



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

February 1, 2019

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. Kodo Construction, Inc.*,
Board Case No. 19-CA-159674

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/ David Habenstreit

David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570
(202) 273-2960

cc: service list

SERVICE LIST

RESPONDENT:

Amine Ghedamsi Kodo Construction, Inc. PO Box 70 Auburn, WA 98071-1015	Kodo Construction, Inc. Attn: Amine Ghedamsi 12557 SE Green Valley Rd. Auburn, WA 98092	Kodo Construction, Inc. PO Box 1018 Auburn, WA 98071-1018
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Fax: (253) 833-0855
Email: inquiry@kodoconstruction.com

Kodo Construction, Inc.
Attn: Amine Ghedamsi
3232 Little Bear Ln.
Buford, GA 30519-8917

CHARGING PARTY:

Jermaine Smiley, Asst Business Mgr
Washington and Northern Idaho District
Council of Laborers
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REGIONAL DIRECTOR:

Ronald K. Hooks
National Labor Relations Board
915 2nd Ave., Rm. 2948
Seattle, WA 98174-1078

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.
KODO CONSTRUCTION, INC.	:	19-CA-159674
	:	
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 Kodo Construction, Inc. (“Respondent”). The Board is entitled to summary enforcement of its order because Respondent failed to file an answer to the Board’s 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 Washington. The Board’s final order issued on October 29, 2018, and is reported at 367 NLRB No. 29.

B. Proceedings Before the Board

1. On December 31, 2015, the Regional Director issued a complaint and notice of hearing in Case No. 19-CA-159674 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 January 14, 2016, 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.

2. Having received no answer, counsel for the General Counsel, on January 21, 2016, sent the Respondent a letter advising that if no answer was received by January 28, 2016, 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 February 2, 2016, 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 February 4, 2016, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until February 18, 2016, 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 October 29, 2018, 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/ David Habenstreit
David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 1st day of February 2019

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.
KODO CONSTRUCTION, INC.	:	19-CA-159674.
	:	
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, Kodo Construction, Inc., its officers, agents, successors, and assigns, enforcing its order dated October 29, 2018, in Case No. 19-CA-159674, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Kodo Construction, Inc., 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.

KODO CONSTRUCTION, INC.

ORDER

Kodo Construction, Inc., Auburn, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Refusing to bargain collectively with the Washington and Northern Idaho District Council of Laborers (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 limited exclusive collective-bargaining representative of the Respondent's unit employees.
 - (b) Changing the terms and conditions of employment of its unit employees by ceasing to assign work to unit employees and to obtain qualified applicants from the applicable local union office to perform unit work.
 - (c) Failing and refusing to continue in effect the terms and conditions of employment of its unit employees contained in the Laborers Compliance Agreement (the Compliance Agreement) and the Western/Central Washington Master Labor Agreement (the Western/Central Master Agreement) effective from June 1, 2015, through May 31, 2018, to which it is signatory, and any automatic extensions thereof, by failing and/or refusing to make payments to the Western Washington Laborers-Employers Pension Trust.
 - (d) Repudiating its collective-bargaining relationship, the Compliance Agreement, and the Western/Central Master Agreement during the term of the Compliance Agreement and the Western/Central Washington Master Labor Agreement effective from June 1, 2015, through May 31, 2018, and any automatic extensions thereof, with the Union.
 - (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Furnish to the Union in a timely manner the information requested by the Union since April 10, 2015.

- (b) Rescind the changes in terms and conditions of employment for its unit employees that were implemented about June 1, 2015, and restore the terms and conditions of employment that were in effect before the Respondent made the changes, including assigning work to unit employees and obtaining qualified applicants from the applicable local union office to perform unit work.
- (c) Within 14 days from the date of this Order, offer unit employees to whom the Respondent has failed and refused to offer work assignments since June 1, 2015, 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.
- (d) Within 14 days of the date of this Order, offer reinstatement to qualified applicants who would have been referred to the Respondent for employment through the applicable local union office to perform unit work were it not for the Respondent's unlawful conduct without prejudice to their seniority or any other rights or privileges to which they would have been entitled.
- (e) Make unit employees and applicants whole for any loss of earnings and other benefits suffered as a result of the unilateral changes in their terms and conditions of employment, in the manner set forth in the remedy section of this decision.
- (f) Compensate affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, 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 awards to the appropriate calendar years for each employee.
- (g) Give full force and effect to the terms and conditions of employment provided in the Western/Central Master Agreement effective from June 1, 2015 through May 31, 2018, and any automatic extensions thereof, by making all required payments to the Western Washington Laborers-Employers Pension Trust that have not been made since about June 1, 2015, including any additional amounts due the fund, in the manner set forth in the remedy section of this decision.
- (h) Recognize and bargain in good faith with the Union as the limited exclusive collective-bargaining representative of employees in the bargaining unit identified in the Compliance Agreement and the

Western/Central Washington Master Agreement between the Associated General Contractors of Washington and the Union during the terms of the agreements, and any automatic extensions thereof.

- (i) Rescind its repudiation of the Compliance Agreement and the Western/Central Washington Master Agreement effective from June 1, 2015, through May 31, 2018, and give full force and effect to the terms and conditions of employment provided in those agreements during the terms of the agreements, and any automatic extensions thereof.
- (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 Auburn, Washington facility 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 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 10, 2015.
- (l) 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 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 refuse to bargain collectively with the Washington and Northern Idaho District Council of Laborers (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 limited exclusive collective-bargaining representative of our unit employees.

WE WILL NOT change your terms and conditions of employment by ceasing to assign you work and to obtain qualified applicants from the applicable local union office to perform unit work.

WE WILL NOT fail and refuse to continue in effect the terms and conditions of employment contained in the Laborers Compliance Agreement and the Western/Central Washington Master Labor Agreement effective from June 1, 2015, through May 31, 2018, and any automatic extensions thereof, by failing and/or refusing to make payments to the Western Washington Laborers-Employers Pension Trust.

WE WILL NOT repudiate our collective-bargaining relationship, the Laborers Compliance Agreement, or the Western/Central Washington Master Labor Agreement during the term of the Compliance Agreement and the Western/Central Washington Master Labor Agreement effective from June 1, 2015, through May 31, 2018, and any automatic extensions thereof.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL furnish to the Union in a timely manner the information requested by the Union since April 10, 2015.

WE WILL rescind the changes in the terms and conditions of employment for our unit employees that were unilaterally implemented about June 1, 2015, and restore the terms and conditions of employment that were in effect before the Respondent made the changes, including assigning work to unit employees and obtaining qualified applicants from the applicable local union office to perform unit work.

WE WILL, within 14 days from the date of the Board's Order, offer unit employees to whom we have failed and refused to offer work assignments since June 1, 2015, 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, within 14 days from the date of the Board's Order, offer reinstatement to qualified applicants who would have been referred to us for employment through the applicable local union office to perform unit work were it not for our unlawful conduct, without prejudice to their seniority or any other rights or privileges to which they would have been entitled.

WE WILL make unit employees and applicants whole for any loss of earnings and other benefits suffered as a result of the unilateral changes in their terms and conditions of employment, plus interest, less any net interim earnings, plus reasonable search-for-work and interim employment expenses.

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 19, 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 give full force and effect to the terms and conditions of employment provided in the Western/Central Washington Master Labor Agreement effective from June 1, 2015, through May 31, 2018, and any automatic extensions thereof, by making all required payments to the Western Washington Laborers-Employers Pension Trust that have not been made since about June 1, 2015, including any additional amounts due the fund.

WE WILL recognize and bargain in good faith with the Union as the limited exclusive collective-bargaining representative of our employees in the bargaining unit identified in the Laborers Compliance Agreement and the Western/Central Washington Master Labor Agreement between the Associated General Contractors

of Washington and the Union during the terms of the agreements, and any automatic extensions thereof.

WE WILL rescind our repudiation of the Laborers Compliance Agreement and the Western/Central Washington Master Labor Agreement effective from June 1, 2015, through May 31, 2018, and give full force and effect to the terms and conditions of employment provided in those agreements during the terms of the agreements, and any automatic extensions thereof.

KODO CONSTRUCTION, INC.

The Board's decision can be found at <http://www.nlr.gov/case/19-CA-159674> 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

NATIONAL LABOR RELATIONS BOARD	:	
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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 party at the addresses listed below:

Kodo Construction, Inc.
Attn: Amine Ghedamsi
12557 SE Green Valley Rd.
Auburn, WA 98092

Amine Ghedamsi
Kodo Construction, Inc.
PO Box 70
Auburn, WA 98071-1015

Kodo Construction, Inc.
Attn: Amine Ghedamsi
3232 Little Bear Ln.
Buford, GA 30519-8917

Kodo Construction, Inc.
PO Box 1018
Auburn, WA 98071-1018

/s/ David Habenstreit
David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated at Washington, D.C.
this 1st day of February 2019