

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
THIRD REGION**

**UNY LLC  
d/b/a GENERAL SUPER PLATING**

**and**

**Case 03-CA-152609**

**LOCAL 81319, IUE-CWA**

**COMPLAINT AND NOTICE OF HEARING**

This Complaint and Notice of Hearing is based on a charge filed by Local 81319, IUE-CWA (Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that UNY LLC d/b/a General Super Plating, (Respondent) has violated the Act as described below:

**I**

The charge in Case 03-CA-152609 was filed by the Union on May 20, 2015, and a copy was served on Respondent by U.S. mail on the same day.

**II**

(a) At all material times, Respondent, a corporation, with an office and place of business in Syracuse, New York, herein called Respondent's Syracuse, New York facility, has been engaged in industrial electroplating.

(b) In conducting its business operations during the past calendar year, Respondent purchased and received at its Syracuse, New York facility, goods valued in excess of \$50,000 directly from points outside the State of New York.

### III

At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### IV

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

### V

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

Kevin Birkmayer	-	General Manager
Jeffery Sands	-	Vice President
Cindy Sommers	-	Human Resources Director

### VI

(a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of Respondent described in Article 1 and Appendix A, of the current collective-bargaining agreement in effect between Respondent and the Union.

(b) At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition is embodied in the current collective-bargaining agreement, which is effective from July 25, 2014

through July 28, 2016, as it was automatically extended for an additional year by its terms.

(c) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

## VII

(a) About March 20, 2015, Respondent closed its business and ceased all operations.

(b) About March 23, 2015, the Union requested that Respondent bargain over the effects on unit employees of its decision to close its business.

(c) The subjects set forth above in paragraph VII (b) relate to the wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(d) Respondent engaged in the conduct described above in paragraph VII (a) without affording the Union an opportunity to bargain with Respondent with respect to the effects of this conduct.

## VIII

(a) About March 26, 2015, the Union requested in writing that Respondent provide it with the financial information set forth on page 2 of Exhibit A.

(b) The information requested by the Union, as described in paragraph VIII (a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) Since about March 26, 2015, Respondent, has failed and refused to furnish the Union with the information requested by it as described above in paragraph VIII (a).

## IX

By the conduct described above in paragraph VII(d) and VIII(c), Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(1) and (5) of the Act.

## X

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

**WHEREFORE**, as part of the remedy for the unfair labor practices alleged above in paragraph VII, the General Counsel seeks an Order requiring that Respondent make whole employees in the Unit in the manner set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

**WHEREFORE**, as part of the remedy for the unfair labor practices alleged above in paragraph VII, the General Counsel seeks an Order, requiring that Respondent:

Preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.

**WHEREFORE**, as an additional remedy for the unfair labor practices alleged above in paragraphs VII and VIII, the General Counsel seeks an Order requiring that Respondent duplicate and mail, at its own expense, a copy of the notice to all employees employed by the Respondent at any time since March 20, 2015.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

**ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before August 26, 2015, or postmarked on or before August 25, 2015.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules

require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT on October 26, 2015 at 1:00 p.m.**, at the Hearing Room at the Niagara Center Building, 130 South Elmwood Avenue, Suite 630, Buffalo, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

**DATED** at Buffalo, New York, this 12th day of August 2015.

/S/RHONDA P. LEY

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RHONDA P. LEY,  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 03  
130 S ELMWOOD AVE  
STE 630  
BUFFALO, NY 14202-2387

Attachments

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3**

**UNY LLC D/B/A GENERAL SUPER PLATING**

**and**

**Case 03-CA-152609**

**LOCAL 81319 IUE-CWA**

**AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 12, 2015, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

Kevin Birkmayer  
GENERAL SUPER PLATING  
General Super Plate  
5762 Celi Dr  
East Syracuse, NY 13057-2990

**CERTIFIED MAIL  
7011-3500-0000-8314-4562  
RETURN RECEIPT REQUESTED**

Terry Kirwan , ESQ.  
Kirwan law Firm PC  
500 Plum St Ste 101  
Syracuse, NY 13204-1475

**REGULAR MAIL**

Michael J. Rusinek, Staff Rep.  
Local 81319 IUE-CWA  
821 Elk St Suite B  
Buffalo, NY 14210-1711

**CERTIFIED MAIL  
7011-3500-0000-8314-4579  
RETURN RECEIPT REQUESTED**

Casey Whitten-Amadon  
Local 81319 IUE-CWA  
2701 Dryden Rd.  
Dayton, OH 45439

**REGULAR MAIL**

August 12, 2015

JULIO GONZALEZ, Designated Agent of  
NLRB

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

Case 03-CA-152609

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Kevin Birkmayer  
GENERAL SUPER PLATING  
General Super Plate  
5762 Celi Dr  
East Syracuse, NY 13057-2990

Terry Kirwan , ESQ.  
Kirwan law Firm PC  
500 Plum St Ste 101  
Syracuse, NY 13204-1475

Michael J. Rusinek, Staff Rep.  
Local 81319 IUE-CWA  
821 Elk St Suite B  
Buffalo, NY 14210-1711

Casey Whitten-Amadon  
Local 81319 IUE-CWA  
2701 Dryden Rd.  
Dayton, OH 45439

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in

**evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and will set a deadline for filing, up to 35 days.

### **III. AFTER THE HEARING**

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

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<b>Kevin Birkmayer, GENERAL SUPER PLATING</b> <b>General Super Plate</b> <b>5762 Celi Dr</b> <b>East Syracuse, NY 13057-2990</b>	B. Received by (Printed Name)	C. Date of Delivery <u>8/26</u>
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