he seeks. That's not  
21 contumacious behavior, Judge. It's respectful  
22 behavior. He's recognizing that he's lost, that  
23 we need to proceed --

24 THE COURT: So let me ask you. So on

1 November 13, I think that was the date that the  
2 Rule to Show Cause issued, why was nothing done  
3 from that date forward?

4 MR. HANLON: What was he supposed to do is  
5 the response, because if you look at the  
6 documents, what is his obligation? And frankly  
7 as I look at the documents I don't know if  
8 he's -- what he's supposed to do.

9 The language used by my opposing  
10 counsel and in the document refers to the parties  
11 conduct, not Mr. Gasser's conduct. And so if I  
12 look at it and I say all right, if that language  
13 that's contained in there deals with the  
14 procedure of arbitration, the contract document,  
15 the collective bargaining agreement that this is  
16 all about, specifically prohibits anyone other  
17 than the arbitrator to determine procedural  
18 arbitrability.

19 I don't use that in my every day  
20 language either, Judge, but if the parties came  
21 to an agreement that if they had a dispute over  
22 the procedure of arbitration, and that it would  
23 be excluded from the power of this Court to  
24 determine, and it would be left to the province

1 of an arbitrator, that's an issue of -- that is  
2 outside. There's other procedures that  
3 Mr. Diemer can pursue under labor law that are  
4 outside of the judicial proceeding that's here  
5 present before the Court.

6 The point is is that we are here on  
7 whether or not Mr. Gasser was willfully and  
8 contumaciously violating your order, and as I  
9 posed the question, how would he get the keys to  
10 his freedom? What would he do to get the keys to  
11 his freedom if he was found in contempt.

12 THE COURT: Well I'd have to fashion  
13 something in the order, other than -- more  
14 specific than what I fashioned in the  
15 September 20th order, obviously.

16 MR. HANLON: Sure, Judge. And if you had to  
17 fashion that more specifically as the basis for  
18 keys to his freedom, then he couldn't have  
19 willfully violated your order to begin with.

20 THE COURT: How does Local 150 get to  
21 enforce? So I enter an order that says you have  
22 to go to arbitration. I accept your argument and  
23 your client -- that your client's position is  
24 that, you know, they didn't understand what they



1 were supposed to do, so he gets a pass. I mean,  
2 how does that ever get enforced so that he has to  
3 do something, whether it's strike an  
4 arbitrator --

5 MR. HANLON: He could go to the Illinois  
6 Labor Relations Board, he could go to the  
7 National Labor Relations Board.

8 THE COURT: No, no, but what --

9 MR. HANLON: The Union can.

10 MR. DIEMER: More proceedings.

11 MR. HANLON: Well unfortunately --

12 THE COURT: So, no, expound on that. So  
13 they would have to go say we've got a court order  
14 saying they've got to go arbitrate and --

15 MR. HANLON: Ordinarily, if there's a  
16 collective bargaining agreement that requires  
17 arbitration and the parties can't agree as to the  
18 arbitration provisions within the body of the  
19 agreement, that's the remedy to go through. They  
20 never sought the remedy. And if the parties  
21 don't agree to the language that's contained in  
22 there, but that's not what's before the Court.  
23 What's before the Court is did Andrew Gasser  
24 willfully and contumaciously not comply with the

1 court order. Was the order specific enough to  
2 tell him what it was that he had to do.

3 THE COURT: So how do they ever get to a  
4 point -- if I accept your argument, how do they  
5 ever get to the point where they have an  
6 enforceable order, because the order I wrote is  
7 not specific enough to enforce. So now they're  
8 basically -- we've got an order saying we've got  
9 to arbitrate, but we've got no way to enforce it  
10 because it's too vague.

11 MR. HANLON: That would be wrong, Judge.  
12 They would have to employ -- because I would no  
13 longer have the ability to say this dispute on a  
14 contract is pending, and if I couldn't say that  
15 that dispute is pending, then they could use the  
16 tools that are available to them to take it  
17 through the steps of arbitration through the  
18 normal, ordinary process you have with a valid  
19 contract.

20 What they're asking you to do is  
21 forget everything that we put in the actual  
22 document, because remember my client didn't write  
23 that contract, that collective bargaining  
24 agreement. He didn't write that. According to

1 Local 150 they wrote it with Mr. Miller.

2 THE COURT: No, all I'm trying to figure out  
3 is what is the direction that he needs in order  
4 to understand my court order that is too vague on  
5 September 20th.

6 MR. HANLON: What it is that he's supposed  
7 to do? And as I'm sitting here, and I ask myself  
8 what is Andrew Gasser supposed to do to comply  
9 with your court order.

10 Your court order says the motion to  
11 compel is granted. We look at the prayer for  
12 relief. The prayer for relief says, you know,  
13 compel him to arbitrate. It doesn't say have  
14 Andrew Gasser do something within a specified  
15 period of time, you know. And unfortunately,  
16 Judge --

17 THE COURT: So do I have to amend my order  
18 of September 20th to provide that?

19 MR. HANLON: You might. If the Court were  
20 to amend its order, certainly then he can't be  
21 held in contempt, and then the order would be  
22 ripe for appeal as well, because it would end the  
23 proceedings.

24 THE COURT: Can I amend my order sua sponte

1 to that effect?

2 MR. HANLON: You're the judge.

3 THE COURT: That doesn't mean as much as you  
4 think it means.

5 MR. HANLON: Judge, if you're asking me if  
6 the legal argument would be that, you know, can a  
7 judge do that, I've not specifically researched  
8 that.

9 THE COURT: No, I know.

10 MR. HANLON: But it would seem to me that  
11 the issues that were before the Court, if the  
12 Court did --

13 THE COURT: Here's my concern. If I rule in  
14 your client's favor, they have to get -- they  
15 either have to get back in front of me in some  
16 fashion to say well Judge, if that wasn't  
17 specific enough, now we need you to be more  
18 specific to articulate, so that there's no  
19 confusion about what Mr. Gasser needs to do.

20 So they have to what, file a motion  
21 to amend my prior order? I guess it would still  
22 be within 30 days, so I could still have  
23 jurisdiction to amend it, I would think. Anyway,  
24 I'm talking out loud, because I'm curious to know

1     what your thoughts are.

2           MR. HANLON: I always find it's a dangerous  
3     thing for me to start articulating what either my  
4     opposing counsel should do or what the Court  
5     ought to do, but I think that in this particular  
6     case it's going -- I'm going to make an exception  
7     to that.

8                     It would seem to me that justice,  
9     which is the whole point of being here, is that  
10    if the Court agrees that there's some ambiguity  
11    in what it is that Mr. Gasser was to do or not to  
12    do, then the Court should articulate that in a  
13    fair and equitable way. And then we'd have a  
14    final order on all issues today, and my opposing  
15    counsel, if the order wasn't complied with, would  
16    then be in a position to, you know, enforce the  
17    Court's order --

18           THE COURT: Your position as we sit here  
19    today is there's no final and appealable order  
20    that's been entered yet, so I could amend that  
21    order of September 20th.

22           MR. HANLON: I believe that that is correct,  
23    because these proceedings actually kicked out the  
24    final order, which was the argument made by

1 Local 150, and the judicial estoppel rule would  
2 apply to them as well, and so yes, I believe that  
3 that would be the case.

4 I will inform the Court, I received  
5 a telephone call from a Second District Appellate  
6 Court yesterday at my office which articulated  
7 that they were going to issue an order today  
8 setting forth a schedule for the respective  
9 parties. And having, you know, heard that, I  
10 don't want to tread lightly on the power of the  
11 Appellate Court, but I know that if an order is  
12 going to come out, the most practical thing for  
13 all the parties would be to get to a final order  
14 today, Judge.

15 And frankly, I think that that  
16 would be a just way. If we take Mr. Diemer at  
17 his word that, you know, advance notice of the  
18 intent to appeal, you know, would be enough for  
19 him to, and I quote, use the term ice this idea,  
20 I think that would be just.

21 THE COURT: I just sort of floated that idea  
22 without talking -- without hearing from Local 150  
23 on it, so I do want to hear. I understand your  
24 position is I should hold him in contempt today.

1 I'm also concerned as to whether I  
2 still have continuing jurisdiction to amend my  
3 order of September 20th, if the only issue  
4 remaining for hearing today was attorneys' fees  
5 petitions, motion to stay and a motion for  
6 contempt.

7 MR. HANLON: Judge, would it be possible I  
8 could talk with Mr. Diemer and come to an  
9 agreement?

10 MR. DIEMER: I've got panels right now.  
11 They can strike the panels right now.

12 THE COURT: Do you want to have a  
13 conversation about whether we can enter something  
14 in an agreed order where there would be no  
15 ambiguity as to the next steps that would be  
16 taken?

17 MR. DIEMER: Like I said, we've got panels  
18 here. We could strike them all and walk out of  
19 the door with arbitrators.

20 MR. HANLON: Judge, I'm not prepared as I  
21 sit here today to strike --

22 THE COURT: All right. Anything else? I'll  
23 give Local 150 a chance to respond to my comment  
24 about amending the September 20th order.

1 MR. DIEMER: Your Honor, because I'm in a  
2 deal making mood, we've got eight panels.  
3 Mr. Gasser can pick an arbitrator off of each  
4 panel. We'll dispense with striking. He can  
5 pick whatever arbitrator he wants off of any  
6 panels.

7 THE COURT: Today or within "x" days?

8 MR. DIEMER: Today.

9 THE COURT: Do you want to have a  
10 conversation for a few minutes to see if you can  
11 agree?

12 MR. HANLON: Let me go outside with my  
13 client, Judge. We still haven't gotten to the  
14 point where Mr. Gasser could address the Court as  
15 well. And I want to be clear here. We're  
16 talking about -- I'm sorry, Mr. Diemer said he  
17 was in a deal striking mode, and --

18 THE COURT: No, no, it's just a matter -- I  
19 will rule. I want to give you a chance to have a  
20 conversation if you want to.

21 MR. HANLON: Sure.

22 THE COURT: All right.

23

24 (Off the record at 4:46.)



1 (On the record at 4:52.)  
2

3 MR. HANLON: Judge, we would have no  
4 objection if the Court wished to modify its prior  
5 order giving specific instruction to something he  
6 believes is reasonable and just. My client  
7 intends to follow such order, and you know, I  
8 think that we would just simply ask for some  
9 reasonable period of time in order to accomplish  
10 whatever it is that the Court would modify that  
11 order for.

12 THE COURT: Okay. Local 150, anything you  
13 wanted to add?

14 MR. PASZTA: Your Honor, we think it's clear  
15 that Mr. Gasser should be held in contempt today.  
16 There's no reason to go back and modify the  
17 order. There was a clear order. I'm not going  
18 to rehash Mr. Diemer's closing, but we think that  
19 we more than met our burden.

20 If you hold Mr. Gasser in contempt  
21 today, then specific instructions can be issued  
22 as a penalty. In other words, we put the  
23 grievances in numeric order, they take the first  
24 strike, and then pursuant to contract language we

1 go down the list --

2 THE COURT: There's nothing punitive about  
3 indirect civil contempt. It's all coercive. So  
4 there's no penalty, it's simply a coercive tool  
5 of the Court.

6 MR. PASZTA: Right. So the coercion would  
7 insist that or would provide that Mr. Gasser put  
8 the grievances in numeric order. He can take the  
9 first strike on that one, we'll rotate all the  
10 way down. Each party has 24 hours to make the  
11 strike. We'll be done in eight business days  
12 with every list, and then we'll proceed to  
13 arbitration, and then there's no penalty beyond  
14 that, assuming that's accomplished.

15 THE COURT: Say that again what you're --

16 MR. PASZTA: We can put the pending  
17 grievances in numeric order by FMCS number or  
18 however we do it numerically. We will give  
19 Mr. Gasser the first strike on the first numeric  
20 FMCS number, we'll take the next one, and we'll  
21 rotate there forward, and we each have 24 hours  
22 to make the selection on each panel, and we will  
23 be done in eight days.

24 THE COURT: Do one a day you're saying?

1 MR. PASZTA: Correct.

2 THE COURT: Okay.

3 MR. HANLON: Judge, can I address that?

4 THE COURT: Yes.

5 MR. HANLON: I'm okay with the general  
6 proposition that they have, but one day. I  
7 haven't even done any research on any of these  
8 arbitrators. Normally we take a lot of time --

9 THE COURT: I understand.

10 MR. HANLON: But Mr. Gasser would like to  
11 address the Court.

12 THE COURT: Mr. Gasser?

13 MR. GASSER: Your Honor, I'm a 20-year Air  
14 Force officer, and if there's one thing I've  
15 learned over this 20 years is that I know how to  
16 follow orders when I understand them.

17 I'm sorry that I didn't get the  
18 whole gist of it, but I do understand the  
19 seriousness of this situation and the gravity of  
20 it all, and how it impacts not only me, but our  
21 Township and our Road District, and how we can  
22 accomplish that mission.

23 Never during this entire process  
24 have I willfully or gone out of my way to say I'm

1 not going to comply with something legally. I am  
2 very respectful of our judicial system. It's  
3 something that I fought for for 20 years. I want  
4 to be able to have this opportunity to actually  
5 follow the order in the way that it was meant to  
6 be followed, and under no circumstances did I  
7 ever try to purposefully agree or -- what's the  
8 right word here. Did I purposefully try to trip  
9 up the opposing side or do anything like that.  
10 And sir, that's all I've got.

11 THE COURT: Thank you, sir. I appreciate  
12 your statement in mitigation. All right. I'm  
13 not pleased that the order that I entered on  
14 September 20 hasn't been followed. It appears  
15 there's been no steps to try to participate in  
16 the arbitration process or re-engage in it. Even  
17 after the Rule to Show Cause there was none.

18 I understand to a large extent  
19 you're relying on your attorney, but ultimately  
20 these orders were directed to you, and you  
21 have -- the duty and obligation ultimately falls  
22 on you to be in compliance or not compliance with  
23 them.

24 That said, I do look at the

1 September 20 order, and it is not as precise or  
2 specific as in retrospect it should have been, in  
3 my opinion. And so I've listened to your  
4 testimony under direct and cross-examination as  
5 well as your statement. I don't find your  
6 conduct to be contumacious or disrespectful to  
7 the Court. So for those reasons, I am not going  
8 to -- I'm denying the Petition for Indirect Civil  
9 Contempt.

10 I am concerned, however, that now  
11 that we've had this whole process and this  
12 hearing, and unless the Appellate Court agrees to  
13 stay the enforcement of the orders that I  
14 previously entered, there needs to be something  
15 taking place to move forward to arbitration.

16 So sounds to me like by agreement  
17 of the parties I can amend the September 20, 2018  
18 order to more specifically provide that you are  
19 to participate; that not only are you compelled  
20 to arbitrate, but you are to participate in the  
21 arbitration process, the first step of which is  
22 to strike on an alternating basis the -- I'll put  
23 it this way. That you are to -- I want to make  
24 sure I have the right language. Maybe the labor

1 attorneys who are in this room who are much more  
2 fluent than I can draft the language. To strike  
3 arbitrators and select panels for each of the  
4 pending arbitration proceedings within seven days  
5 from today's date.

6 So that whatever action you need to  
7 take -- help me understand how this works.  
8 There's seven potential arbitrators, and then  
9 there's two -- each side gets two alternating  
10 strikes generally until you're left with three,  
11 right?

12 MR. DIEMER: No.

13 THE COURT: No.

14 MR. PASZTA: So taking each one separately  
15 makes it easier to understand. Whoever strikes  
16 first, they strike. As you rotate, there's going  
17 to be one name left.

18 THE COURT: Oh, so there's only one left.

19 MR. PASZTA: That's the arbitrator, and the  
20 first strike rotates by panel. So we've already  
21 offered to give them the first strike on the  
22 first panel, which would effectively leave their  
23 last arbitrator the choice. The next would be  
24 ours, the next would be theirs, and so on.

1 THE COURT: But you've only stricken one  
2 from each --

3 MR. PASZTA: We haven't done any.

4 THE COURT: You have not stricken any.

5 MR. PASZTA: Right.

6 THE COURT: All right. Then what I will say  
7 is that Mr. Gasser, you will strike -- you will  
8 make your first strike on each of the panels of  
9 the arbitrators within seven days.

10 MR. HANLON: Judge, there's different  
11 panels, and so --

12 THE COURT: Right. I was going to have them  
13 all -- all pending panels, how much time is a  
14 reasonable period of time to strike those?

15 MR. HANLON: Judge, I'd say the earliest we  
16 could get them all done would be 21 days.

17 THE COURT: I'm okay with that. So by --  
18 you will have participated in the process of  
19 striking arbitrators such that within 21 days we  
20 will have selected an arbitrator for all pending  
21 arbitrations.

22 MR. DIEMER: Do we need to identify the FMCS  
23 numbers for the record, so there is no ambiguity  
24 as to what we're talking about?

1 MR. HANLON: Judge, they're in the exhibits  
2 that were admitted into evidence.

3 THE COURT: I'm okay with --

4 MR. PASZTA: Do you want to use Exhibit 11,  
5 and we'll just go in order? You guys take the  
6 first one, we'll take the second, so you've got  
7 odds, we've got evens?

8 MR. HANLON: That's fine.

9 MR. PASZTA: Going down three numbers?

10 MR. HANLON: Sure.

11 THE COURT: All right. Is there any  
12 objection to my proposed amendment of the  
13 September 20, 2018 order?

14 MR. HANLON: Well actually at this point in  
15 time I believe the jurisdictional enforcement  
16 divested from you, Judge.

17 THE COURT: That's what my concern was, that  
18 I wasn't sure if the pendency of the attorneys'  
19 fees issue --

20 MR. HANLON: If you had amended your order  
21 before ruling on the contempt, I believe that --

22 THE COURT: Well I haven't entered any  
23 orders yet.

24 MR. HANLON: I guess --



1 THE COURT: The only question is is it  
2 already a final and appealable decision, and I  
3 lost jurisdiction of this order when I ruled on  
4 the motion for judgment on the pleadings on the  
5 FOIA case?

6 MR. HANLON: I don't believe that you lost  
7 jurisdiction at that time, Judge, because --

8 THE COURT: All right.

9 MR. HANLON: In the 30-day period of time  
10 they filed their motion on the contempt.

11 THE COURT: All right. So I guess I'll  
12 rephrase my question. Is there any objection to  
13 me amending the September 20, 2018 order in the  
14 fashion I just outlined?

15 MR. HANLON: Judge, you present me with a  
16 difficult legal question, and I don't want to be  
17 disrespectful to the Court.

18 THE COURT: You're not being disrespectful.  
19 It's an interesting issue. Well this is what I'm  
20 doing. To the extent I can't, if it turns out  
21 I've lost jurisdiction, I've lost jurisdiction.  
22 But otherwise I'm concerned that obviously Local  
23 150 has an order compelling arbitration, but they  
24 really don't have a mechanism to enforce it.

1           So I'm not seeking your consent.  
2       I'm amending the September 20, 2018 order to more  
3       specifically provide that you are to complete the  
4       selection of the arbitrators in the pending  
5       proceedings within 21 days, and then what is the  
6       next step after that?

7       MR. DIEMER: Once the arbitrator is  
8       selected, we notify FMCS. They notify the  
9       arbitrator, the arbitrator contacts the parties  
10      for hearing dates, a hearing date is selected,  
11      and the arbitration is convened.

12      THE COURT: And to promptly thereafter --  
13      well, what's the language that would be added?

14      MR. PASZTA: Well that the hearing date has  
15      to be within 60 days of the arbitrator being  
16      assigned.

17      MR. DIEMER: That could be problematic,  
18      because there's some arbitrators that you're not  
19      going to get a hearing date in 60 days.

20      THE COURT: Well I guess I will leave it at  
21      after the selection of the arbitrators,  
22      participate in the scheduling and hearing of the  
23      arbitration proceeding with reasonable diligence.

24           So we've also got an order on all

1 the attorneys' fees, so maybe one of you can  
2 start drafting that.

3 MR. PASZTA: I've already got it mostly  
4 done, your Honor. Before we finish up -- I'm  
5 glad I did it that way. As I was writing the  
6 order for the Ruling on the Petition for  
7 Attorneys' Fees under FOIA, I know that we've got  
8 the attorneys' fees amount, but we also  
9 petitioned for --

10 THE COURT: Oh, the costs, you're right.

11 MR. PASZTA: I don't think we ever got to  
12 that.

13 THE COURT: Good point.

14 MR. HANLON: Judge, I assumed and understood  
15 that was part of your order. I mean, that is not  
16 something --

17 THE COURT: No, the costs were also ordered  
18 as well.

19 MR. PASZTA: And then denied in the other  
20 petitions, obviously, right?

21 THE COURT: Correct, correct. Yes, so the  
22 costs you had proposed, I looked at them, they  
23 were appropriate.

24 All right. Clerically, I'm going

1 to allow you to withdraw the exhibits that were  
2 heard as part of the Petition on the Rule to Show  
3 Cause. The ones that were admitted were Union 1,  
4 Union 2, Union 3, Union 4, Union 5, Union 6,  
5 Union 7, Union 8, Union 9, Union 10, Union 11.  
6 Union 12 and 13 were referred to but were not  
7 offered, were not admitted. I'm going to let the  
8 Petitioner retain copies of those, withdraw them  
9 and retain them.

10 Anything else we need to discuss?

11 All right. Off the record.

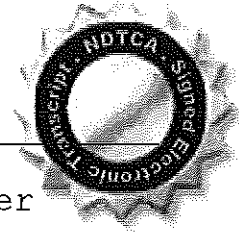
12  
13 (Which were the proceedings had  
14 in said matter on said date.)  
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STATE OF ILLINOIS )  
 )  
COUNTY OF McHENRY )

I hereby certify that I reported in shorthand the Reported Proceedings at the above-entitled cause, and that the foregoing reported proceedings, consisting of pages 3 through 160, inclusive, is a true, correct and complete transcript of my shorthand notes so taken at the time and place aforesaid.

*Elizabeth L. Nenni*

ELIZABETH L. NENNI  
Certified Shorthand Reporter  
CSR License #084-00169



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