



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

March 5, 2020

Clerk United States Court of  
Appeals for the First Circuit  
John Joseph Moakley, U.S. Courthouse  
1 Courthouse Way, Suite 2500  
Boston, MA 02210

Re: *NLRB v. NSL Country Gardens, LLC*,  
Board Case Nos. 01-CA-223025, 01-CA-  
223397, 01-CA-223565, 01-CA-224038, 01-  
CA-229386, 01-CA-230066, 01-CA-231797  
and 01-CA-231850

Dear Ms. Hamilton:

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.

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 & documents to: Svc. List

## SERVICE LIST

### RESPONDENT:

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### REGIONAL DIRECTOR:

Paul Murphy, Acting Regional Director  
National Labor Relations Board  
10 Causeway St., Rm. 601  
Boston, MA 02222-1001

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
 : No.  
 :  
 Petitioner :  
 v. : Board Case Nos.:  
 : 01-CA-223025, 01-CA-223397,  
 NSL COUNTRY GARDENS, LLC : 01-CA-223565, 01-CA-224038,  
 : 01-CA-229386, 01-CA-230066,  
 Respondent : 01-CA-231797, 01-CA-231850

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 First 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 NSL Country Gardens, LLC (“Respondent”) in case nos. 01-CA-223025, 01-CA-223397, 01-CA-223565, 01-CA-224038, 01-CA-229386, 01-CA-230066, 01-CA-231797 and 01-CA-231850. The Board is entitled to summary enforcement of its order in full because Respondent failed to file with the Board exceptions to the administrative law judge’s decision. 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 unfair labor

practices occurred in Massachusetts. The Board's final order issued on November 21, 2019.

## **B. Proceedings Before the Board**

1. On September 25, 2018, the Board's General Counsel issued a consolidated complaint and notice of hearing in Case Nos. 01-CA-223025, 01-CA-223397. On November 21, 2018, General Counsel issued an order further consolidating cases, adding cases 01-CA-223565, 01-CA-224038, 01-CA-229386 and 01-CA-230066. On February 4, 2019, the General Counsel issued a third consolidated complaint adding case no. 01-CA-231797 and, at the hearings before Administrative Law Judge Carter, the judge granted the General Counsel's request to consolidate case 01-CA-231850 with case nos. 01-CA-223025, 01-CA-223397, 01-CA-223565, 01-CA-224038, 01-CA-229386, 01-CA-230066, 01-CA-231797. The consolidated complaint charged Respondent with certain violations of the Act. Respondent filed timely answers denying the violations alleged in the consolidated complaints.

2. Following a hearing before an administrative law judge, the judge issued a decision on October 7, 2019, finding that Respondent had violated the Act and recommending that an order be issued requiring the Respondent to cease and desist from the unfair labor practices found and take certain affirmative action to remedy those unfair labor practices, including posting an appropriate notice.

3. On October 7, 2019, the Board issued an order transferring the proceeding to the Board and notifying the Respondent that the Board must receive exceptions to the administrative law judge's decision by November 4, 2019.

4. Section 10(c) of the Act (29 U.S.C. § 160(c)) provides that "if no exceptions are filed [with the Board] within twenty days after service [of the administrative law judge's decision] upon the parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed." Section 102.46 and 102.48 of the Board's Rules and Regulations (29 C.F.R. 102.46 and 102.48) implement this provision and provide that, in the event no exceptions are filed within 28 days, the decision of the administrative law judge shall be adopted by the Board and all objections and exceptions thereto are waived for all purposes.

5. Respondent did not file exceptions with the Board.

6. In the absence of any exceptions by Respondent to the administrative law judge's decision, on November 21, 2019, the Board issued an order adopting the administrative law judge's findings and conclusions and directing the Respondent to take the action set forth in the Judge's recommended order.

### **C. The Board Is Entitled to Summary Enforcement of Its Order**

The Board is entitled to summary entry of a judgment enforcing its order because, by failing to file exceptions with the Board challenging the administrative

law judge's decision, the Respondent failed to raise any issues before the Board. Section 10(e) of the Act (29 U.S.C. § 160(e)) provides that "no objection that has not been urged before the Board . . . shall be considered by the court, unless the failure or neglect to urge such objection shall be excused by extraordinary circumstances." This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). Interpreting this requirement, this Court and other circuits have consistently held that a respondent's failure to file any exceptions before the Board entitles the Board, absent extraordinary circumstances, to summary entry of a judgment enforcing its order. *NLRB v. Izzzi*, 343 F.2d 753, 754 (1st Cir. 1965). *Accord, e.g., NLRB v. Int'l Union of Operating Eng'rs, Local 86*, 357 F.2d 841, 846-47 (3d Cir. 1966); *NLRB v. Pugh & Barr, Inc.*, 194 F.2d 217, 218-21 (4th Cir. 1952). No extraordinary circumstances are present here.

WHEREFORE, the Board respectfully requests that the Court take jurisdiction of the proceedings, serve notice of the filing of this application upon Respondent, and enter judgment summarily enforcing the Board's order in full. A proposed judgment is attached.

Dated in Washington, D.C.  
this 5th day of March, 2020

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

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
: No.  
Petitioner :  
v. : Board Case Nos.:  
: 01-CA-223025, 01-CA-223397,  
NSL COUNTRY GARDENS, LLC : 01-CA-223565, 01-CA-224038,  
: 01-CA-229386, 01-CA-230066,  
Respondent : 01-CA-231797, 01-CA-231850

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, NSL Country Gardens, LLC, its officers, agents, successors, and assigns, enforcing its order dated November 21, 2019, in Case Nos. 01-CA-223025, 01-CA-223397, 01-CA-223565, 01-CA-224038, 01-CA-229386, 01-CA-230066, 01-CA-231797 and 01-CA-231850, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, NSL Country Gardens, LLC, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

BY THE COURT

Maria R. Hamilton, Clerk

/s/ TRUE COPY

ATTEST: \_\_\_\_\_  
Margaret Carter, Clerk

NATIONAL LABOR RELATIONS BOARD

v.

NSL COUNTRY GARDENS, LLC

**ORDER**

NSL Country Gardens, LLC, Swansea, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Unilaterally offering and paying bargaining unit employees time and one half or double time bonuses for working last-minute open shifts and/or call-outs.
- (b) Bypassing the Union and dealing directly with bargaining unit employees concerning time and one half or double time bonuses for working last-minute open shifts and/or call-outs.
- (c) Modifying Article 5.1 of the service and maintenance employees' collective-bargaining agreement without the Union's consent, specifically by providing higher wage rates to newly hired CNAs without providing that same higher wage rate to current CNAs with the same or more experience.
- (d) Telling employees that if they got rid of the Union that would free Respondent's hands to increase CNA wages instead of having all the money go to union delegates.
- (e) Telling employees that they should not discuss their wages rates with other employees.
- (f) Failing and refusing to provide the Union with information in response to the Union's requests for a list of all bargaining unit members and their hourly wage rates.
- (g) Bypassing the Union and dealing directly with CNAs in the bargaining unit, specifically by proposing, as a means to secure their wages and benefits, that the CNAs sign a decertification petition or resign their employment with Respondent and begin working at the facility as employees of an outside agency that would provide the same wages and benefits.

- (h) Telling employees that Respondent wanted to pay CNAs the same base rate but could not accomplish that unless Respondent negotiated with the Union, employees signed a petition and voted the Union out, or employees resigned and worked at the facility as employees of an outside agency that would provide the same wages and benefits.
  - (i) Engaging in surveillance of employees involved in union activities.
  - (j) Withdrawing recognition of the Union when a contract for each bargaining unit was in effect and when the decertification petition that Respondent relied on was tainted by serious unremedied unfair labor practices.
  - (k) Creating the impression of surveillance of union activities.
  - (l) Suspending and discharging employees because of their union and protected concerted activities.
  - (m) 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 its unlawful, unilateral decisions, made since January 26, 2018, to offer and pay bargaining unit employees time and one half or double time bonuses for working last-minute open shifts and/or call-outs, and make bargaining unit employees whole for any losses attributable to those unilateral decisions, in the manner set forth in the remedy section of this decision.
  - (b) Restore the status quo ante as it existed before February 20, 2018, and continue in effect all the terms and conditions of employment contained in the service and maintenance employees' collective-bargaining agreement unless and until Respondent bargains with the Union to agreement or impasse on different terms and conditions.
  - (c) Make whole employees in the service and maintenance employees' unit for any loss of earnings and other benefits suffered as a result of Respondent's unlawful decision to modify the service and maintenance employees' collective-bargaining agreement without the Union's consent, in the manner set forth in the remedy section of this decision.
  - (d) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following

appropriate units concerning terms and conditions of employment and, if an understanding is reached for either unit, embody the understanding in a signed agreement:

Service and maintenance employees' unit: All full-time and regular part-time Licensed Practical Nurses, Nurses Aides, Orderlies, Technical Employees, Kitchen Employees, Housekeeping Employees, Maintenance Employees and Laundry Employees. [The following employees are excluded from this bargaining unit: all other Employees, Registered Nurses, Director of Nursing, Supervisor of Nursing, Assistant Supervisors of Nursing, Food Service Supervisor, First Cook, Maintenance Supervisor, Housekeeping/Laundry Working Supervisor, Social Worker, Professional Employees, Managerial Employees, Temporary Employees, Guards and Supervisors as defined in the Act.]

Registered nurses' unit: All full time and regular part time registered nurses. [The following employees are excluded from this bargaining unit: all other Employees, Director of Nursing, Supervisor of Nursing, Assistant Supervisors of Nursing, Food Service Supervisor, First Cook, Maintenance Supervisor, Housekeeping/Laundry Working Supervisor, Social Worker, Professional Employees, Managerial Employees, Temporary Employees, Guards and Supervisors as defined in the Act.]

- (e) Furnish to the Union in a timely manner the information about employee wage rates that the Union requested on June 12 and 20, 2018.
- (f) Within 14 days from the date of the Board's Order, offer reinstatement to Stephanie Sullivan and Karen Hirst to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them.
- (g) Make Stephanie Sullivan and Karen Hirst 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.
- (h) Within 14 days from the date of this Order, remove from its files any references to the unlawful decisions to suspend and discharge Stephanie Sullivan and Karen Hirst and, within 3 days thereafter, notify them in writing that this has been done and that the unlawful decisions will not be used against them in any way.

- (i) Compensate bargaining unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 1, 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 year(s).
- (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 Swansea, Massachusetts, copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by Respondent's authorized representative, shall be posted by 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, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees (including per diem employees) by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facilities involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees (including per diem employees) employed by Respondent at any time since January 26, 2018.
- (l) Within 14 days after service by the Region, hold a meeting or meetings, scheduled to have the widest possible attendance, at which the attached notice marked "Appendix A" shall be read to employees by Respondent's facility administrator or, at Respondent's option, by a Board agent in Respondent's facility administrator's presence.

- (m) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that 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** unilaterally offer and pay bargaining unit employees time and one half or double time bonuses for working last-minute open shifts and/or call-outs.

**WE WILL NOT** bypass the Union and deal directly with bargaining unit employees concerning time and one half or double time bonuses for working last-minute open shifts and/or call-outs.

**WE WILL NOT** modify the service and maintenance employees' collective-bargaining agreement without the Union's consent.

**WE WILL NOT** tell employees that if they get rid of the Union that would free our hands to increase CNA wages instead of having all the money go to Union delegates.

**WE WILL NOT** tell employees that they should not discuss their wages rates with other employees.

**WE WILL NOT** fail and refuse to provide the Union with information in response to the Union's requests for a list of all bargaining unit members and their hourly wage rates.

**WE WILL NOT** bypass the Union and deal directly with CNAs in the bargaining unit, specifically by proposing, as a means to secure their wages and benefits, that the CNAs sign a decertification petition or resign their employment and begin working at the facility as employees of an outside agency that would provide the same wages and benefits.

WE WILL NOT tell employees that we want to pay CNAs the same base rate but cannot accomplish that unless we negotiate with the Union, employees sign a petition and vote the Union out, or employees resign and work at the facility as employees of an outside agency that would provide the same wages and benefits.

WE WILL NOT engage in surveillance of employees involved in union activities.

WE WILL NOT withdraw recognition of the Union when a contract for each bargaining unit is in effect and when the decertification petition that we relied on is tainted by serious unremedied unfair labor practices.

WE WILL NOT create the impression of surveillance of union activities.

WE WILL NOT suspend and/or discharge employees because of their union and protected concerted activities.

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

WE WILL rescind our unlawful, unilateral decisions to offer and pay employees time and one half or double time bonuses for working last-minute open shifts and/or call-outs, and WE WILL make bargaining unit employees whole for any losses attributable to those unilateral decisions.

WE WILL restore the status quo ante of the service and maintenance employees' collective-bargaining agreement (as it existed before February 20, 2018), and WE WILL continue in effect all the terms and conditions of employment contained in the service and maintenance employees' collective-bargaining agreement unless and until we bargain with the Union to agreement or impasse on different terms and conditions.

WE WILL make whole employees in the service and maintenance employees' unit for any loss of earnings and other benefits suffered as a result of our decision to modify the service and maintenance employees' collective-bargaining agreement without the Union's consent.

WE WILL recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate units concerning terms and conditions of employment and, if an understanding is reached for either unit, embody the understanding in a signed agreement:

Service and maintenance employees' unit: All full-time and regular part-time Licensed Practical Nurses, Nurses Aides, Orderlies, Technical Employees, Kitchen Employees, Housekeeping Employees, Maintenance Employees and Laundry Employees. [The following employees are excluded from this bargaining unit: all other Employees, Registered Nurses,

Director of Nursing, Supervisor of Nursing, Assistant Supervisors of Nursing, Food Service Supervisor, First Cook, Maintenance Supervisor, Housekeeping/Laundry Working Supervisor, Social Worker, Professional Employees, Managerial Employees, Temporary Employees, Guards and Supervisors as defined in the Act.]

Registered nurses' unit: All full time and regular part time registered nurses. [The following employees are excluded from this bargaining unit: all other Employees, Director of Nursing, Supervisor of Nursing, Assistant Supervisors of Nursing, Food Service Supervisor, First Cook, Maintenance Supervisor, Housekeeping/Laundry Working Supervisor, Social Worker, Professional Employees, Managerial Employees, Temporary Employees, Guards and Supervisors as defined in the Act.]

WE WILL furnish to the Union in a timely manner the information about employee wage rates that the Union requested on June 12 and 20, 2018.

WE WILL offer reinstatement to Stephanie Sullivan and Karen Hirst to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them.

WE WILL make Stephanie Sullivan and Karen Hirst whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL remove from our files any references to the unlawful decisions to suspend and discharge Stephanie Sullivan and Karen Hirst and, within 3 days thereafter, WE WILL notify them in writing that this has been done and that the unlawful decisions will not be used against them in any way.

WE WILL compensate bargaining unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 1, 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 year(s).

NSL COUNTRY GARDENS, LLC

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want

union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov)

10 Causeway Street, 6<sup>th</sup> Floor, Boston MA 02222-1072  
(617) 565-6700, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/01-CA-223025](http://www.nlr.gov/case/01-CA-223025) 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.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND  
MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS  
CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE  
REGIONAL OFFICE'S COMPLIANCE OFFICER (857) 317-7816.

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
: No.  
Petitioner :  
v. : Board Case Nos.:  
: 01-CA-223025, 01-CA-223397,  
NSL COUNTRY GARDENS, LLC : 01-CA-223565, 01-CA-224038,  
: 01-CA-229386, 01-CA-230066,  
Respondent : 01-CA-231797, 01-CA-231850

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:

Joseph Veno, District Mgr  
NSL Country Gardens LLC  
2045 Grand Army of the Republic Hwy  
Swansea, MA 02777

Thomas J. Posey, Atty  
Reed Smith LLP  
10 S. Wacker Dr., 38th Floor  
Chicago, IL 60606-7507

/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 5th day of March, 2020