

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

MICHELS CORPORATION

Case 30-CA-081206

AND

**INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 139, AFL-CIO**

**REQUEST FOR SPECIAL PERMISSION TO APPEAL AND APPEAL FROM THE
ADMINISTRATIVE LAW JUDGE'S APPROVAL OF NON-BOARD SETTLEMENT
AGREEMENT AND DISMISSAL OF COMPLAINT**

Counsel for Acting General Counsel pursuant to Section 120.26 of the Board's Rules and Regulations requests special permission to appeal to the Board Administrative Law Judge Christine Dibble's (ALJ) approval of the non-Board settlement agreement entered into by the International Union of Operating Engineers, Local 139, AFL-CIO (Charging Party or Union), Michels Corporation (Respondent) and discriminatee Rick Dehne. The non-Board settlement agreement is attached as Exhibit A. By approving the settlement agreement, the ALJ granted the Charging Party's request to withdraw its charge and dismissed the Complaint and Notice of Hearing. The Acting General Counsel opposes the settlement agreement because the settlement contains an overly broad and undefined "non-disparagement" clause which is contrary to Board policy and otherwise fails to satisfy the standards established by the Board in *Independent Stave Co.*, 287 NLRB 740, 41 (1987).

I. Background

The Union filed the initial charge in this matter on May 17, 2012 and an amended charge on July 16, 2012. The Complaint and Notice of Hearing issued on July 30, 2012. The hearing on the Complaint opened on October 9, 2012. The formal papers, which were admitted into evidence at the hearing, are attached as Exhibit B. Prior to the opening of the hearing, the Union, Respondent and Dehne reached a non-Board settlement agreement, a copy of which is attached as Exhibit A. The Acting General Counsel objected to the agreement on the basis that the settlement agreement: included an overly-broad non-disparagement clause; did not vindicate employee rights in that it did not contain any notice-posting provision nor any provision assuring employees that the Respondent would respect employee exercise of rights protected by the Act, and instead contained a broad confidentiality provision prohibiting the parties from discussing the settlement; and prohibited the discriminatee from any future re-employment with Respondent. Despite Acting General Counsel's objections, the ALJ accepted the non-Board settlement.

Had the Acting General Counsel been able to proceed with its case, it would have shown that the Complaint allegations stem from Dehne's claim for show-up pay under the parties' collective-bargaining agreement, after he, and the employees he carpooled with, drove nearly two hours to Respondent's jobsite on April 25, 2012, only to be informed just minutes before they were to arrive to work that work was cancelled for the day. Dehne spoke to his supervisors and Union about his claim for show-up pay. Respondent, through its agents and supervisors, countered with numerous threats and coercive statements, one of which was repeated to a union representative.

The Acting General Counsel would also have presented evidence that on May 9, 2012, Dehne was given an ultimatum by an admitted supervisor of Respondent, Lane Hrudka, that Dehne could either continue to work the same hours as everyone else on the project, or if he continued to insist on being paid show-up pay for April 25, 2012, he would begin work three hours later than everyone else on the job, resulting in three hours of lost overtime every day. Dehne insisted he be paid his show up pay, and, as threatened by Hrudka, his hours were changed. Instead of beginning at 6:00 a.m. with everyone else, Dehne's days began at 9:00 a.m. On May 10 and May 11, Dehne was also picked up from where he was working on the jobsite and driven back to his vehicle shortly before 5:00 p.m. so as to prevent him from accruing any overtime hours. On May 11, 2012, Respondent laid off Dehne, purportedly for "lack of work," at the peak of construction season in Wisconsin. To other employees on the jobsite, all of the above actions taken against Dehne were obviously a result of his claim for show-up pay, as Dehne could no longer carpool with his coworkers, was the only individual showing up at the jobsite three hours later than everyone else and was the first and only individual laid off from the job site, all just days after his claim for show up pay. As a result, other employees were effectively chilled from asserting their contractual rights and engaging in other Section 7 activity.

II. Analysis

A. The Board should reject the parties' non-Board settlement agreement as its non-disparagement provision is at odds with the purposes of the Act and Board policy.

The Board has held that "in exercising, its discretion, it will refuse to be bound by any settlement that is at odds with the Act or the Board's policies." *Independent Stave*, 287 NLRB at, 741, citing *Borg-Warner-Corp.*, 121 NLRB 1492, 1495 (1958). The non-disparagement provision of the non-Board settlement agreement is plainly at odds with the Act and Board policy. The last paragraph of the settlement agreement provides the following:

12. Non Disparagement. The Parties shall not directly or indirectly make or publish any disparaging comments about each other or the Released Parties.

According to the terms of the settlement agreement, the term “parties” includes Respondent, the Union, and Dehne. No context is provided elsewhere in the agreement as to what constitutes “disparagement” under the terms of the settlement agreement, nor is there any exclusion of Section 7 activity from this broad prohibition. This term of the non-Board settlement agreement is contrary to purposes of the Act as such language, in other contexts, has been found by the Board to chill the exercise of Section 7 rights. For example, most recently, in *Karl Knauz Motors, Inc.*, 358 NLRB No. 164 slip op at 1 (2012), the Board Found unlawful a “courtesy” provision in an employee handbook that “No one should be disrespectful or use profanity or any other language which injures the image or reputation of the Dealership.” The Board held that the courtesy provision was unlawful because it could reasonably be construed to include Section 7 activity. In so deciding, the Board found that there was nothing in the rule that would suggest that Section 7 activity was excluded and that an employee would reasonably assume that protests or criticism, otherwise protected, fell under that prohibition. Overly broad language that tends to chill employees in the exercise of their Section 7 rights is an issue that the Board has decided numerous times in various contexts. See *Southern Maryland Hospital*, 293 NLRB 1209, 1221 (1989), *enfd.* in relevant part 916 F.2d 932, 940 (4th Cir. 1990) (Board held that a rule that prohibiting “derogatory attacks on...hospital representatives” unlawful); *Claremont Resort & Spa*, 344 NLRB 832 (2005) (rule which prohibited “negative conversations about associates and/or managers” held to be an unlawful interference with employee Section 7 rights); and *Beverly Health & Rehabilitation Services*, 332 NLRB 347, 348 (2000), *enfd.* 297 F.3d 468 (6th

Cir. 2002) (unlawful rule prohibited “[m]aking false or misleading work-related statements concerning the company, the facility or fellow associates.”).¹

Under the parties’ non-Board settlement agreement, there is no exclusion of Section 7 activity from the broad terms of the non-disparagement clause. Dehne may reasonably assume that this provision prohibits him from engaging in criticism or protests of Respondent. Under the expansive non-disparagement provision, both Dehne and the Union are precluded from making honest and valid criticisms of Respondent that would otherwise be protected as Section 7 activity. In fact, Dehne’s underlying protected activity in this matter, his claim that Respondent was unjustly refusing to pay show-up pay, could likewise be considered disparagement. In its resolution of an unfair labor practice, Respondent should not be allowed to prohibit the very protected activity that, in its unlawful reaction to such protected activity, resulted in a Complaint issuing against Respondent. Furthermore, this language would prohibit Dehne from criticizing the Union and its conduct in this matter. It is clear that this language is not only contrary to Board policy but also has prospective impact on Dehne’s Section 7 rights. In *Goya Foods Inc.*, 358 NLRB No. 43 slip op. at 2 (2012) the Board refused to approve a settlement which forced discriminatees to waive their Section 7 rights, holding that future rights of employees and the rights of the public cannot be traded away through a private settlement agreement. Here, should Respondent take retaliatory actions against other union members, Dehne would be precluded from speaking up or engaging in collective action on their behalf if doing so would be construed as “disparaging” Respondent, even if it would be otherwise protected by the Act. Prohibiting

¹ While yet to be adopted by the Board, in *Echostar Technologies*, Administrative Law Judge Clifford Anderson provides a useful discussion of the word “disparaging” in the context of an employee handbook policy, ultimately finding the rule to be unlawful. *Echostar Technologies*, Case 27-CA-066726 (JD (SF))-44-12, September 20, 2012).

Dehne and the Union's future Section 7 activity cannot be in harmony with the Act and the settlement should be rejected for that reason alone.

B. The ALJ failed to properly consider and apply the factors set forth in *Independent Stave* for determining whether to approve a settlement agreement.

While the Board has a policy of encouraging the peaceful resolution of disputes, it is not required to give effect to all settlements reached by the parties to a dispute. *Independent Stave*, 287 NLRB at 741. Ultimately, it is the Board that has the exclusive power to prevent unfair labor practices, and "that function is to be performed in the public interest and not in vindication of private rights." *Id.* In deciding whether the purposes and policies underlying the Act would be effectuated by the approval of a particular settlement agreement, the Board has identified the following four factors:

- (1) whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding the settlement;
- (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of litigation;
- (3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and
- (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes.

Independent Stave, 287 NLRB at 743. With regard to the first factor in *Independent Stave*, Counsel for Acting General Counsel vehemently opposes the settlement in this matter. When the hearing opened, the ALJ questioned Dehne as to whether he was coerced in agreeing to the settlement and whether he fully understood the terms of the settlement. Dehne confirmed that he was not coerced and understood the settlement. However, Dehne's position in relation to the

institutional parties, Respondent and the Union, should also be considered. The Union has an interest in maintaining a good relationship with Respondent, as it is one of the largest construction contractors in Wisconsin, employing many of its members. Respondent, because of its size, has various connections and influence over other construction contractors throughout the state. Dehne depends on the Union for employment and is well aware of Respondent's influence in the industry, putting Dehne in a precarious position should he have chosen to stand in the way of the parties' reaching an agreement. While all this may not amount to coercion in the technical sense, it certainly calls into question the free nature of Dehne's acquiescence to the non-Board settlement.

As to the second factor, the settlement is not reasonable given the nature of the violations and the stage of the proceeding. The settlement was reached the day of the hearing, after extensive resources had already been expended in preparing for trial. As described above, this is a case in which there were numerous and repeated serious threats of adverse consequences. The recognized remedy for such threats is a notice posting, with express commitments that Respondent will not engage in the alleged unlawful conduct, so as to inform employees that their Section 7 rights will be respected. The Board has held that a notice posting is "not a mere formality" and serves to ensure that employees are fully informed of their statutory rights. See *Wyndham Palmas del Mar Resort and Villas*, 334 NLRB 514, 517 (2001). None of the threatening and coercive Section 8(a)(1) statements at issue are addressed by the terms of the settlement. Additionally, there is evidence that other employees were aware of Respondent's retaliatory actions against Dehne because of his assertion of contractual claims. There is no notice provision of any kind within the settlement agreement which would serve to protect those employees' rights and assure that future Section 7 activity will not result in similar retaliation.

Instead of providing the necessary assurances against retaliation, the settlement agreement contains an overbroad confidentiality provision which provides that the parties, including Dehne, will “not communicate or disclose to any other person, natural or otherwise, except as required by law, the contents of any term or provision contained herein or any other aspect of this Agreement between the Parties.” This provision, coupled with the lack of any notice, does nothing to dispel the precedent set by Respondent when it engaged in its unlawful behavior. Rather, the confidentiality provision ensures that Respondent’s employees will be left to conclude that should they choose to assert their contractual rights as Dehne did, they too will face similar retaliation without recourse. As both the Union and Dehne are precluded from discussing the settlement, those employees that witnessed or learned of Respondent’s retaliatory actions against Dehne will be left with the same impression they had the day Respondent laid off Dehne. It is also worth noting that because of the confidentiality and non-disparagement provisions of the settlement agreement, it appears Dehne is prohibited from explaining the reason for his termination of employment with Respondent to prospective employers or his fellow Union members.

Also, according to the Region’s calculations, Dehne’s total back pay, including benefit contributions, at the time of the hearing on October 9, 2012 was \$11,253.93. The non-Board settlement between the parties provides that Dehne receive only \$7,500 in exchange for a waiver of reinstatement, and a waiver of any future employment with Respondent, one of the largest construction contractors in Wisconsin. The Board should carefully scrutinize any prospective waiver of employee rights, particularly the right to nondiscriminatory consideration of future employment. Given the strength of the Acting General Counsel’s case, as well as the last minute

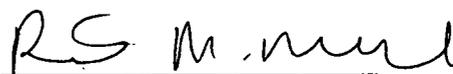
nature of the settlement, the settlement agreement was not reasonable given the nature of the violations alleged.

III. Conclusion

Because the settlement is contrary to Board policy and the Act and fails to meet the standard of reasonableness set forth in *Independent Stave*, and *Goya Foods*, supra, the Acting General Counsel requests that the Board grant its request for special permission to appeal the ALJ's approval of the non-Board settlement agreement, reverse the ALJ's approval of the settlement and remand this matter for further proceedings.

Dated at Milwaukee, Wisconsin this 19th day of October 2012.

Respectfully submitted,



Renée Medved
Counsel for Acting General Counsel
National Labor Relations Board
Thirtieth Region
310 West Wisconsin, Suite 700W
Milwaukee, Wisconsin 53203
Telephone : (414)297-3870
Facsimile: (414)297-3880
E-mail: Renee.Medved@nlrb.gov

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is entered into by and between Michels Corporation (the "Company"), Rick Dehne ("Dehne") and International Union of Operating Engineers, Local 139, AFL-CIO (the "Union"), collectively referred to as "the Parties."

WHEREAS, the Company laid off Rick Dehne on May 11, 2012;

WHEREAS, the Union filed an unfair labor practice charge with the National Labor Relations Board ("Board") alleging that the Company violated the National Labor Relations Act (the "Act") by, in essence, terminating the employment of Dehne ("Case No. 30-CA-081206");

WHEREAS, the Company has denied and continues to deny all allegations in Case No. 30-CA-081206;

WHEREAS, the Parties wish to fully and finally resolve all issues between them, whether known or unknown, asserted or unasserted, including but not limited to the allegations in Case No. 30-CA-081206 and any all other matters arising from or out of the employment of Dehne and the termination of his employment;

NOW THEREFORE, for good and valuable consideration, the Parties agree to the following terms and conditions:

1. Definitions. For purposes of this Agreement:

a. The term "Company" shall include without limitation each and all of its affiliates, officers, agents, divisions, directors, supervisors, employees, representatives, and its successors and assigns and all persons acting by, through, under, or in concert with any of them.

b. The term "Dehne" shall include his heirs, executors, administrators and assigns.

2. No Admission of Liability. This Agreement and compliance with this Agreement shall not be construed as an admission by the Company of any wrongdoing or liability whatsoever. The Company specifically denies the allegations in Case No. 30-CA-081206 and disclaims any liability to or discrimination against Dehne, and/or the Union. Similarly, this Agreement and compliance with this Agreement shall not be construed as an admission by Dehne of any wrongdoing while employed by Michels.

3. Withdrawal of Charge. The Union agrees that it will immediately withdraw with prejudice the unfair labor practice charge that it filed in Case No. 30-CA-081206. The Union and Dehne further agree that they (individually or collectively) will not file any other unfair labor practice charges against the Company based on any matters, whether known or unknown, that arose prior to and including the date of this Agreement which could have been alleged in Case No. 30-CA-081206. Approval of the withdrawal request in 30-CA-081206 is conditioned upon the Company's compliance with the terms of this Agreement, and the Company's obligations under this Agreement are strictly conditioned on the approval of the withdrawal of the charge and dismissal of the Complaint in Case No. 30-CA-082106 with prejudice.

4. Reinstatement or Reemployment. Dehne and the Union understand that the Company has made the decision not to employ or consider Dehne for future employment. Dehne agrees that he will not apply for or accept reinstatement or reemployment with the Company and understands that the Company may reject any such application and/or referral from the Union without liability. The Company agrees it

will provide Dehne with neutral employment references. Dehne expressly waives, releases, and relinquishes any and all rights to reinstatement or reemployment at the Company or to any damages based on the Company's decision not to employ or consider him for reemployment.

5. Consideration. As consideration for this Agreement, the Company shall pay Dehne \$7,500.00. The consideration amount will be subject to any and all withholdings and applicable deductions, and will be in consideration for lost wages, past and future, subject to reporting on IRS Form W-2. The Company agrees to provide the Union and the National Labor Relations Board with copies of the checks and correspondence issued to Dehne as part of this Agreement. Dehne agrees that the above consideration fully compensates him for all alleged damages arising out of his employment and termination thereof, including, without limitation, all claims and allegations in Case No. 30-CA-082106. Dehne shall seek no further compensation, monetary or otherwise, for any other claimed damages, costs, or attorneys' fees in connection with the matters encompassed in this Agreement.

6. General Release. Dehne and the Union hereby irrevocably and unconditionally release and forever discharge the Company from any and all charges, complaints, grievances, claims, actions, and liabilities of any kind (hereinafter referred to as "Claim" or "Claims"), whether known or unknown, suspected or unsuspected, which they individually or collectively have, had or may have as a result of any act or omission of any kind on the part of the Company from the date of his hire by the Company to and including the date of this Agreement that relate in any way to Dehne, including but not limited to, his employment with the Company and/or the termination thereof. All such

Claims are forever barred by this Agreement. Without limiting the generality of the foregoing, this release applies to any and all claims under any state, federal, or local laws, statutes, ordinances, rules, regulations or executive orders (and any amendments thereto) relating to employment and/or discrimination in employment including but not limited to the National Labor Relations Act, Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Reconstruction Era Civil Rights Acts, United States Executive Orders 11246 and 11375, 42 U.S.C. Sections 1981 and 1985, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Employee Retirement Income Security Act of 1974, the Wisconsin Fair Employment Act, the Family and Medical Leave Act, and the Wisconsin Family and Medical Leave Act; except an action to enforce the terms and conditions of this Agreement. **Nothing in this Agreement is intended to waive any right that is not the proper subject of a private legal waiver and no provision of this Agreement shall be construed in a manner that would result in an improper waiver. This Agreement does not waive any rights or claims that may arise after this Agreement is signed.**

7. Covenant Not to Sue. Dehne and the Union agree not to sue or bring any action, whether federal, state, or local, judicial or administrative, now or at any future time, against the Company with respect to any matters released by this Agreement.

8. Confidentiality. The Parties agree to keep the terms of this Agreement strictly confidential and will not communicate or disclose to any other person, natural or otherwise, except as required by law, the contents of any term or provision contained herein or any other aspect of this Agreement between the Parties. The Parties specifically agree not to disclose the terms and provisions of this Agreement to any

person other than their attorney(s) and/or accountant(s) to the extent needed for legal advice or income tax reporting purposes, and as is necessary to comply with a valid subpoena or court order provided that they give notice of any subpoena or court order to the other side before making any disclosure. When releasing this information to any such person, the person shall be advised of the information's confidential nature.

9. Entire Agreement. This Agreement contains the entire understanding between the Parties and fully supersedes any and all prior agreements or understandings between them, whether written or oral. This Agreement may not be amended or modified, except by another writing executed by all of the Parties.

10. Severability. Should any provision of this Agreement be declared illegal, invalid, or unenforceable or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, this Agreement shall be declared null and void, Dehne shall be required to reimburse the Company for the consideration provided in paragraph 5 and the Parties shall be left with the rights they enjoyed prior to the signing of this Agreement.

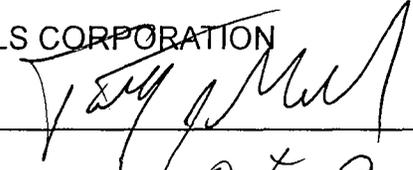
11. Special Provisions and Acknowledgments By signing this Agreement, the Union and Dehne specifically acknowledge that: (a) they have carefully read and understand this Agreement; (b) the Company advises them to consult with an attorney and/or any other advisors of their choice before signing this Agreement; (c) they understand that this Agreement is legally binding and by signing it they give up certain rights; (d) they have voluntarily chosen to enter into this Agreement and have not been forced or pressured in any way to sign it; and (e) they have not relied upon any representation, statement or omission made by the Company with regard to the subject

matter, basis or effect of this Agreement or otherwise, other than those expressly stated in this Agreement.

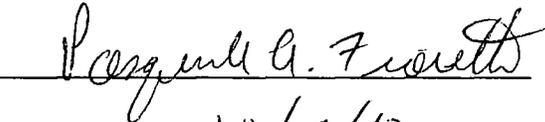
12. Non Disparagement. The Parties shall not directly or indirectly make or publish any disparaging comments about each other or the Released Parties.

WHEREFORE, the Parties, by their duly authorized representatives, have executed this Settlement Agreement on the date(s) set forth below. This Agreement is effective as of Oct. 9, 2012.

MICHELS CORPORATION

By:  Tim Michels
Date: Oct 9, 2012

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 139, AFL-CIO

By:  Raymond G. Frouth (Attorney)
Date: 10/9/12


RICK DEHNE
Date: 10/9/12

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

MICHELS CORPORATION

and

Case 30-CA-081206

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 139, AFL-CIO**

INDEX AND DESCRIPTION OF FORMAL DOCUMENTS

- General Counsel No. Exhibit: 1(a) Original Charge, dated May 17, 2012.
- 1(b) Affidavit of Service of 1(a), dated May 17, 2012.
- 1(c) Original First Amended Charge, dated July 16, 2012.
- 1(d) Affidavit of Service of 1(c), dated July 16, 2012.
- 1(e) Original Complaint and Notice of Hearing, with NLRB 4668 attached, dated July 30, 2012.
- 1(f) Affidavit of Service of 1(e), dated July 30, 2012.
- 1(g) Original Answer to Complaint, by Respondent Michels Corporation, dated August 13, 2012.
- 1(h) Index and Description of Formal Documents
- Dup. G. C. Exh. 1(h)

CAC / (a) / (h)
EXHIBIT RECEIVED
30-CA-081206
21 DATE 8/9/12
MICHELS
W/S

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

MICHELS CORPORATION,

and

Case No: 30-CA-081206

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 139, AFL-CIO

ANSWER TO COMPLAINT AND NOTICE OF HEARING

NOW COMES MICHELS CORPORATION ("Respondent"), for its Answer to the Complaint and Notice of Hearing ("Complaint") admits, denies, and alleges as follows:

1. Admits the allegations in paragraphs 1 (a) through (b) of the Complaint.
2. Admits the allegations in paragraphs 2 (a) through (c) of the Complaint.
3. Admits the allegations in paragraph 3 of the Complaint.
4. As to allegations in paragraph 4 of the Complaint, Respondent denies that Rick Krueger is a supervisor of the Respondent within the meaning of Section 2(11) of the Act and/or an agent of the Respondent within the meaning of Section 2(13) of the Act. Respondent admits all other allegations in paragraph 4 of the Complaint.
5. Respondent admits the allegations in paragraph 5 (a) of the Complaint. As to the allegations in paragraph 5(b) of the Complaint, Respondent admits that Rick Dehne, both by himself individually and through the Union's Business Representative, claims he was entitled to show-up pay. Respondent denies all other allegations in paragraph 5(b) and any inferences therefrom. Respondent admits the allegations in paragraph 5(c) of the Complaint.
6. Denies the allegations in paragraph 6 of the Complaint.
7. Denies the allegations in paragraph 7 of the Complaint.

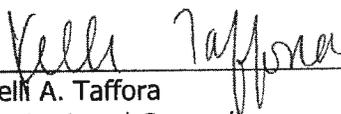
8. Denies the allegations in paragraph 8 of the Complaint.
9. Denies the allegations in paragraph 9 of the Complaint.
10. Denies the allegations in paragraph 10 of the Complaint.
11. Denies the allegations in paragraph 11 of the Complaint.
12. Denies the allegations in paragraph 12 of the Complaint.
13. Admits the allegations in paragraph 13 of the Complaint.
14. Denies the allegations in paragraph 14 of the Complaint.
15. Denies the allegations in paragraph 15 of the Complaint.
16. Denies the allegations in paragraph 16 of the Complaint.
17. Denies the allegations in paragraph 17 of the Complaint.

AFFIRMATIVE AND OTHER DEFENSES

18. The claims alleged in the Complaint are barred in whole or in part because the allegations upon which they are based are insufficient to state any violations of the Act.
19. The claims alleged in the Complaint are barred in whole or in part because the Company acted at all times for legitimate non-discriminatory reasons.
20. The claims alleged in the Complaint are barred in whole or in part because the Company would have taken the same actions even in the absence of any alleged activities protected by the Act.
21. Mr. Dehne failed to mitigate the damages which he allegedly suffered, and such failure to mitigate bars and/or diminishes any potential recovery against Respondent.
22. The doctrine of after-acquired evidence is a bar to or limitation in any claim of liability or damages.
23. The Board is not properly authorized and lacks jurisdiction to act in this matter.

WHEREFORE, Respondent moves for dismissal of the Complaint in its entirety, and requests that it be awarded costs, attorneys' fees, and any other appropriate relief.

Dated this 13th day of August, 2012.

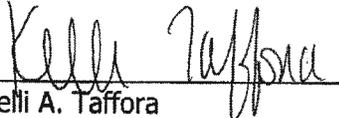

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(920) 924-4371 (O)
(262) 305-0655 (C)
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ktaffora@michels.us

-01-

Statement of Service

In accordance with Section 102.114(i) of the Board's Rules and Regulations, this ANSWER TO COMPLAINT AND NOTICE OF HEARING was served on counsel for International Union of Operating Engineers, Local 139, AFL-CIO, Mr. Pasquale A. Fioretto of Baum Signman Auerbach & Neuman, LTD., by electronic mail to pfioretto@baumsigman.com on August 13, 2012.

Section 102.114(i) states as follows: "In the event the document being filed electronically is required to be served on another party to a proceeding, the other party shall be served by electronic mail (email), if possible. If the other party does not have the ability to receive electronic service, the other party shall be notified by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service no later than the next day, by overnight delivery service, or, with the permission of the party receiving the document, by facsimile transmission."



Kelli A. Taffora
Senior Legal Counsel
Michels Corporation
P.O. Box 128
817 West Main Street
Brownsville, WI 53006
(920) 924-4371 (O)
(262) 305-0655 (C)
(920) 583-3429 (F)
ktaffora@michels.us

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> 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. 	A. Signature <input checked="" type="checkbox"/> <i>Kelli Taffora</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
	B. Received by (Printed Name) <i>Kelli Wolf-Fiasch</i>	C. Date of Delivery <i>7/31/12</i>
1. Article Addressed to: KELLI TAFFORA, SENIOR LEG. COUNSEL MICHELS CORPORATION 817 W MAIN ST PO BOX 128 BROWNSVILLE, WI 53006-1439 <i>CA-D81206</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		
2. Article Number (Transfer from service label) 7010 3090 0003 4074 2530		
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> 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. 	A. Signature <input checked="" type="checkbox"/> <i>Pasquale A. Fioretto</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
	B. Received by (Printed Name) <i>Pasquale A. Fioretto</i>	C. Date of Delivery <i>8/2/12</i>
1. Article Addressed to: PASQUALE A. FIORETTO, ATTORNEY BAUM, SIGMAN, AUERBACH & NEUMAN LTD 200 WEST ADAMS STREET, SUITE 2200 CHICAGO, IL 60606 <i>CA-081206</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes YES, enter delivery address below: <input type="checkbox"/> No	
3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		
2. Article Number (Transfer from service label) 7010 3090 0003 4074 2516		
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 30

AB
SAM

MICHELS CORPORATION

and

Case 30-CA-081206

**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL NO. 139 AFL-CIO**

AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing, dated July 30, 2012.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **July 30, 2012**, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

BRIAN JOHNSON, EMP. REP.
MICHELS CORPORATION
817 W MAIN ST
BROWNSVILLE, WI 53006-1439

REGULAR MAIL

KELLI TAFFORA, SENIOR LEGAL
COUNSEL
MICHELS CORPORATION
817 W MAIN ST
PO BOX128
BROWNSVILLE, WI 53006-1439

CERTIFIED MAIL

PASQUALE A. FIORETTO, ATTORNEY
BAUM, SIGMAN, AUERBACH &
NEUMAN LTD
200 WEST ADAMS STREET, SUITE 2200
CHICAGO, IL 60606

CERTIFIED MAIL

IUOE Local 139 AFL-CIO
N27 W23233 ROUNDY DRIVE
P.O. BOX 130
PEWAUKEE, WI 53072

REGULAR MAIL

July 30, 2012

Date

June Czarnezki, Designated Agent of

NLRB
Name

Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

FORMAL FILE

MICHELS CORPORATION

AND

Case 30-CA-081206

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 139, AFL-CIO

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing, which is based on a charge filed by International Union of Operating Engineers, Local 139, AFL-CIO (Union), is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. §151 et seq. (Act), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (Board), and alleges Michels Corporation (Respondent) has violated the Act by engaging in the following unfair labor practices:

1. (a) The original charge in this proceeding was filed by the Union on May 17, 2012, and a copy was served by regular mail on Respondent on that same date.
(b) The first amended charge in this proceeding was filed by the Union on July 16, 2012, and a copy was served by regular mail on Respondent on that same date.
2. (a) At all material times, Respondent has been a corporation with an office and place of business in Brownsville, Wisconsin, and has been a contractor in the construction industry engaged in excavation and road building operations.

(b) During the past calendar year ending December 31, 2011, Respondent, in conducting its operations described above in paragraph 2(a), purchased and received at its Brownsville, Wisconsin, and other Wisconsin work locations, goods and materials valued in excess of \$50,000 directly from points outside the State of Wisconsin.

(c) 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, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and/or agents of Respondent within the meaning of Section 2(13) of the Act:

Brian Johnson	- Executive Vice President
Mike Debelak	- Vice President of Respondent's Paving Division
Lane Hrudka	- Superintendent
Rick Krueger	- Foreman

5. (a) At all material times, Respondent and the Union have maintained in effect and enforced a collective-bargaining agreement, commonly referred to as the Heavy and Highway Construction Master Agreement, covering wages, hours, and other terms and conditions of employment of certain employees of Respondent who are represented by the Union, including employees working at the Watertown, Wisconsin jobsite.

(b) Starting on about April 25, 2012, and on subsequent dates, Respondent's employee, Rick Dehne, both by himself individually and through the Union's Business Representative, claimed that he was entitled to show-up pay because Respondent failed to contact him to tell him there would be no work prior to him leaving his residence to drive to the Watertown jobsite on the morning of April 25, 2012.

(c) The claim of employee Dehne described above in paragraph 5(b) relates to the collective-bargaining agreement described above in paragraph 5(a).

6. About April 26, 2012, Respondent, by Rick Krueger, at the Watertown jobsite, threatened an employee with unspecified reprisals and/or futility if the employee contacted the Union and/or sought to enforce the claim described in paragraph 5(b).

7. About May 4, 2012, Respondent, by Rick Krueger, at the Watertown jobsite, threatened an employee with discharge if the employee engaged in union activity and/or sought to enforce the claim described in paragraph 5(b).

8. About May 9, 2012, Respondent, by Rick Krueger, at the Watertown jobsite, threatened an employee and/or coercively stated that continued employment is incompatible with union activity and/or the employee's seeking to enforce the claim described above in paragraph 5(b).

9. About May 9, 2012, Respondent, by Lane Hrudka, at the Watertown jobsite:

(a) threatened an employee with more onerous working conditions for engaging in union activity and/or seeking to enforce the claim described in paragraph 5(b); and

(b) threatened an employee that employees would be discharged for engaging in union activity and/or seeking to enforce the claim described in paragraph 5(b).

10. About May 10, 2012, Respondent, by Rick Krueger, at the Watertown jobsite:

- (a) threatened an employee with more onerous working conditions for engaging in union activity and/or seeking to enforce the claim described in paragraph 5(b); and
- (b) impliedly threatened an employee with discharge for engaging in union activity and/or seeking to enforce the claim described in paragraph 5(b).

11. About May 11, 2012, Respondent, by Rick Krueger, at the Watertown jobsite:

- (a) threatened an employee with more onerous working conditions for engaging in union activity and/or seeking to enforce the claim described in paragraph 5(b); and
- (b) impliedly threatened an employee with discharge for engaging in union activity and/or seeking to enforce claim described in paragraph 5(b).

12. About May 10, 2012, Respondent discriminatorily retaliated against its employee Rick Dehne by changing his hours of work and reducing the number of hours he could work.

13. About May 11, 2012, Respondent laid off its employee Rick Dehne.

14. Respondent engaged in the conduct described above in paragraphs 12 and 13 because Dehne engaged in the activity described above in paragraph 5(b) and/or sought the assistance of the Union, and to discourage employees from engaging in these or other concerted activities.

15. By the conduct described above in paragraphs 6 through 14, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

16. By the conduct described above in paragraphs 12 through 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.

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

Wherefore, as part of the remedy for the unfair labor practices alleged above in paragraphs 12 through 14, Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination.

Wherefore, Acting General Counsel further seeks, as part of the remedy that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

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 13, 2012, or postmarked on or before August 12, 2012.** 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.

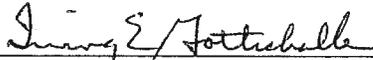
Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on October 9, 2012, 9 a.m. at the **Hearing Room, National Labor Relations Board, 310 West Wisconsin Avenue, Suite 700W, Milwaukee, Wisconsin**, 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 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.

Signed at Milwaukee, Wisconsin on July 30, 2012.



Irving E. Gbtttschalk, Regional Director
National Labor Relations Board
Thirtieth Region
310 West Wisconsin Avenue, Suite 700W
Milwaukee, WI 53203

Attachments

NATIONAL LABOR RELATIONS BOARD
NOTICE

C&NOH July 30, 2012

Case 30-CA-081206

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown and the following requirements are met:

- 1) *The request must be in writing. An original and two copies must be served on the Regional Director;*
- 2) *Grounds thereafter must be set forth in **detail**;*
- 3) *Alternatives dates for any rescheduled hearing must be given;*
- 4) *The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; **and***
- 5) *Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.*

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED MAIL

KELLI TAFFORA, SENIOR LEGAL
COUNSEL
MICHELS CORPORATION
817 W MAIN ST
PO BOX 128
BROWNSVILLE, WI 53006-1439

PASQUALE A. FIORETTO, ATTORNEY
BAUM, SIGMAN, AUERBACH &
NEUMAN LTD
200 WEST ADAMS STREET, SUITE 2200
CHICAGO, IL 60606

REGULAR MAIL

IUOE LOCAL 139 AFL-CIO
N27 W23233 ROUNDY DRIVE
P.O. BOX 130
PEWAUKEE, WI 53072

BRIAN JOHNSON, EMP. REP.
MICHELS CORPORATION
817 W MAIN ST
BROWNSVILLE, WI 53006-1439

**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)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MICHELS CORPORATION
Charged Party
and
**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL NO. 139 AFL-CIO**
Charging Party

Case 30-CA-081206

AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on July 16, 2012, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

BRIAN JOHNSON, Emp. Rep.
MICHELS CORPORATION
817 W MAIN ST
BROWNSVILLE, WI 53006-1439

KELLI TAFFORA, Senior Legal Counsel
MICHELS CORPORATION
817 W MAIN ST
PO BOX128
BROWNSVILLE, WI 53006-1439

July 16, 2012

Date

Kathy Fleming, Designated Agent of
NLRB

Name

/s/Kathy Fleming

Signature

UNITED STATES OF AMERICA

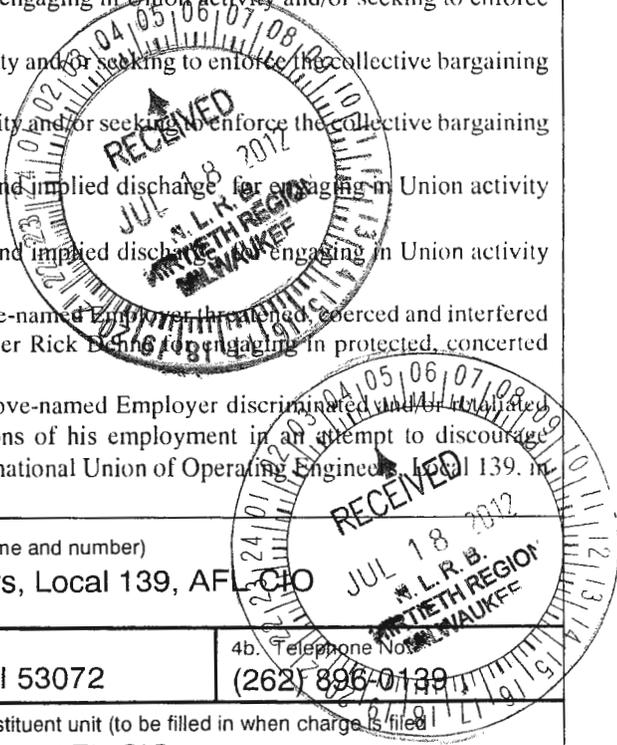
NATIONAL LABOR RELATIONS BOARD

FIRST AMENDED CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 30-CA-081206	Date Filed July 18, 2012

File an original and 4 copies of this charge 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 Michels Corporation	b. Number of workers employed 60+	
c. Address (street, city, state, ZIP code): 817 Main Street, Brownsville, WI 53006	d. Employer Representative Brian Johnson	e. Telephone No. 920-583-3132 Fax No. 920-583-3429
f. Type of Establishment (factory, mine, wholesaler, etc.): Construction	g. Identify principal product or service:	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), and (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Since on or about the dates listed below, the Employer through its officers, agents or representatives, has interfered with, restrained or coerced employees in the exercise of their rights guaranteed in Section 7 of the Act by the following acts and conduct: April 26, 2012 – threatened employees with unspecified reprisals and/or futility if the employees contacted the Union and/or sought to enforce the collective bargaining agreement. May 4, 2012 – threatened employees with discharge if they engaged in Union activity and/or sought to enforce the collective bargaining agreement. May 9, 2012 – threatened employees and/or coercively stated that continued employment and Union activity are incompatible. May 9, 2012 – threatened employees with more onerous working conditions for engaging in Union activity and/or seeking to enforce the collective bargaining agreement. May 9, 2012 – threatened employees with discharge for engaging in Union activity and/or seeking to enforce the collective bargaining agreement. May 10, 2012 – threatened employees with discharge for engaging in Union activity and/or seeking to enforce the collective bargaining agreement. May 10, 2012 – threatened employees with more onerous working conditions and implied discharge for engaging in Union activity and/or seeking to enforce the collective bargaining agreement. May 11, 2012 – threatened employees with more onerous working conditions and implied discharge for engaging in Union activity and/or seeking to enforce the collective bargaining agreement. Additionally, since on or about May 11, 2012, and continuing thereafter, the above-named Employer threatened, coerced and interfered with the protected rights of its employees by laying off bargaining unit member Rick Dehne for engaging in protected, concerted activity. Furthermore, since on or about May 4, 2012, and continuing thereafter, the above-named Employer discriminated and/or retaliated against bargaining unit member Rick Dehne by changing terms and conditions of his employment in an attempt to discourage membership in and support for the exclusive bargaining representative, the International Union of Operating Engineers, Local 139, in violation of the Act.		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) International Union of Operating Engineers, Local 139, AFL-CIO		
4a. Address (street and number, city, state and ZIP code) N27W23233 Roundy Drive, Pewaukee, WI 53072	4b. Telephone No. (262) 896-0139	
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 Union of Operating Engineers, 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 X <u>Pasquale A. Fioretto</u>	Title Attorney	
Signature of representative or person making charge		
Address Pasquale A. Fioretto Baum Sigman Auerbach & Neuman, Ltd. 200 W. Adams, Chicago, IL 60606	Telephone No. 312/236-4316	Date July 16, 2012



UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

MICHELS CORPORATION

Charged Party

and

**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL NO. 139 AFL-CIO**

Charging Party

Case 30-CA-081206

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on May 17, 2012, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

BRIAN JOHNSON, Emp. Rep.
MICHELS CORPORATION
817 W MAIN ST
BROWNSVILLE, WI 53006-1439

May 17, 2012

Date

June Czarnezki, Designated Agent of
NLRB

Name

Signature



UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 30-CA-081206	Date Filed May 17, 2012

File an original and 4 copies of this charge 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 Michels Corporation		b. Number of workers employed 60+
c. Address (street, city, state, ZIP code): 817 Main Street Brownsville, WI 53006	d. Employer Representative Brian Johnson	e. Telephone No. 920-583-3132 Fax No. 920-583-3429
f. Type of Establishment (factory, mine, wholesaler, etc.): Construction	g. Identify principal product or service:	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), and (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since on or about May 11, 2012, and continuing thereafter, the above-named employer threatened, coerced and interfered with the protected rights of its employees by laying off bargaining unit member Rick Dehne for engaging in protected, concerted activity.

Furthermore, since on or about May 4, 2012, and continuing thereafter, the above-named employer discriminated and retaliated against bargaining unit member Rick Dehne by unilaterally changing terms and conditions of his employment in an attempt to discourage membership in and support for the exclusive bargaining representative, the International Union of Operating Engineers, Local 139, in violation of the Act.

Full name of party filing charge (if labor organization, give full name, including local name and number)

International Union of Operating Engineers, Local 139, AFL-CIO

4a. Address (street and number, city, state and ZIP code)

N27W23233 Roundy Drive, Pewaukee, WI 53072

4b. Telephone No.

(262) 896-0139

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 Union of Operating Engineers, 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 X

Pasquale A. Fioretto

Title Attorney

Signature of representative or person making charge

Address Pasquale A. Fioretto
Baum Sigman Auerbach & Neuman, Ltd.
200 W. Adams, Chicago, IL 60606

Telephone No.
312/236-4316

Date
May 16, 2012

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

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 30**

MICHELS CORPORATION

and

Case 30-CA-081206

**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL NO. 139 AFL-CIO**

**AFFIDAVIT OF SERVICE OF: REQUEST FOR SPECIAL PERMISSION TO APPEAL AND APPEAL
FROM THE ADMINISTRATIVE LAW JUDGE'S APPROVAL OF NON-BOARD SETTLEMENT AGREEMENT
AND DISMISSAL OF COMPLAINT dated October 19, 2012**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on October 19, 2012, I served the above-entitled document(s) by the method described, as noted below, upon the following persons, addressed to them at the following addresses:

KELLI TAFFORA, SENIOR LEGAL COUNSEL
MICHELS CORPORATION
817 W MAIN ST PO BOX128
BROWNSVILLE, WI 53006-1439

EMAIL AND REGULAR

CHIEF ADMINISTRATIVE LAW JUDGE
ROBERT A. GIANNASI
ATTN: ADMINISTRATIVE LAW JUDGE
CHRISTINE DIBBLE
NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET, NW, ROOM 5400 EAST
WASHINGTON, DC 20570

EMAIL AND REGULAR

BRIAN JOHNSON EMP. REP.
MICHAEL CORPORATION
817 WEST MAIN STREET
BROWNSVILLE, WI 53006-1439

EMAIL AND REGULAR

PASQUALE A. FIORETTO, ATTORNEY
BAUM, SIGMAN, AUERBACH & NEUMAN LTD
200 WEST ADAMS STREET STE 2200
CHICAGO, IL 60606

EMAIL AND REGULAR

IUOE LOCAL 139
N27 W23233 ROUNDY DRIVE
POB 130
PEWAUKEE WI 53072

REGULAR

JONTHAN LEVINE, ESQ
LITTLER MENDELSON PC
111 E KILBOURN AVENUE, SUITE 1000
MILWAUKEE, WI 53202

EMAIL AND REGULAR

LESTER A. HELTZER, EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET, N.W.
WASHINGTON, DC 20570-0001

E-FILED

October 19, 2012

Carrie J. Klusman, Designated Agent of
NLRB

Date

Name

Carrie J. Klusman

Signature