



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

May 1, 2019

Patricia S. Connor, Esquire
Clerk, United States Court of
Appeals for the Fourth Circuit
Lewis F. Powell, Jr. U.S. Courthouse
1100 East Main Street, Suite 501
Richmond, VA 23219-3517

Re: *NLRB v. WF Coal Sales Inc., a Successor
to Cobalt Coal Ltd. and its Subsidiaries,*
Board No. 09-CA-157523

Dear Ms. Connor:

I am enclosing a copy of 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/ David Habenstreit

David Habenstreit
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half St. S.E.
Washington, D.C. 20570
(202) 273-2960

cc & documents to: Service List

SERVICE LIST

RESPONDENT:

Edward Brantley, President
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12200 Limebay Lane, Apt. 204
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Email: prodev.edward@gmail.com

RESPONDENT'S COUNSEL:

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REGIONAL DIRECTOR:

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National Labor Relations Board
John Weld Peck Federal Building
550 Main Street – Room 3003
Cincinnati, OH 45202-3271

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	
WF COAL SALES INC., A SUCCESSOR TO	:	Board Case No.:
COBALT COAL LTD. AND ITS SUBSIDIARIES	:	09-CA-157523
	:	
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 Fourth 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 WF Coal Sales Inc., a Successor to Cobalt Coal Ltd. and its Subsidiaries (Respondent). The Board is entitled to summary enforcement of its order because Respondent failed to file an answer to the Board's 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 unfair labor

practices occurred in West Virginia. The Board's final order issued on January 29, 2019, and is reported at 367 NLRB No. 77.

B. Proceedings Before the Board

1. On June 30, 2016, the Board's General Counsel issued a complaint and notice of hearing in Case No. 09-CA-157523, 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 to the complaint by July 13, 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 not received an answer, counsel for the General Counsel, on August 5, 2016, sent the Respondent a letter advising that if no answer was received by August 12, 2016, the Board's Regional Office would file a Motion for Default Judgment requesting that all allegations which are not specifically denied be deemed admitted as true.

3. The Respondent did not file an answer or request an extension of time.

4. On August 24, 2016, the General Counsel filed with the Board a Motion for Default Judgment based upon the Respondent's failure to file an answer to the complaint.

5. By order dated August 30, 2016, the Board transferred the case to itself

and issued a Notice to Show Cause, giving Respondent until September 13, 2016, to file with the Board in Washington, D.C., a response to the Motion for Default Judgment. The Board issued a Supplemental Notice to Show Cause on November 29, 2016, extending Respondent's time to respond to December 13, 2016.

6. Respondent did not file a response. The allegations of the motion were therefore undisputed.

7. The Board, on January 29, 2019, issued its Decision and Order, granting the Motion for Default Judgment in the absence of good cause being shown for Respondent's failure to file a timely answer, and entering 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.” This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). 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., 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); *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.

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

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

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
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Petitioner	:	No.
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WF COAL SALES INC., A SUCCESSOR TO	:	Board Case No.:
COBALT COAL LTD. AND ITS SUBSIDIARIES	:	09-CA-157523
	:	
Respondent	:	

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, WF Coal Sales Inc., a Successor to Cobalt Coal Ltd. and its Subsidiaries, its officers, agents, successors, and assigns, enforcing its order dated January 29, 2019, in Case No. 09-CA-157523, reported at 367 NLRB No. 77 (2019) and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, WF Coal Sales Inc., a Successor to Cobalt Coal Ltd. and its Subsidiaries, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

NATIONAL LABOR RELATIONS BOARD

v.

WF COAL SALES INC., A SUCCESSOR TO
COBALT COAL LTD. AND ITS SUBSIDIARIES

ORDER

WF Coal Sales Inc., a Successor to Cobalt Coal Ltd and its Subsidiaries, Premier, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

- (a) Failing and refusing to bargain collectively and in good faith with the Union, United Mineworkers of America, District 17, over subcontracting bargaining unit work and its effects without prior notice to the Union.
- (b) 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 about subcontracting of bargaining unit work and its effects for the following unit:

All full-time and regular part-time production and maintenance employees employed by us at our Route 7, Hensley, West Virginia, Westchester Mine facility, but excluding all contract employees, all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

- (b) Restore the status quo ante by transferring the work it subcontracted back to unit employees.¹
- (c) Within 14 days from the date of this Order, if unit employees whose work was subcontracted no longer work for the Respondent, offer the

¹ At the compliance stage of the proceedings, the Respondent will be permitted to argue and present supporting evidence that restoring the status quo ante would be unduly burdensome. *San Luis Trucking, Inc.*, 352 NLRB 211 fn. 5 (2008); *Allied General Services*, 329 NLRB 568, 569 (1999); *Lear Siegler, Inc.*, 295 NLRB 857 (1989).

unit employees 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) Make all unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful subcontracting, in the manner set forth in the remedy section of this decision.
- (e) Remove from its records all references to the unlawful layoffs, if unit employees whose work was subcontracted no longer work for the Respondent, and notify each of the unit employees in writing that this has been done and that the layoffs will not be used against them in any way.
- (f) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 9, 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) 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.
- (h) Within 14 days after service by the Region, post at its facility in Hensley, West Virginia, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 9, 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 May 6, 2015.

- (i) Within 21 days after service by the Region, file with the Regional Director for Region 9 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 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 bargain collectively and in good faith with the Union, United Mineworkers of America, District 17, over subcontracting bargaining unit work and its effects without prior notice to the Union.

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 about subcontracting of bargaining unit work and its effects for the employees in the following unit:

All full-time and regular part-time production and maintenance employees employed by us at our Route 7, Hensley, West Virginia, Westchester Mine facility, but excluding all contract employees, all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

WE WILL restore the status quo ante by transferring the work we subcontracted back to unit employees.

WE WILL, if you no longer work for us as a result of our unlawful conduct, offer you full reinstatement to your former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to your seniority or any other rights or privileges previously enjoyed.

WE WILL remove from our records all references to the unlawful layoffs, if you no longer work for us as a result of our unlawful conduct, and notify you in writing that this has been done and that the layoffs will not be used against you in any way.

WE WILL make you whole for any loss of earnings and other benefits you may have suffered as a result of our unlawful subcontracting, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses if you no longer work for us as a result of our unlawful conduct.

WE WILL compensate our unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 9, 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.

WF COAL SALES, INC., A SUCCESSOR TO
COBALT COAL LTD AND ITS SUBSIDIARIES

The Board's decision can be found at <http://www.nlr.gov/case/09-CA-157523> 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, DC 20570, or by calling (202) 273-1940.



UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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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 and proposed judgment, in the above-captioned case, has this day been served by first class mail upon the following parties at the addresses listed below:

Edward Brantley, President
WF Coal Sales, Inc.
12200 Limebay Lane, Apt. 204
Raleigh, NC 27613

Mr. Robert Hedrick, Attny at Law
P.O. Box 58004
Raleigh, North Carolina 27658

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

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