

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

KATERRA, INC.

and

CARPENTERS UNION LOCAL 152

**Cases 32-CA-255575
32-CA-256374
32-CA-259533
32-CA-259574
32-CA-262537
32-CA-261950
32-CA-266236**

**SECOND ORDER FURTHER CONSOLIDATING CASES, SECOND AMENDED
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (Board) and in order to avoid unnecessary costs or delays, IT IS ORDERED THAT Cases 32-CA-255575, 32-CA-256374, 32-CA-259553, 32-CA-259574, 32-CA-262537 and 32-CA-261950, filed by the Carpenters Union Local 152 (the Union) against Katerra Inc. (Respondent), in which an Amended Consolidated Complaint and Notice of Hearing issued on September 30, 2020, is consolidated with Case 32-CA-266236, which is based on a charge filed by the Union against Respondent.

This Second Order Further Consolidating Cases, Second Amended Consolidated Complaint and Notice of Hearing, which is based upon these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations and alleges that Respondent has violated the Act as described below.

1.

(a) The charge in Case 32-CA-255575 was filed by the Union on January 31, 2020, and a copy was served on Respondent by U.S. mail on February 3, 2020.

(b) The charge in Case 32-CA-256374 was filed by the Union on February 13, 2020, and a copy was served on Respondent by U.S. mail on February 14, 2020.

(c) The charge in Case 32-CA-259553 was filed by the Union on April 23, 2020, and a copy was served on Respondent by U.S. mail on April 24, 2020.

(d) The charge in Case 32-CA-259574 was filed by the Union on April 23, 2020, and a copy was served on Respondent by U.S. mail on April 24, 2020.

(e) The charge in Case 32-CA-262537 was filed by the Union on July 2, 2020, and a copy was served on Respondent by U.S. mail on July 6, 2020.

(f) The charge in Case 32-CA-261950 was filed by the Union on June 19, 2020, and a copy was served on Respondent by U.S. mail on June 22, 2020.

(g) The charge in Case 32-CA-266236 was filed by the Union on September 16, 2020, and a copy was served on Respondent by U.S. mail on September 17, 2020.

2.

(a) At all material times, Respondent has been a corporation headquartered in Menlo Park, California, and with a place of business in Tracy, California (Respondent's facility) and has been engaged, among other things, in the non-retail fabrication of walls and infrastructure for housing construction.

(b) In conducting its operations during the 12-month period ending June 20, 2020, Respondent sold or shipped from its California facilities goods valued in excess of \$50,000 directly to points outside the State of California.

3.

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.

4.

(a) 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:

Mark Jones	–	General Manager
Mark Evans	–	Manager
James Cooper	–	Facilities & Maintenance Technician
Gerardo “Nacho” Pizarro Zaldivar	–	Manager
Ed Armas	–	Senior Production Manager
Gilbert Hernandez	–	Production Manager
Jess Avalos	–	Production Supervisor
Jon Lahti	–	Senior Human Resource Business Partner
Curtis Walters	–	Security Guard
Adriana Vargas	–	Human Resources Representative

(b) At all material times, Martin Carrillo held the position of Respondent's Production Lead and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

5.

(a) Respondent, by Production Lead Martin Carrillo:

(1) About January 24, 2020, at Respondent's facility:

(i) told employees not to wear a Kattera Union Yes shirt; and

(ii) threatened that Respondent was finding excuses to fire employees who wore the Union shirt to work.

(2) About January 29, 2020, at Respondent's facility:

(i) threatened an employee by telling the employee he/she was given a more onerous work assignment because the employee wore a Union shirt;

(ii) threatened an employee by telling the employee that Respondent was going to use performance data against the employee; and

(iii) impliedly threatened an employee by telling the employee that wearing a Union shirt was going about things the wrong way.

(3) About January 29, 2020, by telephone, impliedly threatened that Respondent was scrutinizing an employee's work more closely because of his union activities.

(4) About February 3, 2020, at Respondent's facility, impliedly threatened employees by saying:

(i) Respondent had terminated an employee instead of retraining the employee because the employee wore a Union shirt; and

(ii) an employee wearing a Union shirt was not a good idea.

(5) About April 15, 2020, at Respondent's facility, threatened an employee by stating that:

(i) he (Carrillo) would deny having made any statements about the Union if the employee reported the statements;

(ii) wearing a Union shirt would prevent the possibility of moving up in Respondent's company; and

(iii) there was better chance of moving up with Respondent if the employee did not wear the Union shirt.

(6) About April 20, 2020, at Respondent's facility, impliedly threatened an employee by stating that Respondent would not consider the employee for a promotion as long as the employee wore a Union shirt.

(7) About April 22, 2020, at Respondent's facility:

- (i) interrogated an employee by asking how much the Union was paying the employee to wear a Union shirt;
- (ii) interrogated an employee by asking when the employee was going to take the Union shirt off;
- (iii) interrogated an employee by asking if the employee told anyone about his (Carrillo's) statements about the Union;
- (iv) threatened an employee with unspecified reprisals by telling him that wearing the Union shirt is hurting him;
- (v) threatened an employee by stating that Respondent did not want anyone wearing a Union shirt to move up in Respondent's company; and
- (vi) threatened plant closure by telling him that Respondent would shut down before letting a Union come in.

(8) About April 2020, by telephone:

- (i) interrogated an employee by asking if the Union had told the employee that Respondent was going to shut down;
- (ii) interrogated an employee by asking if the employee was working for the Union; and
- (iii) interrogated an employee by asking what it would take for the employee not come back to work for Respondent.

(b) About January 29, 2020, Respondent, by Supervisor Jess Avalos, at Respondent's facility, engaged in heightened scrutiny of an employee's work because the employee wore a Union shirt.

(c) About January 29, 2020, Respondent, at Respondent's facility, by Senior Production Manager Ed Armas and Production Manager Gilbert Hernandez, standing near each other in Respondent's facility, engaged in heightened scrutiny of an employee's work because the employee wore a Union shirt.

(d) About February 2020, Respondent by Production Manager Gilbert Hernandez, in Respondent's facility, threatened employees by telling them that Respondent had better not see any temporary employees wearing Union shirts.

(e) About June 17, 2020, Respondent, by Security Guard Curtis Walters, outside the entrance to Respondent's facility told employees that they could not speak with their coworkers or collect their coworkers' signatures for a petition in front of Respondent's facility but that they must engage in such activities off Respondent's property.

6.

(a) About August 25, 2020, Melina Rodriguez engaged in concerted activities with other employees for the purposes of mutual aid and protection, by discussing the enforcement of Respondent's workplace safety guidelines, including the wearing of safety shields.

(b) About August 25, 2020, Respondent issued Melinda Rodriguez a verbal discipline.

(c) Respondent engaged in the conduct described in paragraph 6(b) because Melina Rodriguez engaged in the conduct described above in paragraph 6(a), and to discourage employees from engaging in these activities.

7.

(a) About February 4, 2020, Respondent terminated the employment of Anthony Campbell.

(b) Respondent engaged in the conduct described above in paragraph 7(a) because Anthony Campbell assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

8.

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 Section 7 of the Act in violation of Section 8(a)(1) of the Act.

9.

By the conduct described above in paragraph 7, 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)(3) of the Act.

10.

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 5 and 6, the General Counsel seeks an Order requiring that at a meeting or meetings (by videoconference if necessary based on the status of the Covid-19 pandemic) scheduled to ensure the widest possible attendance, Respondent's representative read the Board's remedial notice to the employees in English and Spanish on worktime in the presence of a Board agent (which may also be by videoconference depending on the status of the Covid-19 pandemic). 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 identified above in paragraph 4 (by videoconference if necessary based on the status of the Covid-19 pandemic). The General Counsel further seeks, as a part of the remedy

for the allegation in paragraph 6, an order that Respondent be required to submit the W-2 reflecting backpay paid to the named discriminatee Anthony Campbell to the Regional Director. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

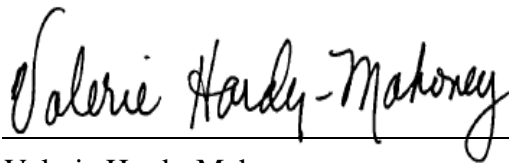
Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Second Amended Consolidated Complaint. The answer must be **received by this office on or before November 19, 2020.** Respondent must serve a copy of the answer on each of the other parties. The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. 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 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. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Second Amended Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that a hearing is scheduled to commence on January 26, 2021 at 9 a.m., in a manner (video conference) and/or location to be determined at a later time, and on consecutive days thereafter until concluded, 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 Second Amended Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED AT Oakland, California, this 5th day of November 2020.



Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, California 94612-5224

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Cases: 32-CA-255575
32-CA-256374
32-CA-259553
32-CA-259574
32-CA-262537
32-CA-261950
32-CA-266236

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 thereafter 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.

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Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court 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 ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are 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. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting 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 provided to the parties with the order transferring the matter to the Board.

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

KATERRA, INC.

and

CARPENTERS UNION LOCAL 152

**Cases: 32-CA-255575
32-CA-256374
32-CA-259553
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32-CA-262537
32-CA-261950
32-CA-266236**

Date: November 5, 2020

**AFFIDAVIT OF SERVICE OF SECOND ORDER FURTHER CONSOLIDATING CASES,
SECOND AMENDED CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

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Division of Judges
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E-File

November 5, 2020

Date

Ida Lam, Designated Agent of NLRB

Name

/s/ Ida Lam