THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

MENARD, INC., Plaintiff, v. NATIONAL LABOR RELATIONS BOARD, Defendant.	**Civil Action No.: 18-CV-00376-WMC** **MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

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BACKGROUND

Seeking to derail an unfair labor practice proceeding currently pending before Defendant National Labor Relations Board (NLRB or the Board),[1] Plaintiff Menard, Inc. (Menard) has filed an amended complaint (Dkt. 7) requesting a declaratory judgment and an injunction prohibiting the NLRB from prosecuting the administrative action. In brief, Menard asserts that the NLRB is acting arbitrarily, capriciously, and outside of its statutory jurisdiction. In the administrative proceeding, the General Counsel has alleged that Menard violated Section 8(a)(1) and (4) of the National Labor Relations Act (NLRA or the Act), 29 U.S.C. § 158(a)(1) and (4), when it discharged an independent contractor purportedly because he had been a witness for the NLRB in an earlier administrative hearing. Menard asks the Court to permanently enjoin the NLRB from proceeding with the case, including the evidentiary administrative hearing scheduled to begin on August 20, 2018.

SUMMARY OF ARGUMENT

Menard's suit is incurably flawed by the absence of subject matter jurisdiction. Controlling authority from both the Supreme Court and the Seventh Circuit holds that federal district courts lack subject matter jurisdiction to review or enjoin the NLRB's handling or prosecution of unfair labor practice proceedings. Rather, under Section 10 of the Act, 29 U.S.C. § 160, federal circuit courts' exclusive role is to review NLRB proceedings once a final Board order has issued. Thus, under the NLRA, Menard can secure court review of the instant NLRB proceeding *only* after exhausting its administrative remedies and then *only* in a circuit court through the exclusive procedures established by Section 10 of the Act. Contrary to Menard's

[1] References to "the NLRB" refer to the agency as a whole; "the Board" refers to the appointed five-member statutory body known as the National Labor Relations Board, as defined in 29 U.S.C. § 153.

assertion, the limited exception to the foregoing rule recognized in *Leedom v. Kyne*, 358 U.S. 184, 188-89 (1958), is wholly inapplicable because Menard has clear statutory means for obtaining court review of any final administrative decision in this case and it cannot show that the NLRB has violated a clear and mandatory provision of the Act. None of the jurisdictional bases cited by Menard suffice to permit this Court to compel or enjoin NLRB action. Thus, Menard's suit fails as a matter of law, and the action should be dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

PROCEDURAL BACKGROUND

A. Earlier Administrative Proceeding

Menard is a Wisconsin corporation that operates approximately 300 home improvement retail stores across fourteen states in the Midwest. Menard contracts with haulers who fulfill home delivery of Menard's goods to its customers. Dkt. 7-Exhibit 1. On August 10, 2016, Local 153, Office & Professional Employees International Union, AFL-CIO filed a charge with the NLRB alleging that Menard violated Section 8(a)(1) of the Act by misclassifying delivery drivers as independent contractors rather than employees. (Attached as NLRB Motion to Dismiss Exhibit 1 (MTD Exhibit 1)). The NLRB's General Counsel issued a complaint against Menard for these alleged violations on December 22, 2016. (Attached as NLRB MTD Exhibit 2). The case was tried before an administrative law judge (ALJ) on May 31 and June 1, 2017. Dkt. 7-Exhibit 1. During the administrative hearing, Kevin Fisher, one of roughly 700 delivery drivers whose classification was at issue, testified in furtherance of the General Counsel's case against Menard. *Id*. Fisher was the only current driver employed by Menard who testified at the hearing. (Attached as NLRB MTD Exhibit 3).

On November 17, 2017, the ALJ issued a decision concluding that Fisher and the other delivery drivers were independent contractors and not employees under Section 2(3) of the Act.[2] No exceptions having been filed to the ALJ's decision, the Board issued an order adopting the ALJ's findings, conclusions, and recommendations. (Attached as NLRB MTD Exhibit 4).[3]

B. Pending Administrative Proceeding

In July 2017, shortly after Fisher testified in the misclassification case, Menard gave him a sixty (60) day notice of termination, effective in October 2017. After he was terminated, Fisher filed unfair labor practice charges against Menard. On May 16, 2018, the NLRB's General Counsel issued a complaint alleging that Menard violated Sections 8(a)(4) and (1) of the Act by terminating Fisher in retaliation for his testimony and participation in the earlier misclassification case.[4] *See* Exhibit 3. The administrative hearing on the Section 8(a)(4) complaint is scheduled to begin on August 20, 2018. (Attached as NLRB MTD Exhibit 5).

C. Menard Files the Instant District Court Action

On May 18, 2018, Menard filed a complaint for declaratory judgment and permanent injunction in the Western District of Wisconsin (Dkt. 1); Menard filed its amended complaint on June 6, 2018. Dkt. 7. The amended complaint seeks to enjoin the NLRB from pursuing the administrative action on the ground that the Board has exceeded its authority under the Act by

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[2] *Menard, Inc.*, Case 18-CA-181821, JD-92-17, ALJD slip op. at pp. 4–19, 2017 WL 5564295 (2017).

[3] In determining its own subject matter jurisdiction, "the district court may consider materials outside the pleadings." *Jerome Stevens Pharm., Inc. v. FDA*, 402 F.3d 1249, 1253 (D.C. Cir. 2005); *see also Grafon Corp. v. Hausermann*, 602 F.2d 781, 783 (7th Cir. 1979)*; Coalition for Underground Expansion v. Mineta*, 333 F.3d 193, 198 (D.C. Cir. 2003) (noting that courts may consider materials outside the pleadings in ruling on a Rule 12(b)(1) motion to dismiss for lack of subjectmatter jurisdiction).

[4] As reflected in Menard's Amended Complaint (Dkt. 7), the NLRB approved withdrawal of charges alleging retaliation for engaging in protected concerted or union activities. Dkt. 7 at ¶ 21.

issuing complaint on behalf of a non-employee excluded from the Act's protections and has also violated the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A) and (C). Dkt. 7 at 5; ¶ 29-36. The original complaint was served on the United States Attorney for Wisconsin on May 23, 2018; the amended complaint was served on June 6, 2018. Pursuant to Federal Rules of Civil Procedure 12(a)(2), 12(a)(4), and 15(a)(3), the NLRB's responsive pleading is due by July 23, 2018.

DISMISSAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(1), when evaluating a facial challenge to subject matter jurisdiction under Rule 12(b)(1), a court should use *Twombly/Iqbal's*[5] "plausibility" requirement, which is the same standard used to evaluate facial challenges to claims under Rule 12(b)(6). *Silha v. ACT, Inc.*, 807 F.3d 169, 174 (7th Cir. 2015). The burden of proving subject matter jurisdiction in response to a Rule 12(b)(1) motion to dismiss is on the plaintiff, the party asserting jurisdiction. *Int'l Harvester Co. v. Deere & Co.*, 623 F.2d 1207, 1210 (7th Cir. 1980).

For the reasons explained below, this Court lacks the requisite subject matter jurisdiction to hear this case.

ARGUMENT

Federal courts are courts of limited jurisdiction and may exercise only that jurisdiction authorized by Article III of the Constitution and statutes enacted by Congress. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). Because subject matter jurisdiction is the fundamental source of a federal district court's authority to hear a case, it presents a threshold issue that, when raised,

[5] *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)

the court must address before reaching the merits of the case. *Wernsing v. Thompson*, 423 F.3d 732, 742-43 (7th Cir. 2005).

In the instant case, Menard asserts that it is entitled to a declaratory judgment and injunctive relief terminating the NLRB's processing of an administrative complaint. Menard argues that the alleged unfair labor practice at issue is premised on purported retaliation against a witness who is an independent contractor and therefore unprotected by the Board's statutory jurisdiction. As discussed below, however, the Act provides specific recourse for review of the Board's statutory authority. By statute, this question is one which is vested exclusively with the Board during the administrative process, subject to subsequent court review only in the United States Courts of Appeals. 29 U.S.C. § 160(e), (f). Moreover, Menard has not made out the required showing of a violation of a clear and mandatory provision of the Act necessary for extraordinary review outside the NLRA's statutory scheme.

A. District Courts Do Not Have Subject Matter Jurisdiction to Review or Enjoin NLRB Unfair Labor Practice Proceedings.

1. The NLRA's Statutory Scheme for Review of Unfair Labor Practice Proceedings

The National Labor Relations Act guarantees employees, among other things, the right to engage in union or other concerted activity and to refrain from such activities. 29 U.S.C. § 157. The Act protects these and other rights contained in Section 7 by deeming certain employer and union activity to be "unfair labor practices" under Section 8. 29 U.S.C. § 158. Congress vested the Board with exclusive authority to administer the Act and to adjudicate unfair labor practice cases. 29 U.S.C. §§ 153, 160; *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242-43 (1959).

Under this statutory scheme, the NLRB cannot initiate unfair labor practice proceedings on its own initiative, but only may act upon a charge filed by an individual, an employer, or a

union. 29 U.S.C §§ 153(d), 160. *See Nash v. Fla. Indus. Comm'n*, 389 U.S. 235, 238 (1967). Upon the filing of a charge with an NLRB Regional Office, the Regional Director and staff, on behalf of the NLRB's General Counsel, investigate the charge and obtain evidence from the relevant parties. *See* NLRB Rules and Regulations, 29 C.F.R. § 101.4. On completion of the investigation, the Regional Director, again on behalf of the General Counsel, determines whether the charge has merit and whether an administrative complaint should issue. *Id*. at §§ 101.4-101.8.[6] If the case does not settle and continues to formal adjudication, an evidentiary hearing is conducted before an administrative law judge, who issues a decision that is subject to review by the Board. *Id*. at §§ 101.10-101.11. The Board's ultimate decision and order constitutes the final agency determination. 29 U.S.C. § 160(b), (c). Section 10(f) of the Act explicitly provides that only the "final order of the Board" is reviewable and that such review is by an appropriate federal court of appeals. 29 U.S.C. § 160(f).[7]

2. **Controlling Authority Uniformly Holds That District Courts are Without Jurisdiction to Review or Enjoin Unfair Labor Practice Proceedings**

Since 1938, the Supreme Court has held that Congress did not grant federal district courts jurisdiction over administrative unfair labor practice proceedings. *Myers v. Bethlehem*

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[6] It is settled law that, pursuant to Section 3(d) of the Act, 29 U.S.C. § 153(d), the General Counsel has unreviewable discretion to determine whether to issue or not to issue a complaint on particular unfair labor practice charges. *See Detroit Edison Co. v. NLRB*, 440 U.S. 301, 316 (1979); *NLRB v. Sears Roebuck and Co*., 421 U.S. 132, 138, 155 (1975); *Vaca v. Sipes*, 386 U.S. 171, 182 (1967).

[7] Section 10(f) of the NLRA provides in pertinent part:

> Any person aggrieved by a *final order of the Board* granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals . . . by filing in such court a written petition praying that the order of the Board be modified or set aside.

29 U.S.C. § 160(f) (emphasis added). Section 10(e) provides for similar enforcement jurisdiction in the courts of appeals upon petition by the Board after issuance of a final order.

Shipbuilding Corp., 303 U.S. 41, 48, 51 (1938); *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 138, 155 (1975). As the Seventh Circuit agreed in *Grutka v. Barbour*, 549 F.2d 5, 7 (7th Cir. 1977):

> It is well settled that district courts generally do not have jurisdiction to enjoin the Labor Board from conducting representation or unfair labor practice proceedings. Under Section 10 of the National Labor Relations Act . . . the exclusive means of obtaining judicial review of Board rulings by an aggrieved party is in a court of appeals. Normally, the administrative remedies extant before the Labor Board must be exhausted as a prerequisite to federal jurisdiction.

See also Squillacote v. International Bhd. of Teamsters, Local 344, 561 F.2d 31, 39, 40 (7th Cir. 1977) (*Teamsters, Local 344*); *United Aircraft Corp. v. McCulloch*, 365 F.2d 960, 961 (D.C. Cir. 1966). As set forth above, Congress instead provided for review of final orders in the federal courts of appeals, with the understanding that this scheme provided the aggrieved party "a full, expeditious and *exclusive* method of review in one proceeding after a final [Board] order is made." H.R. 1147, 74th Cong., 1st Sess., p. 24 (1935) (emphasis added). *See Myers*, 303 U.S. at 48, 51; *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 138, 155 (1975).

Review of final Board orders by a court of appeals affords parties like Menard "an adequate opportunity to secure judicial protection against possible illegal action on the part of the Board." *Myers*, 303 U.S. at 48. Thus, *Myers* also affirmed that in the process of circuit review, "all questions of the jurisdiction of the Board and the regularity of its proceedings [and] all questions of constitutional right or statutory authority are open to examination by the court." *Myers*, 303 U.S. at 49. As the Court further reasoned, due process is thereby afforded because "until the Board's order has been affirmed by the appropriate . . . Court of Appeals, no penalty accrues for disobeying it." 303 U.S. at 48. *Myers* accordingly mandates that "employers exhaust their constitutional claims with the NLRB and vests exclusive jurisdiction in the courts of

appeals to review such claims after the NLRB has issued its final order." *Myers* 303 U.S. at 890-91.

There are many examples of cases where, after exhaustion of the administrative process and issuance of a final Board order, the reviewing courts have considered and resolved statutory jurisdiction claims in Section 10(f) review. *See, e.g., NLRB v. Advertisers Mfg. Co.*, 823 F.2d 1086, 1087 (7th Cir. 1987) (applicability of the Act to protect against retaliation of non-employees upheld); *NLRB v. Somerville Const. Co.*, 206 F.3d 752, 754-55 (7th Cir. 2000) (Board's subject matter jurisdiction addressed on review); *1621 Route 22 West Operating Co. LLC v. NLRB*, 825 F.3d 128, 138-39 (3d Cir. 2016) (same).

The fact that the circuit courts can provide a remedy for the statutory violations alleged by Menard is the very reason this District Court has no jurisdiction to hear those arguments. *Myers*, 303 U.S. at 48, 49; *Vapor Blast Mfg. Co. v. Madden*, 280 F.2d 205, 208 (7th Cir. 1960) ("The review provisions of the Act, 29 U.S.C.A. § 160(e) and (f), provide adequate and full opportunity for the Company to raise the contentions it tendered in its complaint in the district court.").

Under this settled precedent, Menard's allegations that the NLRB's prosecution of the unfair labor practice charges is improper cannot be addressed by this Court. Whether the complaint is supported by the facts and applicable law are matters to be decided in the first instance by the Board. Any objections that Menard has regarding the legality of the NLRB's decision to issue and prosecute the current complaint may be presented to the administrative law judge and then to the Board in the normal course of the unfair labor practice proceeding. If properly and timely raised during the unfair labor practice proceedings, both the Board and the circuit court on subsequent review will have the full opportunity to consider and rule on all of

Menard's claims, including whether a violation of Section 8(a)(1) or (4) of the Act may be premised on retaliation against an independent contractor who testifies in an unfair labor practice proceeding. *See Myers*, 303 U.S. at 49. Menard's attempted end-run around the exclusive review procedures established by Congress and affirmed by the Supreme Court in *Myers*, accordingly must be rejected by this Court.

B. Because Menard Possesses a Statutory Means of Review and Cannot Establish That the NLRB Acted Outside of its Statutory Authority, the Narrow *Leedom v. Kyne* Exception to the Prohibition on District Court Review is Inapplicable.

Implicitly acknowledging the jurisdictional infirmity under the NLRA of its suit, Menard's complaint (Doc. 7 ¶ 44) attempts to ground this Court's jurisdiction on the Supreme Court's decision in *Leedom v. Kyne*, 358 U.S. 184 (1958). The holding of *Kyne*, however, is wholly inapplicable here.

In *Kyne*, the Court recognized an "extraordinary procedural route," *Grutka*, 549 at 7, that is, a "narrow" exception to the NLRA's statutory jurisdictional limitations addressed in *Myers*. *See Teamsters, Local 344*, 561 F.2d at 37. If this exception is met (a test that the D.C. Circuit described as "nearly insurmountable," *U.S. Dep't of Justice v. FLRA*, 981 F.2d 1339, 1343 (D.C. Cir 1993)), district courts may exercise jurisdiction under 28 U.S.C. § 1337, "to strike down an order of the Board made in excess of its delegated powers and contrary to a specific prohibition in the Act." 358 U.S. at 188. The *Kyne* exception applies, however, only "'[i]f the absence of jurisdiction of the federal courts [would] mean a sacrifice or obliteration of a right which Congress has created." *Id.* at 190 (quoting *Switchmen's Union v. Nat'l Mediation Bd.*, 320 U.S. 297, 300 (1943)). The Court further held that to establish district court jurisdiction under *Kyne*, a plaintiff must establish *both* that (1) there is no alternative opportunity for review of the Agency's action, 358 U.S. at 190; *Bd. of Governors of the Fed. Reserve Sys. v. MCorp Fin., Inc.*,

502 U.S. 32, 43 (1991), *and* (2) the Agency is clearly acting in violation of a specific, statutory mandate of the NLRA, 358 U.S. at 188-89.[8]

Since, as discussed above, the unfair labor practice proceeding that Menard is attempting to enjoin here provides for ultimate circuit court review of any final Board order that issues, including all questions raised, Menard cannot meet the first prerequisite for *Kyne* jurisdiction. *See MCorp*, 502 U.S. at 43. For this reason alone, extraordinary *Kyne* jurisdiction to permit preliminary review by this Court is unavailing. *Teamsters, Local 344*, 561 F.2d at 39-40; *Grutka*, 549 F.2d at 8.

Nor can Menard meet the addtional *Kyne* requirement to show that NLRB's issuance of the administrative complaint or prosecution of the alleged unfair labor practice here violates "a specific prohibition in the Act" that is "clear" and "mandatory." 358 U.S. at 188. Disagreement with the Board on a matter of policy or statutory interpretation – such as whether retaliation against a Board witness who is an independent contractor violates the Act – is not in itself a sufficient basis for assertion of jurisdiction. Rather, there must be a "patent disregard by the Board of the bounds of its statutory jurisdiction." *Grutka*, 549 F.2d at 8.

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[8] *Kyne* itself is illustrative of the extraordinary circumstances that must be present for a court to find that the Board has clearly violated a statutory mandate. In that case, the Board flatly refused to take a union election vote among a group of professional employees despite an express prohibition contained in Section 9(b)(1) providing that "the Board shall not (1) decide that any unit is appropriate . . . if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit." 29 U.S.C. § 159(b)(1). It was the Board's clear violation of "a specific prohibition in the Act" that allowed for district court jurisdiction to be exercised in *Kyne*. 358 U.S. at 188. Indeed, so clear was the statutory violation that "[t]he Board conceded . . . that it had acted in excess of its powers." *Boire*, 376 U.S. at 480 (internal quotation mark omitted) (quoting *Kyne*, 358 U.S. at 187).

The Board has never previously considered whether an employer violates Section 8(a)(1) or (4) by discharging an independent contractor for participating in Board proceedings; however, long-standing precedent holds that Section 8(a)(4) should be broadly interpreted in order to protect the rights associated with the statute as well as the administrative process itself. As the Board and the courts recognized early on, "[t]he purpose of Sec. 8(a)(4) was to assure an effective administration of the Act by providing immunity to those who initiate or assist in proceedings under the Act." *John Hancock, Mutual Life Ins. Co. v. NLRB*, 191 F.2d 483, 485 (D.C. Cir. 1951) (quoting *Briggs Mfg. Co*., 75 NLRB 569, 570-571 (1947)). By including Section 8(a)(4) in the Act, "Congress . . . made it clear that it wishes *all persons* with information about [unfair labor practices] to be completely free from coercion against reporting them to the Board." *Nash v. Florida Indus. Comm'n*, 389 U.S. 235, 238 (1967) (emphasis added). This follows because "[i]mplementation of the Act is dependent upon the initiative of individual persons who must . . . invoke its sanctions through filing an unfair labor practice charge." *Nash*, 389 U.S. at 238. As such, the complete freedom to file or participate in Board proceedings is critical to the administration of the Act. *NLRB v. Scrivener*, 405 U.S. 117, 122 (1972). As the Supreme Court further recognized in *Scrivener*, broad protection is necessary "to prevent the Board's channels of information from being dried up by employer intimidation of prospective complainants and witnesses. " *Id*. (internal citations omitted).

Over the years, the Board has applied Section 8(a)(1) and (4) expansively to include anyone who initiates a proceeding or assists the Board—whether or not they are in a direct employee-employer relationship with the respondent—in order to assure effective administration

and enforcement of the Act.[9] Of particular relevance, the Board has long held that these statutory provisions apply even where an employer retaliates against witnesses who are supervisors–a class which, like independent contractors, are statutorily excluded from the definition of "employee" under Section 2(3) of the Act, 29 U.S.C. § 152(3).

For example, in *General Nutrition Center* the Board held that in order to ensure the vindication of statutory employees' rights, Section 8(a)(4) forbids an employer from punishing even a non-employee supervisor for participating in Board proceedings. 221 NLRB 850, 850, 858 (1975). And although the 1947 Taft-Hartley amendments to the Act explicitly rejected extending Section 7 rights to supervisors (and independent contractors), nothing in the 1947 legislative history indicates that Congress intended Section 8(a)(4) to be construed restrictively and exclude supervisors. To hold otherwise would permit a respondent to retaliate against claimants, witnesses, or other participants in Board proceedings, and effectively restrict access to the Board's processes. 229 NLRB at 941; *SNE Enterprises*, 347 NLRB 43 (2006) (applying 8(a)(1) to the discharge of a supervisor for testifying adversely to the employer), *enforced*, 257 Fed. Appx. 642 (4th Cir. 2007). For this reason, the Board recognizes the need to "ensure that even statutorily excluded individuals may not be coerced into violating the law or discouraged from participating in Board proceedings." *Parker-Robb Chevrolet, Inc.* 262 NLRB 402, 404 (1982), *enforced sub nom., Automobile Salesmen's Union v. NLRB*, 711 F.2d 383 (D.C. Cir. 1983); *see, e.g., CleanSoils, Inc.*, 317 NLRB 99 (1995); *Amason, Inc.*, 269 NLRB 750, 752

[9] *Lamar Creamery Co.*, 115 NLRB 1113, 1121 (1956) (respondent violated Section 8(a)(4) when it refused to hire applicant due to his participation in an NLRB proceeding against former employer), *enforced*, 246 F.2d 8 (5th Cir. 1957); *Briggs Mfg. Co.*, 75 NLRB 569, 570–72 (1947) ("Because Section 8(4) does not explicitly limit the term "employee" to those standing in the proximate employer-employee relationship, the broad definition contained in Section 2(3) must prevail under the express provisions of Section 2(3)")); *see also Clark & Hinojosa*, 247 NLRB 710, 716 (1980) (clarifying that subsequent amendments to the Act did not modify the Board's analysis in *Briggs*).

(1984), *enforced*, 758 F.2d 648 (4th Cir. 1985) (table); *H. H. Robertson Co.*, 263 NLRB 1344 (1982); *Oil City Brass Works*, 147 NLRB 627 (1964), *enforced*, 357 F.2d 466 (5th Cir. 1966); *Better Monkey Grip Co.*, 115 NLRB 1170 (1956), *enforced*, 243 F.2d 836 (5th Cir. 1957).

The Board's view that Section 8(a)(4), as well as Section 8(a)(1), extend to prohibit retaliation against supervisors who testify has found support in the reviewing circuit courts. *See, e.g., SNE Enterprises, Inc.*, 257 Fed. Appx. at 647 ("An employer violates § 8(a)(1) of the Act by discharging a supervisor for testifying in a Board proceeding where the testimony impacts employee § 7 rights."); *Tasty Baking Co. v. NLRB*, 254 F.3d 114 (D.C. Cir. 2001) (same); *NLRB v. Oakes Machine Corp.*, 897 F.2d 84, 92 (2d Cir. 1990) ("An exception to this statutorily imposed exclusion of supervisors from the protection of the NLRA, however, is the long-standing board policy that an employer may not discharge a supervisor in retaliation for his testimony or his threat to testify in board proceedings."); *King Radio Corp. v. NLRB*, 398 F.2d 14, 21-22 (10th Cir. 1968); *NLRB v. Southland Paint Company, Inc.*, 394 F.2d 717, 720-21 (5th Cir. 1968) ("The act offers no protection to supervisory personnel who are disciplined or discriminated against because of their support for a union. But it does protect them from discrimination premised on their having given testimony before the Board.").

All of these circuits' case law endorsing the Board's protection of non-employees against retaliation under limited circumstances is consistent with that of the Seventh Circuit. In *NLRB v. Advertisers Mfg. Co.*, 823 F.2d 1086 (7th Cir. 1987), Judge Posner, writing for the panel, upheld the Board's finding of an NLRA violation where a supervisory employee was fired in retaliation for her son's union activities. *Id.* at 1089 (noting that the purpose of the firing was to "intimidate union supporters-consisting mainly of workers protected by the Act . . . by showing the lengths to which the company would go to punish one of them."). There, the panel read the Board's

Parker Robb line of cases broadly to extend the Act to protect non-employees. 823 F.2d at 1088-89.

Given this foregoing precedent, Menard cannot make the requisite showing of a "patent disregard by the Board of the bounds of its statutory jurisdiction." *Grutka*, 549 F.2d at 8. Although Menard may well disagree with the General Counsel's statutory interpretation of Section 8(a)(4) in the instant circumstance, it will have every opportunity to challenge that interpretation before the administrative law judge scheduled to hear this case beginning August 20, and if necessary, the Board, and a reviewing circuit court of appeal. Because of the adequacy of this review and separately, because Menard has not made out a showing of the Board's violation of a clear and mandatory provision of the Act, Menard's *Leedom* claim must be dismissed.[10]

CONCLUSION

Menard cannot circumvent the statutory administrative proceedings and review process by filing suit in district court. No final order in the administrative proceeding has been issued and, when and if one does issue against Menard, it may seek exclusive and statutory review in a court of appeals. For the foregoing reasons, this Court lacks jurisdiction to enjoin or review the Region's investigation and prosecution of unfair labor practice charges and should dismiss Menard's Complaint in its entirety for lack of subject matter jurisdiction under Rule 12(b)(1).

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[10] None of the statutes cited by Menard provides a basis for jurisdiction in the absence of the extraordinary *Leedom* showing. The Declaratory Judgment Act (Dkt 7, Para. 4), 28 U.S.C. §§ 2201, 2202, simply expands the scope of remedies available to plaintiffs where an independent basis of jurisdiction exists. *Nationwide Ins. v. Zavalis*, 52 F.3d 689, 691-92 (7th Cir. 1995). Nor does the Administrative Procedure Act (Dkt. 7, Para. 5), 5 U.S.C. § 702, provide an independent source of subject matter jurisdiction to review or enjoin administrative proceedings. *See Califano v. Sanders*, 430 U.S. 99, 105-06 (1977) (the APA, on its own, does not provide subject matter jurisdiction permitting review of agency action). And a general statutory jurisdictional provision such as 28 U.S.C. § 1331 can only apply if both *Leedom* requirements are shown. *Teamsters, Local 344*, 561 F.2d at 40. Dkt. 7 at 5.

Dated: July 3, 2018

Respectfully submitted,

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THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

MENARD, INC.,	)	
Plaintiff,	)	**Civil Action No. 18-CV-376**
v.	)	**DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**
NATIONAL LABOR RELATIONS BOARD,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2018, I electronically transmitted the attached document to the Clerk of the Court for the U.S. District Court for the Western District of Wisconsin using the CM/ECF system for filing, and the foregoing document was transmitted by Notice of Electronic Filing to the following CM/ECF registrants:

Gary Kenneth Roehm
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5101 Menard Drive
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*/s/ Pia Winston*_____
PIA WINSTON
Attorney for Defendant NLRB

Form NLRB - 501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FIRST AMENDED CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
18-CA-181821	September 14, 2016

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Menard, Inc.		b. Tel. No. (715) 876-5911 c. Cell No.
d. Address (street, city, state ZIP code) 4777 Menard Dr, Eau Claire, WI 54703-9604	e. Employer Representative John Menard	f. Fax No. (715) 876-3866 g. e-Mail h. Dispute Location (City and State) Eau Claire, WI
i. Type of Establishment (factory, nursing home, hotel) Retail Stores	j. Principal Product or Service Home Improvement Items	k. Number of workers at dispute location 45,000

l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (*set forth a clear and concise statement of the facts constituting the alleged unfair labor practices*)

1. Within the last six months, the Employer has interfered with, restrained, and coerced its delivery driver (also known as hauler) employees in the exercise of rights protected by Section 7 of the Act by misclassifying them as independent contractors excluded from the protections of the Act.

2. Within the last six months, the Employer has interfered with, restrained, and coerced its delivery driver (also known as hauler) employees in the exercise of rights protected by Section 7 of the Act by requiring them to enter into arbitration and class action waiver agreements.

3. Full name of party filing charge (*if labor organization, give full name, including local name and number*)
LOCAL 153, OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO

4a. Address (street and number, city, state, and ZIP code) 265 West 14th Street, 6th Floor, New York, NY 10011-7103	4b. Tel. No. (646) 460-1309 4c. Cell No. 4d. Fax No. (212) 463-9479 4e. e-Mail sgold352002@icloud.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (*to be filled in when charge is filed by a labor organization*)
OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO

6. DECLARATION **I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.**		Tel. No. (646) 460-1309
By: (signature of representative or person making charge)	SETH GOLDSTEIN Senior Business Representative Print Name and Title	Office, if any, Cell No.
Address: 265 West 14th Street, 6th Floor, New York, NY 10011-7103	Date: 9/14/16	Fax No. (212) 463-9479 e-Mail sgold352002@icloud.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

NLRB MTD Exhibit 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region Eighteen

MENARD, INC. and LOCAL 153, OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO	Case 18-CA-181821

COMPLAINT AND NOTICE OF HEARING

This Complaint, which is based on a charge filed by Local 153, Office & Professional Employees International Union, AFL-CIO, (Charging Party) 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 Board's Rules and Regulations, and alleges that Menard, Inc. (Respondent) has violated the Act as described below:

1.(a) The charge in this proceeding was filed by Charging Party on August 10, 2016, and a copy was served by regular mail on Respondent on about that same date.

(b) An amended of the charge in this proceeding was filed by Charging Party on September 14, 2016, and a copy was served by regular mail on Respondent on about that same date.

2.(a) At all material times, Respondent has been a home-improvement retailer with a principal office and place of business in Eau Claire, Wisconsin, with facilities

located throughout the United States, engaged in the sales and delivery of home improvement merchandise.

(b) In conducting its operations described above in subparagraph (a) during the calendar year ending December 31, 2015, Respondent derived gross revenues in excess of $500,000.

(c) In conducting its operations described above in subparagraph (a) during the calendar year ending December 31, 2015, Respondent purchased and received goods valued in excess of $50,000 from entities located outside the state of Wisconsin.

(d) 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.

3. Within the last six months, and continuing to date, Respondent has interfered with, restrained and coerced employees in the exercise of their rights guaranteed by Section 7 of the Act, by the following acts and conduct, which have occurred at all facilities owned by Respondent:

(a) Within the last six months, and continuing to date, Respondent has maintained an employee handbook rule containing a mandatory arbitration clause that would reasonably be understood by employees, including delivery drivers, to prohibit them from filing collective or class-wide legal actions in any forum, whether legal or arbitral, against Respondent.

(b) Within the last six months, and continuing to date, Respondent has maintained an employee handbook rule containing a mandatory arbitration clause that would reasonably be understood by employees, including delivery drivers, to prohibit

them from filing unfair labor practice charges with the National Labor Relations Board (Board).

(c) Within the last six months, and continuing to date, Respondent has misclassified its delivery drivers as independent contractors instead of employees, thereby depriving them of their rights guaranteed under the Act.

4. By the conduct described above in paragraph 3, Respondent has been interfering with, restraining and coercing employees in the exercise of Section 7 rights, in violation of Section 8(a)(1) of the Act.

5. 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 Respondent's unfair labor practices described above in paragraph 3, the General Counsel seeks an order requiring Respondent to rescind or revise the mandatory arbitration clause on a nation-wide basis to make it clear to its delivery drivers that they are not required to waive in all forums their right to maintain employment-related class or collective actions, and that they are not prohibited from filing unfair labor practice charges with the Board; to notify employees of the rescinded or revised clause; and to post an appropriate notice at all of its facilities throughout the United States. The General Counsel further seeks an order requiring that Respondent rescind or revise any portions of any agreements with the delivery drivers that purport to classify them as independent contractors within the meaning of the Act, and that Respondent cease and desist from communicating to its delivery drivers that they are independent contractors within the meaning of the Act.

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 January 5, 2017 or postmarked on or before January 4, 2017**. 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.nlrb.gov, click on **E-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 **Tuesday**, **April 4, 2017 at 9:00 a.m. in the NLRB Hearing Room, at the Federal Office Building, 212 3rd Avenue South, Minneapolis, Minnesota** 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: December 22, 2016

/s/ Marlin O. Osthus

MARLIN O. OSTHUS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 18
212 3rd Avenue S, Suite 200
Minneapolis, MN 55401

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

MENARD, INC. **and** **SETH GOLDSTEIN, Esq.**	**Case 18-CA-205432**
MENARD, INC. **and** **KEVIN FISHER, an Individual**	**Case 18-CA-209068**

ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT, AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 18-CA-205432 and Case 18-CA-209068, which are based on a charge filed by Seth Goldstein, Esq. (Goldstein) and a charge filed by Kevin Fisher, an Individual (Fisher), respectively, against Menard, Inc. (Menard) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1. (a) The charge in Case 18-CA-205432 was filed by Goldstein on August 31, 2017, and a copy was served by regular mail on Respondent on about that same date.

(b) The charge in Case 18-CA-209068 was filed by Fisher on November 1, 2017, and a copy was served by regular mail on Respondent on about that same date.

2. (a) At all material times, Respondent has been a corporation, with a principal office and place of business in Eau Claire, Wisconsin and facilities located throughout the United States, and has been engaged in the sales and delivery of home improvement merchandise.

(b) In conducting its operations described above in subparagraph (a) during the calendar year ending December 31, 2017, Respondent derived gross revenues in excess of $500,000.

(c) In conducting its operations described above in subparagraph (a) during the calendar year ending December 31, 2017, Respondent purchased and received goods valued in excess of $50,000 from entities located outside the state of Wisconsin.

(d) 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.

3. 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:

Nick Gronemus	-	Manager, Yard Shipping and Receiving (Corporate)
Matthew Fox	-	Second Assistant General Manager (Dundas, MN Store)
Mark Egland	-	First Assistant General Manager (Dundas, MN Store)
Lyle Cole	-	General Manager (Dundas, MN Store)
Matt Kolb	-	General Manager (Dundas, MN Store)

John Nelson	-	Contractor Representative Manager (Dundas, MN Store)

4. (a) On May 31 and June 1, 2017, Counsel for the General Counsel and Respondent conducted an unfair labor practice hearing in Case 18-CA-181821 before Administrative Law Judge Paul Bogas, in order to determine whether Respondent's delivery drivers were misclassified as independent contractors under the Act.

(b) On May 31, 2017, Fisher served as a witness during Counsel for the General Counsel's case-in-chief, and provided extensive testimony and evidence in support of the contention that Respondent's delivery drivers were statutory employees under the Act.

(c) On June 1, 2017, Fisher attended the hearing and provided assistance to Counsel for the General Counsel.

(d) On November 17, 2017, Administrative Law Judge Bogas issued his decision in Case 18-CA-181821, in which he dismissed Counsel for the General Counsel's complaint on the basis of his finding that Respondent's delivery drivers were independent contractors.

(e) On January 12, 2018, in the absence of exceptions, the Board adopted the decision of Administrative Law Judge Bogas in an unpublished Order.

5. (a) At all material times, the Board concluded that Kevin Fisher has been an independent contractor for Respondent, as defined under the exclusions contained in Section 2(3) of the Act.

(b) Beginning on about July 25, 2017, and continuing to on about October 20, 2017, Respondent reduced the hours of work assigned to Kevin Fisher.

(c) On about August 24, 2017, Respondent issued a letter to Kevin Fisher indicating that it would terminate his contract with Respondent within 60 days.

(d) On about October 20, 2017, Respondent terminated the contract of Kevin Fisher.

(e) Respondent engaged in the conduct described above in subparagraphs (b)-(d) because Kevin Fisher cooperated in a Board investigation, testified at a Board Hearing, and participated throughout the proceedings in Case 18-CA-181821.

6. By the conduct described above in paragraph 5, subparagraphs (b) – (e), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

7. By the conduct described above in paragraph 5, subparagraph (b) – (e), Respondent has been discriminating against Kevin Fisher for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

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

WHEREFORE, the General Counsel seeks all relief as may be just and proper to remedy the unfair labor practices.

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 consolidated complaint. The answer must be **received by this office on or before May 30, 2018 or postmarked on or before May 29, 2018**. 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.nlrb.gov, click on **E-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 consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **July 26, 2018 at 9:00 a.m. in the NLRB Hearing Room, at the Federal Office Building, 212 3rd Avenue South, Minneapolis, Minnesota** 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 consolidated 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: May 16, 2018

/s/ Jennifer A. Hadsall

JENNIFER A. HADSALL
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 18
212 3rd Avenue S, Suite 200
Minneapolis, MN 55401

Attachments

Minneapolis, MN

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MENARD, INC.

and

LOCAL 153, OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Case 18-CA-181821

ORDER

On November 17, 2017, Administrative Law Judge Paul Bogas of the National Labor Relations Board issued his Decision in the above-entitled proceeding and, on the same date, the proceeding was transferred to and continued before the Board in Washington, D.C. The Administrative Law Judge found that the Respondent has not engaged in certain unfair labor practices, and recommended that the complaint be dismissed.

No statement of exceptions having been filed with the Board, and the time allowed for such filing having expired,

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, and Section 102.48 of the National Labor Relations Board Rules and Regulations, the Board adopts the findings and conclusions of the Administrative Law Judge as contained in his Decision, and the recommended Order of the Administrative Law Judge becomes the Order of the Board. Accordingly, the complaint is dismissed.

Dated, Washington, D.C., January 12, 2018.

By direction of the Board:

/s/ Farah Z. Qureshi

Associate Executive Secretary

NLRB MTD Exhibit 4

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

MENARD, INC. **and** **SETH GOLDSTEIN, Esq.**	**Case 18-CA-205432**
MENARD, INC. **and** **KEVIN FISHER, an Individual**	**Case 18-CA-209068**

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter is rescheduled from July 26, 2018 to **August 20, 2018, at 1:00 p.m.,** in the Federal Office Building, NLRB Hearing Room, 212 3rd Avenue South, Suite 200, Minneapolis, Minnesota. The hearing will continue on consecutive days until concluded.

Dated: May 23, 2018

/s/ Jennifer A. Hadsall
JENNIFER A. HADSALL
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 18
Federal Office Building
212 Third Avenue South, Suite 200
Minneapolis, MN 55401-2657

NLRB MTD Exhibit 5

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

MENARD, INC. **and** **SETH GOLDSTEIN, Esq.**	**Case 18-CA-205432**
MENARD, INC. **and** **KEVIN FISHER, an Individual**	**Case 18-CA-209068**

AFFIDAVIT OF SERVICE OF ORDER RESCHEDULING HEARING dated 5-23-2018

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 23, 2018**,** I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

SETH GOLDSTEIN, ESQ.,
265 W 14TH ST
NEW YORK, NY 10011-7103

JOHN MENARD
MENARD, INC.
4777 MENARD DR
EAU CLAIRE, WI 54703-9604

GARY K. ROEHM
MENARD, INC.
4777 MENARD DR
EAU CLAIRE, WI 54703-9604

KEVIN FISHER
6118 SE 14TH AVE
OWATONNA, MN 55060-5189

May 23, 2018	Olga Bestilny, Designated Agent of NLRB
Date	Name
	/s/ Olga Bestilny
	Signature