

OCT 30 2015

Schwerin Campbell Barnard
Iglitzin & Lavitt LLP

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

INSTAFAB COMPANY, INC.

and

IRONWORKERS LOCAL UNION NO. 29

and

INSTAFAB WORKERS COALITION OF
JUSTICE

Cases 19-CA-147671
19-CA-152100
19-CA-153291
19-CA-153804

**ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT,
COMPLIANCE SPECIFICATION, AND NOTICE OF HEARING**

Pursuant to §§ 102.33 and 102.54(c) of the Rules and Regulations of the National Labor Relations Board (the "Board"), and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 19-CA-147671 and 19-CA-152100, which are based on charges filed by Ironworkers Local Union No. 29 (the "Union") against Instafab Company, Inc. ("Respondent"), and Cases 19-CA-153291 and 19-CA-153804, which are based on charges filed by Instafab Workers Coalition of Justice (the "Coalition") against Respondent are consolidated.

CONSOLIDATED COMPLAINT

This Consolidated Complaint, which is based on these charges, is issued pursuant to § 10(b) of the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 *et seq.* and § 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1.

(a) The charge in Case 19-CA-147671 was filed by the Union on March 6, 2015, and a copy was served on Respondent by U.S. mail on the same date.

(b) The first amended charge in Case 19-CA-147671 was filed by the Union on March 26, 2015, and a copy was served on Respondent by U.S. mail on the same date.

(c) The charge in Case 19-CA-152100 was filed by the Union on May 12, 2015, and a copy was served on Respondent by U.S. mail on May 13, 2015.

(d) The first amended charge in Case 19-CA-152100 was filed by the Union on July 31, 2015, and a copy was served on Respondent by U.S. mail on the same date.

(e) The charge in Case 19-CA-153291 was filed by the Coalition on June 1, 2015, and a copy was served on Respondent by U.S. mail on the same date.

(f) The first amended charge in Case 19-CA-153291 was filed by the Coalition on July 31, 2015, and a copy was served on Respondent by U.S. mail on the same date.

(g) The charge in Case 19-CA-153804 was filed by the Coalition on June 8, 2015, and a copy was served on Respondent by U.S. mail on June 9, 2015.

2.

(a) At all material times, Respondent has been an Oregon corporation with an office and place of business in Vancouver, Washington ("the facility"), and has been a contractor in the construction industry engaged in the fabrication and erection of

structural metal, steel, and other metal products for commercial and residential construction.

(b) During the past 12 months, a period representative of all material times, Respondent, in conducting its business operations described above in paragraph 2(a), purchased and received at Respondent's facility goods valued in excess of \$50,000 directly from points outside the State of Washington.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of §§ 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 § 2(11) of the Act and agents of Respondent within the meaning of § 2(13) of the Act:

| | | |
|---------------|---|----------------------|
| Bruce Perkins | - | President and Owner |
| Will Filbeck | - | General Manager |
| Todd Steward | - | Field Superintendent |
| Ron Gregg | - | Shop Foreman |

5.

(a) About February 27, 2015, Respondent, by Will Filbeck ("Filbeck"), at the facility, threatened its employees with discharge for going on strike or talking to or dealing with its striking employees.

(b) From a date in or around early March 2015 to a date in or around April 2015, more precise dates unknown to the General Counsel but particularly within the knowledge of Respondent, Respondent posted a written statement at the facility threatening its employees with discharge for communicating with its striking employees.

(c) On a Friday in or around March 2015, a more precise date unknown to the General Counsel but particularly within the knowledge of Respondent, Respondent, by Filbeck, at the facility, threatened its employees with discharge for talking to picketers or its striking employees.

(d) About March 12, 2015, Respondent posted a job ad on craigslist.org that would reasonably be understood by applicants to mean that union membership and engaging in union activities and protected, concerted activities was inconsistent with employment with Respondent.

(e) About March 19, 2015, Respondent, by Filbeck, at the facility, instructed its employees not to talk to picketers or its striking employees.

(f) About April 21, 2015, Respondent, by Filbeck, at the facility:

(i) interrogated its employees about their union membership or affiliation;

(ii) told its employees that Respondent was seeking employees who were loyal to Respondent and not to a union; and

(iii) threatened to discharge its employees for talking to the Union or soliciting employees to join a strike or to form, join, or assist a union.

(g) About April 23, 2015, Respondent, by Filbeck, at the facility, threatened its employees with negative consequences for having union stickers on their personal vehicles.

(h) On a date in or around late April or early May 2015, a more precise date unknown to the General Counsel but particularly within the knowledge of Respondent, Respondent, at the facility:

(i) by Todd Steward ("Steward"), told its employees that Respondent wanted employees who were loyal to Respondent and would not engage in union activities, including seeking assistance of the Union;

(ii) by Steward, told its employees that they needed to be on board and not go against Respondent because the striking employees were going to lose in the end; and

(iii) by Filbeck, instructed its employees not to talk about the Union or striking employees during work hours, while permitting employees to talk about other non-work subjects.

(i) About May 8, 2015, Respondent threatened its employees with discharge for talking to picketers or striking employees:

(i) by Filbeck, at Respondent's facility; and

(ii) by Steward, at a jobsite in Hillsboro, Oregon.

6.

(a) Since about January 11, 2015, Respondent's employees Andrew Brodehl ("Brodehl"), Patrick Goggin ("Goggin"), William Skyler McCall ("McCall"), Israel Mudder ("Mudder"), Brian Reinke ("Reinke"), and William Russell ("Russell") engaged in

concerted activities with each other and with other employees for the purposes of collective bargaining and other mutual aid and protection and concertedly complained to Respondent regarding the wages, hours, and working conditions of Respondent's employees by:

- (i) communicating with each other, other employees, and third parties about the wages, hours, and working conditions of Respondent's employees;
- (ii) presenting Respondent with petitions listing demands related to the wages, hours, and working conditions of Respondent's employees; and
- (iii) engaging in a strike in support of their demands related to the wages, hours, and working conditions of Respondent's employees.

(b) About the dates set forth opposite their names, Respondent discharged its employees named below:

| Name | Date |
|-------------|-------------------|
| Brodehl | February 27, 2015 |
| Goggin | February 27, 2015 |
| McCall | March 13, 2015 |
| Mudder | February 27, 2015 |
| Reinke | March 13, 2015 |
| Russell | February 27, 2015 |

(c) About the dates set forth opposite their names, Respondent deducted amounts from the pay of its employees named below for the cost of safety harnesses and/or weld certifications:

| Name | Date |
|-------------|----------------|
| Goggin | March 6, 2015 |
| McCall | March 20, 2015 |

| Name | Date |
|-------------|----------------|
| Mudder | March 6, 2015 |
| Reinke | March 13, 2015 |
| Russell | March 6, 2015 |

(e) Respondent engaged in the conduct described above in paragraphs 6(b) and 6(c) because its named employees engaged in the conduct described above in paragraph 6(a) and because they joined and assisted the Union, and to discourage employees from engaging in these or other concerted activities.

7.

By the conduct described above in paragraphs 5 and 6, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(a)(1) of the Act.

8.

By the conduct described above in paragraph 6, 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 §§ 8(a)(1) and (3) of the Act.

9.

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

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondent's representative Will Filbeck read the notice to the employees on worktime in the presence of a Board agent.

Alternatively, the General Counsel seeks an order requiring that Respondent promptly have a Board agent read the notice to employees during worktime in the presence of Respondent's supervisors and agents indentified above in paragraph 4; and

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an order requiring that the Respondent reimburse discriminatees for all search-for-work and work-related expenses regardless of whether the discriminatees received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period.

COMPLIANCE SPECIFICATION

In order to liquidate the amount owed by Respondent, and to avoid unnecessary cost or delays, this Compliance Specification is issued pursuant to § 102.54(c) of the Board's Rules and Regulations together with the instant Consolidated Complaint and alleges as follows:

10.

As a result of the conduct described above in paragraph 6(b) of the Consolidated Complaint, the named employees of Respondent are entitled to backpay in the manner and amount computed as follows.

11.

The backpay periods of the employees named below began on the dates set forth opposite their names, which were the dates Respondent discharged them:

| Name | Beginning of Backpay Period |
|-------------|------------------------------------|
| Brodehl | February 27, 2015 |
| Goggin | February 27, 2015 |
| McCall | March 13, 2015 |

| Name | Beginning of Backpay Period |
|-------------|------------------------------------|
| Mudder | February 27, 2015 |
| Reinke | March 13, 2015 |
| Russell | February 27, 2015 |

12.

The backpay periods of the employees named below end on the dates set forth opposite their names, which were the dates two weeks from the dates Respondent sent valid offers of reinstatement to their correct addresses:

| Name | Beginning of Backpay Period |
|-------------|------------------------------------|
| Brodehl | April 20, 2015 |
| Goggin | April 20, 2015 |
| McCall | April 20, 2015 |
| Mudder | April 20, 2015 |
| Reinke | April 29, 2015 |
| Russell | April 20, 2015 |

13.

Gross backpay is the amount of wages the employees named above in paragraph 6(b) of the Consolidated Complaint and paragraphs 11 and 12 of this Compliance Specification would have earned during the backpay period and is calculated at their hourly rate times the hours they would have worked but for the discrimination against them.

14.

Interim earnings are the wages earned by the employees named above in paragraph 6(b) of the Consolidated Complaint and paragraphs 11 and 12 of this Compliance Specification during their respective backpay periods.

15.

Net backpay is the difference between gross backpay and interim earnings.

16.

(a) The gross backpay of Brodehl is calculated as his hourly wage rate while employed by Respondent, \$20, times the total hours he would have worked for Respondent as a full-time employee working 40 hours per week, or 8 hours per weekday.

(b) The gross backpay of Brodehl for the first quarter of 2015 is \$3,360 (\$20 times 8 hours per weekday times one day, plus \$20 times 40 hours per week times 4 weeks).

(c) Brodehl had deductible interim earnings of \$530 from REFA Erection during the first quarter of 2015.

(d) The net backpay of Brodehl for the first quarter of 2015 is \$2,830 (\$3,360 gross backpay, minus \$530 interim earnings).

(e) The gross backpay of Brodehl for the second quarter of 2015 is \$2,560 (\$20 times 8 hours per weekday times one day, plus \$20 times 40 hours per week times 3 weeks).

(f) Brodehl had deductible interim earnings of \$460 from ABACUS Construction during the second quarter of 2015.

(g) The net backpay of Brodehl for the second quarter of 2015 is \$2,100 (\$2,560 gross backpay, minus \$460 interim earnings).

(h) The total net backpay owed to Brodehl as a result of Respondent's conduct described above in paragraph 6(b) of the Consolidated Complaint is \$4,930 (\$2,830 first quarter of 2015, plus \$2,100 second quarter of 2015).

17.

(a) The gross backpay of Goggin is calculated as his hourly wage rate while employed by Respondent, \$21, times the total hours he would have worked for Respondent as a full-time employee working 40 hours per week, or 8 hours per weekday.

(b) The gross backpay of Goggin for the first quarter of 2015 is \$3,528 (\$21 times 8 hours per weekday times one day, plus \$21 times 40 hours per week times 4 weeks).

(c) Goggin had no deductible interim earnings during the first quarter of 2015.

(d) The net backpay of Goggin for the first quarter of 2015 is \$3,528 (\$3,528 gross backpay, minus \$0 interim earnings).

(e) The gross backpay of Goggin for the second quarter of 2015 is \$2,688 (\$21 times 8 hours per weekday times one day, plus \$21 times 40 hours per week times 3 weeks).

(f) Goggin had no deductible interim earnings during the second quarter of 2015.

(g) The net backpay of Goggin for the second quarter of 2015 is \$2,688 (\$2,688 gross backpay, minus \$0 interim earnings).

(h) The total net backpay owed to Goggin as a result of Respondent's conduct described above in paragraph 6(b) of the Consolidated Complaint is \$6,216 (\$3,528 first quarter of 2015, plus \$2,688 second quarter of 2015).

18.

(a) The gross backpay of McCall is calculated as his hourly wage rate while employed by Respondent, \$25, times the total hours he would have worked for Respondent as a full-time employee working 40 hours per week, or 8 hours per weekday.

(b) The gross backpay of McCall for the first quarter of 2015 is \$3,200 (\$25 times 8 hours per weekday times one day, plus \$25 times 40 hours per week times 3 weeks).

(c) McCall had no deductible interim earnings during the first quarter of 2015.

(d) The net backpay of McCall for the first quarter of 2015 is \$3,200 (\$3,200 gross backpay, minus \$0 interim earnings).

(e) The gross backpay of McCall for the second quarter of 2015 is \$3,200 (\$25 times 8 hours per weekday times one day, plus \$25 times 40 hours per week times 3 weeks).

(f) McCall had no deductible interim earnings during the second quarter of 2015.

(g) The net backpay of McCall for the second quarter of 2015 is \$3,200 (\$3,200 gross backpay, minus \$0 interim earnings).

(h) The total net backpay owed to McCall as a result of Respondent's conduct described above in paragraph 6(b) of the Consolidated Complaint is \$6,400 (\$3,200 first quarter of 2015, plus \$3,200 second quarter of 2015).

19.

(a) The gross backpay of Mudder is calculated as his hourly wage rate while employed by Respondent, \$30, times the total hours he would have worked for Respondent as a full-time employee working 40 hours per week, or 8 hours per weekday.

(b) The gross backpay of Mudder for the first quarter of 2015 is \$5,040 (\$30 times 8 hours per weekday times one day, plus \$30 times 40 hours per week times 4 weeks).

(c) Mudder had deductible interim earnings of \$2,823 from Sowles Co. during the first quarter of 2015.

(d) The net backpay of Mudder for the first quarter of 2015 is \$2,217 (\$5,040 gross backpay, minus \$2,823 interim earnings).

(e) The gross backpay of Mudder for the second quarter of 2015 is \$3,840 (\$30 times 8 hours per weekday times one day, plus \$30 times 40 hours per week times 3 weeks).

(f) Mudder had no deductible interim earnings during the second quarter of 2015.

(g) The net backpay of Mudder for the second quarter of 2015 is \$3,840 (\$3,840 gross backpay, minus \$0 interim earnings).

(h) The total net backpay owed to Mudder as a result of Respondent's conduct described above in paragraph 6(b) of the Consolidated Complaint is \$6,057 (\$2,217 first quarter of 2015, plus \$3,840 second quarter of 2015).

20.

(a) The gross backpay of Reinke is calculated as his hourly wage rate while employed by Respondent, \$27, times the total hours he would have worked for Respondent as a full-time employee working 40 hours per week, or 8 hours per weekday.

(b) The gross backpay of Reinke for the first quarter of 2015 is \$3,456 (\$27 times 8 hours per weekday times one day, plus \$27 times 40 hours per week times 3 weeks).

(c) Reinke had deductible interim earnings of \$3,942 from Carr Construction during the first quarter of 2015.

(d) The net backpay of Reinke for the first quarter of 2015 is \$0, because his interim earnings exceeded his gross backpay.

(e) The gross backpay of Reinke for the second quarter of 2015 is \$7,128 (\$27 times 8 hours per weekday times 3 days, plus \$27 times 40 hours per week times 6 weeks).

(f) Reinke no deductible interim earnings during the second quarter of 2015.

(g) The net backpay of Reinke for the second quarter of 2015 is \$7,128 (\$7,128 gross backpay, minus \$0 interim earnings).

(h) The total net backpay owed to Reinke as a result of Respondent's conduct described above in paragraph 6(b) of the Consolidated Complaint is \$7,128 (\$0 first quarter of 2015, plus \$7,128 second quarter of 2015).

21.

(a) The gross backpay of Russell is calculated as his hourly wage rate while employed by Respondent, \$18.50, times the total hours he would have worked for Respondent as a full-time employee working 40 hours per week, or 8 hours per weekday.

(b) The gross backpay of Russell for the first quarter of 2015 is \$3,108 (\$18.50 times 8 hours per weekday times one day, plus \$18.50 times 40 hours per week times 4 weeks).

(c) Russell had no deductible interim earnings during the first quarter of 2015.

(d) The net backpay of Russell for the first quarter of 2015 is \$3,108 (\$3,108 gross backpay, minus \$0 interim earnings).

(e) The gross backpay of Russell for the second quarter of 2015 is \$2,368 (\$18.50 times 8 hours per weekday times one day, plus \$18.50 times 40 hours per week times 3 weeks).

(f) Russell had no deductible interim earnings during the second quarter of 2015.

(g) The net backpay of Russell for the second quarter of 2015 is \$2,368 (\$2,368 gross backpay, minus \$0 interim earnings).

(h) The total net backpay owed to Russell as a result of Respondent's conduct described above in paragraph 6(b) of the Consolidated Complaint is \$5,476 (\$3,108 first quarter of 2015, plus \$2,368 second quarter of 2015).

22.

Summarizing the facts and calculations specified above, the obligation of Respondent under this Compliance Specification to make the employees whole for losses suffered as a result of Respondent's unlawful conduct will be discharged by payment to the employees of the amounts set forth below, with daily compounded interest accruing on the entire amount to the date of payment, minus tax withholdings required by federal and state law:

| Name | Total Net Backpay |
|-------------|--------------------------|
| Brodehl | \$4,930 |
| Goggin | \$2,688 |
| McCall | \$6,400 |
| Mudder | \$6,057 |
| Reinke | \$7,128 |
| Russell | \$5,476 |

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20, 102.21, and 102.56 of the Board's Rules and Regulations, it must file an answer to the Consolidated Complaint and Compliance Specification. The answer must be **received by this office**

on or before November 18, 2015, or postmarked on or before November 17, 2015.

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 through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. 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 § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer 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 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 by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification (paragraphs 10 to 22) that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See § 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint and Compliance Specification are true. If the answer fails to deny allegations of the Compliance Specification (paragraphs 10 to 22) in the manner required under § 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the Compliance Specification are true and preclude Respondent from introducing any evidence controverting those allegations.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the **23rd day of February, 2016**, at **9:00 a.m.**, at the **Green-Wyatt Federal Building, 1220 SW 3rd Avenue, Suite 605, Portland, Oregon**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated Complaint and Compliance Specification. The procedures to be followed at the hearing are

described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Seattle, Washington this 28th day of October, 2015.

A handwritten signature in black ink, appearing to read "RK Hooks", written over a horizontal line.

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 2nd Avenue
Seattle, WA 98174-1006

Attachment

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 19-CA-147671

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 filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative 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

Bruce Perkins , Owner
Instafab Company, Inc.
2424 E 2nd St
Vancouver, WA 98661-7705
7014 2120 0002 1823 0465

REGULAR MAIL

Michael T. Garone, Esq.
Schwabe, Williamson & Wyatt
1211 SW 5th Ave., Suite 1900
Portland, OR 97204-3719

Robert Camarillo, Vice President
and Business Agent
Ironworkers Local Union No. 29
11620 NE Ainsworth Cir., Suite 200
Portland, OR 97220-9016

William Russell
Instafab Workers Coalition of Justice
11848 SE Pardee St
Portland, OR 97266-3217

Danielle Franco-Malone, Esq.
Schwerin, Campbell, Barnard,
Iglitzin & Lavitt, LLP
18 W Mercer St., Suite 400
Seattle, WA 98119-3971