

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

**INTERNATIONAL ASSOCIATION OF SHEET
METAL, AIR, RAIL AND TRANSPORTATION
WORKERS LOCAL UNION NO. 28**

And

Case 29-CB-214675

HOWARD BIRNS, an Individual

And

UNITED SHEET METAL CORP.

JOINT MOTION TO REMAND CASE TO THE REGIONAL DIRECTOR

Pursuant to Section 102.24 of the Board's Rules and Regulations, the International Association of Sheet Metal, Air, Rail, and Transportation Workers Local Union No. 28 (Respondent), Howard Birns (the Charging Party), and Counsel for the General Counsel (General Counsel) hereby move that the National Labor Relations Board (the Board) remand the above-captioned case to the Regional Director of Region 29 to effectuate a settlement of the dispute.

I. STATEMENT OF THE CASE

On May 31, 2018,¹ the Regional Director of Region 29 (the Regional Director) issued a Complaint and Notice of Hearing (the Complaint) alleging that on August 7, 2017, Respondent initiated internal union disciplinary charges against employee Howard Birns and on February 28, processed the internal union disciplinary charges against Birns in retaliation for Birns' refusal to engage in union activity. A hearing was held before Administrative Law Judge Kenneth Chu on September 18 and October 11.

¹ Hereinafter, all dates are in 2018 unless otherwise noted.

On January 29, 2019, Judge Chu issued a Decision and Recommended Order in the above matter, in which he found Respondent in violation of the Act as alleged, but declined to award reimbursement expenses to Charging Party Birns. Exceptions to the Decision and Recommended Order of the Administrative Law Judge must be filed with the Board by close of business on February 26, 2019.

II. The Settlement

After Judge Chu's January 29, 2019 Decision and Recommended Order, Respondent and Charging Party Birns mutually agreed to settle this matter in lieu of filing exceptions with the Board. (See Attached). The Settlement includes a notice posting remedy and a reimbursement remedy which compensates the Charging Party for 80% of the expenses he incurred to defend himself against the internal Union disciplinary hearing at issue in this matter. If the Board remands this case to the Regional Director, the Regional Director will immediately approve the attached Informal Settlement Agreement and begin enforcing compliance with its terms.

III. Motion to Remand

Respondent, the Charging Party, and the General Counsel agree that the settlement reached between the parties is reasonable and fair, insofar as it remedies the unfair labor practice alleged via a notice posting and addresses the issue of Charging Party's entitlement to reimbursement expenses without the need to file exceptions with the Board.

Accordingly, Respondent, the Charging Party, and the General Counsel respectfully move that, under these circumstances, it will effectuate the purposes of the Act to remand this case to the Regional Director for further action consistent with the procedure upon remand outlined above and the attached Agreement, and that no further action be taken by the Board, the Region, Respondent, or the Charging Party to otherwise effectuate Judge Chu's Decision and Recommended Order.

IV. CONCLUSION

For the foregoing reasons, Respondent, the Charging Party and the General Counsel respectfully move that the Board remand this matter to the Regional Director of Region 29 for further processing in accordance with the attached Agreement.

Dated at Brooklyn, New York March 11, 2019

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² Originally signed February 22, 2019

³ Originally signed February 22, 2019

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

Local 28, International Association of Sheet Metal, Air, Rail and Transportation Workers (United Sheet Metal Corp.) **Case No. 29-CB-214675**

Subject to the approval of the Regional Director for the National Labor Relations Board, **International Association of Sheet Metal, Air, Rail and Transportation Workers Local Union No. 28 (Respondent)** and **Howard Birns (the Charging Party)** **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE TO MEMBERS— After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to Respondent in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of Respondent will then sign and date those Notices and immediately post them in the Office of Respondent, located at 500 Greenwich Street, Suite 502; New York, NY 10013. Respondent will keep all Notices posted for 60 consecutive days after the initial posting. Further, if Respondent maintains bulletin boards at the facility of United Sheet Metal Corp. (the Employer), located at 27-20 Skillman Avenue, Long Island City, New York (the Employer's facility) or the Empire Outlets jobsite located at 55A Richmond Terrace, Staten Island, New York where the alleged unfair labor practices occurred (the Employer's jobsite), Respondent shall also post Notices on each such bulletin board during the posting period. The Regional Director will send copies of the signed Notices to the Employer whose employees are involved in this case, and request that the Notices be posted in prominent places in the Employer's facility and jobsite for 60 consecutive days from the date of posting.

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

REIMBURSEMENT OF EXPENSES—Within 14 days after Respondent has been informed of the Regional Director's approval of this Agreement, Respondent will make whole employee Howard Birns by paying him \$950.00 for expenses he incurred defending himself against the internal Union hearing proceedings at issue in the above-referenced matter. No FICA withholdings shall be made from these reimbursed expenses.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case 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 that evidence. By approving this Agreement, the Regional Director withdraws any Complaint and Notice of Hearing previously issued in the above case, Respondent withdraws any answer filed in response, and all parties agree to waive their rights to file exceptions to the Administrative Law Judge's Decision in this matter.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for Respondent authorizes the Regional Office to forward the cover letter

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with your employer on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT institute internal International Association of Sheet Metal, Air, Rail and Transportation Workers Local Union No. 28 (the Union) disciplinary proceedings against you, or hold a trial against you because you exercise your Section 7 right to refrain from assisting the Union by using your position as foreman to influence United Sheet Metal Corp. (the Employer) to rehire shop steward and executive Board Member James Callahan at the Empire Outlets jobsite, or any other Union official or officer at this or any other job site.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights under Section 7 of the Act.

WE WILL rescind the internal Union disciplinary charges that we instituted against Howard Birns that are based on his failure to use his position as foreman to influence the Employer to rehire Union shop steward and Executive Board Member James Callahan at the Empire Outlets jobsite, **WE WILL** remove from our files and records any references to the internal Union disciplinary proceedings we instituted against Mr. Birns, and **WE WILL** notify him in writing that we have done so.

WE WILL reimburse Mr. Birns for fees he incurred to defend himself against the internal Union disciplinary proceedings we instituted against him.

**International Association of Sheet Metal, Air, Rail
and Transportation Workers Local Union No. 28**

(Labor Organization)

Dated:

3/4/19

By:

Sel Starna
(Representative)

(Title)

Business
Representative

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's

Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

Telephone: (718)330-7713
Hours of Operation: 9:00 a.m. to 5:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to Respondent. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

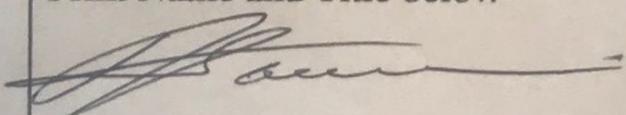
Yes _____
 Initials

No _____
 Initials

PERFORMANCE — Performance by Respondent with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director.

Respondent agrees that in case of non-compliance with any of the terms of this Settlement Agreement by Respondent, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by Respondent, Respondent will waive its right to file exceptions to the Administrative Law Judge Decision in this matter. Thereafter, the General Counsel may file a motion for default judgment with the Board on the terms of the Settlement Agreement. The only issue that may be raised before the Board is whether Respondent defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all findings of fact, and conclusions of law consistent with those allegations adverse to Respondent on all issues raised by the pleadings or by the Administrative Law Judge, and find Respondent responsible for reimbursing Charging Party Howard Birns for 100% of the expenses he incurred to defend himself against the internal Union disciplinary proceedings at issue in this matter. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps Respondent has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case provided that Respondent complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party International Association of Sheet Metal, Air, Rail and Transportation Workers Local Union No. 28		Charging Party Howard Birns	
		Feb 21 - 2019	
By: _____	Name and Title	Date	
Print Name and Title below			
		By: _____	Name and Title
		HOWARD BIRNS	
		Print Name and Title below	
			
Recommended By: _____		Approved By: _____	
Date		Date	
GENAIRA L. TYCE Senior Field Attorney		KATHY DREW-KING Regional Director, Region 29	