

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON D.C.**

DOUGLAS AUTOTECH CORPORATION

Respondent

and

CASE GR-7-CA-51428

INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA (UAW), AFL-CIO, AND ITS  
LOCAL 822

Charging Union

**GENERAL COUNSEL'S RESPONSE TO RESPONDENT'S MOTION FOR  
SUMMARY JUDGMENT**

Pursuant to Section 102.24(b) of the Board's Rules and Regulations, the General Counsel hereby responds to Respondent's Motion for Summary Judgment. For the reasons set forth below, Respondent's Motion should be denied.

Upon a charge filed by the Union on August 6, 2008, and amended on September 18, the General Counsel issued a Complaint and Notice of Hearing on February 25, 2009,<sup>1</sup> alleging that Respondent unlawfully discharged the entire bargaining unit at its Bronson, Michigan facility – approximately 145 employees; and unlawfully withdrew recognition from the Union as the exclusive collective bargaining representative of the unit. Respondent filed its Answer to the Complaint on March 17. A hearing before an administrative law judge is scheduled to commence June 24.

On May 19, Respondent filed its Motion for Summary Judgment. Respondent's Motion should be denied on the ground that it raises genuine issues of material fact that would better be

---

<sup>1</sup> All dates hereafter are 2009, unless otherwise indicated.

resolved after the hearing by the administrative law judge. For example, in its Motion, Respondent states that an issue in the case is whether it “reemployed” alleged discriminatees within the meaning of Section 8(d) of the Act. Respondent then proceeds to argue that it is entitled to judgment as a matter of law because, it says, it did not reemploy alleged discriminatees. Respondent’s contention that it did not reemploy alleged discriminatees, which is included as an affirmative defense in its Answer to the Complaint, itself raises issues of material fact – namely, whether Respondent took actions that resulted in the reemployment of the alleged discriminatees within the meaning of Section 8(d).<sup>2</sup> Respondent’s Answer to Complaint is attached hereto as Exhibit A.

In this regard, Counsel for the General Counsel takes exception to Respondent’s “assumed” statement of “undisputed facts” offered in support of its Motion. The statement of facts set forth by Respondent is inaccurate, incomplete and misleading; including, but by no means limited to, the assertions pertaining to Respondent’s actions and statements following the Union’s unconditional offer to return to work in May 2008.<sup>3</sup>

In sum, there are genuine issues of material fact in dispute in this matter and Respondent is not entitled to summary judgment. Its Motion should be denied.

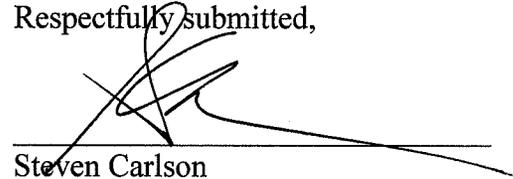
---

<sup>2</sup> Respondent correctly states that this case appears to involve issues of first impression for the Board related to the interpretation of Section 8(d). The General Counsel is confident that its case is well-grounded in both the text of the Act and prior Board decisions. Ultimately, the unique posture of this case further compels the conclusion that a complete evidentiary record developed at a hearing before an administrative law judge is not only warranted, but essential.

<sup>3</sup> It is well settled that the Board does not require more than allegations of legally significant factual issues to warrant a hearing in an unfair labor practice matter. *United States Postal Service*, 311 NLRB 254 (1993), fn. 3, citing Section 102.24(b) of the Board’s Rules which specifically states that the party opposing summary judgment need not file affidavits or other documentary evidence. Accordingly, Counsel for the General Counsel does not believe it is appropriate to try its case in the context of Respondent’s Motion for Summary Judgment.

Dated at Grand Rapids, Michigan, this 27<sup>th</sup> day of May, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven Carlson", is written over a horizontal line. The signature is stylized and somewhat cursive.

Steven Carlson  
Counsel for the General Counsel  
National Labor Relations Board  
Region Seven, Resident Office  
82 Ionia NW, Room 330  
Grand Rapids, Michigan 49503  
Phone: (616) 456-2270  
Fax: (616) 456-2596  
e-mail: [Steven.Carlson@nrlb.gov](mailto:Steven.Carlson@nrlb.gov)

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

DOUGLAS AUTOTECH CORPORATION,

Respondent,

and

Case No. GR-7-CA-51428

INTERNATIONAL UNION, UNITED  
AUTOMOBILE , AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA (UAW), AFL-CIO, AND ITS  
LOCAL 822,

Charging Union.

---

**ANSWER TO COMPLAINT**

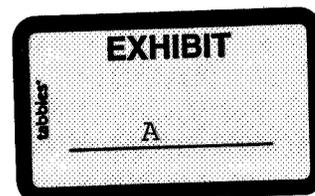
NOW COMES Douglas Autotech Corporation ("DAC"), through its counsel, VARNUM, LLP, and in Answer to the National Labor Relations Board General Counsel's Complaint states:

1(a). The original charge in this proceeding was filed by the Charging Union on August 6, 2008, and a copy was served by regular mail on Respondent on the same date.

**ANSWER: DAC neither admits nor denies the allegations contained in Paragraph 1(a) for lack of information and belief and leaves General Counsel to its proofs.**

1(b). The amended charge in this proceeding was filed by the Charging Union on September 18, 2008, and a copy was served by regular mail on Respondent on the same date.

**ANSWER: DAC neither admits nor denies the allegations contained in Paragraph 1(b) for lack of information and belief and leaves General Counsel to its proofs.**



2. At all material times, Respondent, a corporation with a facility in Bronson, Michigan, hereinafter called the Bronson facility, has been engaged in the manufacture and nonretail sale of automotive parts and related products.

**ANSWER: DAC admits the allegations contained in Paragraph 2.**

3. During calendar year 2008, a representative period, Respondent, in the course and conduct of its operations described in paragraph 2, sold and shipped goods valued in excess of \$50,000 directly to customers located outside the State of Michigan.

**ANSWER: DAC admits the allegations contained in Paragraph 3.**

4. 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.

**ANSWER: DAC admits the allegations contained in Paragraph 4.**

5. At all material times, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO and its Local 822 have each been a labor organization within the meaning of Section 2(b) of the Act.

**ANSWER: DAC neither admits nor denies the allegations contained in Paragraph 5 for lack of information and belief and leaves General Counsel to its proofs.**

6. At all material times. R. Paul Viar, Jr., has held the position of director of administration and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

**ANSWER: DAC admits that Paul Viar, Jr. currently holds the position Director of Administration at DAC. DAC neither admits nor denies the remaining allegations contained in Paragraph 6 because they state legal conclusions to which no answer is required and leaves General Counsel to its proofs.**

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

All employees employed at its Bronson, Michigan plant; but excluding superintendents, foremen, assistant foremen, time study men, timekeepers, plant protection employees, stock and service manager, receiving room foremen, first aid nurse, administrative office employees, clerical or secretarial assistants, payroll clerks, and all other guards and supervisors as defined in the Act.

**ANSWER: DAC denies the allegations contained in Paragraph 7 because they are untrue. For further clarification, the Charging Union members lost all protection under the Act when they engaged in an illegal strike.**

8. Since about 1941, and at all material times, the Charging Union has been the designated exclusive collective bargaining representative of the Unit, and has been recognized as such representative by Respondent. This recognition has been embodied in a series of collective bargaining agreements, the most recent of which was effective from May 1, 2005 through April 30, 2008.

**ANSWER: DAC admits that the most recent collective bargaining agreement between DAC and the UAW was effective from May 1, 2005 through April 30, 2008. DAC neither admits nor denies the remaining allegations contained in Paragraph 8 for lack of information and belief and/or because they state legal conclusions to which no answer is required and leaves General Counsel to its proofs.**

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

**ANSWER: DAC neither admits nor denies the allegations contained in Paragraph 9 for lack of information and belief and/or because they state legal conclusions to which no answer is required and leaves General Counsel to its proofs.**

10. On or about May 1, 2008, most of the employees in the Unit engaged in a strike against Respondent at its Bronson, Michigan facility.

**ANSWER: DAC denies the allegations contained in Paragraph 10 because they are untrue. For clarification, on or about May 1, 2008, all the Charging Union members engaged in an illegal strike against DAC.**

11. On or about May 5, 2008, the Charging Union, on behalf of the striking employees in the Unit, made an unconditional offer to return to work.

**ANSWER: DAC neither admits nor denies the allegations contained in Paragraph 11 because they state legal conclusions to which no answer is required and leaves General Counsel to its proofs.**

12. On or about May 5, 2008, Respondent locked out all the employees in the Unit at its Bronson, Michigan facility.

**ANSWER: DAC neither admits nor denies the allegations contained in Paragraph 12 because they state legal conclusions to which no answer is required and leaves General Counsel to its proofs.**

13. On or about August 4, 2008, Respondent discharged all the employees in the Unit.

**ANSWER: DAC admits that it discharged Charging Union members on or about August 4, 2008. DAC denies the remaining allegations contained in Paragraph 13 because they are untrue. For further clarification, the Charging Union members lost all protection under the Act when they engaged in an illegal strike.**

14. Respondent engaged in the conduct described in paragraph 13 because of its employees' participation in the strike described in paragraph 10, and to discourage employees from engaging in these and other protected concerted activities.

**ANSWER: DAC denies the allegations contained in Paragraph 14 because they are untrue and/or because they state legal conclusions to which no answer is required. For further clarification, DAC states that the Charging Union members engaged in an illegal strike for which they lost all protection under the Act.**

15. On or about August 14, 2008, Respondent withdrew recognition from the Charging Union as the exclusive collective bargaining representative of the Unit and since that date has failed and refused to meet and bargain collectively with the Charging Union.

**ANSWER: DAC denies the allegations contained in Paragraph 15 because they are untrue. For further clarification, DAC states that the Charging Union members engaged in an illegal strike for which they lost all protection under the Act.**

16. By the conduct described in paragraphs 13 and 14, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act.

**ANSWER: DAC denies the allegations contained in Paragraph 16 because they are untrue and/or because they state legal conclusions to which no answer is required. For further clarification, DAC states that the Charging Union members engaged in an illegal strike for which they lost all protection under the Act.**

17. By the conduct described in paragraph 15, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective bargaining representative of the Unit, in violation of Section 8(a)(1) and (5) of the Act.

**ANSWER: DAC denies the allegations contained in Paragraph 17 because they are untrue and/or because they state legal conclusions to which no answer is required. For further clarification, DAC states that the Charging Union members engaged in an illegal strike for which they lost all protection under the Act.**

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

**ANSWER: DAC denies the allegations contained in Paragraph 18 because they are untrue and/or because they state legal conclusions to which no answer is required. For further clarification, DAC states that the Charging Union members engaged in an illegal strike for which they lost all protection under the Act.**

#### **AFFIRMATIVE DEFENSES**

DAC states the following affirmative defenses in this matter:

1. General Counsel has failed to state a claim upon which relief can be granted.
2. The Charging Union members lost protection under the Act when they engaged in an illegal strike.
3. At no time has DAC "reemployed" the Charging Union members.
4. General Counsel has acknowledged that it has no NLRB or federal court case law which supports its theory of the case.
5. General Counsel's case is frivolous and without factual or legal basis which entitles DAC to protection and fees under the Equal Access to Justice Act.

6. The Charging Union members engaged in an illegal strike beginning on or about May 1, 2008.
7. The Charging Union members did not make an unconditional offer to return to work.
8. Any DAC lockout, if it occurred, did not amount to "reemployment" under the Act.
9. DAC discharged illegal strikers unprotected by the Act and consistent with the Act.
10. The Charging Union members engaged in an illegal strike and public policy demands that the Charging Union not be able to remedy its own illegal act.
11. DAC took no actions against Charging Union members to discourage membership in the Charging Union.
12. DAC took no actions against Charging Union members to discourage protected concerted activities.
13. DAC exceeded its obligations to bargain in good faith when it decided, without legal obligation to do so, to bargain with the Charging Union regarding members no longer protected by the Act due to an illegal strike.
14. Charging Union and Union Members' claims are barred by the Doctrine of Laches/Unclean Hands.
15. Charging Union and Union Members' claims are barred by the Doctrine of Equitable Estoppel.
16. DAC has not withdrawn recognition from the Charging Union.
17. DAC has not failed or refused to meet with the Charging Union.
18. DAC has not discouraged any individual from membership in the Charging Union or any other labor organization.

19. Charging Union has failed to mitigate its damages by failing to properly file the mandatory Section 8(d)(3) Notice prior to the strike.
20. Charging Union's failure to properly file its mandatory Section 8(d)(3) Notice before its members went on strike had the effect of stripping each and every striking Union member of any and all rights under Sections 8, 9 and 10 of the Act.
21. Charging Union members have failed to mitigate damages.
22. If DAC is in any way liable for back pay, that back pay cannot start until at least 30 days after Charging Union properly made its Section 8(d)(3) Notice.

WHEREFORE, DAC respectfully requests that General Counsel's Complaint be dismissed and that DAC be awarded all appropriate remedies under the Equal Access to Justice Act.

Dated: March 17, 2009

  
\_\_\_\_\_  
Jeffrey J. Fraser  
VARNUM  
P.O. Box 352  
Grand Rapids, MI 49501-0352  
(616) 336-6000  
Attorneys for Respondent

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON D.C.**

DOUGLAS AUTOTECH CORPORATION

Respondent

and

CASE GR-7-CA-51428

INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA (UAW), AFL-CIO, AND ITS  
LOCAL 822

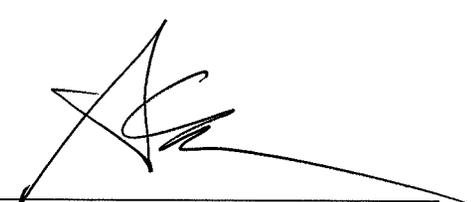
Charging Union

**PROOF OF SERVICE**

The undersigned certifies that on May 27, 2009, he served a copy of the General Counsel's Response to Respondent's Motion for Summary Judgment upon the following parties by e-mail:

Jeffrey J. Fraser  
Counsel for Respondent  
[jjfraser@varnumlaw.com](mailto:jjfraser@varnumlaw.com)

Samuel C. McKnight  
Counsel for the Charging Union  
[smcknight@kmsmc.com](mailto:smcknight@kmsmc.com)



---

Steven Carlson  
Counsel for the General Counsel  
National Labor Relations Board  
Region Seven, Resident Office  
82 Ionia NW, Room 330  
Grand Rapids, Michigan 49503  
Phone: (616) 456-2270  
Fax: (616)456-2596  
e-mail: [Steven.Carlson@nlrb.gov](mailto:Steven.Carlson@nlrb.gov)