



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

December 22, 2016

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

Re: *NLRB v. Thermico, Inc. and Associate
Resources, Inc.*, Board Case No. 07-CA-
170484

Dear Ms. Hunt:

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

cc & documents to: Service List

SERVICE LIST

RESPONDENT:

Mr. Mark Thompson, Pres. and CEO
Thermico, Inc. and Associated
Resources, Inc., a single employer
3405 Centennial Dr., Ste. 2
Midland, MI 48642

The Board is not aware of
counsel for Respondent

Tel: (989) 496-2927
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Email: mthompson@thermico.com

CHARGING PARTY:

Local 47, Int'l Assn of Heat and
Frost Insulators and Allied Workers
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300 St. Andrews Rd., Ste. 304A
Saginaw, MI 48638

Tel: (989) 799-5780
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CHARGING PARTY COUNSEL:

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REGIONAL DIRECTOR:

Terry A. Morgan, Rgn'l Dir.
National Labor Relations Board
477 Michigan Avenue – Room 300
Detroit, MI 48226-2569

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
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 Petitioner : No.
 v. :
 : Board Case No.:
 THERMICO, INC. AND ASSOCIATE RESOURCES, INC. : 07-CA-170484
 :
 :
 Respondent :

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

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

The National Labor Relations 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 order against Thermico, Inc. and Associate Resources, Inc. (“Respondent”). The Board is entitled to summary enforcement of its order because Respondent did not contest that it had defaulted on its settlement agreement 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 Michigan. The Board's final order issued on October 26, 2016, and is reported at 364 NLRB No. 135.

B. Proceedings Before the Board

1. On February 23, 2016, Local 47, International Association of Heat and Frost Insulators and Allied Workers (AWIU), AFL-CIO filed an unfair labor practice charge against Thermico, Inc. and Associate Resources, Inc. as a single employer.

2. Subsequently the parties entered into a bilateral informal settlement agreement, which was approved by the Regional Director for Region 7 on March 15, 2016. The settlement agreement required the Respondent to take certain actions and, among other things, contained the following 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 14 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 issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. 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 all of the allegations of the Complaint will be deemed admitted and it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may

impose, a full remedy for each unfair labor practice identified in the Notice to Employees. 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 at the last address provided to the General Counsel.

3. By letter dated May 31, 2016, the Region notified Respondent that the Union asserted that the Respondent had violated the terms of the settlement agreement by failing to properly post the Notice and by failing to respond to the Union's letter requesting bargaining. The Region's letter advised the Respondent of its obligation to respond to these assertions by June 7, 2016, and warned that failure to do so may result in the issuance of a complaint and the filing of a motion for default judgment.

4. On June 13, 2016, Respondent submitted its response denying the allegations of non-compliance. On June 14, 2016, the Region again notified the Respondent by mail of the allegations of non-compliance. The letter advised the Respondent of its obligation to fully comply with the terms of the notice posting and collective-bargaining provisions of the settlement agreement within 14 days of that letter.

5. On June 15, 2016, the Region spoke with the Respondent's president and

chief executive officer, Mark Thompson, and informed him that the Union had requested bargaining and forwarded to the Respondent a copy of the Union's letter requesting bargaining. The Respondent thereafter acknowledged receipt.

6. The Respondent did not comply.

7. On July 13, 2016, the Regional Director issued a complaint based on the breach of affirmative provisions of settlement agreement. On July 19, 2016, the General Counsel filed a Motion for Default Judgment with the Board. On July 20, 2016, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

8. The Respondent did not file a response to the Notice to Show Cause. The allegations in the motion were undisputed.

9. In light of the uncontroverted allegations in the motion for default judgment that the Respondent failed to comply with the terms of the settlement agreement, and pursuant to the noncompliance provisions thereof, on October 26, 2016, the Board issued its Decision and Order granting the Motion for Default Judgment and entered 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. The settlement agreement provided that in case of noncompliance the allegations would be deemed admitted and the only issue that

could be raised before the Board is whether the Respondent had defaulted on the terms of the settlement agreement. The Respondent did not raise any issues before the Board and did not contest that it had defaulted on the terms of the settlement agreement.

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.” This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). 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., Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Tri-State Warehouse & Distrib.*, 677 F.2d 31, 31 (6th Cir. 1982); *NLRB v. Innkeepers of Ohio, Inc.*, 596 F.2d 177 (6th Cir. 1979); *NLRB v. Aaron Convalescent Home*, 479 F.2d 736, 738-39 (6th Cir. 1973); *NLRB v. Globe-Wernicke Systems*, 336 F.2d 589, 589 (6th Cir. 1964). *See also Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3d Cir. 1984); *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). 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 22nd day of December, 2016

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
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 :
 Petitioner : No.
 v. :
 : Board Case No.:
 THERMICO, INC. AND ASSOCIATE RESOURCES, INC. : 07-CA-170484
 :
 :
 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, Thermico, Inc. and Associate Resources, Inc., its officers, agents, successors, and assigns, enforcing its order dated October 24, 2013, in Case No. 07-CA-170484, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Thermico, Inc. and Associate Resources, Inc., its officers, agents, successors, and assigns, shall abide by said order (see attached order and appendix).

Mandate shall issue forthwith.

BY THE COURT

Circuit Judge

DATED:

NATIONAL LABOR RELATIONS BOARD

v.

THERMICO, INC. AND ASSOCIATE RESOURCES, INC.

ORDER

Thermico, Inc. and Associate Resources, Inc., Midland, Michigan, a single employer, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Failing and refusing to bargain in good faith with Local 47, International Association of Heat and Frost Insulators and Allied Workers (AWIU), AFL-CIO as the exclusive collective-bargaining representative of employees in the bargaining unit.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

All full-time and regular part-time mechanical insulation installers employed by the Respondent, at and out of its facility located at 3405 Centennial Drive, Suite 2, Midland, Michigan, but excluding scaffold builders, painters, office clerical employees, managerial employees, professional employees, technical employees, delivery drivers, and guards and supervisors as defined by the Act, and all other employees.
 - (b) Bargain in good faith with the Union not less than twice per week, at least 4 hours per session, or another schedule mutually agreed upon by the parties, until a complete collective-bargaining agreement or a bona fide impasse is reached.
 - (c) Within 14 days after service by the Region, post at its facility in Midland, Michigan, copies of the attached notice marked "Appendix."

Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 5, 2015.

- (d) 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.

APPENDIX

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Local 47, International Association of Heat and Frost Insulators and Allied Workers (AWUI), AFL-CIO as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time mechanical insulation installers employed by us, at and out of our facility located at 3405 Centennial Drive, Suite 2, Midland, Michigan, but excluding scaffold builders, painters, office clerical employees, managerial employees, professional employees, technical employees, delivery drivers, and guards and supervisors as defined by the Act, and all other employees.

WE WILL bargain in good faith with the Union not less than twice per week, at least 4 hours per session, or another schedule mutually agreed upon, until a complete collective-bargaining agreement or a bona fide impasse is reached.

THERMICO, INC. AND ASSOCIATE RESOURCES, INC.

The Board's decision can be found at www.nlrb.gov/case/07-CA-170484 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive

Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
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CERTIFICATE OF SERVICE

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

Mr. Mark Thompson, Pres. and CEO
Thermico, Inc. and Associated
Resources, Inc., a single employer
3405 Centennial Dr., Ste. 2
Midland, MI 48642

/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 22nd day of December, 2016