

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

HARTZHEIM DODGE, INC.

and

Case 32-CA-24548

**DISTRICT LODGE NO. 190, LOCAL
LODGE NO. 1101, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS**

**MOTION TO TRANSFER CASE TO THE BOARD
AND FOR DEFAULT SUMMARY JUDGMENT**

The General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned, pursuant to Sections 102.20, 102.21 and 102.24 of the Board's Rules and Regulations, Series 8, as amended, hereby moves that this case be transferred to the Board and that it grant default summary judgment against Hartzheim Dodge, Inc., herein called Respondent. In support of this motion, the General Counsel shows as follows:

1. On May 20, 2009, District Lodge No. 190, Local Lodge No. 1101, International Association of Machinists and Aerospace Workers, herein called the Union, filed an unfair labor practice charge in Case 32-CA-24548, alleging that Respondent has engaged in conduct violative of Sections 8(a)(1) and (5) of the National Labor Relations Act, as amended, herein called the Act. A copy of that charge is attached and incorporated herein as *Exhibit 1(a)*. On that same date, a copy of the charge in Case 32-CA-24548 was served on Respondent by mail. Copies of the transmittal letter and the affidavit of service by mail of that charge are attached and incorporated herein as *Exhibits 1(b)* and *1(c)*.

2. On July 31, 2009, the Regional Director for the Thirty-Second Region of the Board issued a Complaint and Notice of Hearing in this case, alleging that Respondent has engaged in, and is engaging in, conduct violative of Sections 8(a)(1) and (5) of the Act. A copy of that Complaint and Notice of Hearing is attached and incorporated herein as *Exhibit 2*.

3. On July 31, 2009, a copy of that Complaint and Notice of Hearing was served on Respondent by certified mail. A copy of the affidavit of service is attached and incorporated herein as *Exhibit 3*. A copy of the return receipt card, indicating that Respondent received the Complaint and Notice of Hearing by no later than August 11, 2009, is attached and incorporated herein as *Exhibits 4(a)* and *4(b)*.¹

4. No Answer from Respondent was received within fourteen (14) days of the service of that Complaint and Notice of Hearing, and to date no Answer to the Complaint has been received from Respondent, nor any request for any extension of time to file an Answer.

5. Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations of a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the Complaint that issued in this case affirmatively states that, unless an answer is filed within 14 days of service, all the allegations in the Complaint shall be considered to be admitted to be true. In such circumstances, Respondent's failure to file an answer to the Complaint,

¹ Although the return receipt card does not indicate the date when Respondent received (signed for) the Complaint and Notice of Hearing, the Region received the return receipt card from the Postal Service on August 11, 2009, as reflected by the Region's receipt stamp on the back of that card (*Exhibit 4(b)*).

its failure to request any additional time to file such an answer, and its failure to show good cause for not filing such an answer, fully warrant the granting of a default judgment.

12. Moreover, even though Respondent appears to be unrepresented by counsel, that does not excuse its failure to file an answer, particularly where, as here, Respondent has made no effort whatsoever to comply with the Board's Rules and Regulations. See, e.g., *All American Fire Protection, Inc.*, 336 NLRB 767 (2001); *Country Lane Construction, Inc.*, 339 NLRB 1321 (2003).

WHEREFORE, in view of the matters set forth above and upon consideration of the documents attached hereto and incorporated in this Motion, and inasmuch as no issues of fact or law have been raised requiring a hearing in this case, the undersigned requests that the Board find and conclude that Respondent has violated, and is violating, Sections 8(a)(1) and (5) of the Act as alleged in the Complaint, and that the Board issue a Decision and Order in conformity with those allegations.

DATED AT Oakland, California this 10th day of September 2009.

Respectfully submitted,



Kenneth Ko
Counsel for the General Counsel
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 32-CA-24548	Date Filed 5-20-09

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 Hartzheim Dodge	b. Tel. No. (408) 445-4500
	c. Cell No.
d. Address (Street, city, state, and ZIP code) 1050 Capitol Expressway Automall San Jose, CA 95136-1193	e. Employer Representative Glenn Hartzheim
	f. Fax No. (408) 265-1287
	g. e-Mail
	h. Number of workers employed
i. Type of Establishment (factory, mine, wholesaler, etc.) Auto Dealership	j. Identify principal product or service Automobiles
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)	
Within the last six months, the above-named employer has failed to engage in effects bargaining after numerous attempts by the Union to bargain.	
<p>COPY SENT NLRB Date <u>5/20/09</u> By <u>J.L.</u></p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">OAKLAND CA 2009 MAY 20 AM 6:43 RECEIVED NLRB REGION 32</p>	
By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number)	
Machinists Automotive Lodge Local 1101	
4a. Address (Street and number, city, state, and ZIP code) 2102 Almaden Road, Suite 105 San Jose, CA 95125	4b. Tel. No. 408.723.4900
	4c. Cell No.
	4d. Fax No. 408.448.4618
	4e. e-Mail
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 Association of Machinists and Aerospace Workers	
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 <u>[Signature]</u> (signature of representative or person making charge)	Caren P. Sencer/Attorney (Print/type name and title or office, if any)
Address: <u>1001 Marina Village Parkway, Suite 200, Alameda, CA 94501</u>	May 19, 2009 (date)
	Tel. No. 510.337.1001
	Office, if any, Cell No.
	Fax No. 510.337.1023
	e-Mail

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.

EXHIBIT 1(a)



NATIONAL LABOR RELATIONS BOARD

Region 32

Ronald V. Dellums Federal Building & Courthouse
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

Telephone: 510/637-3300

FAX: 510/637-3315

Website: www.nlr.gov

Board Agent's E-Mail: Cynthia.Rence@nlrb.gov

R-6

May 20, 2009

Mr. Glen Hartzheim
Hartzheim Dodge Hayward
1050 Capital Expressway Automall
San Jose, CA 95136

**Re: Hartzheim Dodge
Case 32-CA-24548**

Dear Mr. Hartzheim:^{1/}

This is to inform you that a charge, a true copy of which is enclosed, was filed in the above-entitled matter. Also enclosed is a copy of Form NLRB-4541 pertaining to our investigation and voluntary adjustment procedures.

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.nlr.gov> (See Attachment to this letter for instructions). Of course, the Agency will continue to accept timely filed paper documents.

For information pertaining to this case, please contact **Cynthia C. Rence, (510)637-3293**. When the Board agent solicits relevant evidence from you or your counsel, I request and strongly urge you or your counsel to promptly present to the Board agent any and all evidence relevant to the investigation. It is my view that a refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily. Full and complete cooperation includes, where relevant, timely providing all material witnesses under your control to a Board agent so that witnesses' statements can be reduced to affidavit form, and providing all relevant documentary evidence requested by the Board agent. The submission of a position letter or memorandum, or the submission of affidavits not taken by a Board agent, does not constitute full and complete cooperation. Further, please be advised that we cannot accept any limitations on the use of any evidence or position statements that are provided to the Agency. Thus any claim of confidentiality cannot be honored except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge.

^{1/} The National Labor Relations Board will provide assistance to individuals with limited English. If you or anyone involved in this case is in need of assistance due to their limited English, please advise this Office as soon as possible.

La Junta Nacional de Relaciones de Trabajo proveerá asistencia a personas con ingles limitado. Si uno necesita asistencia debido a su ingles limitado, debe avisar a esta Oficina tan pronto posible.

EXHIBIT 1(b)

May 20, 2009

In this regard, we are required by the Federal Records Act to keep copies of documents used in furtherance of our investigation for some period of years after a case closes. Further, we may be required by the Freedom of Information Act to disclose such records upon request, absent some applicable exemption such as those that protect confidential financial information or personal privacy interests (e.g., Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4)). Accordingly, we will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the foregoing laws, regulations and policies. Please state the case name and number on all correspondence.

Please submit promptly a complete written account of the facts and a statement of your position in respect to the allegations set forth in the charge. All communications and submissions should be made to the Board Agent.

Enclosed for the Employer is a form requesting commerce data which should be completed, signed by an employer representative and returned to my attention.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceeding before the National Labor Relations Board and the courts. Please note that "Notice of Appearance" Form NLRB-4701 may be executed by your designated representative

Please be advised that, under the Freedom of Information Act, unfair labor practice charges and representation petitions are subject to prompt disclosure to members of the public upon request. In this regard, you may have received a solicitation by organizations or persons who have obtained public information concerning this matter and who seek to represent you before our Agency. You may be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board; their information regarding this matter is only that which must be made available to any member of the public.

Very truly yours,

Alan B. Reichard

Alan B. Reichard
Regional Director

Enclosures

Case 32-CA-24548

Filed: May 20, 2009

I certify that I served the above-referenced **CHARGE** by Regular Mail on the addressee(s) named below:

Mr. Glen Hartzheim
Hartzheim Dodge Hayward
1050 Capital Expressway Automall
San Jose, CA 95136

Served and signed on May 20, 2009.



(Signature)

EXHIBIT 1(c)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

HARTZHEIM DODGE, INC.

and

Case 32-CA-24548

**DISTRICT LODGE NO. 190, LOCAL
LODGE NO. 1101, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS**

COMPLAINT AND NOTICE OF HEARING

It having been charged by District Lodge No. 190, Local Lodge No. 1101, International Association of Machinists and Aerospace Workers, herein called the Union, that Hartzheim Dodge, Inc., herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Complaint and Notice of Hearing and alleges as follows:

EXHIBIT 2

1.

The charge was filed by the Union on May 20, 2009, and a copy was served on Respondent by mail on or about that same date.

2.

(a) At all times material herein, Respondent, a California corporation, has been engaged in the sale and servicing of new and used automobiles at a facility located in San Jose, California, herein called the Facility.

(b) During the past twelve months, Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000.

(c) During the past twelve months, Respondent, in the course and conduct of its business operations, purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

3.

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

4.

The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5. |

The following-described employees of Respondent employed at the Facility, 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 performing work described in and covered by "Article 1 - Jurisdiction" of the May 1, 2006 through April 30, 2011 collective bargaining agreement between Respondent and the Union (herein called the Agreement); excluding all other employees, guards, and supervisors as defined in the Act.

6.

Since on or about May 1, 2006, and at all times material herein, the Union has been the designated exclusive collective-bargaining representative of the employees in the Unit, and since said date the Union has been recognized as such representative by Respondent. Such recognition has been embodied in the Agreement.

7.

At all times since May 1, 2006, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the Unit, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

8.

(a) On or about May 15, 2009, Respondent closed the Facility and terminated all of the Unit employees, herein called the Facility Closure.

(b) The Facility Closure relates to the wages, rates of pay, hours of employment and other terms and conditions of employment of the employees in the Unit and is a mandatory subject for the purposes of collective-bargaining.

(c) Respondent engaged in the Facility Closure without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to the effects of the Facility Closure.

9.

By the acts and conduct described above in paragraphs 8(a) and 8(c), and by each of said acts, Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and Respondent thereby has been engaging in unfair labor practice affecting commerce within the meaning of Sections 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

WHEREFORE, as a part of the remedy for the unfair labor practices alleged above in paragraphs 8(a) and 8(c), the General Counsel seeks an order requiring that Respondent: (1) make whole Unit employees in the manner set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968); and (2) preserve and, within fourteen (14) days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other reports, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of any order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner. In this regard, the General Counsel seeks quarterly compound interest on all back pay or monetary awards found appropriate in this case.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

PLEASE TAKE NOTICE that on the 7th day of October 2009, at 9:00 a.m., in the Oakland regional Office of the Board, 1301 Clay Street, Room 300N, Oakland, CA 94612-5224, and continuing on consecutive days thereafter, a hearing will be conducted before a duly designated Administrative Law Judge of the Board on the allegations in this Complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear in person and present testimony. Form NLRB 4668, Summary of Standard Procedures in Formal Hearing Held Before the National Labor Relations Board in Unfair Labor Practice Proceedings, is attached.

ANSWER REQUIREMENT

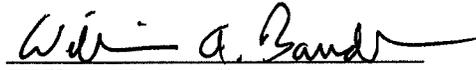
Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Complaint. The answer must be **received by this office on or before August 14, 2009, or postmarked on or before August 13, 2009.** Unless filed electronically in a 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 date of filing, 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 an answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer needs 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 continue to 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 still be accomplished in conformance with 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 untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

DATED AT Oakland, California this 31st of July 2009.



William A. Baudler
Acting Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HARTZHEIM DODGE, INC.

and

**DISTRICT LODGE NO. 190, LOCAL
LODGE NO. 1101, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS**

Case: 32-CA-24548

DATE OF MAILING: July 31, 2009

AFFIDAVIT OF SERVICE OF COMPLAINT AND NOTICE OF HEARING

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 postpaid mail upon the following persons, addressed to them at the following addresses:

Mr. Glen Hartzheim
Hartzheim Dodge Hayward
1050 Capital Expressway Automall
San Jose, CA 95136
7001 2510 0007 4031 1255

Mr. Charles Toby
Grand Lodge Representative
IAM & AW Western Regional Office
620 Coolidge Drive, Suite 130
Folsom, CA 95630

Mr. Richard Breckenridge
Machinists Automotive Local 1101
2102 Alameda Road, Suite 105
San Jose, CA 95125

Ms. Caren P. Sencer, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091

Attn: Ramona Cota
Peters Shorthand Reporting Co.
11344 Coloma Road, Suite 740
Gold River, CA 95670

National Labor Relations Board
Division of Judges
901 Market St., Suite 300
San Francisco, CA 94103

E-File

Subscribed and sworn to before me this 31st day of July 2009.

DESIGNATED AGENT

/s/ Shirley M. Owens

NATIONAL LABOR RELATIONS BOARD

24548

SENDER: COMPLETE THIS SECTION **COMPLETE THIS SECTION ON DELIVERY**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Glen Hartzheim
Hartzheim Dodge Hayward
1050 Capital Expressway Automall
San Jose, CA 95136

A. Signature Agent Addressee
Steven Orant

B. Received by (Printed Name) C. Date of Delivery
STEVEN ORANT

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) **7001 2510 0007 4031 1255**

EXHIBIT 4(a)

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP code in this box •

NATIONAL LABOR RELATIONS BOARD
REGION 32
Federal Building
1301 Clay St., Suite 300N
Oakland, California 94612-5211

2007
MAY 10 10 25 AM '07
RECEIVED
REGION 32
OAKLAND CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HARTZHEIM DODGE, INC.

and

DISTRICT LODGE NO. 190, LOCAL
LODGE NO. 1101, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS

Case: 32-CA-24548

DATE OF MAILING: September 10, 2009

AFFIDAVIT OF SERVICE OF MOTION TO TRANSFER CASE TO THE BOARD
AND FOR DEFAULT SUMMARY JUDGMENT

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 postpaid mail upon the following persons, addressed to them at the following addresses:

Mr. Glen Hartzheim
Hartzheim Dodge Hayward
1050 Capital Expressway Automall
San Jose, CA 95136
7001 2510 0007 6033 0120

Mr. Charles Toby
Grand Lodge Representative
IAM & AW Western Regional Office
620 Coolidge Drive, Suite 130
Folsom, CA 95630

Mr. Richard Breckenridge
Machinists Automotive Local 1101
2102 Alameda Road, Suite 105
San Jose, CA 95125

Ms. Caren P. Sencer, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091

Les Heltzer
Executive Secretary
National Labor Relations Board
1099 14th St. N. W., Suite 11610
Washington, D. C. 2005

E-file

Subscribed and sworn to before me this 10th of September
2009.

DESIGNATED AGENT

/s/ Shirley M. Owens

NATIONAL LABOR RELATIONS BOARD