

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 17-2150 Caption [use short title]

Motion for: Entry of Default Judgment

Set forth below precise, complete statement of relief sought:

Default judgment enforcing in full the NLRB's Order against the Respondent, based on Respondent's failure to answer the NLRB's application for enforcement. A proposed judgment is attached to the motion.

National Labor Relations Board v. Always East Transportation, Inc.

MOVING PARTY: National Labor Relations Board OPPOSING PARTY: Always East Transportation, Inc.

- Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Linda Dreeben OPPOSING ATTORNEY: No entry of appearance from counsel. [name of attorney, with firm, address, phone number and e-mail]

National Labor Relations Board 1015 Half Street, SE Washington, D.C. 20570

Court- Judge/ Agency appealed from: National Labor Relations Board

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain): Respondent is currently unrepresented.

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below? Has this relief been previously sought in this court? Requested return date and explanation of emergency:

Opposing counsel's position on motion: Unopposed Opposed Don't Know

Does opposing counsel intend to file a response: Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date:

Signature of Moving Attorney:

/s/ Linda Dreeben Date: 8/17/17 Service by: CM/ECF Other [Attach proof of service]

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

NATIONAL LABOR RELATIONS BOARD	)	
	)	
Petitioner	)	No. 17-2150
	)	
v.	)	Board Case Nos.
	)	03-CA-128669
ALLWAYS EAST TRANSPORTATION, INC.	)	03-CA-133846
	)	
Respondent	)	

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD  
FOR ENTRY OF A DEFAULT JUDGMENT**

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

The National Labor Relations Board, by its Deputy Associate General Counsel, respectfully moves this Court for entry of a judgment by default enforcing the Board’s Order in the above-captioned case. In support of this motion, the Board shows as follows:

1. On May 11, 2017, the Board issued a Decision and Order against Allways East Transportation, Inc. (“Respondent”). 365 NLRB No. 71. Thereafter, on July 12, 2017, the Board filed an application for enforcement of its Order in this Court.

2. Pursuant to Rule 15(b)(2) of the Federal Rules of Appellate Procedure, the Respondent was required to serve on the Board, and file with this Court, an answer to the Board’s application within 21 days. The Respondent

failed to serve and file an answer within the 21-day timeframe—that is, by August 2, 2017. Further, no counsel has filed an appearance to represent the Respondent in defending against the Board’s application for enforcement and, to date, it remains unrepresented before the Court.<sup>1</sup>

3. Under Rule 15(b)(2), the consequence of non-compliance with the answer requirement is clear: “If the respondent fails to answer in time, the court will enter judgment for the relief requested.” Accordingly, the Board is entitled to a judgment by default enforcing its Order in full.

4. For the Court’s convenience, a proposed judgment enforcing the Board’s Order is attached to this motion.

WHEREFORE, the Board respectfully requests that this Court grant its Motion for Entry of a Default Judgment and enter a judgment enforcing the Board’s Order against the Respondent in full.

/s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, SE  
Washington, DC 20570  
(202) 273-2960

Dated at Washington, DC  
this 17th day of August 2017

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<sup>1</sup> The Court has given the Respondent until August 28, 2017, to secure counsel for this case.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	Docket No. 17-2150
v.	:	
	:	
ALLWAYS EAST TRANSPORTATION, INC.	:	Board Case Nos.:
	:	03-CA-128669
Respondent	:	03-CA-133846

JUDGMENT ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the motion of the National Labor Relations Board for a default judgment enforcing its order in Case Nos. 03-CA-128669 and 03-CA-133846, dated May 11, 2017, reported at 365 NLRB No. 71, against Respondent, Allways East Transportation, Inc. The Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Allways East Transportation, Inc., its officers, agents, successors, and assigns, shall abide by and perform the directions of the Board set forth in its order. (See Attached Order and Appendix).

Mandate shall issue forthwith

FOR THE COURT:

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Circuit Judge

DATED:

NATIONAL LABOR RELATIONS BOARD

v.

ALLWAYS EAST TRANSPORTATION, INC.

Allways East Transportation, Inc., Yonkers, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.
  - (b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the unit.
  - (c) 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 drivers and monitors employed by Allways East Transportation, Inc. at its 228 Myers Corners Road, Wappingers Falls, New York location; excluding office clerical employees, dispatchers, assistant dispatchers, safety trainers, mechanics, guards, and supervisors and professional employees as defined in the Act.
  - (b) Furnish to the Union in a timely manner the information it requested on July 18, 2014.
  - (c) Within 14 days after service by the Region, post at its Wappingers Falls, New York facility copies of the attached notice marked "Appendix."

Copies of the notice, on forms provided by the Regional Director for Region 3, 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 April 22, 2014.

- (d) Within 21 days after service by the Region, file with the Regional Director for Region 3 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 International Brotherhood of Teamsters, Local 445 as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

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 drivers and monitors employed by Allways East Transportation, Inc. at its 228 Myers Corners Road, Wappingers Falls, New York location; excluding office clerical employees, dispatchers, assistant dispatchers, safety trainers, mechanics, guards, and supervisors and professional employees as defined in the Act.

WE WILL furnish to the Union in a timely manner the information requested by the Union on July 18, 2014.

ALLWAYS EAST TRANSPORTATION, INC.

The Board's decision can be found at [www.nlr.gov/case/03-CA-128669](http://www.nlr.gov/case/03-CA-128669) 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  
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NATIONAL LABOR RELATIONS BOARD	)	
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Petitioner	)	No. 17-2150
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v.	)	Board Case Nos.
	)	03-CA-128669
ALLWAYS EAST TRANSPORTATION, INC.	)	03-CA-133846
	)	
Respondent	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on August 17, 2017, I filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for Second Circuit by using CM/ECF system. I further certify that the foregoing document was served on the Respondent, by first-class mail, at the following address:

Attn: Judith Koller, President  
Allways East Transportation, Inc.  
870 Nepperhan Avenue  
Yonkers, NY 10703

/s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, SE  
Washington, DC 20570

Dated at Washington, DC  
this 17th day of August 2017