

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

LONG MECHANICAL, INC.

and

**Cases 07-CA-053473
07-CA-053572
07-CA-060379**

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

DECISION AND ORDER

Statement of the Cases

On October 14, 2011, Long Mechanical, Inc. (the Respondent) and the Acting General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals.¹ The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

Findings of Fact

1. The Respondent's business

At all material times, the Respondent, a corporation with an office and showroom in Northville, Michigan, has been engaged in the building and construction business as a mechanical contractor.

¹ The Charging Parties declined to enter into the Formal Settlement Stipulation. They did not file an opposition with the Board.

During the fiscal year ending April 30, 2010, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$5 million.

During the fiscal year ending April 30, 2010, the Respondent, in conducting its business operations described above, provided services valued in excess of \$50,000 to the Hampton Inn and a Veterans Administration hospital, which are enterprises in the State of Michigan that are directly engaged in interstate commerce.

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

2. The labor organization involved

At all material times, each of the Charging Parties, Locals 98 and 636, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (also referred to collectively as the Union), has been a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate unit

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

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

On September 2, 2010, a Board election was conducted among the employees in the unit in Case 07-RC-023367, in which a majority of the employees cast ballots designating the Charging Parties as representative of the unit for purposes of collective bargaining.

On January 20, 2011, the Charging Parties were certified as the exclusive collective-bargaining representative of the unit.

At all times since September 2, 2010, based on Section 9(a) of the Act, the Charging Parties have been the exclusive collective-bargaining representative of the unit.

4. (a) On about May 3, 2011, the Respondent, by its agent James Long, at its St. Catherine jobsite:

(1) bypassed the Charging Parties and dealt directly with its employees in the unit concerning their terms and conditions of employment;

(2) solicited grievances from employees and impliedly promised to remedy them in an effort to dissuade employees from supporting the Charging Parties;

(3) threatened employees with loss of employment and other adverse job consequences if the Respondent signed a collective-bargaining agreement with the Charging Parties;

(4) threatened to close its facility if the Respondent signed a collective-bargaining agreement with the Charging Parties.

(b) On about May 5, 2011, the Respondent, by its agent James Long, at its Marywood site:

(1) bypassed the Charging Parties and dealt directly with its employees in the unit concerning their terms and conditions of employment;

(2) solicited grievances from employees and impliedly promised to remedy them in an effort to dissuade employees from supporting the Charging Parties;

(3) threatened employees with loss of employment and other adverse job consequences if the Respondent signed a collective-bargaining agreement with the Charging Parties.

5. From about February 9 to about April 15, 2011, the Respondent laid off its employees Daniel Brady and Alan LaBar.

6. From about February 9 to about March 4, 2011, the Respondent laid off its employees Gabriel Ivan, Robert Rice, and Gary Steiner.

7. On about March 15, 2011, the Respondent sent its employee Max Dietrich home prior to the completion of his shift.

8. From about March 17 to about April 5, 2011, the Respondent laid off its employee Max Dietrich.

9. From about January 25 through February 8, 2011, the Respondent discriminatorily assigned its employees Daniel Brady and Alan LaBar less favorable job assignments and deprived them of jobsite equipment provided to other unit employees.

10. From about May 9 through about May 11, 2011, and from about May 16 to about May 19, 2011, the Respondent laid off its employee Daniel Brady.

11. From about May 9 to about May 13, 2011, the Respondent laid off its employee Alan LaBar.

12. From about May 18 to about May 19, 2011, the Respondent laid off its employees Max Dietrich and Ronald Garant.

13. On about March 1, 2011, the Charging Parties, by letter to the Respondent, requested all Material Safety Data Sheets (MSDS) for the period of January 1, 2008 to the present, and on about May 25, 2011, orally, and on about June 15, 2011, in writing, the Charging Parties limited said request to the period of January 1, 2010 to the present.

14. On about March 1, 2011, the Charging Parties, by letter to the Respondent, requested all documents regarding unemployment benefits filed by the Respondent's employees and the resolution of such claims for the period of January 1, 2008 to the present, and on about May 25 and June 15, 2011, the Charging Parties, in writing, limited said request to the years 2008 and 2009.

15. On about March 1 and June 15, 2011, the Charging Parties, by letter to the Respondent, requested the following information:

(a) all documents showing employee participants in any benefit plan sponsored by the Respondent, and the plan or plans in which each such employee is participating for the period of January 1, 2008 to the present;

(b) the personnel files for employees Charles Couchman, Josh Dyke, Jerry Fannon, Bryan Hensley, Andrew Hocking, Gabe Ivan, Rob Makowiec, Jeffrey Marion, Rob Rice, Mike Shuryan, and Gary Steiner for the period of January 1, 2008 to the present;

(c) all certified payroll records for any and all state and/or federal prevailing wage jobs worked on by the Respondent for the period of January 1, 2008 to the present;

(d) all workers' compensation claims filed by employees, along with any document showing the resolution of such claims, whether by settlement or litigation, for the period from January 1, 2000 to the present.

16. On March 1, May 25, and June 15, 2011, the Charging Parties, by letter to the Respondent, requested the following information:

(a) the personnel files of employees Mike Baran, Dan Brady, Charles Bigelow, Jon Brenneman, Gary Hocking, J.D. Hocking, Doug Jarvis, Al LaBar, Lucas

Liedel, Chad Neur, Tony Ratcliffe, Paul Schuette, Albert Simcheck, Tom Stark, and Dain Vettese for the period of January 1, 2008 to the present;

(b) all payroll records showing rates of pay, hours worked, and job classification for the Respondent's employees, or in the event that the Respondent's payroll records do not contain all of the data requested, all documents which include the requested data for all employees for the period of January 1, 2008 to the present.

17. On about May 25 and June 15, 2011, the Charging Parties, by letter to the Respondent, requested the following information:

(a) the personnel files for employees Max Dietrich and Ron Garant;

(b) breakdown of wage and fringe benefit package utilized/reported by the Respondent for prevailing wage jobs.

18. The information requested by the Charging Parties as described in paragraphs 13, 14, 15, 16, and 17 is necessary for and relevant to the Charging Parties' performance of their duties as the exclusive collective-bargaining representative of the unit.

19. Since about March 1, 2011, the Respondent has:

(a) failed and refused to furnish the Charging Parties with the information described in paragraphs 15(b) and (c), 16(a), and 17(a) and (b);

(b) failed and refused to furnish the Charging Parties with the information described in paragraph 14 with respect to all documents regarding unemployment benefits filed by the Respondent's employees and the resolution of such claims for the years 2008 and 2009;

(c) failed and refused to furnish the Charging Parties with the information described in paragraph 15(a) with respect to the documents showing employee participants in any benefit plan sponsored by the Respondent, and the plan or plans in which each such employee is participating for the period of January 1, 2008 to 2010;

(d) failed and refused to furnish the Charging Parties with the information described in paragraph 15(d) with respect to workers' compensation claims filed by its employees from the period of 2000 to March 2007;

(e) failed and refused to furnish the Charging Parties with the information described in paragraph 16(b), with respect to the payroll record for the Respondent's employees Charles Couchman, Josh Dyke, Jerry Fannon, Bryan Hensley, Andrew Hocking, Gabe Ivan, Rob Makowiec, Jeffrey Marion, Rob Rice, Mike Shuryan, and Gary Steiner.

20. From about March 1 to about June 13, 2011, the Respondent has unreasonably delayed in furnishing the Charging Parties with the information described in paragraph 16(b), with respect to the payroll record for the Respondent's employees Mike Baran, Dan Brady, Charles Bigelow, Jon Brenneman, Max Dietrich, Ron Garant, Gary Hocking, J.D. Hocking, Doug Jarvis, Al LaBar, Lucas Liedel, Chad Neur, Tony Ratcliffe, Paul Schuette, Albert Simcheck, Tom Stark, and Dain Vettese.

21. From about March 1 to about June 24, 2011, the Respondent has:

(a) unreasonably delayed in furnishing the Charging Parties with the information described in paragraph 15(a), with respect to all documents showing employee participants in any benefit plan sponsored by the Respondent, and the plan or plans in which each such employee is participating for the period of the year 2011;

(b) unreasonably delayed in furnishing the Charging Parties with the information described in paragraph 15(d), with respect to workers' compensation claims filed by its employees from the period of March 2007 to June 20, 2011;

(c) unreasonably delayed in furnishing the Charging Parties with the information described in paragraph 13, with respect to the MSDS sheets for the period of 2010 and 2011.

22. The Respondent engaged in the conduct described in paragraphs 5, 7, 8, 9, 10, 11, and 12 because of the named employees' sympathies for and activities on behalf of the Charging Parties, and to discourage employees from engaging in these or other protected concerted activities.

23. The subjects set forth in paragraphs 4(a)(1) and 4(b)(1), 5, 6, 8, 10, 11, and 12 relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

24. The Respondent engaged in the conduct described in paragraphs 5, 6, 8, 10, 11, and 12 without prior notice to the Charging Parties and without affording the Charging Parties a meaningful opportunity to bargain with respect to the layoffs and the effects of the layoffs on the unit.

25. By the conduct described in paragraphs 4(a)(2), 4(a)(3), and 4(a)(4), and 4(b)(2) and 4(b)(3), the Respondent has been interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

26. By the conduct described in paragraphs 5, 7, 8, 9, 10, 11, 12, and 22, the Respondent has been discriminating in regard to the hire or tenure or terms and

conditions of employment of its employees, in violation of Section 8(a)(3) and (1) of the Act.

27. By the conduct described in paragraphs 4(a)(1), 4(b)(1), 5, 6, 8, 10, 11, 12, 19, 20, 21, and 24, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that

Long Mechanical, Inc., Northville, Michigan, its officers, agents, successors, and assigns shall:

1. Cease and desist from

(a) Bypassing the Union and dealing directly with the unit employees regarding their terms and conditions of employment. (Findings of Fact, paragraphs 4(a)(1), 4(b)(1)).²

(b) Soliciting grievances from employees and impliedly promising to remedy them in an effort to dissuade employees from supporting the Charging Parties (also referred to collectively as the Union). (Findings of Fact, paragraphs 4(a)(2) and 4(b)(2)).

(c) Threatening employees with loss of employment and other adverse job consequences if the Respondent signed a collective-bargaining agreement with the Charging Parties. (Findings of Fact, paragraphs 4(a)(3) and 4(b)(3)).

(d) Threatening to close its facility if it signed a collective-bargaining agreement with the Charging Parties. (Findings of Fact, paragraph 4(a)(4)).

(e) Laying off employees because of their sympathies for and activities on behalf of the Charging Parties, and to discourage employees from engaging in these or other protected concerted activities. (Findings of Fact, paragraphs 5, 7, 8, 9, 10, 11, 12).

(f) Laying off employees without prior notice to the Charging Parties and without affording the Charging Parties a meaningful opportunity to bargain with respect to the layoffs and the effects of the layoffs on the unit. (Findings of Fact, paragraphs 5, 6, 8, 10, 11, and 12).

² Paragraph references in the Order are to the numbered paragraphs in the Findings of Fact, above.

(g) Sending an employee home prior to the completion of his shift because of his support and sympathies for or activities on behalf of the Union or any other labor organization. (Findings of Fact, paragraph 7).

(h) Assigning its employees less favorable job assignments and depriving them of jobsite equipment provided to other unit employees because of their sympathies for and activities on behalf of the Charging Parties, and to discourage employees from engaging in these or other protected concerted activities. (Findings of Fact, paragraph 9).

(i) Failing to furnish, or delaying in furnishing, the Union with any and all documents and information it requested pertaining to wages, hours, and other terms and conditions of employment of the unit, which are mandatory subjects of bargaining. (Findings of Fact, paragraphs 19, 20, and 21).

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights listed above.

(k) In any like or related manner discriminating in regard to the hire or tenure or any other terms or conditions of employment of employees in order to discourage support of or membership in the Union, or any other labor organization.

(l) In any like or related manner failing and refusing to bargain collectively and in good faith with the Charging Parties as the exclusive collective-bargaining representative of the unit with respect to wages, hours, and other terms and conditions of employment, in violation of Section 8(a)(5) and (1) of the Act. The unit is:

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

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Daniel Brady, Max Dietrich, Ronald Garant, and Alan LaBar whole for any loss of earnings and benefits suffered by reason of the discrimination against them, by payment of backpay, and reimburse them for any out-of-pocket expenses they incurred while searching for work, with interest computed in accordance with Board policy in the amounts to be paid as follows:

50 percent of the amount opposite each name is due 30 days after approval of this settlement stipulation by the Administrative Law Judge, and the remaining 50 percent is due 60 days after the approval of the Settlement Agreement by the Administrative Law Judge.

Daniel Brady	\$7,112.32
Max Dietrich	\$3,709.18
Ronald Garant	\$522.88
Alan LaBar	\$12,079.68

(b) Make Gabriel Ivan, Gary Steiner, and Robert Rice whole for any loss of earnings and benefits suffered as a result of its failure to bargain as described in paragraphs 6 and 24, above, by payment of backpay, and reimburse them for any out-of-pocket expenses they incurred while searching for work, with interest computed in accordance with Board policy, in the amounts as follows:

50 percent of the amount opposite each name is due 30 days after approval of this settlement stipulation by the Administrative Law Judge, and the remaining 50 percent is due 60 days after the approval of the settlement stipulation by the Administrative Law Judge.

Gabriel Ivan	\$2,068.80
Robert Rice	\$2,395.20
Gary Steiner	\$1,432.00

(c) In the event that the discriminatees listed below are required to reimburse the Michigan Unemployment Insurance Agency (MUIA) for unemployment compensation received as a result of a loss of pay because of the alleged unfair labor practices in this matter, pay over to the MUIA an amount equal to that which each alleged discriminatee is required to reimburse the MUIA, not to exceed the amounts as follows:

Daniel Brady	\$2,172.00
Gabriel Ivan	\$1,086.00
Alan LaBar	\$2,172.00
Robert Rice	\$1,086.00
Gary Steiner	\$1,066.00

(d) Make Max Dietrich whole for any loss of earnings and benefits suffered as a result of the Respondent's sending him home prior to the completion of his shift, by payment of backpay, with interest computed in accordance with Board policy.

(e) Reimburse Daniel Brady, Max Dietrich, Ronald Garant, Gabriel Ivan, Alan LaBar, Robert Rice, and Gary Steiner, amounts equal to the difference in taxes owed upon receipt of a lump-sum payment ordered herein and taxes that would have been owed had there been no discrimination.

(f) Submit the appropriate documentation to the Social Security Administration so that when the backpay ordered herein is paid, it will be allocated to the appropriate time periods as if no discrimination had occurred.

(g) Remove from all its files and records all references to the May 5, 2010 layoffs of Daniel Brady, Max Dietrich, Ronald Garant, and Alan LaBar, and advise each of them, in writing, that it has done so and will not hold said action against him in the future in any manner.

(h) Remove from its files and records all references to the layoffs of Daniel Brady, Max Dietrich, Ronald Garant, Gabriel Ivan, Alan LaBar, Robert Rice, and Gary Steiner, and all references to sending Max Dietrich home prior to the end of his shift on March 15, 2011, and advise each of them, in writing, that it has done so and will not hold said action against him in the future in any manner.

(i) On request, bargain in good faith with the Charging Parties concerning the decisions to lay off Daniel Brady, Max Dietrich, Ronald Garant, Gabriel Ivan, Alan LaBar, Robert Rice, and Gary Steiner and the effects of those decisions on the unit.

(j) On request, meet and bargain collectively and in good faith with the Charging Parties as the exclusive collective-bargaining representative of the unit.

(k) If not already provided, furnish the Charging Parties with the information requested on March 1, May 25, and June 15, 2011.

(l) To remedy the Respondent's failure, refusal, and unreasonable delay in providing information to the Charging Parties, and to allow the Charging Parties the full benefit of their certification, the certification year will be extended for six months from January 20, 2012, if the Respondent provides the information in dispute to the Charging Parties by that date. In the event that the Respondent does not provide the information in dispute to the Charging Parties by January 20, 2012, the certification year will be extended for six months from the date the Respondent provides the information in dispute to the Charging Parties, in accordance with *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962).

(m) Within 14 days of service by the Region, post at its office in Northville, Michigan, copies of the attached notice marked as Appendix A. Copies of the notice, on

forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Representatives of the Charging Parties shall have the right to inspect the notice during the posting during business hours.

(n) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official attesting to the steps that the Respondent has taken to comply with the Board Order, including the date and to whom the attached notice marked as Appendix A was mailed.

Dated, Washington, D.C., October 5, 2012.

MARK GASTON PEARCE, CHAIRMAN

BRIAN E. HAYES, MEMBER

RICHARD F. GRIFFIN, JR., MEMBER

APPENDIX A

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A
CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF
APPEALS

We are posting this notice to inform you of your rights guaranteed by the National Labor Relations Act.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Section 7 of the National Labor Relations Act gives you as employees these rights:

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

We assure our employees that:

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT in any like or related manner fail or refuse to meet and bargain collectively and in good faith with Locals 98 and 636, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, (herein Union), as the exclusive collective-bargaining representative of our employees in the following appropriate unit (unit):

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

WE WILL NOT threaten our employees that we will not employ union members or adherents or threaten them with termination if they continue to organize on behalf of the Union, or any other labor organization.

WE WILL NOT solicit grievances from our employees and promise to remedy them in order to dissuade them from supporting the Union.

WE WILL NOT threaten our employees with loss of employment and other adverse job consequences if we sign a collective bargaining agreement with the Union.

WE WILL NOT lay off any employee because of his support and sympathies for or activities on behalf of the Union or any other labor organization.

WE WILL NOT threaten our employees that we will close our facilities if we sign a collective-bargaining agreement with the Union.

WE WILL NOT send any employee home prior to the completion of his shift because of his support and sympathies for or activities on behalf of the Union or any other labor organization.

WE WILL NOT assign our employees less favorable job assignments or deprive them of jobsite equipment provided to other unit employees because of their sympathies for and activities on behalf of the Union, or to discourage employees from engaging in these or other protected concerted activities.

WE WILL NOT bypass the Union and deal directly with the unit employees regarding their terms and conditions of employment.

WE WILL NOT fail or delay to furnish the Union with any and all documents and information it requested pertaining to wages, hours, and other terms and conditions of employment of the unit, which are mandatory subjects of bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights listed above.

WE WILL NOT in any like or related manner discriminate in regard to the hire or tenure or any other terms or conditions of employment of our employees in order to discourage support of or membership in the Union, or any other labor organization.

WE WILL NOT in any like or related manner unilaterally lay off unit employees without affording the Union prior notice and a meaningful opportunity to bargain regarding the layoff and the effect of the layoff on unit employees.

WE WILL make whole unit employees Daniel Brady, Max Dietrich, Ronald Garant, and Alan LaBar for any loss of earnings and benefits suffered as a result of their layoffs, by payment of backpay, with interest in according with Board policy.

WE WILL make whole bargaining unit employees Gabriel Ivan, Robert Rice, and Gary Steiner, who have been recalled to work, by payment of backpay, with interest in according with Board policy.

WE WILL remove from our files and records all references to the layoffs of Daniel Brady, Max Dietrich, Ronald Garant, Gabriel Ivan, Alan LaBar, Robert Rice, and Gary Steiner, and all references to sending Max Dietrich home prior to the end of his shift on March 15, 2011, and advise each, in writing, that we have done so and will not hold said action against him in the future.

WE WILL, upon request, bargain with the Union concerning the decision to lay off Daniel Brady, Max Dietrich, Ronald Garant, Gabriel Ivan, Alan LaBar, Robert Rice, and Gary Steiner, and the effects of those decisions on the unit.

WE WILL, upon request, meet and bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit.

WE WILL, if not already provided, furnish the Union with the information it requested on March 1, May 25, and June 15, 2011.

WE WILL acknowledge that that the certification year in Case 7-RC-023367 will be extended for six months from January 20, 2012, if we provide the requested information to the Union by January 20, 2012, or in the event we do not provide the requested information to the Union by January 20, 2012, the certification year will be extended for six months from the date we provide the requested information to the Union.

LONG MECHANICAL, INC.
(Employer)

DATE: _____

BY: _____
(Representative) (Title)