Long Mechanical, Inc., *and* Locals 98 and 636, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO. Cases 07–CA–052917, 07–CA–053146, and 07–CA–053200

August 9, 2012

DECISION AND ORDER

BY MEMBERS HAYES, GRIFFIN, AND BLOCK

The Acting General Counsel seeks default judgment in this case pursuant to the terms of an informal settlement agreement. Upon charges and amended charges filed by Locals 98 and 636, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO (collectively the Union) on May 10, June 18, September 9, September 16, October 5, and October 13, 2010, respectively, the Acting General Counsel issued the consolidated amended complaint on December 27, 2010, against Long Mechanical, Inc., the Respondent. The consolidated amended complaint alleged that the Respondent violated Section 8(a)(1) and (3) of the Act. The Respondent filed an answer.

Subsequently, the Respondent and the Union entered into an informal settlement agreement, which was approved by the Regional Director for Region 7 on January 19, 2011.[1] Pursuant to the terms of the settlement agreement, the Respondent agreed, among other things, to (1) reinstate employees Daniel Brady, Max Dietrich, Ronald Garant, and Alan LaBar to the positions they occupied prior to their recent layoff or discharge and at their previous rates of pay and benefits; (2) place employees Tom Stark, Tony Ratcliffe, Tom Simchek, and Michael Baran on a preferential recall list to be called to their prior position or if they are not available, to substantially equivalent positions, at their previous rates of pay and benefits prior to their recent layoffs; and (3) provide to the Union's counsel for review on a biweekly basis payroll records for all hourly employees, cost detail reports, including posted and unposted details, for all jobs on which work is being performed by the Respondent, and a listing of all jobs on which bids have been awarded in order to effectuate the Respondent's compliance with the provision of the settlement agreement requiring them to place the above-mentioned employees Stark, Ratcliffe, Simcheck, and Baran on a preferential recall list and recall them in the order listed above. The agreement also contained the following provision:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director may reissue the complaint in this matter. The General Counsel may then file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the reissued complaint may be deemed to be true by the Board and its answer to such complaint shall be considered withdrawn. The Charged Party also waives the following: (a) filing of answer; (b) hearing; (c) administrative law judge's decisions; (d) filing of exceptions and briefs; (e) oral argument before the Board; (f) the making of findings of fact and conclusions of law by the Board; and (g) all other proceedings to which a party may be entitled under the Act or the Board's Rules and Regulations. On receipt of said motion for default judgment, the Board shall issue an order requiring the Charged Party to show cause why said motion of the General Counsel should not be granted. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is customary to remedy such violations. The parties further agree that the Board's order and U.S. Court of Appeals judgment may be entered thereon ex parte.

By letter dated May 19, the Regional Director for Region 7 advised the Respondent that it was not in compliance with certain terms of the settlement agreement. The letter urged the Respondent to take immediate action to ensure compliance with the terms of the settlement agreement within 14 days of the issuance of the letter, including the provision of certain information and documents. The letter further stated that the Respondent's noncompliance may invoke the terms of the noncompliance provision of the settlement agreement.[2] By letter dated June 7, the Regional Director once again requested

[1] All subsequent dates are in 2011 unless otherwise indicated.

[2] According to an attachment to the Acting General Counsel's motions, on May 26, 2011, the Respondent responded that it would do its best to comply, although this letter is not in the record.

that the Respondent comply with certain provisions of the settlement agreement by providing certain information such as payroll records and information pertaining to "Cost Detail Reports." The letter advised the Respondent that failing to comply by close of business on June 21 would likely result in the reissuance of the consolidated amended complaint and possibly the filing of a motion for default judgment. The Respondent did not reply.

Accordingly, on October 7, the Regional Director reissued the consolidated amended complaint. On October 10, the Acting General Counsel filed a Motion for Default Judgment with the Board. On December 20, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the motion should not be granted.[3] The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

In its response to the Notice to Show Cause, the Respondent incorporated by reference the arguments provided in its October 28 opposition and December 2 reply which generally denied breaching the settlement agreement. The Respondent failed to respond to any of the six specific allegations that it had breached the settlement agreement set forth in the Acting General Counsel's motion and has not come forward with anything specifically supporting its general denial that it has breached the settlement agreement. Therefore, we find that the Respondent's general denial fails to raise any material issues of fact warranting a hearing. Accordingly, we grant the Acting General Counsel's Motion for Default Judgment. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations in the reissued consolidated amended complaint are true.[4]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation, with an office and showroom in Northville, Michigan (Respondent's business office), has been engaged in the building and construction business as a mechanical contractor.

During the fiscal year ending April 30, 2010, the Respondent, in conducting its business operations described above, delivered gross revenues in excess of $5 million and provided services valued in excess of $50,000 to the Hampton Inn and a Veterans Administration hospital, enterprises in Michigan that are directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Locals 98 and 636, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

James Long - Co-Owner and President

Allison Long - Co-Owner and Secretary-Treasurer

Ron Tini - Vice-President and Project Manager

Dave Dixon - Controller

Steve Hocking – Estimator and Project Manager

Doug Wojay - Service Manager

Paul McKendry - Warehouse Manager

William Guenther - Supervisor

1. About May 5, 2010, the Respondent, by its agent James Long, at the Respondent's business office:

(a) threatened employees that the Respondent will not employ union members or adherents;

(b) threatened employees that the Respondent will no longer employ them if they continue to organize on behalf of the Union;

(c) advised employees that they quit their employment with the Respondent by supporting a labor union;

[3] On October 28, before the Board could issue a Notice to Show Cause, the Respondent filed a Statement in Opposition to the Acting General Counsel's motion. On November 23, the Acting General Counsel filed a response to the Respondent's opposition. On December 2, the Respondent filed a reply. Sec. 102.24(b) of the Board's Rules and Regulations and the noncompliance provision of the parties' settlement agreement provided that the Board, in these circumstances, issue a Notice to Show Cause.

[4] See *U-Bee, Ltd.*, 315 NLRB 667 (1994). The Respondent also argues that the Charging Parties cannot attempt to use the allegations underlying a second settlement agreement to enter a default judgment against it. However, the second settlement agreement, referred to by the Respondent, pertained to settling three subsequent unfair labor practice cases completely separate from this case and are not relevant to this determination.

(d) informed employees that they must leave the Respondent's employ if they wish to join a labor union;

(e) characterized employees' support of the Union as disloyalty to and abandonment of the Respondent.

2. About May or June 2010, and late August 2010, the Respondent, by its agent Ron Tini, at its business office, informed employees that the Respondent did not call them back to work because of employees' activities in support of the Union.

3. On or about August 23, 2010, the Respondent, by its agent James Long, during a staff meeting at Respondent's business office:

(a) announced that employees Max Dietrich and Ronald Garant had violated work rules by obtaining interim employment and abandoned their employment with the Respondent;

(b) announced if employees Max Dietrich and Ronald Garant show up to vote during the representation election in Case 7–RC–23367 that they would be prevented from doing so by the federal government;

(c) threatened employees that the Respondent would fight to maintain a union free status, and he would not stand by and watch what was happening.

4. On or about August 23, 2010, the Respondent, by its agent William Guenther, during a staff meeting at the Respondent's business office, threatened employees by suggesting they terminate their employment with the Respondent if they wanted to join a union.

5. On or about September 2, 2010, the Respondent, by its agent Ron Tini, at the Respondent's business office, coercively interrogated employees as to how they were going to vote in the representation election to be conducted in Case 7–RC–23367.

6. On or about September 2, 2010, the Respondent, by its agent William Guenther, at the Respondent's business office, coercively interrogated employees as to whether they were going to vote in the representation election to be conducted in Case 7–RC–23367.

7. On or about September 2, 2010, the Respondent by its agent Dave Dixon, at the Respondent's business office, engaged in surveillance of employees as they congregated with the Union's officials.

8. On or about September 2, 2010, the Respondent, by its agent James Long, at the Respondent's business office, interfered with employees by attempting to call a meeting with them as they were preparing to vote in the representation election in Case 7–RC–23367.

9. On or about September 2, 2010, the Respondent, by its agents James Long, Steve Hocking, Allison Long, Ron Tini, Dave Dixon, and Doug Wojay, at the Respondent's business office, interfered with employees by stationing themselves in close proximity to employees as they were waiting in line to vote during the representation election in Case 7–RC–23367.

10. On or about September 2, 2010, the Responded by its agent Ron Tini, at the Respondent's business office, interfered with employees as they were waiting in line to vote during the representation election by telling them that it should not have come to this and asking them if they thought the grass was greener on the other side.

11. About May 5, 2010, the Respondent discharged its employees Max Dietrich, Ronald Garant, Alan LaBar, Tony Ratcliffe, Thomas Stark, Chad Neuer, Daniel Brady, and Jonathan Brenneman.

12. About May 5, 2010, approximately 30 minutes after discharging the employees named in paragraph 11, the Respondent rescinded but did not cure the said discharges.

13. About May 7, 2010, the Respondent laid off its employees Max Dietrich and Ronald Garant, and since then has refused to recall them.

14. In or about early August 2010, the Respondent discharged its employees Max Dietrich and Ronald Garant.

15. About July 20, 2010, the Respondent sent an employee to training for medical gas certification as a benefit in order to discourage employees from engaging in activities in support of the Union.

16. From about May 7 to about May 24, 2010, and again on October 1, 2010, the Respondent laid off its employee Tony Ratcliffe.

17. From about May 7 to about May 26, 2010, and again on October 6, 2011, the Respondent laid off its employee Alan LaBar.

18. From about June 1 to about June 23, 2010, and again on September 9, 2010, the Respondent laid off its employee Thomas Stark.

19. On or about September 20, 2010, the Respondent laid off its employee Daniel Brady.

20. The Respondent failed and refused to recall from layoff the following employees:

(a) from about May 7 to about May 24, 2010, and from October 1, 2010, to the present, employee Tony Ratcliffe;

(b) from about May 7 to about May 26, 2010, and from October 6, 2010 to the present, employee Alan LaBar;

(c) from about June 1 to about June 23, 2010, and from September 9, 2010 to the present, employee Thomas Stark;

(d) since about September 20, 2010, employee Daniel Brady;

(e) since about August 2010, employees Thomas Simcheck and Michael Baran.

The Respondent engaged in the conduct described in paragraphs 11 through 20 because the named employees assisted and supported the Union and engaged in other protected concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By the conduct described in paragraphs 1 through 10, the Respondent has been interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By the conduct described in paragraphs 11 through 20, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. The described unfair labor practices of the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by terminating Max Dietrich and Ronald Garant, by laying off and failing to recall from layoff Tony Ratcliffe, Alan LaBar, Thomas Stark, and Daniel Brady, and by failing to recall from layoff Thomas Simcheck, and Michael Baran, we shall order the Respondent to make these employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful actions against them.

In this regard, we find that the backpay due these employees should not be limited to the amount specified in the settlement agreement.[5] As set forth above, the settlement agreement provided that, in the event of noncompliance, the Board could "issue an Order providing a full remedy for the violations found as is customary to remedy such violations." Thus, under this language, it is appropriate to provide the "customary" remedies, including reinstatement, full backpay and benefits, expungement of the Respondent's personnel records, and notice posting.[6]

The additional backpay due the employees shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). However, because we shall order the Respondent to provide the customary remedy of full backpay, the applicable backpay period will commence on the date of the unlawful acts of discrimination, with any amounts already paid to be deducted from the Respondent's backpay liability.

We shall also order the Respondent to offer Max Dietrich and Ronald Garant full reinstatement and to recall Alan LaBar, Tony Ratcliffe, Thomas Stark, Daniel Brady, Thomas Simcheck, and Michael Baran to their former jobs, or, if those jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

Further, the Respondent shall be required to remove from its files and records all references to the unlawful discharges of Max Dietrich, Ronald Garant, Alan LaBar, Tony Ratcliffe, Thomas Stark, Chad Neuer, Daniel Brady, and Jonathan Brenneman, and the unlawful layoffs of Alan LaBar, Tony Ratcliffe, Thomas Stark and Daniel Brady, and notify them in writing that this has been done and that the unlawful references will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Long Mechanical, Inc., Northville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because of their support of or activity on behalf of Locals 98 and 636, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO, or any other union.

(b) Threatening employees with lack of employment or termination if they are union members or adherents or continue to organize on behalf of the Union or any other labor organization.

(c) Telling employees that they quit their employment with the Respondent by supporting a labor union; in-

[5] As noted above, there is no indication in the motion that the Respondent has failed to pay the sums set forth in the settlement agreement covering backpay. To the extent that the Respondent has paid these sums, the Respondent will be credited with any amount already paid.

[6] See *L. J. Logistics, Inc.*, 339 NLRB 729, 730–731 (2003).

forming employees that they must leave the Respondent's employ if they wish to join a labor union; and characterizing employees' support of the Union as being disloyal or abandoning their employment.

(d) Telling employees that the Respondent did not call them back to work because of their activities in support of the Union or any other labor organization.

(e) Announcing to employees that certain employees violated the Respondent's work rules by obtaining interim employment thereby abandoning their employment, and that the federal government will prevent them from voting during a scheduled National Labor Relations Board representation election.

(f) Threatening employees that the Respondent will fight to maintain a union-free status and will not stand by and watch what was happening.

(g) Threatening employees by suggesting they terminate their employment with the Respondent if they want to join a union.

(h) Coercively interrogating employees as to whether or how they are going to vote in a National Labor Relations Board representation election.

(i) Engaging in surveillance of employees' union activities.

(j) Interfering with employees' right to vote in a National Labor Relations Board representation election by attempting to call a meeting with them as they were preparing to vote.

(k) Interfering with employees' right to vote in a National Labor Relations Board representation election by stationing supervisors and agents in close proximity to employees as they are waiting in line to vote.

(l) Threatening or interfering with employees as they are waiting in line to vote in a National Labor Relations Board representation election by telling them that it should not have come to this and asking them if they thought the grass was greener on the other side.

(m) Laying off or discharging any employee because of his/her support of the Union or any other labor organization.

(n) Providing benefits to employees in order to discourage them from engaging in activities in support of the Union or any other labor organization.

(o) Refusing to recall any laid-off employee because of his/her support of the Union or any other labor organization.

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

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

(a) Within 14 days from the date of this Order, , reinstate Max Dietrich and Ronald Garant, and recall Alan LaBar, Tony Ratcliffe, Thomas Stark, Daniel Brady, Thomas Simcheck, and Michael Baran fully and immediately to their respective jobs, or, if those jobs no longer exist, to substantially equivalent positions of employment, in either case at the wages and with the full seniority and benefits to which the Respondent's policies and practices entitle them.

(b) Make Max Dietrich, Ronald Garant, Alan LaBar, Tony Ratcliffe, Thomas Stark, Daniel Brady, Thomas Simcheck, and Michael Baran whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from all of the Respondent's files and records all references to the May 5, 2010 discharges of Max Dietrich, Ronald Garant, Alan LaBar, Tony Ratcliffe, Thomas Stark, Chad Neuer, Daniel Brady, and Jonathan Brenneman, and within 3 days thereafter notify them in writing that this has been done and that the unlawful discharges will not be held against them in any way.

(d) Within 14 days from the date of this Order, remove from all of the Respondent's files and records all references to the layoffs of Alan LaBar, Tony Ratcliffe, Thomas Stark, and Daniel Brady, and within 3 days thereafter notify them in writing that this has been done and that the unlawful layoffs will not be held against them in any way.

(e) Within 14 days after service by the Region, post at its facility in Northville, Michigan, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted.[8] In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent custom-

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[8] Pursuant to the terms of the settlement agreement, the Region may provide Notices in more than one language as deemed appropriate by the Regional Director.

arily communicates with its employees by such means.[9] Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 5, 2010.

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

Dated, Washington, D.C., August 9, 2012

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Brian E. Hayes, Member

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Richard F. Griffin, Jr., Member

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Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against employees because of their support of or activity on behalf of Local 98 or 636, United Association of Journey men and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO (herein Union), or any other labor organization.

WE WILL NOT threaten our employees that we will not employ union members or adherents or threaten them with termination if they continue to organize on behalf of the Union or any other labor organization.

WE WILL NOT tell our employees that they quit their employment with us by supporting a labor union; inform employees that they must leave our employ if they wish to join a labor union; or characterize employees' support of the Union as being disloyal or abandoning their employment.

WE WILL NOT tell our employees that we did not call them back to work because of their activities in support of the Union or any other labor organization.

WE WILL NOT announce to our employees that certain employees violated our work rules by obtaining interim employment thereby abandoning their employment, and that the federal government will prevent them from voting during a scheduled National Labor Relations Board representation election.

WE WILL NOT threaten our employees that we will fight to maintain a union-free status and will not stand by and watch what was happening.

WE WILL NOT threaten our employees by suggesting they terminate their employment with us if they want to join a union.

WE WILL NOT coercively interrogate our employees as to whether or how they are going to vote in a National Labor Relations Board representation election.

WE WILL NOT engage in surveillance of our employees' union activities.

WE WILL NOT interfere with our employees' right to vote in a National Labor Relations Board representation election by attempting to call a meeting with them as they are preparing to vote.

WE WILL NOT interfere with our employees' right to vote in a National Labor Relations Board representation election by stationing our supervisors and agents in close proximity to employees as they are waiting in line to vote.

WE WILL NOT threaten or interfere with our employees as they are waiting in line to vote in a National Labor Relations Board representation election by telling them that it should not have come to this and asking them if they thought the grass was greener on the other side.

[9] For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

WE WILL NOT lay off or discharge any employee because of his/her support of the Union or any other labor organization.

WE WILL NOT provide benefits to our employees in order to discourage them from engaging in activities in support of the Union or any other labor organization.

WE WILL NOT refuse to recall any laid-off employee because of his/her support of the Union or any other labor organization.

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

WE WILL, within 14 days from the date of the Board's Order, reinstate Max Dietrich and Ronald Garant, and recall Alan LaBar, Tony Ratcliffe, Thomas Stark, Daniel Brady, Thomas Simcheck, and Michael Baran fully and immediately to their respective jobs, or, if those jobs no longer exist, to substantially equivalent positions of employment, in either case at the wages and with the full seniority and benefits to which our policies and practices entitle them.

WE WILL make Max Dietrich, Ronald Garant, Alan LaBar, Tony Ratcliffe, Thomas Stark, Daniel Brady, Thomas Simcheck, and Michael Baran whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest. WE WILL, within 14 days from the date of the Board's Order, remove from our files and records all references to the May 5, 2010 discharges of Max Dietrich, Ronald Garant, Alan LaBar, Tony Ratcliffe, Thomas Stark, Chad Neuer, Daniel Brady, and Jonathan Brenneman, and within 3 days thereafter notify them in writing that this has been done and that the unlawful discharges will not be held against them in any way.

WE WILL, within 14 days from the date of the Board's Order, remove from our files and records all references to the layoffs of Max Dietrich and Ronald Garant, Alan LaBar, Tony Ratcliffe, Thomas Stark, and Daniel Brady, and within 3 days thereafter notify them in writing that this has been done and that the unlawful layoffs will not be held against them in any way.

LONG MECHANICAL, INC.