

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

**IMERYS CARBONATES USA, INC.**

and

**ROBERT JOSEPH BLANTON, an Individual**

**UNITED STEEL, PAPER AND FORESTRY, RUBBER,  
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND  
SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO**

and

**UNITED STEEL, PAPER AND FORESTRY, RUBBER,  
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND  
SERVICE WORKERS INTERNATIONAL UNION, LOCAL 254-06,  
AFL-CIO**

and

**ROBERT JOSEPH BLANTON, an Individual**

**Case 10-CA-232952**

**And**

**Cases 10-CB-232953 &  
10-CB-240168**

**USW INTERNATIONAL UNION MOTION TO DISMISS ALL CHARGES**

Respondent United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO (“the International”) respectfully seeks the dismissal of all charges against it. As the International Union shows below, all charges against the International are time-barred by Section 10(b) of the Act and must be dismissed.

**STATEMENT OF FACTS**

1. Charge 10-CB-232953 was filed on December 18, 2018. See Charge; Complaint, p.
2. The charge was filed solely against Respondent USW Local 254-06. On June 5,

- 2019, Charge 10-CB-232953 was amended. See First Amended Charge. The amendments made on that date were also filed solely against USW Local 254-06.
2. On August 29, 2019, Charge 10-CB-232953 was amended to add the International Union.
  3. Charge 10-CB-240168 was filed on April 24, 2019, against USW Local 254-06 as the sole Respondent.
  4. On September 6, 2019, Charge 10-CB-240168 was amended to add the International Union. See First Amended Charge, Compl. p. 2.
  5. The Complaint in this matter alleges that on December 6, 2018, the International Union, through Local 254-06 steward Joseph Young “threatened employees with physical violence;” “physically battered employees;” and made other threats to employees. Compl. ¶ 7(a); (b) (c).
  6. The Complaint in this matter alleges that on December 6, 2018, the International Union “informed” Employer Imerys Carbonates that Charging Party “had engaged in a physical altercation” and that by this conduct the International Union “attempted to cause and caused” Employer Imerys to discharge Charging Party Robert Blanton. Compl. ¶ 8(a); (b).
  7. The charges in 10-CB-232953 were filed against the International Union more than six months after December 6, 2018, the date of the alleged conduct. The charges alleged in Complaint paragraphs (7) and (8) are therefore time-barred and must be dismissed.
  8. The Complaint alleges that on December 7, 2018; the International Union, through Local 254-06 Union President Darryl Ford, threatened employees with job loss.

9. The charges in 10-CB-232953 were filed against the International Union more than six months after December 7, 2018, the date of the alleged conduct. The charges alleged in Complaint paragraph (9) are therefore time-barred and must be dismissed.
10. The Complaint in this matter alleges that since “about” January 26, 2019, the International Union has “failed to process to arbitration a grievance concerning the Charging Party.” Compl. ¶ 10.
11. On January 26 or 27, 2019, International Union Staff Representative Kelly Smith sent the Charging Party a letter dated January 26 notifying Charging Party that the International Union had made the decision not to arbitrate the grievance filed challenging his termination.
12. The Charging Party testified that he received the letter dated January 26, 2019 from Kelly Smith on or about January 29, 2019.
13. The charges in 10-CB-240168 were filed against the International Union more than six months after January 26, 2019 the date of the alleged conduct, and more than six months after Charging Party received the notification of the International’s decision. The charges alleged in Complaint ¶ 10 are therefore time-barred and must be dismissed.

### **ARGUMENT**

The Act and black letter Board law hold that a complaint may not issue based upon conduct occurring more than six months before the filing and service of the charge. 29 U.S.C. §160(b); *St. Barnabas Medical Center*, 343 NLRB 1126 (2004). The limitations period does not begin to run until the charging party has “clear and unequivocal notice” of either an actual or constructive violation of the Act. *Leach Corp.*, 312 NLRB 990, 991 (1993), *enfd.* 54 F.3d 802

(D.C. Cir. 1995). A party will be charged with constructive knowledge of an unfair labor practice where he or she could have discovered the alleged misconduct through the exercise of reasonable diligence. See *Moeller Bros. Body Shop*, 306 NLRB 191, 193 (1992); and *John Morrell & Co.*, 304 NLRB 896, 899 (1991) (10(b) period begins to run when the aggrieved party knows or should know that his or her statutory rights have been violated.)

In this case, the Charging party clearly and unequivocally knew on or about January 29, 2019 when he received Kelly Smith's letter that the International Union was not proceeding to arbitration on his grievance. See *Linden Maintenance Corp.*, 280 NLRB 995, 996 (1986) (indicating that the 10(b) period began to run on a duty of fair representation claim when an employee was clearly informed that his grievance would be abandoned). Yet, he waited until September 6, 2019 to amend his charge in case 10-CB-240168 to add the International Union as respondent, more than six months after he received notice that his grievance would not be arbitrated. Accordingly, the charge in case 10-CB-240168 is clearly time-barred and must be dismissed.

In addition, the complaint makes clear that the Charging party knew of alleged conduct that forms the basis of the complaint allegations in paragraphs 7 and 8 no later than December 6 and 7, 2018. Rather than file a timely charge, the Charging party waited more than eight months until August 29, 2019 to add the International Union as party. Thus, the allegations in paragraphs 7 and 8 against the International Union must be dismissed as time-barred.

Accordingly, for the above cited reasons, the allegations in the complaint in cases 10-CB-232953 and 10-CB-240168 against the International Union are due to dismissed as time-barred by the Act.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify on December 10, 2019, I electronically filed a true and correct copy of the foregoing Motion to Dismiss through the NLRB's website and served the following by hand to:

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