

Per PACER docket, no objections to the Board's proposed judgment were filed within 14 days as per the terms of the order. Consequently the proposed judgment submitted by the Board in this case has been adopted by the Circuit.

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEB 28 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NATIONAL LABOR RELATIONS
BOARD,

Petitioner,

v.

KELAYE CONCRETE LLC,

Respondent.

No. 17-70224

NLRB No. 19-CA-168201
National Labor Relations Board

ORDER

Before: CANBY, CLIFTON, and FRIEDLAND, Circuit Judges.

The application of the National Labor Relations Board for summary enforcement of its September 19, 2016 order (Docket Entry No. 1) is granted.

Unless objections as to form are received within fourteen (14) days of the date of this order, the form of judgment already submitted by the National Labor Relations Board will be the judgment of the court.

The Clerk shall serve the proposed judgment on respondent.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case Nos.
KELAYE CONCRETE LLC	:	19-CA-168201
	:	19-CA-171176
Respondent	:	19-CA-171823

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, Kelaye Concrete LLC, its officers, agents, successors, and assigns, enforcing its order dated September 19, 2016, in Case Nos. 19-CA-168201, 19-CA-171176 and 19-CA-171823, reported at 364 NLRB No. 123, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Kelaye Concrete LLC, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Endorsed, Judgment Filed and Entered

/s/ Molly Dwyer
Molly Dwyer
Clerk

NATIONAL LABOR RELATIONS BOARD

v.

KELAYE CONCRETE LLC

ORDER

Kelaye Concrete LLC, Boring, Oregon, its officers, agents, successors, and assigns shall

1. Cease and desist from

- (a) Threatening employees that they would not be rehired if they were Union supporters and/or members.
- (b) Threatening employees by stating that it was seeking to go nonunion.
- (c) Coercively interrogating employees about their union membership, activities, sympathies, and/or support.
- (d) Prohibiting employees from talking about the Union or benefits during work.
- (e) Discharging or constructively discharging employees because they engaged in, or are perceived to have engaged in, union and other protected concerted activities, and to discourage employees from engaging in such activities.
- (f) Failing and refusing to bargain collectively and in good faith with Operative Plasterers' and Cement Masons' Union, Local 528, affiliated with Operative Plasterers' and Cement Masons' International Association, AFL-CIO as the limited exclusive collective-bargaining representative of the employees in the following unit, by failing to continue in effect all the terms and conditions of employment provided for in the June 1, 2015— May 31, 2018 collective-bargaining agreement between the Union and individual members of the Associated General Contractors of Washington, and any automatic renewal or extension of it, by failing to pay employee benefits. The unit is:

All cement masons' work to be done at the site of the construction, alteration, painting or repair of a building, structure, or other work in the following counties in the State of Washington: Clallam, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Snohomish, Thurston, and Whatcom.

- (g) Failing to continue in effect all the terms and conditions of employment provided for in the collective-bargaining agreement described above by failing to pay employee benefits because its employees supported the Union and/or engaged in other protected concerted activities, or were perceived by the Respondent as doing so, and to discourage employees from engaging in such activities.
 - (h) Constructively discharging employees because of its failure to continue in effect all the terms and conditions of employment provided for in the collective-bargaining agreement described above by failing to pay employee benefits.
 - (i) 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) Within 14 days from the date of this Order, offer employees Dan Ellis, Geoff Hagedorn, Riley Kerle, Wade Kerle, Mikal Davenport, Jose Mendoza, and Brandon Martinson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
 - (b) Make employees Dan Ellis, Geoff Hagedorn, Riley Kerle, Wade Kerle, Mikal Davenport, Jose Mendoza, and Brandon Martinson whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.
 - (c) Within 14 days from the date of this Order, remove from their files any reference to the unlawful discharges and/or constructive discharges, and within 3 days thereafter, notify the employees in writing that this has been done and that the discharges and/or constructive discharges will not be used against them in any way.
 - (d) On request, bargain with the Union as the limited exclusive collective-bargaining representative of the unit.
 - (e) Honor and comply with the terms of the June 1, 2015—May 31, 2018 collective-bargaining agreement between the Union and individual members of the Associated General Contractors of Washington and any

automatic renewal or extension of it, including by paying employee benefits.

- (f) Make employees whole for any loss of earnings and other benefits suffered as a result of its failure to pay employee benefits since September 4, 2015, with interest, in the manner set forth in the remedy section of this decision.
- (g) Compensate Dan Ellis, Geoff Hagedorn, Riley Kerle, Wade Kerle, Mikal Davenport, Jose Mendoza, Brandon Martinson, and any affected unit employees who receive backpay as a result of the Respondent's unlawful changes in terms and conditions of employment, for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for each employee.
- (h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment 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 this Order.
- (i) Within 14 days after service by the Region, post at its Washington facilities copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 19, 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 facilities 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 September 4, 2014.

- (j) Within 21 days after service by the Region, file with the Regional Director for Region 19 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 the National Labor Relations Act and has ordered us to post and abide by 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 threaten you that you will not be rehired if you were Union supporters and/or members.

WE WILL NOT threaten you by stating that we are seeking to go nonunion.

WE WILL NOT coercively interrogate you about your union membership, activities, sympathies, and/or support.

WE WILL NOT prohibit you from talking about the Union or benefits during work.

WE WILL NOT discharge or constructively discharge you because you have engaged in, or are perceived to have engaged in, union and other protected concerted activities, and to discourage employees from engaging in such activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Operative Plasterers' and Cement Masons' Union, Local 528, affiliated with Operative Plasterers' and Cement Masons' International Association, AFL-CIO as the limited exclusive collective-bargaining representative of our employees in the following unit by failing to continue in effect all the terms and conditions of employment in the June 1, 2015—May 31, 2018 collective-bargaining agreement, and any automatic renewal or extension of it, by failing to pay employee benefits. The unit is:

All cement masons' work to be done at the site of the construction, alteration, painting or repair of a building, structure, or other work in the following counties in the State of Washington: Clallam, Cowlitz, Grays Harbor, Island, Jefferson,

King, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Snohomish, Thurston, and Whatcom.

WE WILL NOT fail to continue in effect all the terms and conditions of employment in the June 1, 2015—May 31, 2018 collective-bargaining agreement by failing to pay employee benefits to the unit employees described above because our employees supported the Union and/or engaged in other protected concerted activities, or were perceived by us as doing so, and to discourage employees from engaging in such activities.

WE WILL NOT constructively discharge any of you because of our failure to continue in effect all the terms and conditions of employment provided for in the June 1, 2015—May 31, 2018 collective-bargaining agreement by failing to pay employee benefits.

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, within 14 days from the date of this Order, offer employees Dan Ellis, Geoff Hagedorn, Riley Kerle, Wade Kerle, Mikal Davenport, Jose Mendoza, and Brandon Martinson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make employees Dan Ellis, Geoff Hagedorn, Riley Kerle, Wade Kerle, Mikal Davenport, Jose Mendoza, and Brandon Martinson whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges and/or constructive discharges, and WE WILL, within 3 days thereafter, notify each employee in writing that this has been done and that the discharges and/or constructive discharges will not be used against them in any way.

WE WILL, on request, bargain with the Union as the limited exclusive collective-bargaining representative of the unit.

WE WILL honor and comply with the terms of the June 1, 2015—May 31, 2018 collective-bargaining agreement between the Union and individual members of the Associated General Contractors of Washington and any automatic renewal or extension of it.

WE WILL make employees whole for any loss of earnings and other benefits suffered as a result of our failure to pay employee benefits since September 4, 2015, with interest.

WE WILL compensate Dan Ellis, Geoff Hagedorn, Riley Kerle, Wade Kerle, Mikal Davenport, Jose Mendoza, Brandon Martinson, and any affected unit employees who receives backpay as a result of our unlawful changes in terms and conditions of employment, for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 19, within 21 days from the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for each employee.

KELAYE CONCRETE LLC

The Board's decision can be found at www.nlr.gov/case/19-CA-168201 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.



If you view the Full Docket you will be charged for 1 Pages \$0.10

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 17-70224 NLRB v. Kelaye Concrete LLC Appeal From: National Labor Relations Board Fee Status: USA - No Fee Req	Docketed: 01/25/2017 Termed: 02/28/2017
Case Type Information: 1) agency 2) enforcement 3) null	
Originating Court Information: District: NLRB-1 : 19-CA-168201 Date Rec'd COA: 01/24/2017	

- 01/24/2017 [1](#) FILED NLRB'S APPLICATION FOR SUMMARY ENTRY OF A JUDGMENT ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD. DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. NOTIFIED RESPONDENTS OF FILING. SEND MQ: No. [10278870] (HC) [Entered: 01/25/2017 09:07 AM]
- 01/24/2017 [2](#) RECEIVED PROPOSED JUDGMENT. [10278889] (HC) [Entered: 01/25/2017 09:10 AM]
- 01/24/2017 [3](#) Filed Petitioner NLRB Mediation Questionnaire. Served on 01/24/2017. [10278895] (HC) [Entered: 01/25/2017 09:11 AM]
- 01/31/2017 [4](#) Filed Mediation order: This case is NOT SELECTED for inclusion in the Mediation Program. Counsel may contact circuit mediator to discuss services available through the court's mediation program, to request a settlement assessment conf, or to request a stay of the appeal for settlement purposes. Also, upon agreement of the parties, the brfing sch can be modified or vacated to facilitate settlement discussions. Csl are requested to send copies of this order to their clients. Info regarding the mediation program may be found at www.ca9.uscourts.gov/mediation. [10292224] (VS) [Entered: 01/31/2017 11:11 AM]
- 02/28/2017 [5](#) Filed order (WILLIAM C. CANBY, RICHARD R. CLIFTON and MICHELLE T. FRIEDLAND) The application of the National Labor Relations Board for summary enforcement of its September 19, 2016 order (Docket Entry No. [\[1\]](#)) is granted. Unless objections as to form are received within fourteen (14) days of the date of this order, the form of judgment already submitted by the National Labor Relations Board will be the judgment of the court. The Clerk shall serve the proposed judgment on respondent. [10335544] (WL) [Entered: 02/28/2017 07:19 AM]

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