



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

September 30, 2016

Clerk, United States Court of
Appeals for the Fourth Circuit
Lewis F. Powell, Jr. U.S. Courthouse
1100 East Main Street, Suite 501
Richmond, VA 23219-3517

*Re: NLRB v. Engineering Contractors, Inc.
and ECI of Washington, LLC, Alter Egos,
Board Case Nos. 05-CA-036213, 05-CA-
036214, 05-CA-036216, 05-CA-036306 and
05-CA-036225*

Dear Clerk:

On March 28, 2013, this Court entered judgment in No. 12–1410 enforcing the Board’s initial order. A controversy having arisen over the amount due under the Board’s order, the Regional Director issued a compliance specification and notice of hearing on February 4, 2016. The Board issued its Supplemental Decision and Order determining the amount due on June 23, 2016.

The Board now wishes to obtain enforcement of its Supplemental Decision and Order and is enclosing an application of the National Labor Relations Board for the summary entry of a judgment enforcing the Board’s supplemental order and a proposed judgment.

Please serve a copy of the application on Respondent, whose addresses appear 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 St. S.E.
Washington, D.C. 20570
(202) 273-2960

cc & documents to: Service List

SERVICE LIST

NOTE: The Board is not aware of counsel for Respondent

RESPONDENTS:

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REGIONAL DIRECTOR:

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:
	: No
Petitioner	:
v.	: Board Case Nos.:
	: 05-CA-036213
ENGINEERING CONTRACTORS, INC. AND ECI	: 05-CA-036214
OF WASHINGTON, LLC, ALTER EGOS	: 05-CA-036216
	: 05-CA-036306
Respondent	: 05-CA-036225

APPLICATION FOR SUMMARY ENTRY OF A
JUDGMENT ENFORCING A SUPPLEMENTAL ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Fourth Circuit:

The National Labor Relations Board (the “Board”), pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)), applies to this Court for summary entry of a judgment enforcing its Supplemental Order against Engineering Contractors, Inc. and ECI of Washington, LLC, Alter Egos (“Respondent”). The Board is entitled to summary enforcement of its Supplemental Order because Respondent failed to file an answer to the Board’s compliance specification and the Board entered an order by default. In support, the Board shows:

A. Jurisdiction of this Court

This Court has jurisdiction over this application under Section 10(e) of the Act (29 U.S.C. § 160(e)). Venue is proper in this Circuit because the unfair labor practices occurred in Maryland. The Board's final order issued on June 23, 2016, and is reported at 364 NLRB No. 32.

B. Proceedings Before the Board

1. The underlying controversy was brought before the Court by the Board's application for enforcement of its Order issued December 8, 2011. That order directed Respondent, in part, to make whole certain employees for any loss of earnings or benefits they may have suffered by reason of the discrimination against them. The Court entered its judgment enforcing the Board's Order in full in No. 12-1410, on March 28, 2013.

2. A controversy having arisen over the amount of backpay due discriminatees under the terms of the Board's order, the Regional Director issued and served on Respondent a compliance specification and notice of hearing on February 4, 2016, alleging the amount of backpay due under the Board's Order. The specification advised Respondent that, under the Board's Rules (29 C.F.R. 102.56), it was required to file an answer by February 25, 2016, and that if it failed to file an answer, the allegations of the specification would be deemed to be true

and Respondent would be precluded from introducing any evidence controverting them.

3. Respondent did not file an answer.

4. On March 8, 2016, the Regional Office notified the Respondent that it had not received an answer and advised Respondent that unless an answer was received by March 18, 2016, a motion for default judgment would be filed. By letter dated March 22, 2016, the Region again informed the Respondent that no answer had been received and that unless an answer was received by March 28, 2016, a motion for default judgment would be filed.

5. Respondent did not file an answer.

6. On March 31, 2016, counsel for the Acting General Counsel filed with the Board a Motion for Default Judgment based on Respondent's failure to file an answer to the compliance specification. On April 4, 2016, the Board issued an order, transferring the proceeding to itself and a Notice to Show Cause, giving Respondent until April 18, 2016, to file with the Board in Washington, D.C., a response to the motion for default judgment.

7. Respondent did not file a response.

8. On June 23, 2016, the Board granted the Motion for Summary Judgment and issued its Supplemental Decision and Order. The order directed Respondent to make whole the named individuals, and fringe benefit funds by paying them the

amounts set forth below, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as set forth in *Kentucky River Medical Center*, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State laws.

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

On these facts, the Board is entitled to summary enforcement of its supplemental order against Respondent. Where a respondent in a Board proceeding fails to file an appropriate answer to the compliance specification in a timely manner, the Board may, pursuant to Board Rule 102.56(c), find the specification to be true and enter an order, essentially by default, against the respondent. The Board, further, is entitled to have that 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 any defense before the Board entitles the Board, absent extraordinary circumstances, to summary enforcement of its order. *See, e.g., Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9th Cir. 1991); *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); *NLRB v. Aaron Convalescent Home*, 479 F.2d 736, 738-39 (6th Cir. 1973).

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 St. S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 30th day of September, 2016

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No
Petitioner	:	
v.	:	Board Case Nos.:
	:	05-CA-036213
ENGINEERING CONTRACTORS, INC. AND ECI	:	05-CA-036214
OF WASHINGTON, LLC, ALTER EGOS	:	05-CA-036216
	:	05-CA-036306
Respondent	:	05-CA-036225

JUDGMENT ENFORCING A SUPPLEMENTAL ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

Before:

This Court having on March 28, 2013, in No. 12-1410, entered its judgment enforcing in full the Order of the National Relations Board in Board Case Nos. 05-CA-036213, 05-CA-036214, 05-CA-036216, 05-CA-036306 and 05-CA-036225, the Board on June 23, 2016, issued its Supplemental Decision and Order fixing the amount due and having thereafter applied to this Court for summary entry of a judgment specifying the amount due:

IT IS HEREBY ORDERED AND ADJUDGED by the Court that the Respondent, Engineering Contractors, Inc. and ECI of Washington, LLC, Alter Egos, its officers, agents, successors, and assigns, shall make whole the named discriminatees and fringe benefit funds by paying them the amounts set forth below, plus interest accrued to the date of payment, as prescribed in New

Horizons, 283 NLRB 1173 (1987), compounded daily as set forth in Kentucky River Medical Center, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State laws. ¹

Plumbers Local 5 discriminatees:

Thomas Alston	283,249.34
Thomas Bistodeau	173,419.21
Donald Brown	296,970.71
Richard Emery	230,898.12
Francis Hill	102,356.79
Jeffrey Lehman	232,354.21
Jeremy Nicholas	279,980.22
Lovelle Proctor	176,634.48
Brandon Sewell	247,334.03
Tristan Swann	<u>259,916.83</u>
Total:	\$2,283,113.94

Steamfitters Local 602 discriminatees:

Timothy Capps	59,155.83
Clinton Cupples	1,843.50
Phillip Fowler	72,680.10
David Hall, Sr.	67,510.74
David Hall, Jr.	25,377.68
Nicholas Hamilton	76,538.91
Gary Harper, Jr.	74,559.30
Thomas Kay	<u>43,934.82</u>
Total:	\$421,600.88

Sheet Metal Workers Local 100 discriminatees:

Arrington Baines	269,392.56
Gregory DeSibour	277,596.20
Florence Gjorka	177,459.23
Dwayne Lyons	176,089.08

¹ As set forth in the compliance specification, the Respondent shall pay the discriminatees the amounts set forth opposite their names below, less any additional interim earnings unknown at this time, and shall remit to the appropriate taxing authority the Respondent's share of FICA contributions.

Eric Martin	244,849.72
Scottie Moomau	142,753.97
Troy Naylor	274,634.72
John Prescott	277,596.20
Charles Seville	277,596.20
David Tabron	178,525.00
Corey Young	320,827.00
Frank Young	96,408.00
Victor Zelaya	<u>137,776.11</u>
Total:	\$2,851,503.99

Asbestos Workers Local 24 discriminatees:

Joe Burnette	200,727.44
Curtis Clark	150,289.52
Bobby Jones	106,069.54
Frank Keeler	180,908.96
Sandra Rice	191,643.97
Sean Sprouse	<u>180,908.96</u>
Total:	\$1,010,548.39

TOTAL AMOUNT BACKPAY DUE \$6,566,767.20

Plumbers Local 5 benefit funds:

Plumbers and Pipefitters Medical Fund	479,715.00
Plumbers and Pipefitters National Pension Fund	409,620.05
Plumbers and Gasfitters Local 5 Retirement Savings Fund	80,559.62
Plumbers and Pipefitters Apprenticeship Fund	82,836.44
United Association International Training Fund	<u>6,856.40</u>
Total:	\$1,059,587.51

Steamfitters Local 602 benefit funds:

Heating, Piping and Refrigeration Medical Fund	80,728.81
Heating, Piping and Refrigeration Pension Fund	98,902.24
Steamfitters Local 602 Retirement Savings Fund	32,352.92
Heating, Piping and Refrigeration Training Fund	10,816.62
International Training Fund	<u>1,214.20</u>
Total:	\$224,014.79

Sheet Metal Workers Local 100 benefit funds:	
Health Benefit Fund	581,259.44
National Pension Fund for the Sheet Metal and Air Conditioning Industry	575,041.20
Sheet Metal Workers Local 100 401(k) Fund	48,083.50
Sheet Metal Local 100 Apprentice and Journeyman Training Fund	60,034.30
International Training Institute for the Sheet Metal and Air Conditioning Industry	11,540.04
	Total: \$1,275,958.48

Asbestos Workers Local 24 benefit funds:	
Asbestos Workers Local 24 Medical Fund	262,013.78
Asbestos Workers Local 24 Pension Fund	310,005.51
Asbestos Workers Local 24 Apprentice Fund	8,398.15
National Joint Apprentice Fund	<u>2,282.35</u>
Total:	\$582,699.79

TOTAL AMOUNT DUE BENEFIT FUNDS \$3,142,260.57

**TOTAL AMOUNT DUE
BACKPAY AND FUNDS: \$9,709,027.77**

Mandate shall issue forthwith.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
 : No
 :
 :
 : Board Case Nos.:
 : 05-CA-036213
 : 05-CA-036214
 : 05-CA-036216
 : 05-CA-036306
 : 05-CA-036225

Petitioner :
v. :
Respondent :

CERTIFICATE OF SERVICE

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

Mr. Steve Griffith
Engineering Contractors, Inc., and its
alter ego, ECI of Washington, LLC
15808 Chippenham Ter.
Upper Marlboro, MD 20774-8007

Mr. Paul Parker
Engineering Contractors, Inc.
7925 Penn Randall Place, Suite B3
Upper Marlboro, MD 20772

/s/ Linda Dreeben

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

Dated at Washington, D.C.
this 30th day of September, 2016