

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LONG MECHANICAL, INC.

Respondent

and

Cases 07-CA-052917
07-CA-053416
07-CA-053200

LOCALS 98 AND 636,
UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING
AND PIPEFITTING INDUSTRY OF THE
UNITED STATES AND CANADA, AFL-CIO

Charging Unions.

RESPONDENT'S MOTION FOR RECONSIDERATION

INTRODUCTION

Respondent, Long Mechanical, Inc. ("Long Mechanical"), pursuant to Section 102.48(d) of the NLRB Rules and Regulations, respectfully requests that the Board reconsider its decision dated August 9, 2012, granting the Motion for Default Judgment brought by the Acting General Counsel for Region 7. Long Mechanical Inc, 358 NLRB No. 98 (2012). In granting the motion, the Board concluded that "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."

In fact, the record in this matter includes detailed and specific information from Long Mechanical supporting its position that it complied with the settlement agreement at issue. The Acting General Counsel attached much of this information as exhibits to its Motion for Default Judgment (e.g., Exhibits U, X, Y, Z, AA). The Board committed material error by failing to consider

Long Mechanical's specific denials in the record.

ARGUMENT

The settlement agreement alleged to have been breached was entered into by Long Mechanical on January 19, 2011 (agreement attached hereto as Exhibit A; attached to the Acting General Counsel's Motion for Default Judgment as Exhibit O). The settlement agreement required that Long Mechanical take the following actions:

- Post a notice approved by the Regional Director.
- Provide \$93,500 in backpay to eight named employees.
- Reimburse the Michigan Unemployment Insurance Agency for any amounts owed by the eight employees receiving backpay.
- Reinstatement employees Daniel Brady, Max Dietrich, Ronald Garant, and Alan Labar to their positions.
- Place employees Tom Stark, Tony Ratcliffe, Tom Simchek and Mike Baran on a preferential recall list.
- Provide certain documents to counsel for the Charging Unions or the Regional Director.

There is no suggestion that Long Mechanical failed to post the appropriate notice, failed to provide the \$93,500 of backpay to the eight employees, or failed to comply with the clause regarding unemployment insurance.

After being notified that the Region believed there was non-compliance with respect to other parts of the settlement agreement, Long Mechanical responded to the Region in detail. The Acting General Counsel's Motion for Default Judgment includes some of these responses as exhibits. For example, the Acting General Counsel asserted that Long Mechanical breached the agreement by failing to reinstate Brady, Dietrich, Garant and LaBar to their prior positions as foremen by January 25, 2011 (Motion for Default Judgment, paragraph 11). In correspondence to the Region, Long

Mechanical's President, James Long, provided detailed information regarding the dates the individuals were reinstated and explained that a lack of work prevented certain employees from immediately being placed in foremen positions (July 7, 2011 e-mail attached hereto as Exhibit B; attached to the Acting General Counsel's Motion for Default Judgment as Exhibit Q).

The Acting General Counsel also alleged that Long Mechanical failed to reinstate health insurance benefits for Mr. Brady and Mr. LaBar until April 18, 2011 (Motion for Default Judgment, paragraph 13). There was no allegation that Long Mechanical failed to reinstate Brady, LaBar, Dietrich or Garant at their previous rates of pay or failed to reinstate any other benefits. Once again, in his July 7, 2011 correspondence to the Region, Mr. Long explained that Mr. Brady and Mr. LaBar were provided insurance request notices upon their reinstatement, were laid off because of a lack of work during the winter (during which period they secured work with a different employer and received insurance), and were immediately provided insurance upon their subsequent reinstatement (Exhibit B; Exhibit Q to the Acting General Counsel's Motion for Default Judgment).

The Acting General Counsel asserted that Long Mechanical failed to recall Mr. Stark, Mr. Ratcliffe, Mr. Simchek, and Mr. Baran from a preferential recall list – while recalling other employees – in violation of the settlement agreement (Motion for Default Judgment, paragraph 15). Mr. Long explained to the Region, however, that Mr. Ratcliffe was recalled as soon as work was available, and that nobody was recalled ahead of him. The other three could not be recalled because there was no work available which they were qualified to perform.¹ (Exhibit B; Exhibit Q to the Acting General Counsel's Motion for Default Judgment). Also see Affidavit of James Long dated

¹ As reflected in a May 25, 2011 e-mail from Mr. Long to the Union's counsel, it was agreed that the individuals on the preferential recall list could be recalled in any order (Exhibit C).

March 17, 2011, paragraph 8 (attached hereto as Exhibit D; attached to the Acting General Counsel's Motion for Default Judgment as Exhibit U).

Finally, the Acting General Counsel claims that Long Mechanical failed to provide complete payroll records (Motion for Default Judgment, paragraph 18).² Long Mechanical's asserted compliance with the requirement was explained in an August 23, 2011 e-mail to the Region (attached hereto as Exhibit E; attached to the Acting General Counsel's Motion for Default Judgment as Exhibit X). The record reflects that detailed information required by the settlement agreement was produced (documents attached to the Acting General Counsel's Motion for Default Judgment as Exhibits Y, Z, and AA).

Thus, the record includes detailed and specific denials by Long Mechanical in response to the Acting General Counsel's claim that it has breached the settlement agreement. In Vocell Bus Company, Inc., 357 NLRB No. 148 (2011), the Board denied a motion for summary judgment based on an alleged breach of a settlement agreement when the employer "denied that it defaulted on the terms of the settlement agreement. Specifically it asserted that it reinstated Sainvil to his former position, that Sainvil refused multiple offers of work assignments, and that it was given no explanation for the Regional Director's calculation of the additional backpay due." The Board found that those denials were "sufficient to require a hearing on the question of whether the Respondent fully complied with the terms of the settlement agreement" and denied the Acting General Counsel's Motion for Summary Judgment.

Here, as reflected in the record, Long Mechanical provided even more detailed and specific

² Although the Board's decision indicates that the Acting General Counsel set forth "six specific allegations" that Long Mechanical breached the settlement agreement, there only appear to be four such allegations in the Motion for Default Judgment (paragraphs 11, 13, 15, 18) – all of which Long Mechanical addressed in its various responses to the Region.

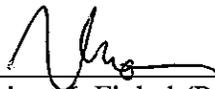
information to the Region in stating its disagreement with the Acting General Counsel's contention that it failed to comply with the settlement agreement. This information is part of the record and was provided to the Board with the Acting General Counsel's Motion for Default Judgment (e.g. Exhibits Q, U, X, Y, Z, AA). Long Mechanical did not simply state a "general denial" to the claim that it breached the settlement agreement. Under the Board's analysis in Vocell Bus, these specific denials are sufficient at a minimum to justify a hearing on the issue of compliance with the settlement agreement.

CONCLUSION

For the foregoing reasons, Respondent Long Mechanical, Inc. respectfully requests that the Board grant its motion for reconsideration and vacate its previous granting of the Acting General Counsel's Motion for Default Judgment.

Respectfully submitted,

FINKEL WHITEFIELD SELIK

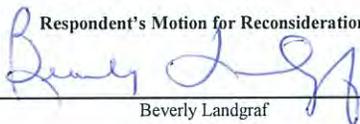
BY:  _____
Robert J. Finkel (P13435)
Michael L. Weissman (P51437)
Attorneys for Respondent
32300 Northwestern Highway, Suite 200
Farmington Hills, Michigan 48334
(248) 855-6500

Dated: August 31, 2012

PROOF OF SERVICE

The undersigned certifies that on August 31, 2012, she did serve a copy of the instrument(s) listed below upon all parties of record as disclosed in the pleadings by placing the same in an envelope, properly addressed, with postage fully prepaid thereon, and by depositing same in a United States mail receptacle located in Farmington Hills, MI:

Respondent's Motion for Reconsideration



Beverly Landgraf

EXHIBIT A

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

LONG MECHANICAL, INC.

CASES 7-CA-52917, 7-CA-53146, 7-CA-53200 AND, 7-RC-23367

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board, HEREBY AGREE AS FOLLOWS:

POSTING OF NOTICE — Upon approval of this Agreement and receipt of the Notices from the Region, which may include Notices in more than one language as deemed appropriate by the Regional Director, the Charged Party will post immediately in conspicuous places in and about its plant/office, including all places where notices to employees/members are customarily posted, and maintain for 60 consecutive days from the date of posting, copies of the attached Notice (and versions in other languages as deemed appropriate by the Regional Director) made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith signed copies of said Notices to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for 60 consecutive days from the date of posting. Further, in the event that the charged union maintains such bulletin boards at the facility of the employer where the alleged unfair labor practices occurred, the union shall also post Notices on each such bulletin board during the posting period.

See Attachment A.

NONADMISSION CLAUSE It is understood that, by signing this Agreement, the Charged Party does not admit that it has, in fact, violated the Act.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

BACKPAY — The Charged Party will make whole the employee(s) named below by payment to each of them as follows:

50% of the amount opposite each name is due 14 days after approval of this Settlement Agreement by the Regional Director, and the remaining 50% is due 45 days after the approval of the Settlement Agreement by the Regional Director. The Charged Party will make appropriate withholdings for each named employee, but shall not withhold Federal taxes at a higher rate than 25 percent of gross backpay:

Max Dietrich	\$20,000	Ronald Garant	\$20,000
Alan LaBar	\$16,000	Tony Ratcliffe	\$10,000
Thomas Stark	\$7,500	Daniel Brady	\$10,000
Thomas Simcheck	\$5,000	Mike Baran	\$5,000

UNEMPLOYMENT CLAUSE - The parties recognize that the amount of backpay to be paid represents a compromise of the total amount of backpay due the discriminatees listed above. It is agreed that in the event that the discriminatees are required to reimburse the Michigan Unemployment Insurance Agency (MUIA) for any unemployment compensation received as a result of a loss of pay because of the alleged unfair labor practices in this matter, the Charged Party will pay over to the MUIA an amount equal to that which each discriminatee is required to reimburse the MUIA.

REINSTATEMENT/RECALL - Charged Party agrees to reinstate Daniel Brady, Max Dietrich, Ronald Garant, and Alan LaBar to the positions they occupied prior to their recent layoff or discharge, by January 25, 2011. Tom Stark, Tony Ratcliffe, Tom Simcheck and Mike Baran will be placed on a preferential recall list and be called back to their prior positions or if they are not available, to substantially equivalent positions, at their previous rates of pay and benefits prior to their recent layoffs. Upon reinstatement or recall, all discriminatees, except Simcheck and Baran, will get credit for all accrued vacation calculated as if they had not been laid off. Simcheck's vacation will be deemed to have accrued beginning in May 2010, and Baran's vacation will be deemed to have accrued beginning in August 2010.

In order to effectuate the Charged Party's compliance with the provision of the Settlement Agreement requiring them to place Thomas Stark, Tony Ratcliffe, Tom Simcheck and Mike Baran on a preferential recall list and recall them in the order listed above, the Charged Party will provide to the Charging Party's counsel for review on a bi-weekly basis, the following documents:

1. Payroll records for all hourly employees employed by Long Mechanical, Inc., Long Plumbing, Long Mechanical Service, and Long Kitchen and Bath Design.
2. Cost detail reports, including posted and unposted details, for all jobs on which work is being performed by Long Mechanical, Inc., Long Plumbing, Long Mechanical Service, and Long Kitchen and Bath Design
3. A listing of all jobs on which bids have been awarded.

During the existence of the preferential recall list, the Charged Party shall furnish at the Detroit Regional Office, upon the request of the Regional Director, the documents listed in this section, within three days of said request by the Regional Director.

NONCOMPLIANCE WITH SETTLEMENT AGREEMENT — The Charged Party agrees that in case of noncompliance 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 noncompliance 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.



G.C. 13

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), and does not constitute a settlement of any other case(s) or matters. It does not preclude persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters which precede the date of the approval of this Agreement regardless of whether such matters were known to the General Counsel or were readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

REFUSAL TO ISSUE COMPLAINT — In the event the Charging Party fails or refuses to become a party to this Agreement, and if in the Regional Director's discretion it will effectuate the policies of the National Labor Relations Act, the Regional Director shall decline to issue a Complaint herein (or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement), and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 14 days thereof. This Agreement shall be null and void if the General Counsel does not sustain the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in the above captioned case(s), as well as any answer(s) filed in response.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY. Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ No /s/ J.R.L.
 Initials Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE — The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Within 5 days of complying with all the terms and provisions of the Settlement Agreement, the Charged Party will notify the Regional Director, in writing, of what steps it has taken to comply herewith, including all places where said notices were posted, and the duration of actual posting. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above captioned case(s).

Charged Party LONG MECHANICAL, INC.		Charging Party 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	
By: Name and Title	Date	By: Name and Title	Date
/s/ James R. Long, President	1/19/11	/s/ Tinamarie Pappas, Attorney	1/19/11
Recommended By:	Date	Approved By:	Date
/s/ Eric S. Cockrell Board Agent	1/19/11	/s/ Stephen M. Glasser Regional Director	1/19/11

RE: LONG MECHANICAL, INC.
CASES 7-CA-52917, 7-CA-53146,
7-CA-53200 AND, 7-RC-23367
Attached to Settlement Agreement

ATTACHMENT A

As a full and complete settlement of the instant charges and related Case 7-RC-23367, the Charged Party and Charging Party (sometimes referred to as the parties) agree as follows:

1. Upon approval of this settlement agreement, the Regional Director shall issue an order severing Case 7-RC-23367 from the instant Consolidated Amended Complaint.
2. The Regional Director's approval of this settlement agreement constitutes the Charged Party's and Charging Party's agreement, that for the sole purpose of resolving the election in Case 7-RC-23367, the challenges to the fourteen (14) determinative ballots be, and are, sustained.¹
3. As a result of the parties' agreement to sustain the said challenges, the following Revised Tally of Ballots is issued, of which the parties acknowledge receipt and to which the parties waive the filing of objections:

Approximate number of eligible voters	29
Number of void ballots	0
Number of votes cast for Petitioner	8
Number of votes cast against labor organization	7
Number of valid votes counted	15
Number of challenged ballots	0
Number of valid votes counted plus challenged ballots	15
Number of challenges sustained	14

4. The Regional Director's approval of this settlement agreement constitutes withdrawal of the election objections filed by the Charged Party and Charging Party.

¹ The Charged Party agrees that Max Dietrich and Ronald Garant are included in the bargaining unit notwithstanding the fact that their respective challenges were sustained in this proceeding.

5. Upon the Regional Director's approval of this settlement agreement, the Regional Director shall issue a Certification of Representative reflecting the Charging Parties' exclusive representative status in the following appropriate collective bargaining unit:

All full-time and regular part-time journeymen and apprentice plumbers, pipe fitters, and pipe fitters/welders employed by the Employer at or out of its facility located at 190 East Main Street, Northville, Michigan; but excluding all plumbing service employees, HVAC service employees, sheet metal employees, sheet metal fab shop employees, truck drivers, bathroom remodel employees, office clerical employees, managerial employees, and guards and supervisors as defined in the Act.

6. In the event that the Regional Director vacates the Settlement Agreement or it is otherwise rendered null and void, such action shall have no impact on the certification of the Charging Party as the exclusive collective bargaining representative of the bargaining unit in Case 7-RC-23367.

EXHIBIT B

Steib, Stephanie

From: Jim Long [jlong@longmechanical.com]
Sent: Thursday, July 07, 2011 1:53 PM
To: Steib, Stephanie
Cc: Mamat, Frank
Subject: FW: Case 07-CA-060379
Attachments: 060379 #4.pdf; response to NLRB charges 060379.doc; 060379 #1.pdf; 060379 #1A.JPG; 060379 #1B.JPG

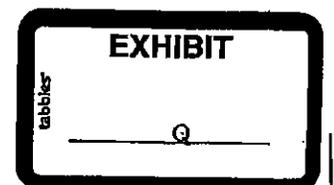
Ms. Steib,

We forward to you our response to the false allegations in case #7-CA-60379, with supporting documents and pictures.

Please forward any and all correspondence regarding this and other issues to me. We will thus inform our attorney, Frank Mamat accordingly.

Thank you.

James R. Long
Long Mechanical
Office: 248.349.0373
Cell: 248.330.5201
Fax: 248.349.3869



To: Stephanie J. Steib

Re: Long Mechanical, Inc.
Case 07-CA-060379

We present to your our response to the above claim.

Please forward copies of all correspondence to our office and electronic correspondence to my email.

Please note that the attorney for the charging party, Tinamarie Pappas, has inside knowledge and a favored relationship with the National Labor Relations Board.

These charges must be recognized for what they are, a desperate attempt to continue to harass our firm by baseless false claims.

Our response will make this clear to you.

In these past **FIVE** months, we have attended **FOUR** collective bargaining meetings with the Business Managers of Local 98 and 636 and Tinamarie Pappas. **NONE** of these items have been previously brought to our attention for discussion.

Now we get a long list of charges, many of them **FIVE** months old?

My question to you: Does this sound like they (Local 98, 636, and Tinamarie Pappas) are trying to bargain in good faith?

1. **Al Labor and Dan Brady were recalled to work on January 26, 2011.** They were directed by Ron Tini of our firm to show up for work at the new St. Catherine's High School in Wixom, MI. This is a "Dual Gate" project, due to the presence of a number of open shop contractors. Ron Tini was clear in his direction that this was a dual gate project and that it was important all Long Mechanical employees enter the job site from 12 Mile Road job site entrance, not the Napier Road entrance.

We received a call from Ledcor Construction, the construction managers for this project, that two of our employees were entering the site through the incorrect gate, and had been doing so for 3 days. Ledcor was very upset with our firm as a "contaminated" gate can cause serious issues for the construction manager.

We spoke to Dan and Al about this, and they started to use the correct gate.

Both Dan Brady and Al Labor are seasoned veterans of "dual gate" construction sites. They both know that signs at the construction site entrance clearly identify which contractor can use which gate.

No one from Long Mechanical has accused these employees of 'sabotage.' That term was noted in a correspondence from Frank Mamat to Tinamarie Pappas on January 28, 2011, copy of which is attached.

Enclosed please find two photographs which clearly identify the signs at the Napier Road entrance, clearly indicating that employees of Long Mechanical are **NOT** to use this project entrance.

2. We do not understand what would cause this charge. Long Mechanical Management does not discriminate against employees nor deprive them of job site equipment. We strive to manage our projects in a cost efficient manner, always have.

3. We do not understand what would cause this charge. Long Mechanical Management does not engage in verbal abuse of its employees.

4. Dan Brady and Al Labar were sent the standard insurance request notice in their paycheck February 3, 2011. This is a document they sign if they choose to decline health insurance, or notifies them to call the office if they want to be part of the plan.

Al Labar called on Monday Feb 7 and Dan Brady called on Thursday February 10, Both requesting to be part of the plan.

On February 4, the mechanical piping on the project they were on was completed. With the fact that this was a new building, it was a severe winter, and the masons and iron workers could not work, and the project was pretty much shut down, Dan and Al were laid off.

During their layoff, we were informed that both Dan and Al had secured work with Local 190 in Ann Arbor, and would be covered by other insurance plans.

On or about Thursday April 14th we notified both Dan and Al that the St. Catherine's project was starting up again and to report to work Monday April 18th.

On Monday April 18th health insurance was reinstated and provided for both Dan and Al.

To further prove to you that we have and continue to be falsely accused, please see the attached copy of a May 3rd email from Tinamarie Pappas accusing us that "Both Dan Brady and Al Labar have checked with Long's health insurance provider, and were advised on April 28th that neither is currently covered by the Company health insurance..."

Our May 5th response is also attached, showing that her accusation is **ABSOLUTELY NOT TRUE.**

After we informed Tinamarie Pappas of the truth, she had a chance to confirm with Dan and Al, we were surprised to receive a letter from Mr. Glasser dated May 19th (two weeks later), stating that we had "failed to restore the benefits of Daniel Brady and Alan Labar."

This is just another example of the FALSE accusations we continue to endure.

5. It is well documented that we were not awarded any projects during this time. Thus it was impossible to put Max Dietrich in a foreman's position

The first new project we were awarded, the "Huron Valley Women's Prison" project, Max was installed as our foreman. This was April 25th, 2011. Max was supplied with a company cell phone on April 15th in preparation for this job.

This project has been shut down for 9 weeks and started back up on June 27th. During the shutdown, Max was shifted to another existing project and has been working as a non-foreman. During this time he retained his company cell phone.

6. Again, well documented that we were not awarded any new projects other than identified in #5.

In April we were awarded a contract for work at Northville City Hall. Al Labor was installed as foreman on that project. On site work started May 16, 2011. Al's company cell phone, which has been in his possession for at least 6 years, was activated on May 16th.

Chad Neuer was shifted from the Marywood project to the U of D project on May 23, 2011. At that time, Ron Garant was installed as foreman of the Marywood project, Ron was issued a company cell phone on April 24, 2011.

7. We have NOT been awarded any new projects that would require a foreman, other than the projects noted above.

8. Tony Ratcliffe was called back to work as soon as we had sufficient work for him. No one was recalled ahead of Tony.

9. We cannot return these 3 individuals until we have sufficient work.

10. From May 9, 2011 to May 11, 2011, Dan Brady ran out of work at the St. Catherine's project due to a delay in receiving temperature control valves for him to install. Dan Brady was well aware of the issue with the delay in the control valve delivery.

This same reason also applies for May 16 through May 19. Dan took vacation days on May 16 and May 17.

11. Al Labar was laid off from May 9, 2011 to May 13, 2011 at St. Catherine's for the same reason Dan Brady was in item #10. Al Labar was also well aware of the issue with the delay in the control valve delivery.

12. On May 17, 2011, Max Dietrich and Ron Garant ran out of work at the Marywood project. We informed them to show up at the St. Catherine's project as a truck load of HVAC roof curbs was to arrive on site and additional help was needed to please them on the roof and assemble them.

On the afternoon of May 17, we received a call from the trucking company (these items were coming from out of state), that the truck had mechanical difficulties and would not be on site May 18. We notified Max and Ron accordingly that there would be no work, and that we would call them when the trucker was on his way. On May 19, we received notice that the truck was repaired and the driver would be on site May 20. Max and Ron were thus notified and returned to work on May 20, 2011.

13. We do not understand what would cause this charge. Long Mechanical Management does not threaten employees with loss of employment or any of the other false accusations listed.

14. Any and all pay modifications have to be discussed at a collective bargaining meeting. If an employee inquires as to a pay modification, we explain this to them.

15. We have and continue to provide information to the charging party that is relevant to any and all collective bargaining discussions.

James R. Long
Long Mechanical

Mamat, Frank

From: Jim Long [long@longmechanical.com]
Sent: Thursday, May 05, 2011 9:28 AM
To: Mamat, Frank; pappaslawoffice@comcast.net
Subject: RE: LONG MECHANICAL-AL LABAR

Please see our response below.

James R. Long
Long Mechanical
Office: 248.349.0373
Cell: 248.330.5201
Fax: 248.349.3869

ITEM #4

-----Original Message-----
From: Mamat, Frank [mailto:FMamat@fosterswift.com]
Sent: Wednesday, May 04, 2011 12:07 PM
To: 'pappaslawoffice@comcast.net'
Subject: Re: LONG MECHANICAL-AL LABAR

This message is being sent from a Blackberry device.

Thanks. I am looking into the matter

Frank T.

Mamat.
Attorney and Professor of Law, Labor Lawyer to America's Top Companies
(313)333-7174 (cell)
(248)539-9919 (office)

Circular 230 Disclosure: Pursuant to U.S. Department of Treasury Circular 230 which sets forth best practices for tax advisors, if this writing contains advice on a federal tax issue, the advice was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein. If you would like a written tax opinion upon which you can rely for the purpose of avoiding penalties or for the use in support of the promotion, marketing, or recommending of the transaction described herein, please contact us.

DISCLAIMER/CONFIDENTIALITY: This communication, along with any documents, files or attachments, is intended only for the use of the addressee and may contain legally privileged and confidential information. Any document attached is a legal document and should not be changed or altered without the knowledge and approval of legal counsel. The sender takes no responsibility for any alterations, additions, revisions or deletions to any such document. Due to software and printer variations, documents printed at the recipient's location may vary from the original printed document.

----- Original Message -----
From: Tinamarie Pappas [mailto:pappaslawoffice@comcast.net]
Sent: Wednesday, May 04, 2011 09:20 AM

To: Mamat, Frank
Subject: LONG MECHANICAL-AL LABAR

Frank: Al Labar was instructed by Long to show up for an orientation at the Huron Valley Women's Correctional Facility on or about Thursday, April 14, 2011. He spent 1.5 to 2 hours at the orientation per Long's directive. He was not paid for that time. Please look into this matter with your client and advise. Obviously, this constitutes time spent performing duties at the Company's request for which Mr. Labar should have been paid.

Response: Al Labar did not put this time down on his time card, thus he was not paid. I personally spoke to him about this a couple of days ago.

In addition,
please advise, per my email from the week of April 18, whether Max Dietrich has been reissued a Company cell phone.

Response: Max Dietrich received a company cell phone on/about April 15th, 2011.

Lastly, both Dan Brady and Al Labar have checked with Long's health insurance provider, and have were advised on April 28 that neither is currently covered by the Company health insurance, nor have they been since their January 25 reinstatement, rather they are listed by the insurer as "inactive". This is direct conflict with the representations made to me by Jim Long during our April 19, 2011 meeting at the NLRB's offices, and is in further derogation of the terms of the NLRB settlement agreement. Per your request, I am bringing these matters to your attention.

Response: Not sure where they got their information but here are the facts: Al Labar and Danny Brady were both active on April 18th, 2011 with the company health insurance. They should be receiving their cards next week. I have given both of them their ID numbers they can use until they receive their cards.

Tinamarie Pappas

Law Offices of Tinamarie Pappas
4661 Pontiac Trail
Ann Arbor, MI 48105
(734) 994-6338
FAX (734) 663-7626

Confidentiality Notice

This e-mail communication (including any attachments) contains information

FOSTER SWIFT

FOSTER SWIFT COLLINS & SMITH P.C. ATTORNEYS

Lansing | Farmington Hills | Grand Rapids | Detroit | Marquette

ITEM #1

Frank T. Mamat
P: 248.539.9919 F: 248.538.3619

fmamat@fosterswift.com

32300 Northwestern Highway - Suite 230
Farmington Hills MI 48334

January 28, 2011

Via First Class Mail and Telefacsimile (734) 663-7626

Tinamarie Pappas
Law Offices of Tinamarie Pappas
4661 Pontiac Trail
Ann Arbor, MI 48105

Re: D. Brady

Dear Ms. Pappas:

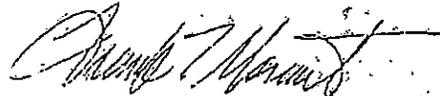
Please be advised that a reinstated employee, D. Brady, has been intentionally insubordinate and committing company sabotage over the last three (3) days by, among other things, intentionally refusing to enter and leave through a "reserved gate" assigned to Long Mechanical by the General Contractor. Brady intentionally used the non-"Long" gate in an effort to sabotage the system, cause labor disruption at the jobsite, and cause the General Contractor to terminate the contract with Long.

Since he just was returned to work pursuant to a NLRB Settlement Agreement, his intentional insubordination and attempt to sabotage the job are not protected by the NLRA or the Settlement Agreement.

The Company will follow the law, but will not be intentionally harmed by your Clients' attempts to frustrate the Act or sabotage the Settlement Agreement. Obviously, if Brady refuses to work or continues to sabotage the customer relationship, everyone will be without work.

Very truly yours,

FOSTER, SWIFT, COLLINS & SMITH, P.C.



Frank T. Mamat
FTM:td

cc: Mark Baines, NLRB, Region 7 (Via First Class Mail and Telefacsimile)

fosterswift.com

8



KEEP OUT
TRESPASSERS
WILL BE
PROSECUTED

GATE A

Entrance to For The Use of
Employees, Contractors and Subcontractors Only

SOLOMON PLUMB

LONG MECH

J-J CONST.

MODERN DRYWALL

This Entrance, Delivery and Subcontractors
Who are Registered with This Entrance



SITE SAFETY RULES

- 1. All workers must wear hard hats at all times.
- 2. No running or horseplay on site.
- 3. No smoking in the presence of flammable materials.
- 4. All workers must be trained in safety procedures.
- 5. No unauthorized personnel allowed on site.
- 6. All workers must be in good health and sober.
- 7. No alcohol consumption on site.
- 8. No use of mobile phones while working.
- 9. All workers must be properly trained in their tasks.
- 10. No use of tools or equipment unless properly trained.
- 11. All workers must be properly trained in their tasks.
- 12. No use of tools or equipment unless properly trained.

WORK SAFETY
WORK SAFELY

NO SITE HIRING

DANGER
CONSTRUCTION
ZONE
TRESPASSERS
WILL BE
PROSECUTED

DANGER
AUTHORIZED
PERSONNEL
ONLY

EXHIBIT C

-----Original Message-----

From: Jim Long

Sent: Wednesday, May 25, 2011 4:20 PM

To: 'Tinamarie Pappas'

Cc: Carlo Castiglione (CCastiglione98@ualocal98.org); 'fwiechert@pipefitters636.org'; 'Mamat, Frank'; Dave Dixon

Subject: RE: Long Mechanical

Tina,

To confirm an item that we discussed and agreed upon at our meeting this morning:

The four individuals noted in the SA under the "Reinstatement/Recall clause 2nd paragraph; Stark, Ratcliffe, Simcheck, and Baron. If needed, Long Mechanical, can recall any of these individuals in any order, and not in the order noted in the SA.

James R. Long

Long Mechanical

Office: 248.349.0373

Cell: 248.330.5201

Fax: 248.349.3869

EXHIBIT D

COUNTY OF)
) ss
STATE OF MICHIGAN)

CASE 7-CA-53473

Confidential Witness Affidavit

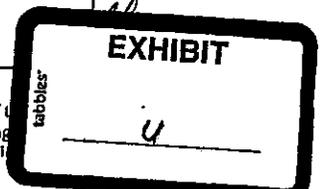
I, James Long, being first duly sworn upon my oath, hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

Office Mailing Address: 190 East Main Street, Northville, MI 48167

My Office Telephone: (248) 349-0373

1 1. Construction began at St. Catherine Catholic in Wixom during the summer of 2010
2 with the mechanical construction beginning in January 2011. On or around January
3 24, 2011, Employer project manager Ron Tini contacted employees Danny Brady and
4 Al LaBar to report to St. Catherine's. Long Mechanical involvement with the St.
5 Catherine job is scheduled to last until September or October 2011. This particular
6 job is primarily calls for sheet metal work and there is very little piping work to be
7 performed. Long Mechanical was only hired to perform the HVAC portion of the job
8 not the plumbing. We knew we would have intermittent work at St. Catherine's since
9 it is new construction that was being performed during the dead of winter and that
10 actual construction would progress slowly as any job would during a Michigan
11 winter.
12



AT REGISTRATION # 19762LRB (J...)

JAL

- 1 2. During the settlement discussions on January 13, 2011, with the Union, we provided
2 the Union with documentation listing each job the company had and its status as to
3 how long the job was scheduled to last. We also orally told the Union that we only
4 had short term plumbing and pipefitting work scheduled but the Union demanded that
5 we recall employees back to work any way. I was not present during Tini's telephone
6 conversation with Brady or LaBar and I do not know exactly what he told them as far
7 as how long the job would last but Union was clearly on notice that we did not have
8 sufficient work to keep these employees working for long periods of time.
- 9
- 10 3. As of January 25, 2011, the Employer had a total of six on going jobs that were in
11 various states of completion. Of the six jobs only three of them were active. I
12 estimate that we had 11 employees working at that time. These 11 employees
13 included sheet metal/plumbers and fitters. I do not have a job report in front of me so
14 I cannot give exact names as to which individuals were assigned to St. Catherine's. I
15 do not recall the exact date but Luke Liedel, Jon Brenneman and Rob Makowiec were
16 transferred to from St. Catherine's to different jobs. Makowiec was transferred to Lee
17 Steel to perform sheet metal work which Brady and LaBar are not qualified to
18 perform. Makowiec was laid off on March 4, 2011, once he completed the Lee Steel
19 job. Makowiec has remained on layoff to this day due to lack of work. Liedel and
20 Brenneman were moved to a job called Takao to do some storm water piping. They
21 worked at Takao for about a week. Takao was a job that we started about six months
22 ago which Liedel and Brenneman had mostly completed. We decided to send them
23 back to the Takao to complete the job and to clean up. We decided to move Liedel

JAL

1 and Brenneman to Takao due to their familiarity with the job and by moving them it
2 allowed us to keep Brady and LaBar working. Liedel and Brenneman have since been
3 reassigned back to St. Catherine to perform sheet metal work. I do not recall the
4 exact date that they were recalled. I am not sure when Liedel and Brenneman were
5 first assigned to work at St. Catherine's.

6
7 4. As of February 9, 2011, all the pipefitting work that we could perform at St. Catherine
8 was complete and we had also caught up on the sheet metal portion of the work as
9 well. Since the job dictated that we had no more work to perform we made the
10 decision to lay off the following employees: Danny Brady, Al LaBar, Gabe Ivan, Rob
11 Rice and Gary Steiner. I was not present during the meeting where job foreman Gary
12 Hocking informed the guys verbally that they would be laid off. Either Steve
13 Hocking or Ron Tini instructed Gary Hocking to inform the guys. I do not know
14 exactly Gary Hocking told the employees during this meeting but it probably was
15 something along the lines of we will call you when work becomes available. We
16 were not certain as to how long the lay off would last. Gary Hocking remained on the
17 job to monitor job progress of the other trades to see when we could get back to work.
18 The general contractor Ledcore never told us to get off the job in order to dry it out. It
19 would be impossible to dry-out a job in middle of February after the weather we had.
20 Concrete is not scheduled to be poured at St. Catherine's until summer.

21
22 5. Long Mechanical did not notify the Union on February 9, 2011, of the layoffs because
23 we had already put them on notice as of January 13, 2011. We told them in writing

1 and orally that no work was available and that work that we did have was short term
2 in nature. We gave the Union written job reports indicating how much work were left
3 to perform on each job. It is not the Employer's position that we were not aware that
4 we had to notify the Union of the layoffs but rather we had already did on January 13,
5 2011.

6
7 6. We could not transfer the employees at St. Catherine's to other two jobs because we
8 just did not have enough work available for them to perform. I do not have dates and
9 I do not have names of the individuals that we brought back to St. Catherine's but as I
10 stated earlier it is to perform sheet metal work only. This is work that Brady and
11 LaBar cannot perform.

12
13 7. During early March 2011, the work at Marywood, one of our other jobs, was
14 beginning to run out. On or about March 4, 2011, we were forced to lay off sheet
15 metal/plumber fitter employees Andy Hocking and Brian Hensley. Also working at
16 Marywood were plumber/pipe fitters Max Dietrich and Ron Garant. There was only
17 enough plumbing work available for one the individuals so we elected to keep Garant
18 working at Marywood and transfer Dietrich over to St. Catherine's to perform a small
19 amount of pipe fitting work. We did this in an effort to keep Dietrich working. We
20 had a choice to either lay Dietrich off or recall Brady or LaBar but we decided to keep
21 Dietrich working because it is easier to keep a guy who was already working rather
22 than to recall someone off a layoff. I notified the Union of the our decision to transfer
23 Dietrich to St. Catherine's in an email that I sent to Local 98 Business Manager Carlo

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Castiglione. I am not sure of the exact date of my email to Castiglione. I have had other email conversations with Castiglione as to why the Union filed additional unfair labor practice charges. Dietrich has completed his work at St. Catherine's as of Tuesday, March 15, 2011, and was transferred back to Marywood.

ORAL

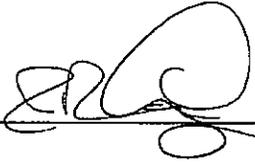
- 8. The Employer did not lay Brady and LaBar off in retaliation for their union activity. The Employer has not recalled Stark, Ratcliffe, Simcheck or Baran because there is no work available for them and they are not qualified to perform sheet metal work either. We were forced to layoff the five employees at St. Catherine's because we have no other place to put them.
- 9. The Employer's past layoff practices are contained in my affidavit that I provided to Linda Rabin Hammell in Case 7-CA-52917.



1

I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make any changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

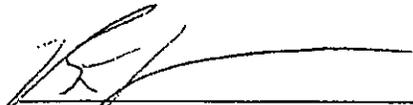
I have read this statement consisting of 6 pages, including this page, I fully understand its contents, and I certify that it is true and correct to the best of my knowledge and belief.



3.17.11
Date

Subscribed and Sworn to Before me at
Farmington Hills, MI

This 17th day of March, 2011



Brett L. Jackson, Board Agent
National Labor Relations Board



EXHIBIT E

Steib, Stephanie

From: Jim Long [jlong@longmechanical.com]
Sent: Tuesday, August 23, 2011 11:04 AM
To: Steib, Stephanie; Mamat, Frank
Cc: Dave Dixon; Allison Long
Subject: RE: Layoff and recalls
Attachments: layoff dates.xls

Ms Steib,

I was out of the office most of last week.

Please find attached the layoff information requested.

Also please see our responses below to your questions.

James R. Long
Long Mechanical
Office: 248.349.0373
Cell: 248.330.5201
Fax: 248.349.3869

From: Steib, Stephanie
Sent: Tuesday, August 16, 2011 11:19 AM
To: Mamat, Frank; 'Jim Long'
Subject: Layoff and recalls



Mr. Mamat and Mr. Long,

I am inquiring into the layoff and recall of Long employees since January 1, 2011. I am requesting that you provide the names of the employees who have been laid off, the dates of their layoffs, the jobs they were laid off from, and the job they were recalled to. Even if a layoff was for one day, please provide them. I have the payroll records, but the records do not reflect if an employee was laid off or if they elected to take time without pay. Examples include those taking vacation time to compensate a layoff.

A: Please see attached.

Who is Gary Kennaw? When was he hired, what job(s) is/are he working on, and why is he working over those on the preferential recall list?

A: He is a service tech, service techs are not part of the collective bargaining unit.

If Doug Jarvis is working for Long Mechanical, why isn't he listed on the payroll documents? Please provide information on his work history since January 1, 2011.

A: Doug last worked on 6-10-11 and 6-17-11, we will contact Doug as we have not spoken with him yet regarding his time card.

In addition to Jarvis, are there any other employees working who have not been listed on payroll documents? If so, please identify them and their work history since January 1, 2011.

8/23/2011

No.

Regarding cost detail reports – On May 17, Mamat sent me an email with the 5-1 and 5-8 payroll records and said that there were no material cost entered for these weeks. By letter dated May 23, Long mailed to the Regional office cost detail reports, including labor and material costs, from January 19, 2011 through June 11, 2011. Those records showed material costs for the first week of May for Marywood, Courthouse, and other projects. Why was this information originally omitted?

A: Material cost was not intentionally omitted. Material for that week had not yet been entered. When invoices/materials are entered, they are given the date on the invoice, sometimes invoices are not entered for a week or two.

Looking at the payroll records for Jeff Marion, why are there numerous dates where he worked more than 24 hours in a day? Examples include May 12 working 34.5 hours and April 25 working 41 hours. Similar situation for Jerry Fannon working 38.5 hours on April 26 and John D. Hocking working 23 hours on 04/29. Please explain these situations and similar situations as to why there are more than 24 hours in a workday.

A: When payroll is entered for an employee working for a particular service job or any particular job that does not have a service number, these hours are entered as a total, not broken down day by day.

Thank you for your cooperation in this matter.

-Stephanie Steib

name	layoff dates	job	return to work	job
Brady, D.	2/10/11 - 4/15/11	St Catherine's	4/18/11	St Catherine's
	5/9/11 - 5/11/11	St Catherine's	5/12/11	St Catherine's
	5/16/11 - 5/17/11	vacation		
	5/18/11 - 5/19/11	St Catherine's	5/20/11	St Catherine's
Labar, A	2/10/11 - 4/15/11	St Catherine's	4/18/11	St Catherine's
	5/9/11 - 5/13/11	St Catherine's	5/16/11	Northville
Rice, R.	2/10/11 - 3/4/11	St Catherine's	3/7/11	Marywood
Ivan, G.	2/10/11 - 3/4/11	St Catherine's	3/7/11	Marywood
Steiner, G.	2/10/11 - 3/4/11	St Catherine's	3/7/11	St Catherine's
Garant, R.	5/18/11 - 5/19/11	Marywood	5/20/11	St Catherine's
Hocking, G.	5/5/11 - 5/6/11	vacation		
	5/9/11	St Catherine's	5/10/11	VA - Detroit
	5/11/11	VA - Detroit	5/12/11	St Catherine's
Liedel, L.	5/5/11 - 5/13/11	St Catherine's	5/16/11	shop
Neuer, C.	4/14/11 - 4/18/11	vacation		
	4/19/11	personal day	4/20/11	Marywood
Hamman, J.	not part of bargaining unit			
Dietrich, M.	3/18/11 - 3/25/11	Marywood		
	3/28/11 - 4/4/11	vacation	4/5/11	St Catherine's
	5/18/11 - 5/19/11	Marywood	5/20/11	St Catherine's
Marion, J.	not part of bargaining unit			
Hocking, A.	3/7/11 - 4/1/11	Marywood	4/4/11	Marywood
Hensley, B.	3/7/11 - 4/1/11	Marywood	4/4/11	Marywood
	5/5/11 - 6/3/11	St Catherine's	6/6/11	VA - Detroit
Makowiec, R.	3/4/11	voluntary quit		
Dyke, J.	3/7/11 - 4/1/11	VA Pharmacy - AA	4/4/11	St Catherine's
	5/5/11 - 6/3/11	St Catherine's	6/6/11	St Catherine's
Brenneman, J.	3/17/11 - 3/25/11	personal time	3/28/11	St Catherine's
	7/18/11 - 7/22/11	vacation	7/25/11	U of D
Hocking, Jr., J.	5/5/11	personal time		VA Pharmacy - AA
	5/10/11	partial hours	5/11/11	VA Pharmacy - AA
	5/12/11	vacation	5/12/11	VA Pharmacy - AA
	5/13/11	partial hours		VA Pharmacy - AA
	5/16/11 - 5/24/11	vacation	5/25/11	VA Pharmacy - AA