



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

May 13, 2020

Clerk, United States Court of
Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, OH 45202-3988

Re: *NLRB v. Law-Den Nursing Home, Inc.*,
Board Case No. 07-CA-233610

Dear Clerk:

I am enclosing the Board's application for summary entry of a judgment enforcing the Board's orders 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 name and address also appears 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 St., S.E.
Washington, D.C. 20570
(202) 273-2960

cc & documents to: Service List

SERVICE LIST

RESPONDENT:

Todd Johnson
Law-Den Nursing Home, Inc.
18551 San Diego Blvd
Lathrup Village, MI 48076-3315

Phone: (313) 867-1719
Fax: (313) 867-1840
Email: info@detroitnursinghome.com

THE BOARD IS NOT
CURRENTLY AWARE OF A
COUNSEL FOR RESPONDENT

CHARGING PARTY:

Serena Everett, Regional Director
SEIU Healthcare Michigan
3031 West Grand Blvd., Ste. 555
Detroit, MI 48202-3141

Phone: (313) 963-3180
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REGIONAL DIRECTOR:

Terry A. Morgan, Regional Director
National Labor Relations Board
477 Michigan Ave., Rm. 05-200
Detroit, MI 48226-2569

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
LAW-DEN NURSING HOME, INC.	:	07-CA-233610
	:	
Respondent	:	

APPLICATION FOR SUMMARY ENTRY OF A JUDGMENT
ENFORCING AN ORDERS OF
THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Sixth 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 of October 16, 2019, and its Supplemental Order of March 17, 2020. The orders were issued in Board Case No. 07-CA-233610 against Law-Den Nursing Home, Inc. (Respondent). The Board is entitled to summary enforcement of its Orders because Respondent failed to file an answer or respond to either the complaint or compliance specification and the Board entered the orders 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 Michigan. The Board's initial Decision and Order issued on October 16, 2019, and is reported at 368 NLRB No. 95. The Board's Supplemental Decision and Order issued on March 17, 2020, and is reported at 369 NLRB No. 45.

**B. Proceedings Before the Board
Order of October 16, 2019**

1. On April 5, 2019, the Regional Director issued a complaint and notice of hearing in Case No. 07-CA-233610, 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 April 19, 2019, and that if the Respondent failed to file an answer, the allegations of the complaint may be deemed to be true.

2. The Respondent did not file an answer to the complaint.

3. On April 23, 2019, the Regional Director for Region Seven served a letter upon Respondent advising that it had not receive any answer and informing that if it did not receive an answer by April 30, 2019, a Motion for Default Judgment would be sought.

4. No answer, response or request for an extension of time was received from Respondent.

5. On June 19, 2019, 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 complaint.

6. By order dated June 20, 2019, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until July 5, 2019, to file with the Board in Washington, D.C., a response to the Motion for Default Judgment.

7. Respondent did not file a response. The allegations in the motion were therefore undisputed.

8. The Board, on October 16, 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 answer and entering an appropriate order against the Respondent.

C. Proceedings Before the Board Supplemental Order of March 17, 2020

1. On July 12, 2019, the Regional Director issued a compliance specification and notice of hearing alleging the amount of backpay due under the Board's October 16, 2019 Order. The specification advised Respondent that, under the Board's Rules (29 C.F.R. 102.56), it was required to file an answer by August 2, 2019, and that if it failed to file an answer, the allegations of the specification may be deemed to be true and Respondent would be precluded from introducing any evidence controverting them.

2. Respondent did not file an answer.

3. By letter dated August 6, 2019, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was received by August 13, 2019, a motion for default judgment would be filed with the Board.

4. Respondent did not file an answer, response, or request an extension of time. Consequently, on January 8, 2020, Counsel for the General Counsel filed with the Board a corrected motion for default judgment based upon the Respondent's failure to file an answer to the complaint.¹

5. On February 4, 2020, the Board issued a Supplemental Notice to Show Cause giving Respondent until February 18, 2020, to file with the Board in Washington, D.C., a response as to why the General Counsel's corrected motion for default judgment should not be granted.²

6. Respondent did not file an answer, response, or request an extension of time.

7. On March 17, 2020, issued its Supplemental Decision and Order, granting the motion for default judgment and directing Respondent to make whole

¹ The Counsel for the General Counsel originally filed its Motion for Default Judgment on October 25, 2019, however, it inadvertently failed to include certain attachments.

² The Board originally issued an Order on October 31, 2019, transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. In light of the General Counsel's January 8, 2020 Corrected Motion for Default Judgment, the Board issued a Supplemental Notice to Show Cause.

the individuals named in its order by paying them the amounts following their names, plus interest accrued to the date of payment as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State laws.

D. The Board Is Entitled to Summary Enforcement of Its Orders

On these facts, the Board is entitled to summary enforcement of its orders against Respondent. Where a respondent in a Board proceeding fails to provide an appropriate answer to the unfair labor practice complaint 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. Likewise, by failing to place an appropriate answer to the compliance specification before the Board, pursuant to Board Rule 102.56(c), the Board may find the specification to be true and enter an order, essentially by default, against the respondent.

It is settled that the Board is entitled to have the default judgments 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 an order. *See, Mt. Clemens Gen. Hosp. v. NLRB*, 328 F.3d 837, 843 (6th Cir. 2003) (in the absence of extraordinary circumstances, a Board decision and order is entitled to summary enforcement if no objections are filed with the Board); *NLRB v. Tri-State Warehouse & Distrib., Inc.*, 677 F.2d 31 (6th Cir. 1982); *NLRB v. Innkeepers of Ohio, Inc.*, 596 F.2d 177 (6th Cir. 1979).

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

Dated in Washington, D.C.
this 13th day of May 2020

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
LAW-DEN NURSING HOME, INC.	:	07-CA-233610
	:	
Respondent	:	

JUDGMENT ENFORCING ORDERS 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, Law-Den Nursing Home, Inc., its officers, agents, successors, and assigns, enforcing its Order and Supplemental Order dated October 16, 2019, and March 17, 2020, respectively, in Case No. 07-CA-233610, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Law-Den Nursing Home, Inc., its officers, agents, successors, and assigns, shall abide by the Board's order of October 16, 2019 (368 NLRB No. 95) (See Attached Order and Appendix).

It is further ORDERED AND ADJUDGED by the Court that Law-Den Nursing Home, Inc., its officers, agents, successors, and assigns, shall as described

in the Board’s March 17, 2020 (369 NLRB No. 45), make whole the individuals named below by paying them the amounts following their names, plus interest accrued to the date of payment as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State laws.³

Karen Alexander	\$1,706.80
Pearl Bell	\$1,204.80
Stephanie Brooks	\$2,208.80
Donniea Buck	\$1,204.80
Jeaneen Burks	\$1,204.80
Angela Carey	\$1,204.80
Catlin McEntire	\$2,208.80
Ebony Christian	\$1,204.80
Keyonna Denham	\$1,204.80
Eddrienna Franklin	\$1,204.80
Kenya Greene	\$2,208.80
Brian Haynes	\$1,204.80
Kettana Hicks	\$2,710.80
Isobo Ikiiriko	\$1,204.80
Antonette Jackson	\$1,204.80
Eula Jackson	\$2,710.80
Emmanuel Jones	\$1,204.80

³ These amounts do not yet include any excess tax liability. As set forth in the compliance specification, the Respondent is also liable for the adverse tax consequences for any employee receiving a lump-sum backpay award. These amounts may be updated to reflect the actual date of payment. Any adverse tax consequences shall be reported in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016); *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014).

Valery Lisbon	\$1,204.80
Joyce McCroy	\$2,710.80
Cassandra McIlwain	\$1,204.80
David Mixon	\$1,204.80
Loleather Newson	\$2,710.80
Christopher Oneal	\$1,204.80
Sherie Osakwe	\$1,204.80
Dorothy Randolph	\$1,706.80
Tiffany Richardson	\$1,204.80
Darrell Shipp	\$1,706.80
Constance Showers	\$1,706.80
Deborah Smith	\$200.80
Miriah Smith	\$1,204.80
Michelle Smith	\$1,204.80
Paris Taylor	\$1,204.80
Angela Toney	\$1,204.80
Elijah Troupe	\$1,204.80
Shanta Tyler	\$1,204.80
Brianna Williams	\$1,204.80
Dameka Williams	\$1,706.80
Sherry Williams	\$1,706.80
Tanisha Williams	\$1,204.80
<hr/>	
Total Backpay Due	\$58,031.20

ENTERED BY ORDER OF THE COURT

Clerk

DATED:

NATIONAL LABOR RELATIONS BOARD

v.

LAW-DEN NURSING HOME, INC.

ORDER

Law-Den Nursing Home, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing and refusing to bargain collectively and in good faith with SEIU Healthcare Michigan (the Union) as the exclusive collective-bargaining representative of employees in the following unit by failing to continue in effect the terms and conditions of the agreement reached on November 28, 2018, to pay unit employees their accrued vacation pay and accrued sick pay:

All full-time and regular part-time cooks, maintenance employees, medical attendants, laundry attendants and food service workers employed at the Respondent's facility located at 1640 Webb, Detroit, Michigan, but excluding guards and supervisors as defined by the Act, and all other employees.

- (b) Refusing to bargain collectively and in good faith with the Union by failing and refusing to furnish it with requested information that is necessary and relevant to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees.
- (c) 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) Honor and comply with the terms and conditions of the November 28, 2018 agreement, and rescind any and all changes to unit employees' terms and conditions of employment that the Respondent implemented by not applying that agreement to unit employees.

- (b) Make unit employees whole for any loss of earnings or other benefits, including by payment to employees of their accrued vacation pay and accrued sick pay, suffered as a result of the Respondent's failure to abide by and apply to unit employees the terms of the November 28, 2018 agreement, in the manner set forth in the remedy section of this decision.
- (c) Furnish to the Union in a timely manner the information it requested by certified mail and email since about November 16, 2018.
- (d) 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 7, within 21 days of the date the amount of backpay pay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.
- (e) 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. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.
- (f) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix," to the Union and to all unit employees who were employed by the Respondent at any time since November 16, 2018. In addition to the physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 7 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 fail and refuse to bargain collectively and in good faith with SEIU Healthcare Michigan (the Union) as the exclusive collective-bargaining representative of our employees in the following unit by failing to continue in effect the terms and conditions of the agreement reached on November 28, 2018, to pay your accrued vacation pay and accrued sick pay:

All full-time and regular part-time cooks, maintenance employees, medical attendants, laundry attendants and food service workers employed at our facility located at 1640 Webb, Detroit, Michigan, but excluding guards and supervisors as defined by the Act, and all other employees.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is necessary and relevant to the 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 honor and comply with the terms and conditions of the November 28, 2018 agreement.

WE WILL make you whole for any loss of earnings and other benefits, including by payment to you of your accrued vacation pay and accrued sick pay, suffered as

a result of our unlawful failure to abide by and apply to you the terms of the November 28, 2018 agreement, plus interest.

WE WILL furnish to the Union in a timely manner the information it requested by certified mail and email since about November 16, 2018.

WE WILL compensate you for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 7, 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.

LAW-DEN NURSING HOME, INC.

The Board's decision can be found at www.nlr.gov/case/07-CA-233610 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 SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
LAW-DEN NURSING HOME, INC.	:	07-CA-233610
	:	
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 first class mail upon the following party at the address listed below:

Todd Johnson
Law-Den Nursing Home, Inc.
18551 San Diego Blvd
Lathrup Village, MI 48076-3315

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

Dated at Washington, D.C.
this 13th day of May 2020