



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

May 19, 2020

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. Rhino Northwest LLC*, Board  
Nos. 19-CA-221309 and 19-CA-221359

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

cc & documents to: Service List

## SERVICE LIST

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### REGIONAL DIRECTOR:

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practices occurred in the State of Washington. The Board's final order issued on December 11, 2019.

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

1. On April 29, 2013, the Regional Director for Region 19 issued a Consolidated Complaint and Notice of Hearing in Case Nos. 19-CA-221309 and 19-CA-221359, charging Respondent with certain violations of the Act.

Respondent filed an answer.

2. Following a hearing before an administrative law judge, the judge issued a decision on October 28, 2019, finding that Respondent had violated the Act and recommending that an order be issued requiring that the Respondent 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 28, 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 25, 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 to the administrative law judge's decision with the Board.

6. In the absence of any exceptions by Respondent to the administrative law judge's decision, on December 11, 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 not filing exceptions with the Board challenging the administrative law judge's decision, the Respondent did not 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. *See, e.g., NLRB v. Nevis Indus.*, 647 F.2d 905, 908 (9th Cir. 1981). *Accord, e.g., NLRB v. Tri-State Warehouse & Distrib.*, 677 F.2d 31, 31 (6th Cir. 1982); *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.

/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 19th day of May, 2020

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
 :  
 Petitioner : Circuit No.  
 v. :  
 : Board Case Nos.:  
 RHINO NORTHWEST LLC : 19-CA-221309  
 : 19-CA-221359  
 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, Rhino Northwest LLC, its officers, agents, successors, and assigns, enforcing its order dated December 11, 2019, in Case Nos. 19-CA-221309 and 19-CA-221359, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Rhino Northwest LLC, 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.

RHINO NORTHWEST LLC

**ORDER**

Rhino Northwest LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Failing and refusing to bargain with the Union in good faith by failing to meet with the Union at reasonable times for the purposes of collective bargaining;
  - (b) Failing and refusing to bargain with the Union by unilaterally implementing a new safety work boot policy without notifying or bargaining with the Union;
  - (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act:
  - (a) Within 14 days after service by the Region, post at all its facility in Fife, Washington, where notices to employees are customarily posted, 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, the notices shall be distributed electronically, such as by email, or by regular U.S. mail for those employees who do not have email. Reasonable steps shall be taken by the 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, the Respondent has gone out of business

or closed the facilities 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 January 1, 2018.

- (b) 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 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

In recognition of these rights, we hereby notify employees that:

WE WILL NOT fail and refuse to bargain with Local No. 15, International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists, and Allied Crafts of the United States, its Territories and Canada, AFL-CIO, CLC (Union) in good faith by failing to meet with the Union at reasonable times for the purposes of collective bargaining.

WE WILL NOT implement any changes in the wages, hours, or working conditions of our bargaining unit employees, including implementing a new work (or safety) boot policy, without first notifying the Union and giving it an opportunity to bargain.

WE WILL, upon request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following appropriate bargaining unit concerning terms and conditions of employment:

All full-time and regular part-time riggers, including boom lift riggers, ballroom riggers, decorating riggers, down riggers, ETCP high riggers, fly operators, head riggers, head fly operators, high riggers, high rigger trainees, high rigger welders, installation riggers, roof operators, roof supervisors, and rigging trainees, employed by the Employer out of its Fife, Washington,

facility, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related matter interfere with, restrain, or coerce you in the exercise of rights listed above.

RHINO NORTHWEST 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)

915 2<sup>nd</sup> Avenue, Room 2948, Seattle, WA 98174-1078  
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/19-CA-221309](http://www.nlr.gov/case/19-CA-221309) 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 (206) 220-6340.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
 :  
 Petitioner : Circuit No.  
 v. :  
 : Board Case Nos.:  
 RHINO NORTHWEST LLC : 19-CA-221309  
 : 19-CA-221359  
 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 address listed below:

Harrison C. Kuntz, Esq.  
Heidi Durr, Attorney  
Timothy A. Garnett, Attorney  
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7700 Bonhomme Avenue, Suite 650  
St. Louis, MO 63105-0030

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

Dated at Washington, D.C.  
this 19th day of May, 2020