INTERNET FORM NLRB-501 (2-08)

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

DO NOT WRITE IN THIS SPACE		
Case	Date Filed	

**INSTRUCTIONS:** 

File an original with NLRB Regional Director for the region in which the		ring.	
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
a. Name of Employer     Menards		b. Tel. No. 715-876-5911	
		c. Cell No.	
d. Address (Street, city, state, and ZIP code)  e. Employer Representative		f. Fax No. 715-876-2866	
4777 Menard Drive	John Menard, Jr.	g. e-Mail	
Eau Claire, WI 54703	CEO	h. Number of workers employed 45,000	
<ul> <li>Type of Establishment (factory, mine, wholesaler, etc.)</li> <li>Chain Store</li> </ul>	j. Identify principal product or service Home Improvement		
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 3			
practices are practices affecting commerce within the meanin within the meaning of the Act and the Postal Reorganization	g of the Act, or these unfair labor practices are u		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)			
1. Menards is an Employer covered under the National Labor Relations Act.			
2. The Employer maintains an unlawful and overbroad written employment agreement that interferes with non-union employees' right to engage in concerted activities protected under the Act. (See Attachment)			
3. Full name of party filing charge (if labor organization, give full	I name including local name and number		
<ol> <li>Full name of party filing charge (if labor organization, give full name, including local name and number)</li> <li>Office &amp; Professional Employees International Union, Local 153</li> </ol>			
4a. Address (Street and number, city, state, and ZIP code) 265 West 14th Street		<sup>4b. Tel. No.</sup> 646-460-1309	
New York, NY 10011		4c. Cell No.	
		<sup>4d. Fax No.</sup> 212-463-9479	
		4e. e-Mail	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Office & Professional Employees International Union			
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.		Tel. No. 646-460-1309	
By Jah Man Seth	Goldstein, Business Representative	Office, if any, Cell No.	
	Print/type name and title or office, if any)	Fax No. Same As Above	
	12/9/15	e-Mail	
Address	(date)		
MAIL FILL FALOR OTATEMENTS ON THIS SHAPOR SAN DE			

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

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

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## Managers at Menards Stand to Lose Big Money if Unions Form



Posted: December 8, 2015
Photo by Scott Lewis/Flickr

 ${f I}$ t's not just a long-rumored threat, it's a promise put in writing.

The employment agreement for managers at Menards, the home-improvement giant, imposes a substantial cut in pay should the workers under their supervision form a

A <u>section of the employment agreement</u> titled "Union Activity" sets forth: "The Manager's income shall be automatically reduced by sixty percent (60%) of what it would have been if a union of any type is recognized within your particular operation during the term of this Agreement. If a union wins an election during this time, your income will automatically be reduced by sixty percent (60%)."

## APPENDIX J

## **Union Activity**

<u>UNION ACTIVITY</u>: The Manager's income shall be automatically reduced by sixty percent (60%) of what it would have been if a union of any type is recognized within your particular operation during the term of this Agreement. If a union wins an election during this time, your income will automatically be reduced by sixty percent (60%).

I HAVE READ & UNDERSTAND THE CONTENTS OF THIS APPENDIX J:

Oign a Date

A copy of one such agreement signed in 2015 was obtained by *The Progressive* magazine. The clause calling on managers to be punished for union successes appears as Appendix J to the agreement. Newly hired managers are asked to initial every page. The agreement also specifies that managers "may be terminated at any time for any or no reason, with or without cause."

The contract was provided by a management employee who asked not to be identified for fear of repercussions. The employee said the agreement is required for all management staff, adding that the threat was effective: "The mere mention of the word 'union' is a workplace taboo."

Jeff Abbott, a spokesman for Menards, asked that questions about the agreement be submitted in writing, only to issue a terse response: "Employment agreements are confidential. Thank you."

Menards, founded and headquartered in Eau Claire, Wisconsin, has more than 280 stores in fourteen states, according to its website. The company ranked 39th (http://www.forbes.com/largest-private-companies/list/) on Forbes' 2015 list of "America's Largest Private Companies," with an estimated \$8.7 billion in annual revenue and 42,000 employees.

Last March, investigative reporter Michael Isikoff reported that company owner John Menard Jr. secretly funneled more than \$1.5 million to a political advocacy group working to support Wisconsin Governor Scott Walker. The article noted that Menards was subsequently awarded up to \$1.8 million in special tax credits from the scandal-plaqued (http://host.madison.com/search/?

23wsj&c=news/local\*&nc=\*column\*,\*opinion\*&sForm=false&sHeading=Scott%
20Walker%20aides%20pushed%20for%20questionable%20\$500K%20WEDC%
20loan) Wisconsin Economic Development Corp., which Walker then chaired.

John Menard's antipathy to unions is well-known. In a 2007 article (http://www.milwaukeemag.com/2007/04/30/bigmoney-john-menard/) in Milwaukee Magazine, a former store manager said he was made to attend "a one-

in Milwaukee Magazine, a former store manager said he was made to attend "a oneand-one-half-day seminar in Eau Claire about fighting unions." The article also quoted an ex-manager in Iowa saying that company policy included a 60 percent pay cut for managers should a store become unionized.

A 2003 Forbes article (http://www.forbes.com/forbes/2003/1006/048.html) stated that a provision to this effect was part of a "contract" between Menards and a former manager who sued the chain for age discrimination. Other (http://www.alternet.org/election-2012/major-retailer-urges-workers-take-civics-

course-anti-obama-content) <u>publications</u>

(http://www.theinvestigativefund.org/blog/1717/menards\_chain\_gives\_employees\_antiobama\_propaganda/) have referred to the 60 percent pay cut as a "threat." The document obtained by *The Progressive* shows this language is included in employment agreements with management-level employees.

"Shame on Menards," said Stephanie Bloomingdale, secretary-treasurer of the Wisconsin AFL-CIO, reacting to the employment agreement. "How are working people supposed to get ahead in this economy and work for a strong America when billionaires like John Menard are rigging the deck before working people even have a chance?"

Jessica Kahanek, a spokeswoman for the National Labor Relations Board, declined to comment on whether threatening managers with a pay cut if workers unionize constituted an unfair labor practice, saying "a case with a similar fact pattern could come before the Board at some time in the future."

The National Labor Relations Act, to which Kahanek directed a reporter, makes it illegal to threaten "employees," not managers, over union activity. But it would be illegal if a manager, in seeking to avoid a pay cut, employed threats or coercion against employees.

Carin Clauss, an emeritus professor of law at the University of Wisconsin-Madison who served as U.S. Solicitor of Labor from 1977 to 1981, believes the company might be vulnerable if a complaint were to be filed with the NLRB. The law, she notes, says an employer may not "interfere with, restrain, or coerce employees" in the exercise of their rights to form a union and, in her opinion, "you can interfere with employees by threatening a third party."

Commenting without knowing the identity of the company, Clauss called the pay-cut threat "an outrageous practice" that she hoped would draw a complaint. "If I were the general counsel for NLRB, I would hope someone would file a charge so the board could take a position," she said.

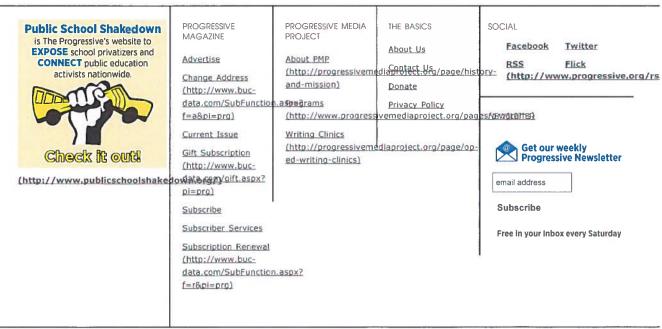
Clauss also suggested an agreement that threatened managers with consequences if they "don't do something to interfere with employees' organizing rights" could be deemed contrary to public policy and therefore void and unenforceable.

Harris Freeman, an expert in labor law at Western New England University's School of Law, said that even if threatening to cut the pay of managers is not an actionable violation, it is arguably "a pernicious practice" that could exacerbate workplace tensions. "What this encourages," he said, "is for supervisors to not in any way identify with employees' shared concerns."

Bill Lueders is Associate Editor for The Progressive magazine.

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