

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

CAPITAL ROOTS, INC.

and

Case 03-CA-300872

**SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 200 UNITED**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by Service Employees International Union Local 200 United (Union). It 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 Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Capital Roots, Inc. (Respondent) has violated the Act as described below.

1.

(a) The charge in this proceeding was filed by the Union on August 8, 2022, and a copy was served on Respondent by U.S. mail on the same date.

(b) The amended charge in this proceeding was filed by the Union on November 10, 2022, and a copy was served on Respondent by U.S. mail on the same date.

(c) The second amended charge was filed by the Union on July 27, 2023, and a copy was served on Respondent by U.S. mail on the same date.

2.

(a) At all material times, Respondent has been a corporation with an office and place of business in Troy, New York (Respondent's facility), where it operates a private nonprofit food services agency.

(b) Annually, Respondent, in conducting its business operations described above in paragraph 2(a), derives gross revenues available for operating expenses in excess of \$50,000.

(c) Annually, Respondent, in conducting its business operations described above in paragraph 2(a), purchases and receives at its Troy, New York facility goods valued in excess of \$5,000 directly from points outside the State of New York.

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.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5.

(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 agents of Respondent within the meaning of Section 2(13) of the Act:

Julie Clancy	—	Deputy Director
Sharon DiLorenzo	—	Education Director
Rachel Hye Youn Rupright	—	Former President, Board of Directors
Amy Klein	—	Chief Executive Officer
Lily Morrighan	—	Healthy Communities Director
Collin Parliman	—	Retail Markets Director
Jessica Trowbridge	—	Operations Director
Sean Wyse	—	Community Engagement Director

(b) At all material times, Respondent's unnamed legal representative has been an agent of Respondent within the meaning of Section 2(13) of the Act.

6.

(a) About June 16, 2022, Respondent, by Klein, at Respondent's facility, threatened to terminate employees for selecting the Union as their bargaining representative.

(b) Respondent, by the individuals named below, about the dates and at the locations opposite their names, threatened employees with facility closure because employees had selected the Union as their bargaining representative:

Agent	Date	Location
(i) Klein	June 16, 2022	Respondent's facility
(ii) Klein	August 5, 2022	Respondent's facility
(iii) Klein	August 5, 2022	Respondent's facility
(iv) Klein	August 5, 2022	Respondent's facility
(v) Klein	August 5, 2022	Respondent's facility

(c) About June 16, 2022, Respondent, by Klein, at Respondent's facility, made a derogatory comment about employees who supported the Union.

(d) About June 16, 2022, Respondent, by Klein, at Respondent's facility, made a derogatory comment about a pro-union employee.

(e) About June 16, 2022, Respondent, by Klein, at Respondent's facility, interrogated employee Greg Campbell-Cohen about the union support and union activities of other employees.

(f) About July 13, 2022, Respondent, by Respondent's unnamed legal agent, via Zoom, interrogated employee Nicki Russell about her union support and activities.

(g) About July 22, 2022, Respondent, by Klein, via email, directed employees not to communicate or share information with a pro-union employee.

(h) About July 29, 2022, Respondent, by Wyse, at Respondent's facility, surveilled a pro-union employee's email account.

(i) About August 5, 2022, Respondent, by Klein, during a staff meeting at Respondent's facility, by telling employees that they would never have a say in Respondent's decisions, informed its employees that it would be futile for them to engage in protected concerted and union activities.

(j) About August 5, 2022, Respondent, by Klein, during a staff meeting at Respondent's facility, blamed the Union for worsening workplace conditions.

(k) About August 11, 2022, Respondent, by Klein, at Respondent's facility, equated employees' request for voluntary recognition with an attack.

7.

(a) At all material times, Respondent has maintained the following rule:

Computers and Electronic Mail Usage

Capital Roots' property, including computers and electronic mail, should only be used for conducting organization business. Incidental and occasional personal use of organization computers and our electronic mail is permitted. We ask that you keep your use to a minimum. All information and messages stored in these systems will be treated no differently from other business-related information and messages. Any employee who uses computer systems for improper purposes may be subject to discipline, up to and including termination.

(b) Respondent, about the dates and by the individuals named below, enforced the rule described above in paragraph 7(a) selectively and disparately by applying it more strictly against employees who formed, joined, or assisted the Union:

Agent	Date
(i) Trowbridge	June 24, 2022
(ii) Klein	July 5, 2022
(iii) Klein	July 29, 2022

8.

(a) About the dates set forth opposite their names, Respondent deactivated access to an internal database for the employees named below:

Names	Dates
(i) Cody Bloomfield	July 1, 2022
(ii) Greg Campbell-Cohen	July 1, 2022
(iii) Tess Drauschak	July 1, 2022
(iv) MaryAnn Gonzalez	July 1, 2022
(v) Laura Kenny	July 1, 2022
(vi) Nicki Russell	July 1, 2022
(vii) Melissa Spiegel	July 1, 2022
(viii) Makayla Mahaus	July 1, 2022
(ix) Mike DellaRocco	July 5, 2022
(x) Megan Healey	July 5, 2022

(b) About July 22, 2022, Respondent terminated its employee Greg Campbell-Cohen.

(c) About July 25, 2022, Respondent denied a flexible work schedule to its employee Cody Bloomfield.

(d) About July 29, 2022, Respondent issued a written warning to its employee Cody Bloomfield.

(e) About August 31, 2022, Respondent issued a negative performance appraisal of its employee Melissa Spiegel.

(f) Respondent engaged in the conduct described above in paragraph 8(a) through (e) because employees of Respondent formed the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

9.

(a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and part-time employees of the Employer.

Excluded: Interns, volunteers, student workers, Americorps Vistas, managers, supervisors, and guards as defined by the Act.

(b) Since about July 5, 2022 and at all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in a notice of recognition dated August 8, 2022.

(c) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

10.

(a) About July 22, 2022, Respondent terminated its employee Greg Campbell-Cohen.

(b) About August 3, 2022, Respondent terminated its employee Cody Bloomfield.

(c) About October 21, 2022, Respondent eliminated a job classification.

(d) About October 21, 2022, Respondent altered two job classifications.

(e) The subjects set forth above in paragraph 10(a) through (d) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(f) Respondent exercised discretion in imposing the disciplines described above in paragraph 10(a) through (b).

(g) Respondent engaged in the conduct described above in paragraph 10(a) through (b) without providing pre-implementation notice and an opportunity to bargain with the Union with respect to this conduct and the effects of this conduct.

(h) Respondent engaged in the conduct described above in paragraph 10(c) through (d) without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

11.

By the conduct described above in paragraphs 6 and 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)(1) of the Act.

12.

By the conduct described above in paragraph 8, 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.

13.

By the conduct described above in paragraph 10, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

14.

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

WHEREFORE, the General Counsel further seeks an Order providing for all relief as may be just and proper to remedy the unfair labor practices alleged, including, but not limited to, requirements that Respondent:

(a) preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payroll records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of such Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner;

(b) make employee Greg Campbell-Cohen whole, including but not limited to, by reimbursement for consequential harm he incurred as a result of Respondent's unlawful conduct;

(c) reimburse Greg Campbell-Cohen for reasonable consequential damages incurred by him as a result of the Respondent's unlawful conduct;

(d) offer reinstatement to Greg Campbell-Cohen, and, in the event he is unable to return to work, instate a qualified applicant of the Union's choice;

(e) immediately expunge from its files and records any reference that Greg Campbell-Cohen was terminated for cause and prohibiting Respondent from using the terminations against him in any way and notify Greg Campbell-Cohen in writing, that it has done so.

(f) immediately expunge from its files and records any reference that Cody Bloomfield was issued a written warning and prohibiting Respondent from using the discipline against him in any way and notify Cody Bloomfield in writing, that it has done so.

(g) immediately expunge from its files and records any reference to the negative performance appraisal given to Melissa Spiegel and prohibiting Respondent from using the appraisal against her in any way and notify Melissa Spiegel in writing, that it has done so.

(h) on the Union's request, rescind the termination of Cody Bloomfield, but nothing in this Order is to be construed as requiring the Respondent to rescind any unilateral changes that benefited the unit employees without a request from the Union.

(i) on the Union's request, rescind the decision to eliminate a job classification, but nothing in this Order is to be construed as requiring the Respondent to rescind any unilateral changes that benefited the unit employees without a request from the Union.

(j) on the Union's request, rescind the changes to job classifications, but nothing in this Order is to be construed as requiring the Respondent to rescind any unilateral changes that benefited the unit employees without a request from the Union.

(k) send employee Greg Campbell-Cohen a letter of apology apologizing for any hardship or distress caused by his discharge, by U.S. Mail and email with a courtesy copy to Region 3, on Respondent's letterhead and signed by a responsible official of Respondent;

(l) provide ongoing training of employees, including supervisors and managers, both current and new, on employees' rights under the Act and compliance with the Board's Orders with an outline of the training submitted to the Agency in advance of what will be presented and that the Federal Mediation and Conciliation Service (FMCS) conduct such training;

(m) physically post the Notice to Employees at Respondent's facility and require the Notice to be posted until a contract is executed, and distribute the Notice to Employees and the Board's Orders to current and new supervisors and manager;

(n) electronically distribute the Notice to Employees to all employees employed by Respondent by text messaging, posting on social media websites, and posting on internal apps and intranet websites, if Respondent communicates with its employees by such means;

(o) grant a Board Agent access to Respondent's facility and to produce records so that the Board Agent can determine whether Respondent has complied with posting, distribution, and mailing requirements;

(p) at a meeting or meetings scheduled to ensure the widest possible attendance, have Ann Klein read the Notice to Employees and an Explanation of Rights to employees employed by Respondent at Respondent's facility on work time in the presence of a Board agent, a representative of the Union, or have a Board agent read the Notice to Employees and an Explanation of Rights to employees employed by Respondent at Respondent's facility on work time in the presence of a representative of the Union and Ann Klein and make a video recording of the reading of the Notice to Employees and the Explanation of Rights, with the recording being distributed to employees by electronic means or by mail.

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 complaint. The answer must be **received by this office on or before August 15, 2023 or postmarked on or before August 14, 2023**. Respondent also 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 complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on February 26, 2024, at 1:00 p.m., in the Hearing Room at the Leo W. O'Brien Federal Building, 11A Clinton Avenue, Suite 342, Albany, NY 12207, 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.

DATED at Buffalo, New York, this 1st day of August, 2023.

/s/ Linda M Leslie

LINDA M. LESLIE
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 03-CA-300872

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.

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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.