



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

September 13, 2017

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *NLRB v. Omega Construction Services, LLC*, Board Case Nos.
28-CA-188536

Dear Ms. Dwyer:

I am enclosing the Board's application for summary entry of a judgment enforcing the Board's order in this case and 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 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: service list

SERVICE LIST

RESPONDENT:

Dann Anderson Jr., Owner
Omega Construction Services, LLC
5400 East Williams Blvd., Apt. 11206
Tucson, AZ 85711

Phone: (520) 838-0054
Mobile: (520) 784-3935

CHARGING PARTY:

Roy L. Evaimalo
708 W McMurray Blvd Lot 41
Casa Grande, AZ 85122-3138

Phone: (520)401-6332
Mobile: (520)788-5382

REGIONAL DIRECTOR:

Cornele A. Overstreet, Regn'l Director
National Labor Relations Board
2600 North Central Ave., Ste. 1400
Phoenix, AZ 85004-3099

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	
OMEGA CONSTRUCTION SERVICES, LLC	:	Board Case No.
	:	28-CA-188536
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 Ninth 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 order against Omega Construction Services, LLC (“Respondent”). The Board is entitled to summary enforcement of its order because Respondent failed to file an answer to the Board’s consolidated complaint 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 Arizona. The Board's final order issued on May 12, 2017, and is reported at 365 NLRB No. 72.

B. Proceedings Before the Board

1. On January 31, 2017, the Regional Director issued a complaint and notice of hearing in Case No. 28-CA-188536 charging Respondent with certain violations of the Act. The complaint, in part, advised the Respondent that under the Board's Rules (29 C.F.R. 102.20 and 102.21), the Respondent was required to file an answer by February 14, 2017, and that if the Respondent failed to file an answer, the allegations of the complaint would be deemed to be true.

2. Having received no answer, counsel for the General Counsel, on February 27, 2017, sent the Respondent a letter advising that if no answer was received by March 6, 2017, the Board's Regional Office would file a Motion for Default Judgment with the Board.

3. The Respondent did not file an answer.

4. On March 9, 2017, counsel for the General Counsel filed a Motion for Default Judgment with the Board based upon the Respondent's failure to file an answer to the complaint.

5. By order dated March 15, 2017, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until March 29, 2017, to

file a response to the Motion for Default Judgment with the Board in Washington, D.C.

6. Respondent did not file a response.

7. On May 12, 2017, the Board issued its Decision and Order. In the absence of good cause being shown for Respondent's failure to file a timely answer, the Board granted the Motion for Default Judgment and entered an appropriate order against the 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. Where a respondent in a Board proceeding fails to file an appropriate answer to the unfair labor practice complaint in a timely manner, the Board may, pursuant to Board Rule 102.20, absent a showing of "good cause," deem the complaint's allegations admitted, and then may enter an order, essentially by default, against the respondent. No cause for Respondent's failure to file an answer was alleged or shown here.

It is settled that the Board 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., NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9th Cir. 1991); *Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th 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 Street, S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 13th day of September, 2017

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
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Petitioner	:	No.
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OMEGA CONSTRUCTION SERVICES, LLC	:	Board Case No.
	:	28-CA-188536
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, Omega Construction Services, LLC, its officers, agents, successors, and assigns, enforcing its order dated May 12, 2017, in Case Nos. 28-CA-188536, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Omega Construction Services, 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.

OMEGA CONSTRUCTION SERVICES, LLC

ORDER

Omega Construction Services, LLC, Tucson, Arizona, its officers, agents, successors, and assigns shall:

1. Cease and desist from

- (a) Interrogating employees about their concerted activities.
- (b) Creating the impression that employees' concerted activities are under surveillance.
- (c) Promulgating overly-broad and discriminatory rules or directives prohibiting employees from "running their mouths" or communicating with third parties about their terms and conditions of employment.
- (d) Threatening employees with discharge, suspension, cessation of work assignments, and other unspecified reprisals if they engage in protected concerted activities or refuse to disclose, in response to unlawful interrogation, that they engaged in concerted activities.
- (e) Ceasing assigning work to employees, suspending, or discharging employees because they engage in protected concerted activities, and to discourage employees from engaging in these activities.
- (f) Conditioning the assignment of future work to employees on their cessation of concerted activities.
- (g) Reneging on purchase agreements or failing to reimburse employees for money already paid pursuant to a purchase agreement, because they engage in concerted activities and to discourage employees from engaging in concerted activities.
- (h) Failing to return employees' personal property because they engage in concerted activities and to discourage employees from engaging in concerted activities.
- (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) Rescind the overly broad and discriminatory rules or directives prohibiting employees from “running their mouths” or from communicating with third parties about their terms and conditions of employment.
 - (b) Rescind the threat to discharge, suspend, cease assigning employees work, or administer other unspecified reprisals because they engaged in concerted activities or because they refuse to disclose that they engaged in concerted activities in response to unlawful interrogation.
 - (c) Rescind the threat not to assign employees future work unless they cease engaging in concerted activities.
 - (d) Within 14 days from the date of this Order, offer Roy Evaimalo full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
 - (e) Make Roy Evaimalo whole for any loss of earnings or benefits he may have suffered as a result of the unlawful refusal to assign him work, his suspension, and his discharge, in the manner set forth in the remedy section of this decision, plus reasonable search-for-work and interim employment expenses.
 - (f) Compensate Roy Evaimalo for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 28, 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 years.
 - (g) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to assign work to Roy Evaimalo, his suspension, and his discharge, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful actions will not be used against him in any way.
 - (h) At the option of Roy Evaimalo, either reinstate the agreement to allow Evaimalo to purchase a work truck or reimburse Evaimalo for the \$2000 that he already paid toward the purchase price, with interest.

- (i) Return to Roy Evaimalo personal belongings, tools, and property that were left in his work truck at the time of his discharge or reimburse Evaimalo for the cost of replacing those belongings, with interest.
- (j) 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.
- (k) Within 14 days after service by the Region, post at its facility in Tucson, Arizona, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 28, 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 September 3, 2016.
- (l) Within 21 days after service by the Region, file with the Regional Director for Region 28 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 interrogate employees about their concerted activities.

WE WILL NOT create the impression that employees' concerted activities are under surveillance.

WE WILL NOT promulgate overly-broad and discriminatory rules or directives prohibiting employees from "running their mouths" or communicating with third parties about their terms and conditions of employment.

WE WILL NOT threaten employees with discharge, suspension, cessation of work assignments, and other unspecified reprisals if they engage in protected concerted activities or refuse to disclose, in response to unlawful interrogation, that they engaged in concerted activities.

WE WILL NOT cease assigning work to employees, suspend, or discharge employees because they engage in protected concerted activities, and to discourage employees from engaging in these activities.

WE WILL NOT condition the assignment of future work to employees on their cessation of concerted activities.

WE WILL NOT renege on purchase agreements or fail to reimburse employees for money already paid pursuant to a purchase agreement, because they engage in concerted activities and to discourage employees from engaging in concerted activities.

WE WILL NOT fail to return employees' personal property because they engage in concerted activities and to discourage employees from engaging in concerted activities.

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 rescind the overly broad and discriminatory rules or directives prohibiting employees from "running their mouths" or from communicating with third parties about their terms and conditions of employment.

WE WILL rescind the threat to discharge, suspend, cease assigning employees work, or administer other unspecified reprisals because they engaged in concerted activities or because they refuse to disclose that they engaged in concerted activities in response to unlawful interrogation.

WE WILL rescind the threat not to assign employees future work unless they cease engaging in concerted activities.

WE WILL, within 14 days from the date of the Board's Order, offer Roy Evaimalo full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make employee Roy Evaimalo whole for any loss of earnings and other benefits suffered as a result of the unlawful refusal to assign him work, his suspension, and his discharge, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL compensate Roy Evaimalo for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 28, 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 years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful refusal to assign work to Roy Evaimalo, his suspension, and his discharge and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful actions will not be used against him in any way.

WE WILL, at the option of Roy Evaimalo, either reinstate the agreement to allow Evaimalo to purchase a work truck or reimburse Evaimalo for the \$2000 that he already paid toward the purchase price, with interest.

WE WILL return to Roy Evaimalo the personal belongings, tools, and property that were left in his work truck at the time of his discharge or reimburse Evaimalo for the cost of replacing those belongings, with interest.

OMEGA CONSTRUCTION SERVICES, LLC

The Board's decision can be found at www.nlr.gov/case/28-CA-188536 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 NINTH CIRCUIT

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OMEGA CONSTRUCTION SERVICES, LLC	:	Board Case No.
	:	28-CA-188536
Respondent	:	

CERTIFICATE OF SERVICE

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

Dann Anderson Jr., Owner
Omega Construction Services, LLC
5400 East Williams Blvd., Apt. 11206
Tucson, AZ 85711

/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 13th day of September, 2017