



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

May 14, 2020

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. Burrink Commercial Services  
Inc.*, Board Case No. 13-CA-246967

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.

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: Service List

## SERVICE LIST

### RESPONDENT (Sec. of St. - Corporate Agent):

Brennden Burrink  
Burrink Commercial Services, Inc.  
20770 Torrence Ave.  
Lynwood, IL 60411

Telephone: (708) 275-5410  
Fax: (708) 825-1555  
E-mail: brenndenb@burrinkandsons.com  
Email: jceponis@burrinkandsons.com

### CHARGING PARTY:

Karl E. Masters, Union Counsel  
Johnson & Krol, LLC  
311 South Wacker Drive, Suite 1050  
Chicago, IL 60606

E-mail: masters@johnsonkrol.com

### REGIONAL DIRECTOR:

Peter Sung Ohr, Regional Director  
National Labor Relations Board  
219 S. Dearborn St., Ste 808  
Chicago, IL 60604-5208

### RESPONDENT (additional addresses):

Brennden Burrink, President  
Burrink Commercial Services Inc.  
PO Box 108  
South Holland, IL 60473

Brennden Burrink, President  
Burrink Commercial Services Inc.  
9765 W. 135th Pl.  
Cedar Lake, IL 46303

### CHARGING PARTY:

Cement Masons Local 502, AFL-CIO  
739 S. 25th Avenue  
Bellwood, IL 60104

Email: lpicardi@cml502.com  
larrypicardi@gmail.com

UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No.
Petitioner	:	
v.	:	
	:	Board Case No.:
BURRINK COMMERCIAL SERVICES INC.	:	13-CA-246967
	:	
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 Burrink Commercial Services Inc. (“Respondent”). The Board is entitled to summary enforcement 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 activities giving rise to this proceeding occurred in Indiana. The Board’s final order issued

on February 6, 2020, and is reported at 369 NLRB No. 21.

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

1. On October 25, 2019, the General Counsel issued a complaint and notice of hearing in Case No. 13-CA-246967, 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 November 8, 2019, 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 allegations in the complaint are true.

2. Respondent did not file an answer.

3. On November 13, 2019, counsel for the General Counsel sent Respondent a letter stating that no answer had been received regarding the Complaint and Notice of Hearing. The letter notified Respondent that if an answer is not received by November 25, 2019, the Region will file a Motion for Default Judgment with the Board.

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

5. On December 9, 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 December 11, 2019, the Board transferred the case to

itself and issued a Notice to Show Cause, giving Respondent until December 26, 2019, to file with the Board, 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 February 6, 2020, 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 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 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.” 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., 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/ 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 14th day of May 2020

UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No.
Petitioner	:	
v.	:	
	:	Board Case No.:
BURRINK COMMERCIAL SERVICES INC.	:	13-CA-246967
	:	
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, Burrink Commercial Services Inc., its officers, agents, successors, and assigns, enforcing its order dated February 6, 2020, in Case No. 13-CA-246967, reported at 369 NLRB No. 21, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Burrink Commercial Services Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

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Judge, United States Court of  
Appeals for the Seventh Circuit

NATIONAL LABOR RELATIONS BOARD

v.

BURRINK COMMERCIAL SERVICES INC.

**ORDER**

Burrink Commercial Services Inc., Cedar Lake, Indiana, its officers, agents, successors, and assigns shall

1. Cease and desist from
  - (a) Physically assaulting picketers lawfully engaged in area standards picketing at the Respondent's jobsite because employees supported the Union and/or to discourage them from supporting 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) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix" at the Respondent's facility in Cedar Lake, Indiana, as well as at the job site where the assault took place, if the Respondent still maintains a presence there. 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, if the construction project at the jobsite where the assault took place is complete, or if the Respondent has ceased operations at that location, 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 August 8, 2019.

- (b) 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 physically assault picketers lawfully engaged in area standards picketing at our job site because our employees supported the Union and/or to discourage our employees from supporting 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.

#### **BURRINK COMMERCIAL SERVICES INC.**

The Board's decision can be found at [www.nlrb.gov/case/13-CA-246967](http://www.nlrb.gov/case/13-CA-246967) 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

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	:	No.
Petitioner	:	
v.	:	
	:	Board Case No.:
BURRINK COMMERCIAL SERVICES INC.	:	13-CA-246967
	:	
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 mail upon the following party at the addresses listed below:

Brennden Burrink, President  
Burrink Commercial Services Inc.  
PO Box 108  
South Holland, IL 60473

Brennden Burrink  
Burrink Commercial Services, Inc.  
20770 Torrence Avenue  
Lynwood, IL 60411

Brennden Burrink, President  
Burrink Commercial Services Inc.  
9765 W. 135th Pl.  
Cedar Lake, IL 46303

/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 14th day of May 2020