

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

CAPITAL IRON WORKS COMPANY

and

Case 17-CA-24499

BOILERMAKERS LOCAL LODGE 83,
affiliated with INTERNATIONAL BROTHERHOOD
OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS,
FORGERS & HELPERS, AFL-CIO

**MOTION TO TRANSFER PROCEEDING TO BOARD
AND FOR DEFAULT JUDGMENT**

Counsel for the General Counsel, pursuant to the provisions of Section 102.24 and 102.50 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, files this Motion requesting that the National Labor Relations Board (Board) issue an Order transferring Case 17-CA-24499 to the Board, and, further moves that the Board issue an Order Granting Default Judgment sustaining all the allegations of the Complaint issued herein. In support of this Motion, Counsel for the General Counsel states as follows:

1. The charge in Case 17-CA-24499 was filed by Boilermakers Local Lodge 83, affiliated with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO (Charging Party) against Capital Iron Works Company (Respondent), on April 29, 2009, and was served by regular mail on Respondent on the same date at the following address: 701 Southeast Adams Street, P.O. Box 2098, Topeka, Kansas 66607.

2. An amended charge in Case 17-CA-24499 was filed by the Charging Party against Respondent on June 29, 2009, and was served by regular mail on Respondent on the same date at the following address: 701 Southeast Adams Street, P.O. Box 2098, Topeka, Kansas 66607.
3. A second amended charge in Case 17-CA-24499 was filed by the Charging Party against Respondent on July 27, 2009 and was served by regular mail on Respondent on the same date at the following address: 701 Southeast Adams Street, P.O. Box 2098, Topeka, Kansas 66607.
4. A Complaint and Notice of hearing issued on July 29, 2009, and was served by certified mail on Respondent on the same date at the following address: 701 Southeast Adams Street, P.O. Box 2098, Topeka, Kansas 66607. In the paragraph titled, "Answer Requirement," Respondent was notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it was required to file an Answer to the Complaint within 14 days from the date of service, and that failure to do so would result in all the allegations of the Complaint being deemed admitted to be true and so found by the Board.
5. The United States Postal Service's "Track and Confirm" system confirms delivery of the Complaint to Respondent on August 11, 2009, at 9:54 a.m.
6. By letter dated August 13, 2009, which was sent by facsimile transmission to (785) 234-0499 and by regular mail to 701 Southeast Adams Street, P.O. Box 2098, Topeka, Kansas 66607, Field Attorney William F. LeMaster advised Respondent that an Answer had not been filed in response to the Complaint, and further informed Respondent that Counsel for the General Counsel would file a Motion for Default Judgment with the Board unless Respondent filed an Answer to the Complaint by the close of business on August 20, 2009. NLRB Field Attorney

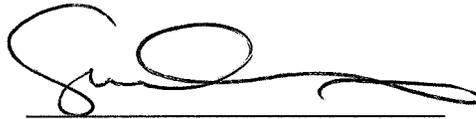
LeMaster's letter was not returned by the United States Postal Service, and facsimile confirmation report shows that Respondent received all pages of the facsimile transmission.

7. To date, Respondent has not filed an Answer to the Complaint.
8. Attached hereto and made a part of this Motion are the following documents, which are marked and described as follows:
 - a) G.C. Ex. A - Charge in Case 17-CA-24499 filed on April 29, 2009, and signed by Angela M. Atkinson, Counsel for Charging Party.
 - b) G.C. Ex. B -- Copy of service letter to Respondent, dated April 29, 2009, and signed by Daniel L. Hubbel, Regional Director.
 - c) G.C. Ex. C - Amended Charge in Case 17-CA-24499 filed on June 29, 2009, and signed by Angela M. Atkinson, Counsel for Charging Party.
 - d) G.C. Ex. D - Copy of service letter to Respondent, dated June 29, 2009, and signed by Daniel L. Hubbel, Regional Director.
 - e) G.C. Ex. E - Second Amended Charge in Case 17-CA-24499 filed on July 27, 2009, and signed by Joseph E. Moreland, Counsel for the Charging Party.
 - f) G.C. Ex. F - Copy of service letter to Respondent, dated July 27, 2009, and signed by Daniel L. Hubbel, Regional Director.
 - g) G.C. Ex. G - Complaint and Notice of Hearing, Case 17-CA-24499, dated July 29, 2009, signed by Daniel L. Hubbel, Regional Director.
 - h) G.C. Ex. H - Affidavit of Service of Complaint And Notice of Hearing with Form NLRB-4668 Attached, showing a date of mailing of July 29, 2009. Certified mail receipts attached.
 - i) G.C. Ex. I - Copy of the United States Postal Service's "Track and Confirm" online result for the Complaint.
 - j) G.C. Ex. J - NLRB Field Attorney William F. LeMaster's letter to Respondent, dated August 13, 2009
 - k) G.C. Ex. K - Copy of the facsimile transmission report for the August 13, 2009 letter.
9. Counsel for the General Counsel submits that, as shown by the foregoing, Respondent's failure to file an Answer to the Complaint warrants a finding that Respondent admits the

allegations of the Complaint and Notice of Hearing. Counsel for the General Counsel further submits that an Order Granting Default Judgment is fully warranted and necessary in order to effectuate the purposes of the Act and to avoid unnecessary costs and delay. See, e.g., *Lake States Industrial Services, Inc.*, 349 NLRB No. 25 (2007). Accordingly, Counsel for the General Counsel requests that the Board issue an Order Transferring this Proceeding to the Board and, issue an Order Granting Default Judgment on the allegations in the Complaint and Notice of Hearing previously issued herein, and for its entry of an Order granting all appropriate and traditional relief.

Date: August 26, 2009

Respectfully submitted,



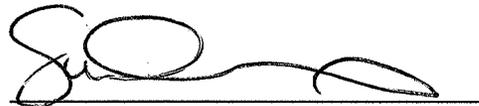
Susan A. Wade-Wilhoit
Counsel for the General Counsel
National Labor Relations Board, Region 17
8600 Farley, Suite 100
Overland Park, Kansas 66212-4677



STATEMENT OF SERVICE

I hereby certify that I have this date served copies of the General Counsel's foregoing Motion To Transfer Proceeding To Board and for Default Judgment on all parties listed below by electronically filing with the Executive Secretary of the National Labor Relations Board, and by electronic email to Counsel for Charging Party. Respondent was served by overnight delivery service.

Dated: August 26, 2009



Susan A. Wade-Wilhoit
Counsel for General Counsel

PARTIES RECEIVING ELECTRONIC MAIL:

Ms. Angela M. Atkinson, Attorney
Blake & Uhlig, P.A.
475 New Brotherhood Bldg
753 State Ave
Kansas City, KS 66101
ama@blake-uhlig.com

PARTIES RECEIVING BY OVERNIGHT MAIL:

Mr. Mike Buckner
Capital Iron Works Company
701 Southeast Adams Street
P.O. Box 2098
Topeka, KS 66607

Respondent
Overnight Delivery No. 8659 3143 8269

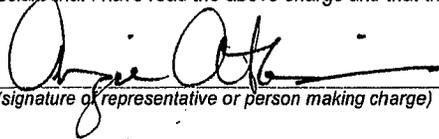
INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 17-CA-24499	Date Filed April 29, 2009

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Capital Iron Works Company	b. Tel. No. 785-234-0427
	c. Cell No.
	f. Fax No. 785-234-0499
d. Address (Street, city, state, and ZIP code) 701 Southeast Adams Street P.O. Box 2098 Topeka, KS 66607	e. Employer Representative Mike Buckner
	g. e-Mail
	h. Number of workers employed approximately 8
i. Type of Establishment (factory, mine, wholesaler, etc.) steel manufacturing	j. Identify principal product or service steel fabrication
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) _____ 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) During the past six months the above-named employer, by its officers, agents and representatives, has failed and refused to bargain collectively and in good faith with Boilermakers Local 83, by failing and refusing the Union's demand that it execute the collective bargaining agreement the parties reached in July, 2008, and by failing and refusing to remit Union dues deducted from employees' paychecks. Since on or about April 10, 2009, and at all times thereafter, the above-named employer has failed and refused to bargain collectively and in good faith with Boilermakers Local 83 by failing and refusing to respond to a valid information request.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Boilermakers Local Lodge 83	
4a. Address (Street and number, city, state, and ZIP code) 5910 East 86th Street Kansas City, MO 64138	4b. Tel. No. 819-523-8300
	4c. Cell No.
	4d. Fax No. 816-523-2832
	4e. e-Mail bml83@bml83.org
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) International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, 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.	
By  (signature of representative or person making charge)	Angela M. Atkinson (Print/type name and title or office, if any)
Tel. No. 913-321-8884	
Office, if any, Cell No.	
Fax No. 913-321-2396	
e-Mail ama@blake-uhlig.com	
Address Blake & Uhlig, P.A., 753 State Ave., Ste. 475, KCKs. 66101	04/28/2009 (date)

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

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of the information is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes. General Counsel Exhibit A

FILE CO

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD



Kansas City Regional Office
8600 Farley Street - Suite 100
Overland Park, Kansas 66212-4677
Telephone: (913) 967-3000
Fax Number: 913-967-3010
Agent Assigned: (913)967-3015E-mail Address: Susan.Wade-Wilhoit@nlrb.gov

Resident Office:
224 S. Boulder Ave., Suite 318
Tulsa, OK 74103
Telephone: (918) 581-7952
Fax Number: 918-581-7970

April 29, 2009

Mr. Mike Buckner
Capital Iron Works Company
701 Southeast Adams Street
P.O. Box 2098
Topeka, KS 66607

RE: Capital Iron Workers Company
Case 17-CA-24499

Dear Mr. Buckner:

A charge alleging that you have engaged in violations of the Labor Management Relations Act, as amended, is herewith served upon you. Carefully read the enclosed Form NLRB-4541, explaining our investigative and voluntary settlement procedures. Also enclosed is Notice of Appearance Form NLRB-4701 if you wish to be represented by counsel or other representative or if you wish to ensure that the party receives copies of certain documents or correspondence from the agency in addition to charges, petitions and formal documents (see NLRB-4541 for a full explanation).

Please promptly submit to the Board agent named below a complete written account of the facts and an initial statement of your position with respect to the allegations, to assist us in understanding and considering your position when taking evidence from the Charging Party.

FILING DOCUMENTS WITH REGIONAL OFFICES: The Agency is moving toward a fully electronic records system. To facilitate this important initiative, the Agency strongly urges all parties to submit documents and other materials (except unfair labor practice charges and representation petitions) to Regional Offices through the Agency's E-Filing system on its website: <http://www.nlrb.gov> (See Attachment to this letter for instructions). Of course, the Agency will continue to accept timely filed paper documents.

I also strongly urge you to cooperate fully with the Board agent in providing all evidence relevant to the investigation, because it is my view that refusing to fully cooperate during the investigation may cause a case to be litigated unnecessarily. Full and complete cooperation includes timely providing the Board agent with all requested relevant documentary evidence, and all requested material witnesses under your control, so that witnesses' statements can be reduced to affidavit form by the Board agent. Please note that a position letter and affidavits not taken by the Board agent, do not constitute full and complete cooperation. Also, a position letter submitted in lieu of allowing the Board agent to interview and take affidavits, which contradictorily invites us to inquire further if more information is needed, will not be considered to be an offer to provide witnesses and will not constitute full cooperation. Consequently, you are hereby requested, and strongly urged, to promptly contact the Board agent to make arrangements to provide your evidence and witnesses.

You should be aware that we cannot accept conditions placed on the use of position statements or other submissions of evidence. Thus, the Federal Records Act mandates that records received by us (or copies of those records), which are used in furtherance of our mission, be retained by us during the processing of the case and after it closes. We must retain copies of any proffered position statement or evidence until the regulatory retention period has elapsed. Furthermore, the Freedom of Information Act would require the release of much of the information supplied, particularly position statements which generally are subject to disclosure once a case closes. Consequently, we cannot guarantee that information given to us will be kept confidential, and we will not agree to restrict the use of such records if they are submitted to us with any conditional language. If such declarations of restriction are unilaterally placed in such documents, we will not abide by them and we will not notify you or return the documents to you. They will be utilized by this Agency in accordance with the above and extant law and regulation, including as evidence in litigation before the Board and courts.

Also, under the Freedom of Information Act, charges are subject to prompt disclosure to the public. Thus, you may have been contacted by persons who have obtained such information and who seek to represent you before this Agency. You may be assured that no such organization or person has any "inside knowledge" or favored relationship with this Agency; their information regarding this matter is only that which must be made available to the public.

If you are a non-English speaker and need assistance, please inform the Board agent assigned to this case.

A copy of the National Labor Relations Board customer service standards "Our Services Our Standards", concerning the processing of unfair labor practice cases, can be found on the Agency's Internet site under "Public Notices," and then select Unfair Practice Cases.

Very truly yours,

/s/ Daniel L. Hubbel

Daniel L. Hubbel
Regional Director

DLH:mm

CATS/Docket - CA Initial Letter.ctm

Board Agent handling case:
Susan A. Wade-Wilhoit

Telephone:

(913)967-3015

E-mail Address Susan.Wade-Wilhoit@nrlb.gov

Enclosures

cc: Ms. Angela M. Atkinson, Attorney
Blake & Uhlig, P.A.
475 New Brotherhood Bldg
753 State Ave
Kansas City, KS 66101

Boilermakers Local Lodge 83
5910 East 86th Street
Kansas City, MO 64138

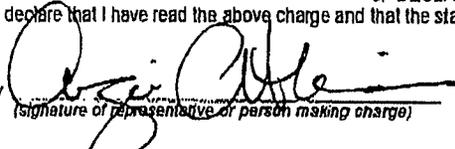
INTERNET
FORM NLRB-501
(2-09)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
AMENDED CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 17-CA-24499	Date Filed June 29, 2009

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Capital Iron Works Company	b. Tel. No. 785-234-0427
	c. Cell No.
	f. Fax No. 785-234-0499
d. Address (Street, city, state, and ZIP code) 701 Southeast Adams Street P.O. Box 2098 Topeka, KS 66607	e. Employer Representative Mike Buckner
	g. e-Mail
	h. Number of workers employed approximately 8
i. Type of Establishment (factory, mine, wholesaler, etc.) steel manufacturing	j. Identify principal product or service steel fabrication
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) and Section (d) _____ 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.	
<p>2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)</p> <p>During the past six months the above-named employer, by its officers, agents and representatives, has failed and refused to bargain collectively and in good faith with Boilermakers Local 83, by failing and refusing the Union's demand that it execute the collective bargaining agreement the parties reached in July, 2008.</p> <p>During the past six months the above-named employer, by its officers, agents and representatives, has unilaterally changed terms and conditions of employment of unit employees during the term of the current agreement.</p> <p>Since on or about April 10, 2009, and at all times thereafter, the above-named employer has failed and refused to bargain collectively and in good faith with Boilermakers Local 83 by failing and refusing to respond to a valid information request.</p>	
<p>3. Full name of party filing charge (if labor organization, give full name, including local name and number)</p> <p>Boilermakers Local Lodge 83</p>	
4a. Address (Street and number, city, state, and ZIP code) 5910 East 86th Street Kansas City, MO 64138	4b. Tel. No. 819-523-8300
	4c. Cell No.
	4d. Fax No. 816-523-2832
	4e. e-Mail bmi83@bmi83.org
<p>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)</p> <p>International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO</p>	
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.	
By  Angela M. Atkinson <small>(Signature of representative or person making charge)</small>	Tel. No. 913-321-8884
<small>(Print/type name and title or office, if any)</small>	Office, if any, Cell No.
	Fax No. 913-321-2396
	e-Mail ama@blake-uhlig.com
Address Blake & Uhlig, P.A., 753 State Ave., Ste. 475, KCKs. 66101	06/29/2009 <small>(date)</small>

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

PRIVACY ACT STATEMENT

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UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Kansas City Regional Office
8600 Farley Street - Suite 100
Overland Park, Kansas 66212-4677
(913) 967-3000
Fax Number: 913-967-3010
(913)967-3015

Resident Office:
224 South Boulder Ave., Suite 318
Tulsa, OK 74103
(918) 581-7952
Fax Number: 918-581-7970
Susan.Wade-Wilhoit@nlrb.gov

June 29, 2009

Mr. Mike Buckner
Capital Iron Works Company
701 Southeast Adams Street
P.O. Box 2098
Topeka, KS 66607

RE: Capital Iron Works Company
Case 17-CA-24499.

Dear Mr. Buckner:

Please be advised that the charge in this case has been amended in accordance with the enclosed copy of the amended charge.

Very truly yours,

/s/ Daniel L. Hubbel

Daniel L. Hubbel
Regional Director

DLH:mmm

CATS/Docket - Amd Charge Initial Letter.ctm

Enclosure

cc: Boilermakers Local Lodge 83
5910 East 86th Street
Kansas City, MO 64138

Ms. Angela M. Atkinson, Attorney
Blake & Uhlig, P.A.
475 New Brotherhood Bldg
753 State Ave
Kansas City, KS 66101

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET
FORM NLRB-201
(2-08)
SECOND AMENDED

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 17-CA-24499	Date Filed July 27, 2009

INSTRUCTIONS:

File an original with NLRB Region Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Capital Iron Works Company	b. Tel. No. 785-234-0427
	c. Cell No.
	f. Fax No. 785-234-0499
d. Address (Street, city, state, and ZIP code) 701 Southeast Adams Street P.O. Box 2098 Topeka, KS 66607	e. Employer Representative Mike Buckner
	g. e-Mail
	h. Number of workers employed approximately 8
i. Type of Establishment (factory, mine, wholesaler, etc.) steel manufacturing	j. Identify principal product or service steel fabrication
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (1st subsections) (5) and 8(d) 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) During the past six months the above-named employer, by its officers, agents and representatives, has failed and refused to bargain collectively and in good faith with Boilermakers Local 83, by failing and refusing to among other things: execute the applicable collective bargaining agreement; remit union dues deducted from employees' paychecks; timely remit union dues deducted from employees' paychecks, pay contractually required wage increases, pay the correct amount for safety eyeglass reimbursements, and remit 401(k) contribution to the plan as required by the collective bargaining agreement. Since on or about April 10, 2009, and at all times thereafter, the above-named employer has failed and refused to bargain collectively in good faith with Boilermakers Local 83 by failing and refusing to respond to a valid information request. Since on or about May 14, 2009, and at all times thereafter, the above-named employer has failed and refused to bargain collectively in good faith with Boilermakers Local 83 by failing and refusing to respond to a valid information request.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Boilermakers Local Lodge 83	
4a. Address (Street and number, city, state, and ZIP code) 5910 East 86th Street Kansas City, MO 64138	4b. Tel. No. 516-523-8300
	4c. Cell No.
	4d. Fax No. 816-523-2832
	4e. e-Mail gmi83@bmi83.org
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) International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, 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.	
By  (signature of representative or person making charge)	Tel. No. 913-321-8884
JOSEPH W. MORGLAND, ATTORNEY (Print name and title or office, if any)	Office, if any, Cell No.
	Fax No. 913-321-2396
	e-Mail ama@blake-uhlig.com
Address Blake & Uhlig, P.A., 753 State Ave., Ste. 475, KCKS 66101	7/27/09 (date)

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

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Kansas City Regional Office
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(913) 967-3000
Fax Number: 913-967-3010
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Resident Office:
224 South Boulder Ave., Suite 318
Tulsa, OK 74103
(918) 581-7952
Fax Number: 918-581-7970
Susan.Wade-Wilhoit@nlr.gov

July 27, 2009

Mr. Mike Buckner
Capital Iron Works Company
701 Southeast Adams Street
P.O. Box 2098
Topeka, KS 66607

RE: Capital Iron Works Company
Case 17-CA-24499

Dear Mr. Buckner:

Please be advised that the charge in this case has been amended in accordance with the enclosed copy of the amended charge.

Very truly yours,

/s/ Daniel L. Hubbel

Daniel L. Hubbel
Regional Director

DLH:pmc
Enclosure

cc:

Boilermakers Local Lodge 83
5910 East 86th Street
Kansas City, MO 64138

Ms. Angela M. Atkinson, Attorney
Blake & Uhlig, P.A.
475 New Brotherhood Bldg
753 State Ave
Kansas City, KS 66101

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

CAPITAL IRON WORKS COMPANY

and

Case 17-CA-24499

BOILERMAKERS LOCAL LODGE 83,
affiliated with INTERNATIONAL BROTHERHOOD
OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS,
FORGERS & HELPERS, AFL-CIO

COMPLAINT AND NOTICE OF HEARING

Boilermakers Local Lodge 83, affiliated with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO, herein called the Union, has charged that Capital Iron Works Company, herein called the Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151, et seq., herein called the Act. Based thereon the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1.

(a) The charge in this proceeding was filed by the Union on April 29, 2009, and a copy was served by regular mail on Respondent on the same date.

(b) The amended charge in this proceeding was filed by the Union on June 29, 2009, and a copy was served by regular mail on Respondent on the same date.

(c) The second amended charge in this proceeding was filed by the Union on July 27, 2009, and a copy was served by regular mail on Respondent on the same date.

2.

(a) At all material times Respondent, a corporation, with an office and place of business located at 701 Southeast Adams Street, Topeka, Kansas, herein called Respondent's facility, has been engaged in the fabrication of steel.

(b) During the 12-month period ending December 31, 2008, Respondent, in conducting its business operations described above in paragraph 2(a), purchased and received at its Topeka, Kansas facility goods valued in excess of \$50,000 directly from sources located outside the State of Kansas.

(c) During the 12-month period ending December 31, 2008, Respondent, in conducting its business operations described in paragraph 2(a) sold and shipped from its Topeka, Kansas facility goods valued in excess of \$50,000 directly to points outside the State of Kansas.

(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 Union has been a labor organization within the meaning of Section 2(5) of the Act.

4.

At all material times Mike Buckner held the position of Respondent's Owner/President, 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.

5.

(a) 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 production and maintenance employees, including truck drivers, employed by Respondent at its facility located at 701 Southeast Adams Street, Topeka, Kansas, but excluding office employees, professional employees, guards and supervisors as defined in the Taft-Hartley Act, and those excluded from the unit by the National Labor Relations Board certification in Case 17-RC-3895.

(b) On August 30, 1962, the Union was certified as the exclusive collective bargaining representative of the Unit.

(c) At all times since August 30, 1962, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6.

(a) On or about July 7, 2008, the Union and Respondent reached complete agreement on terms and conditions of employment of the Unit to be incorporated in a collective-bargaining agreement.

(b) Since on or about February 9, 2009, the Union has requested that Respondent execute a written contract containing the agreement described above in paragraph 6(a).

(c) Since on or about February 9, 2009, Respondent, through Mike Buckner, has failed and refused to execute the agreement described above in paragraph 6(a).

7.

(a) At all material times, Respondent has failed and refused to remit to the Union monies deducted from employees' paychecks pursuant to dues check-off authorizations for the months of December 2008 and May 2009.

(b) In late April 2009, Respondent delayed remitting to the Union monies deducted from employees' paychecks pursuant to check-off authorizations for the months of January 2009 through March 2009.

(c) During the six month period preceding the filing of the charge to the present, Respondent has failed to grant employees a \$.50 periodic wage increase in accordance with the unsigned collective-bargaining agreement described above in paragraph 6.

(d) Since on or about March 15, 2009, Respondent has failed to make the 401(K) contribution for hours that employees worked in 2008.

(e) Since in or about February 2009, Respondent has failed to grant employees reimbursement for safety glasses at the monetary level specified in the unsigned collective-bargaining agreement described above in paragraph 6.

(f) The subjects set forth above in paragraphs 7(a) through 7(e) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective-bargaining.

(g) Respondent engaged in the conduct described above in paragraphs 7(a) through 7(e) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to the conduct and the effects of this conduct.

8.

(a) On or about April 10, 2009, the Union requested in writing that Respondent provide the Union a copy of the following documents for the period of July 1, 2008 to the present:

- 1) All payroll records and other documents related to payment of performance based pay to bargaining unit employees;
- 2) All payroll records for all employees who are not at the top of their classification;

- 3) All records, copies of checks and other documents related to the Company's reimbursement payment to unit employees for prescription glasses;
- 4) All 401K contribution records.

(b) On or about May 14, 2009, the Union requested in writing that Respondent provide the Union with an accounting of the dues monies remitted to the Union by check #16099.

(c) The information requested by the Union described above in paragraphs 8(a) and 8(b) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(d) At all material times, and continuing to date, Respondent, has failed and refused to furnish the Union with the information requested as described above in paragraph 8(a) and 8(b).

9.

By the conduct described above in paragraphs 6, 7, and 8 Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees in violation of Section 8(a)(1) and (5) and Section 8(d) of the Act.

10.

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

11.

As part of the remedy for the unfair labor practices alleged above in paragraphs 6, 7, and 8, the General Counsel seeks an Order requiring Respondent to make employees whole by, inter alia, making employees' Darren Janssen, Gary King, and Christopher Ortega whole for the failure to pay them the periodic wage increases described above in paragraph 7(c), and by making employee Kermit Schrenk whole for the failure to reimburse him for safety glasses as described above in

paragraph 7(e). The General Counsel also seeks an Order requiring Respondent to pay quarterly compounded interest on all backpay and monetary awards granted as a remedy for Respondent's unfair labor practices. 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 August 12, 2009 or postmarked on or before August 11, 2009**. Unless filed electronically in a pdf format, 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 by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. 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 document 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 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 be accomplished in conformance with the requirements of Section 102.114 of 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 Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **October 6, 2009, at 9:00 am (CT), Sharon K. Evans Hearing Room, National Labor Relations Board, 8600 Farley Street, Suite 100, Overland Park, Kansas**, the exact location to be designated at a later date, 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 at Overland Park, Kansas, this 29th day of July, 2009.



/s/ Daniel L. Hubbel
Daniel L. Hubbel, Regional Director
National Labor Relations Board
Seventeenth Region
8600 Farley Street - Suite 100
Overland Park, Kansas 66212-4677

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Capital Iron Works Company

and

Boilermakers Local Lodge 83, affiliated with International Brotherhood of
Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO

Case No. 17-CA-24499

DATE OF MAILING July 29, 2009

AFFIDAVIT OF SERVICE OF COMPLAINT AND NOTICE OF HEARING WITH FORM 4668 ATTACHED

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid certified mail upon the following persons, addressed to them at the following addresses:

PARTIES RECEIVING CERTIFIED MAIL:

Mr. Mike Buckner
Capital Iron Works Company
701 Southeast Adams Street
P.O. Box 2098
Topeka, KS 66607

Respondent
Certified No. 7008 1830 0000 7774 0756

Boilermakers Local Lodge 83
5910 East 86th Street
Kansas City, MO 64138

Charging Party
Certified No. 7008 1830 0000 7774 0763

PARTIES RECEIVING REGULAR MAIL:

Ms. Angela M. Atkinson, Attorney
Blake & Uhlig, P.A.
475 New Brotherhood Bldg
753 State Ave
Kansas City, KS 66101

Wilma Carson

<p>Subscribed and sworn before me on</p> <p>July 30, 2009</p>	<p>DESIGNATED AGENT</p> <p><i>Marion L. Murphy</i></p> <p>Marion L. Murphy</p> <p>NATIONAL LABOR RELATIONS BOARD</p>
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**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)



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UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Region 17
8600 Farley Street - Suite 100
Overland Park, Kansas 66212-4677
Telephone: 913-967-3000
Fax Number: 913-967-3010
Agent Assigned: (913)967-3027
William.LeMaster@nlrb.gov

Resident Office:
224 South Boulder Ave. - Suite 318
Tulsa, OK 74103-3006
Telephone: 918-581-7952
Fax Number: 918-581-7970

August 13, 2009

**By Facsimile to (785)234-0499
and Regular U.S. Mail**

Mr. Mike Buckner
Capital Iron Works Company
701 Southeast Adams Street
PO Box 2098
Topeka, Kansas 66607

Re: Capital Iron Works Company
Case 17-CA-24499

Dear Mr. Buckner:

Pursuant to Sections 102.20 and 102.21 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Employer's Answer to the Complaint, which issued in the above-captioned case, was due 10 days from the date of service thereof, with copies of the Answer to be served on each of the other parties. This office sent the Complaint to you by certified mail on July 29, 2009. The United States Postal Service left a notice at your above-address on July 30, 2009 and the Complaint was delivered on August 11, 2009. I have enclosed another copy of the Complaint for your convenience.

As of this date, we have not received an Answer to the Complaint. Section 102.20 of the Board's Rules and Regulations provides that if no Answer is filed, all of the allegations in the Complaint shall be deemed to be admitted and may be so found by the Board. As I explained in my voicemail left for you on this date, this letter is to advise you that if you do not file an Answer with our office by August 20, 2009, Counsel for the General Counsel will file a Motion for Default Judgment with the Board asking that all allegations in the Complaint be found true without a hearing. If you should have any questions, feel free to call me at (913)967-3027.

Very truly yours,

A handwritten signature in black ink, appearing to read "William F. LeMaster".

William F. LeMaster
Field Attorney

MODE = MEMORY TRANSMISSION START=AUG-13 10:33 END=AUG-13 10:36

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NATIONAL LABOR RELATIONS BOARD

Region 17

Kansas City Regional Office

8600 Farley Street - Suite 100

Overland Park, Kansas 66212-4677

Resident Office:

224 South Boulder Ave. - Suite 318

Tulsa, OK 74103-3066

(918)581-7951

Phone: (913) 967-3027

Fax: (913) 967-3010

Date: August 13, 2009

Number of pages: 9
(Including this page)

TO: Mr. Mike Buckner
Capital Iron Works Company
701 Southeast Adams Street
PO Box 2098
Topeka, Kansas 66607

Fax: (785)234-0499

FROM: William F. McMaster
Field Attorney

Subject: 17-CA-24499
Capital Iron Works Company

Comments: Letter concerning the Respondent's failure to file an Answer to Complaint.

This communication is intended for the sole use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication may be strictly prohibited. If you have received this communication in error, please notify me immediately by telephone call, and return communication to me at the address above via United States Postal Service. Thank you.