Agency Website: www.nlrb.gov Telephone: (317)226-7381 Fax: (317)226-5103

September 16, 2011

UNITED STEELWORKERS 1301 TEXAS ST RM 200 GARY, IN 46402-3017

> Re: National Gypsum Company Case 25-CA-031898

Dear

We have carefully investigated and considered your charge that NEW NGC, INC. D/B/A NATIONAL GYPSUM COMPANY has violated the National Labor Relations Act.

**Decision to Dismiss:** Based upon that investigation, I have concluded that further proceedings are not warranted regarding those portions of the charge pertaining to 1) the Employer's issuance of discipline to employee on June 23, 2011, 2) Manager Phillips' instruction to that he should "be careful" on June 28, 2011, and 3) that representatives of the Employer threatened or coerced employees during employee meetings on June 28, 2011 by sharing with them the Employer's perception of courses of action available to the employees (i.e., accept the Employer's final offer, strike, or be locked out).

Your charge alleges that the Employer issued employee discipline through a unilaterally implemented change to the Lockout/Hazardous Energy Control Policy. However, the Employer's Lockout Policy, as it existed prior to the June 2011 unilateral implementation of the new lock policy, provided for a 3-day suspension for the first offense for employees who failed to lockout a piece of equipment as required by the Policy. The evidence is insufficient to establish that Brassine's 3-day suspension was motivated by any union activities or that the Employer unilaterally changed its existing Lockout Policy by issuing Brassine a 3-day suspension.

Your charge further alleges that stating that should "be careful" in retaliation for the evidence was insufficient to find a violation. This comment, in the context of Hawkins leaving an employee meeting, is insufficient to establish any unlawful threat or coercion by the Employer.

Finally, your charge alleges that Employer representatives threatened employees by telling them that their only available options were to accept the Employer's final offer, to strike, or to be locked out. However, such a comment does not constitute an unlawful threat or coercion but instead represents a statement of the Employer's perception of available courses of action for

the employees. Based upon the foregoing, I am dismissing these allegations since there is insufficient evidence to establish a violation.

Your request to withdraw those allegations of the charge pertaining to 1) the Employer's alleged direct dealing with employees, via a letter distributed to employees on May 13, 2011, and 2) the Employer's alleged direct dealing with employees during employee meetings conducted on June 28, 2011, is hereby approved.

The remaining allegation of the charge, pertaining to the Employer's unilateral implementation of a change in the Lockout Policy, specifically requiring employees to maintain a certain number of locks on their person and others within a reasonable distance, will be handled separately.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

**Means of Filing**: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at <a href="www.nlrb.gov">www.nlrb.gov</a>, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

**Appeal Due Date:** The appeal is due on September 30. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than September 29, 2011.

**Extension of Time to File Appeal:** Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to <a href="https://www.nlrb.gov">www.nlrb.gov</a>, click on **File Case Documents**, enter the NLRB Case Number and follow the detailed instructions. The fax number is (202)273-4283. A request for an extension of time to file an appeal **must be received on or before** September 30, 2011273:September 30, 2011. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

**Confidentiality:** We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

PATRICIA K. NACHAD Acting Regional Director

Enclosure

cc GENERAL COUNSEL
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## UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

## APPEAL FORM

Date:
Room 8820, 1099 - 14th Street, N.W. Washington, DC 20570-0001
by taken to the General Counsel of the National gional Director in refusing to issue a complaint
ude all case numbers in which appeal is taken.)
(Signature)
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