



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

October 30, 2018

Clerk, United States Court of
Appeals for the Seventh Circuit
Everett McKinley Dirksen Courthouse
219 South Dearborn Street, Rm. 2722
Chicago, IL 60604

Re: *NLRB v. 3232 Central Avenue, LLC d/b/a Central Market of Indiana, Inc.*,
Board Case Nos. 13-CA-172779, 13-CA-173389 and 13-CA-194865

Dear Clerk:

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 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 Street, S.E.
Washington, D.C. 20570
(202) 273-2960

cc & documents to: Service List

SERVICE LIST

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UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

| | | |
|---------------------------------------|---|------------------|
| NATIONAL LABOR RELATIONS BOARD | : | |
| | : | No. |
| Petitioner | : | |
| v. | : | |
| | : | Board Case Nos.: |
| 3232 CENTRAL AVENUE, LLC | : | 13-CA-172779, |
| D/B/A CENTRAL MARKET OF INDIANA, INC. | : | 13-CA-173389, |
| | : | 13-CA-194865 |
| 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 Seventh 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 3232 Central Avenue, LLC d/b/a Central Market of Indiana, Inc. (“Respondent”). The Board is entitled to summary enforcement because Respondent failed to file an answer to the Board’s amended unfair labor practice 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 activities

giving rise to this proceeding occurred in Indiana. The Board's final order issued on August 21, 2018, and is reported at 366 NLRB No. 167.

B. Proceedings Before the Board

1. On September 29, 2016, the General Counsel issued a consolidated complaint in Case Nos. 13-CA-172779 and 13-CA-173389 charging Respondent with certain violations of the Act. The Respondent submitted a letter responding to the complaint on October 13, 2016.

2. Upon a new charge filed on March 15, 2017, an amended second consolidated complaint and notice of hearing ("amended complaint") was issued on January 31, 2018, consolidating the new case no. 13-CA-194865 with the original complaint case nos. 13-CA-172779 and 13-CA-173389, charging Respondent with violations of the Act. The amended 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 on or before February 14, 2018, and that if the Respondent failed to file an answer the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

3. Respondent did not file an answer to the amended complaint.

4. On February 15, 2018, the Region sent Respondent a letter stating that no answer had been received to the amended complaint. The letter notified

Respondent that if an answer is not received by February 22, 2018, the Region will file a Motion for Default Judgment with the Board.

5. Respondent still did not file an answer to the amended complaint.

6. On February 26, 2018, counsel for the General Counsel filed with the Board a Motion for Default Judgment based upon the Respondent's failure to file an answer to the amended complaint.

7. By order dated February 28, 2018, the Board transferred the case to itself and issued a Notice to Show Cause, informing Respondent that a response to the Motion for Default Judgment must be filed with the Board on or before March 14, 2018.

8. Respondent filed a late response that was received by the Board on March 20, 2018. Respondent subsequently filed a motion to allow its late-filed response.

9. The Board issued its Decision and Order on August 21, 2018, and found Respondent's letter response to the allegations in the original complaint to be adequate. The Board also found that the letter response adequately addressed subparagraph IX(d) of the amended complaint. Accordingly, the Board denied the Motion for Default Judgment as to those allegations. The Board severed and remanded those allegations to the Region for further action. Subsequently, on October 4, 2018, the Charging Party submitted a written withdrawal of the

remanded allegations and, on October 10, 2018, an order was issued dismissing the allegations.

However, the Board did find that good cause had not been shown for Respondent's lack of response to the amended complaint and its late response to the Notice to Show Cause. In the absence of any answer to the remaining allegations in the amended complaint, the Board found that default judgment was warranted 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 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 good cause for Respondent's failure to file an answer to the amended complaint was 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. Dane County Dairy*, 795 F.2d 1313, 1319-21 (7th Cir. 1986); *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); *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 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 30th day of October, 2018

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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|---------------------------------------|---|------------------|
| NATIONAL LABOR RELATIONS BOARD | : | |
| | : | No. |
| Petitioner | : | |
| v. | : | |
| | : | Board Case Nos.: |
| 3232 CENTRAL AVENUE, LLC | : | 13-CA-172779, |
| D/B/A CENTRAL MARKET OF INDIANA, INC. | : | 13-CA-173389, |
| | : | 13-CA-194865 |
| 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, 3232 Central Avenue, LLC d/b/a Central Market of Indiana, Inc., its officers, agents, successors, and assigns, enforcing its order dated August 21, 2018, in Case Nos. 13-CA-172779, 13-CA-173389 and 13-CA-194865, reported at 366 NLRB No. 167, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, 3232 Central Avenue, LLC d/b/a Central Market of Indiana, Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Judge, United States Court of
Appeals for the Seventh Circuit

NATIONAL LABOR RELATIONS BOARD

v.

3232 CENTRAL AVENUE, LLC
D/B/A CENTRAL MARKET OF INDIANA, INC.

ORDER

3232 Central Avenue, LLC d/b/a Central Market of Indiana, Inc., Lake Station, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Reducing the work hours of unit employees because they support and assist the Union, Local 881, United Food and Commercial Workers, and to discourage employees from engaging in these activities.
 - (b) Prohibiting employees in the bargaining unit from taking vacation days because they support and assist the Union, and to discourage employees from engaging in these activities.
 - (c) Laying off, constructively discharging or otherwise discriminating against employees for supporting the Union or any other labor organization.
 - (d) Unilaterally changing the terms and conditions of employment of its unit employees.
 - (e) 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 collective-bargaining representative of the Respondent's unit employees.
 - (f) 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 reductions of work hours for unit employees that were unilaterally implemented about August 2016 and October 2016.
 - (b) Rescind the policy prohibiting unit employees from taking vacation days that was unilaterally implemented about October 19, 2016.

- (c) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

All employees working in the above retail store of the Company who are actively engaged in handling or selling of merchandise, excluding those employees in the Meat Department, Deli Department, Seafood Department, Maintenance Employees, one (1) Store Manager, one (1) Produce Manager, three (3) Assistant Managers, one (1) Grocery Manager and Pharmacists.

- (d) Make its unit employees whole for any loss of earnings and other benefits suffered as a result of the unlawful reductions of work hours and policy prohibiting unit employees from taking vacation days, in the manner set forth in the remedy section of this decision.
- (e) Within 14 days from the date of this Order, offer its unit employees who were laid off and/or constructively discharged between December 2016 and March 2017 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.
- (f) Make unit employees laid off or constructively discharged between December 2016 and March 2017 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.
- (g) Compensate the affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.
- (h) Within 14 days from the date of this Order, remove from its files any reference to the unlawful reductions of hours, layoff and constructive discharges, and within 3 days thereafter, notify the employees in writing that this has been done and that the reductions of hours and discharges will not be used against them in any way.
- (i) Furnish to the Union in a timely manner the information requested by the Union on about November 15, 2015.

- (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 Lake Station, Indiana facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 13 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 about February 8, 2016.
- (l) Within 21 days after service by the Region, file with the Regional Director for Region 13 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 reduce your hours because you support and assist the Union, Local 881, United Food and Commercial Workers, and to discourage you from engaging in these activities.

WE WILL NOT prohibit you from taking vacation days because you support and assist the Union, and to discourage you from engaging in these activities.

WE WILL NOT change your terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the Union or any other labor organization.

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 rescind the reductions of hours of our unit employees that were unilaterally implemented about August 2016 and October 2016.

WE WILL rescind the policy prohibiting unit employees from taking vacation days.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

All employees working in the above retail store of the Company who are actively engaged in handling or selling of merchandise, excluding those employees in the Meat Department, Deli Department, Seafood Department, Maintenance Employees, one (1) Store Manager, one (1) Produce Manager, three (3) Assistant Managers, one (1) Grocery Manager and Pharmacists.

WE WILL make unit employees whole for any loss of earnings and other benefits suffered as a result of our unlawful unilateral reductions of their hours and prohibition against taking vacation days, plus interest.

WE WILL, within 14 days from the date of the Board's Order, offer our unit employees who were laid off and/or constructively discharged between December 2016 and March 2017 full reinstatement to their former jobs or, if those jobs no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make unit employees who were laid off and/or constructively discharged between December 2016 and March 2017 whole for any loss of earnings and other benefits resulting from their unlawful layoffs and/or discharges, less any net interim earnings, plus interest, and WE WILL also make such employees whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

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

WE WILL furnish to the Union in a timely manner the information requested by the Union on about November 15, 2015.

3232 CENTRAL AVE, LLC
D/B/A CENTRAL MARKET OF INDIANA, INC.

The Board's decision can be found at www.nlr.gov/case/13-CA-172779 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 SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
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 : No.
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 Petitioner :
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 v. :
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 : Board Case Nos.:
 3232 CENTRAL AVENUE, LLC : 13-CA-172779,
 D/B/A CENTRAL MARKET OF INDIANA, INC. : 13-CA-173389,
 : 13-CA-194865
 Respondent :

CERTIFICATE OF SERVICE

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

Zafar Sheikh, Mgr
Central Market of Indiana Inc.
3232 Central Avenue
Lake Station, IN 46405-2212

Bashir Chaudry, Asst Mgr
Central Market of Indiana Inc.
3232 Central Avenue
Lake Station, IN 46405-2212

Zafar Sheikh
3155 West Wallen Avenue
Chicago, IL 60645

Bashir Chaudry
6655 N Monticello Ave
Lincolnwood, IL 60712-3713

Sean Sheikh
66 Mott Street
New York, NY 10013-4811

Bushra Naseer
3673 West North Shore Avenue
Lincolnwood, IL 60712-3747

/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 30th day of October, 2018