



UNITED STATES GOVERNMENT

**NATIONAL LABOR RELATIONS BOARD**

**OFFICE OF THE GENERAL COUNSEL**

Washington, D.C. 20570

March 23, 2016

Clerk, United States Court of  
Appeals for the Sixth Circuit  
540 Potter Stewart U.S. Courthouse  
100 East Fifth Street  
Cincinnati, OH 45202-3988

Re: *NLRB v. Midwestern Video Personnel,  
Inc.*, (6th Cir.) Board Case No. 07-CA-  
148107

Dear Clerk:

I am enclosing the Board's application for summary entry of a judgment enforcing the Board's order in this case, and a copy of a proposed judgment.

Please serve a copy of the application on Respondent, whose address appears on the service list. I have served a copy of the Board's application and proposed judgment on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of all correspondence the Court sends to counsel in this case, and a copy of the judgment issued.

Very truly yours,

/s/ Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, S.E.  
Washington, D.C. 20570  
(202) 273-2960

# SERVICE SHEET

## REGIONAL DIRECTOR:

Terry A. Morgan, Regional Director  
National Labor Relations Board  
477 Michigan Avenue – Room 300  
Detroit, MI 48226-2569

## RESPONDENT:

Charlyn Scroggins, President  
Midwestern Video Personnel, Inc.  
5666 Richman Road  
Spencer, OH 44275

Tel: (330) 667-0101  
Cell: (330) 416-4214  
Fax: (330) 667-1011

## RESPONDENT'S COUNSEL:

*The Board is not aware of  
present counsel for Respondent*

## CHARGING PARTY:

Michael Tatomir  
27427 Engleside Street  
Farmington Hills, MI 48336-1664

## CHARGING PARTY'S COUNSEL:

Robert D. Fetter, Esq.  
Miller Cohen, P.L.C.  
600 West Lafayette Blvd.  
Fourth Floor  
Detroit, MI 48226-2711

Tel: (313) 964-4454  
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and is reported at 363 NLRB No. 120.

## **B. Proceedings Before the Board**

1. Upon a charge filed on March 12, 2015, the General Counsel issued the complaint on July 31, 2015, alleging that the Respondent violated Sections 8(a)(3) and (1) of the Act. The Respondent filed an answer to the complaint.

2. Subsequently, the Respondent entered into an informal settlement agreement which was approved by the Regional Director for Region 7 on October 9, 2015. The settlement agreement required Respondent to perform certain actions and contained the following noncompliance provision:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 7 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on July 31, 2015, in the instant case(s). Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

3. On October 14, 2015, the Region sent the Respondent a copy of the approved settlement agreement and advised it to take the steps necessary to comply.

4. By letter dated October 22, 2015, the Regional Director advised the Respondent that it was not in compliance with the settlement agreement. In the letter Regional Director again described the actions to be taken to comply with the agreement. The letter warned that failure to take the remedial actions within 7 days could result in the reissuing of the complaint and seeking a motion for default judgment.

5. In an October 26, 2015, telephone conversation the Respondent stated that it had shut down its business and could not afford to comply with its obligations under the settlement agreement. The Respondent also stated that it would do nothing further in this matter and would not contest any remaining dispute. The region reiterated its warning that failure to comply with the agreement could result in the reissuance of the complaint and a filing of a motion for default judgment.

6. Having received no further response, and pursuant to the noncompliance provisions of the settlement agreement, on December 1, 2015, the Regional Director issued a Complaint Based on Breach of Affirmative Provisions of Settlement Agreement (the reissued complaint) and the General Counsel filed a

Motion for Default Judgment with the Board.

7. On December 14, 2015, the Board issued an order transferring the case to itself and a Notice to Show Cause, giving Respondent until December 28, 2015, to file a response to the Motion for Default Judgment with the Board in Washington, D.C.

8. The Respondent did not file a response. The allegations in the motion were therefore undisputed.

9. In the absence of a response and pursuant to the noncompliance provisions of the settlement agreement, on February 22, 2016, the Board issued its Decision and Order granting the Motion for Default Judgment and entering an appropriate order against Respondent.

### **C. The Board Is Entitled to Summary Enforcement of Its Order**

On these facts, the Board is entitled to summary enforcement of its order against Respondent. Respondent did not dispute before the Board that it had breached its settlement agreement. Therefore Respondent cannot dispute before this Court the Board's finding that it had breached the settlement agreement.

It is settled that the Board is entitled to have the default judgment summarily enforced. Under Section 10(e) of the Act (29 U.S.C. § 160(e)), no objection that has not been urged before the Board shall be considered by a court of appeals "unless the failure or neglect to urge such objection shall be excused because of

extraordinary circumstances.” Interpreting that requirement, courts have consistently held that a respondent’s failure to assert a defense before the Board entitles the Board, absent extraordinary circumstances, to summary enforcement of its order. *See e.g., N.L.R.B. v. Innkeepers of Ohio, Inc.*, 596 F.2d 177, 178 (6th Cir. 1979). *See also NLRB v. Mays Printing Co.*, 452 F.App’x 593 (6th Cir. 2009), *Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Aaron Convalescent Home*, 479 F.2d 736, 738-39 (6th Cir. 1973); *NLRB v. Innkeepers of Ohio, Inc.*, 596 F.2d 177 (6th Cir. 1979); *NLRB v. Dane County Dairy*, 795 F.2d 1313, 1319-21 (7th Cir. 1986); *Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3d Cir. 1984). No such circumstances have been alleged or shown here.

WHEREFORE, the Board respectfully requests that the Court, after serving notice of the filing of this application on Respondent, enter judgment summarily enforcing the Board’s order in full. A proposed judgment is attached.

/s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, S.E.  
Washington, D.C. 20570

Dated in Washington, D.C.  
this 23rd day of March, 2016

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
 :  
 :  
 Petitioner : No.  
 v. :  
 :  
 :  
 MIDWESTERN VIDEO PERSONNEL, INC. : Board Case No.:  
 : 07-CA-148107  
 Respondent :

JUDGMENT ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Midwestern Video Personnel, Inc., its officers, agents, successors, and assigns, enforcing its order dated February 22, 2016, in Case No. 07-CA-148107, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Midwestern Video Personnel, Inc., Spencer, Ohio, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Remit \$9,350 in wages and \$110.53 in interest to Region 7 of the National Labor Relations Board to be disbursed to Michael Tatomir, in accordance with the terms of the settlement agreement approved by the Regional Director on October 9, 2015.

2. Compensate Michael Tatomir for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for Tatomir.

3. Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

ENTERED BY ORDER OF THE COURT

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Clerk

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:
	:
Petitioner	: No.
v.	:
	:
MIDWESTERN VIDEO PERSONNEL, INC.	: Board Case No.:
	: 07-CA-148107
Respondent	:

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for summary entry of judgment, proposed judgment, and appearance of counsel form, in the above-captioned case, has this day been served by first class mail upon the following party at the address listed below:

Charlyn Scroggins, President  
Midwestern Video Personnel, Inc.  
5666 Richman Road  
Spencer, OH 44275

/s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, S.E.  
Washington, D.C. 20570

Dated at Washington, D.C.  
this 23rd day of March, 2016