



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

August 28, 2020

Clerk, United States Court of
Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: *NLRB v. 3H Service System, Inc.*, Board
Case Nos. 22-CA-236583 and 22-CA-
248356

Dear Clerk:

I am enclosing an original 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.

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

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CHARGING PARTY:

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Local 32BJ
494 Broad Street, 3rd Fl.
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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No.
Petitioner	:	
v.	:	
	:	Board Case Nos.:
3H SERVICE SYSTEM, INC.	:	22-CA-236583
	:	22-CA-248356
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 Third 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 3H Service System, Inc. (“Respondent”). The Board is entitled to summary enforcement of its order because Respondent withdrew its 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 New Jersey. The Board's final order issued on July 9, 2020 and is reported at 369 NLRB No. 116.

B. Proceedings Before the Board

1. On December 18, 2019, the Board's General Counsel issued a Consolidated Complaint and Notice of Hearing in Case Nos. 22-CA-236583 and 22-CA-248356, charging Respondent with certain violations of the Act. The Consolidated Complaint 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 and that if no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

2. On December 30, 2019, the Respondent filed an answer to the complaint. However, on January 29, 2020, the Respondent filed a motion to withdraw its answer, and on January 31, 2020, the Regional Director granted that motion.

3. In light of the lack of an answer by Respondent, on February 7, 2020, the General Counsel filed a Motion to Transfer Proceedings to the Board and for Default Judgment.

4. By order dated February 13, 2020, the Board transferred the case to itself and issued a Notice to Show Cause why the motion should not be granted. The Order gave Respondent until February 27, 2020, to file with the Board in Washington, D.C., a response to the Motion for Default Judgment.

5. Respondent did not respond. The allegations in the motion were therefore undisputed.

6. The Board, on July 9, 2020, issued its Decision and Order, finding that withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.¹ Accordingly, the Board granted the Motion for Default Judgment and entered 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 place before the Board an 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.

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

¹ See *Rock Technologies, Inc.*, 346 NLRB No. 68 (2006) (not reported in Board volumes); *Maislin Transport*, 274 NLRB 529 (1985).

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., Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3d Cir. 1984). *See also 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); *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.

/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 28th day of August 2020

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No.
Petitioner	:	
v.	:	
	:	Board Case Nos.:
3H SERVICE SYSTEM, INC.	:	22-CA-236583
	:	22-CA-248356
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, 3H Service System, Inc., its officers, agents, successors, and assigns, enforcing its order dated July 9, 2020, in Case Nos. 22-CA-236583 and 22-CA-248356, reported at 369 NLRB No. 116, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent 3H Service System, Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

BY THE COURT

Circuit Judge

DATED:

NATIONAL LABOR RELATIONS BOARD

v.

3H SERVICE SYSTEM, INC.

ORDER

3H Service System, Inc., Lincroft, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Failing and refusing to recognize and bargain with Local 32BJ, Service Employees International Union (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.
 - (b) Changing the terms and conditions of employment of its unit employees without first notifying the Union and giving it an opportunity to bargain.
 - (c) Bypassing the Union and dealing directly with unit employees regarding grievances and terms and conditions of employment.
 - (d) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.
 - (e) 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 as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All service employees employed in any facility in the State of

New Jersey, excluding commercial office buildings under 100,000 square feet, except that economic terms and conditions for residential buildings, hospitals, department stores, schools, charitable, educational and religious institutions, race tracks, nursing homes, theaters, hotels, shopping malls, golf courses, bowling alleys, warehouses, route work, bank branches and industrial facilities shall be set forth in riders negotiated for each location covered by this agreement.

- (b) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the bargaining unit.
- (c) On request, rescind the changes in the terms and conditions of employment for its unit employees that were unilaterally implemented in about August and December 2018 and July, August 2019, and on about September 23, 2018, and July 1, 2019.
- (d) Make whole the unit employees for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful unilateral changes in the unit employees' terms and conditions of employment made in about August 2018 and on about September 23, 2018, and July 1, 2019, with interest, in the manner set forth in the remedy section of this decision.
- (e) Make whole the unit employees for any loss of earnings and other benefits suffered as a result of the Respondent's direct dealing with employees since about December 2018 and July, August 2019, with interest, in the manner set forth in the remedy section of this decision.
- (f) Reimburse the unit employees for any expenses ensuing from the Respondent's unilateral denial of health insurance coverage/benefits since about August 2018, with interest, as set forth in the remedy section of this decision.
- (g) Make all contractually required benefit contributions that have not been made to any unit employee benefit funds since about August 2018, if any, including any additional amounts due any such funds, and reimburse unit employees for any expenses ensuing from its failure to make such payments, with interest, in the manner set forth in the remedy section of this decision.

- (h) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay award(s), and file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award(s) to the appropriate calendar year(s) for each employee.
- (i) Furnish to the Union in a timely manner the information requested by the Union on October 22, 2018, with the exception of employees' social security numbers.
- (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) Post at its Lincroft, New Jersey facility copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 22, 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,

² If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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 August 1, 2018.

- (1) Within 21 days after service by the Region, file with the Regional Director for Region 22 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 recognize and bargain with Local 32BJ, Service Employees International Union (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT change your terms and conditions of employment, including but not limited to your pay, wage rate, health insurance, paid time off, vacation, and holiday benefits, without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT bypass the Union and deal directly with unit employees regarding grievances and terms and conditions of employment.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT discriminate against employees based on their union-represented status.

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 as the exclusive collective-bargaining representative of our employees in the following appropriate unit

concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All service employees employed in any facility in the State of New Jersey, excluding commercial office buildings under 100,000 square feet, except that economic terms and conditions for residential buildings, hospitals, department stores, schools, charitable, educational and religious institutions, race tracks, nursing homes, theaters, hotels, shopping malls, golf courses, bowling alleys, warehouses, route work, bank branches and industrial facilities shall be set forth in riders negotiated for each location covered by this agreement.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL, on request by the Union, rescind the changes in the terms and conditions of employment for our unit employees that were unilaterally implemented in about August and December 2018 and July, August 2019, and on about September 23, 2018, and July 1, 2019.

WE WILL make our unit employees whole for any loss of earnings and other benefits suffered as a result of our unlawful unilateral changes in our unit employees' terms and conditions of employment made in about August and December 2018, and July, August 2019, and on about September 23, 2018, and July 1, 2019, plus interest.

WE WILL make our unit employees whole for any loss of earnings and other benefits suffered as a result of our direct dealing with employees since about December 2018 and July, August 2019, with interest, in the manner set forth in the remedy section of this decision.

WE WILL reimburse you for any expenses ensuing from our unilateral denial of your health insurance coverage/benefits since about August 2018, plus interest.

WE WILL make all contractually required benefit fund contributions that we have failed to make since about August 2018, if any, including any additional amounts due any such funds, and WE WILL reimburse our unit employees for any expenses ensuing from our failure to make such payments, plus interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay award(s), and WE WILL file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award(s) to the appropriate calendar year(s) for each employee.

WE WILL furnish to the Union in a timely manner the information it requested on October 22, 2018, with the exception of employees' social security numbers.

3H SERVICE SYSTEM, INC.

The Board's decision can be found at www.nlr.gov/case/22-CA-236583 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 THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
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3H SERVICE SYSTEM, INC.	:	22-CA-236583
	:	22-CA-248356
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:

Carl Mack, Manager
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Marietta, GA 30067

Russ Wetherington
3H Service System, Inc.
1700 Cumberland Point Dr., Ste 16
Marietta, GA 30067

/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 28th day of August 2020