



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

September 22, 2020

Lyle W. Cayce  
Clerk United States Court of  
Appeals for the Fifth Circuit  
F. Edward Hebert Bldg.  
600 S. Maestri Place, Ste. 115  
New Orleans, LA 70130-3408

Re: *NLRB v. T-3 Construction LLC*, Board  
Case No. 16-CA-247162

Dear Mr. Cayce:

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

cc: service list

SERVICE LIST

RESPONDENT:

Tim Pulice  
T3 Construction LLC  
6217 S. 91 Ave.  
Omaha, NE 68127

Tel: (402) 676-1345  
E-mail: tim@t3ne.com

THE BOARD IS NOT AWARE OF  
A COUNSEL FOR RESPONDENT  
AT THIS TIME

CHARGING PARTY:

Larry Jaramillo, Business Manager  
Southwest Laborers District Council and  
Laborers Local 154  
1110 W Pioneer Parkway, Ste 100  
Arlington, TX 76013

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CHARGING PARTY COUNSEL:

Eric H. Nelson, Attorney at Law  
3303 Main St, Ste 303  
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REGIONAL DIRECTOR:

Timothy L. Watson  
819 Taylor St., Rm. 8A24  
Fort Worth, TX 76102-6178

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practices occurred in Texas. The Board's final order issued on July 6, 2020 and is reported at 369 NLRB No. 115.

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

1. On March 2, 2020, the Board's General Counsel issued a complaint and notice of hearing in Case No. 16-CA-247162, 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 March 16, 2020, and that if the Respondent failed to file an answer, the allegations of the complaint would be deemed to be true.

2. Having not received an answer, on March 18, 2020, the Board's Regional Director sent the Respondent a letter advising that if no answer was received by March 25, 2020, the Board's Regional Office would seek a default judgment with the Board.

3. The Respondent did not file an answer or ask for an extension of time.

4. On May 15, 2020, counsel for the General Counsel filed with the Board a Motion to Transfer Proceedings to the Board and Motion for Default Judgment based upon the Respondent's failure to file an answer to the complaint.

5. By order dated May 20, 2020, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until June 3, 2020, to file with the Board in Washington, D.C., a response to the Motion for Default Judgment.

6. Respondent did not file a response.

7. The Board, on July 6, 2020, issued a Decision and Order granting the Motion for Default Judgment in the absence of good cause being shown for Respondent's failure to file an 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 appropriate 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 cause for Respondent's failure to file an answer was alleged or 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." 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. Brookshire Grocery Co.*, 919 F.2d 359, 363 n.2 (5<sup>th</sup> Cir. 1990), *Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6<sup>th</sup> Cir. 1991); *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9<sup>th</sup> Cir. 1991); *NLRB v. Dane County Dairy*, 795 F.2d 1313, 1319-21 (7<sup>th</sup> Cir. 1986); *Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3<sup>d</sup> Cir. 1984).

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 St., S.E.  
Washington, D.C. 20570

Dated in Washington, D.C.  
this 22nd day of September 2020



# NATIONAL LABOR RELATIONS BOARD

v.

## T-3 CONSTRUCTION LLC

### **ORDER**

T-3 Construction LLC, Collinsville, Texas, its officers, agents, successors, and assigns shall:

1. Cease and desist from
  - (a) Failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit by failing to pay unit employees contractually-required wages in accordance with the March 1, 2019–April 30, 2020 Agreement. The bargaining unit is:

All laborers, skilled laborers, specialist laborers, industrial laborers, laborer foremen, and general foremen performing work covered by the Southwest Laborers’ District Council Tri-State Agreement.
  - (b) Failing and refusing to pay certain employees who performed work for the Respondent.
  - (c) Failing and refusing to make all contractually-required pension fund payments on behalf of unit employees in accordance with the March 1, 2019–April 30, 2020 Agreement.
  - (d) 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) Pay unit employees all contractually-required wages in accordance with the March 1, 2019–April 30, 2020 Agreement, in the manner set forth in the remedy section of this decision.
  - (b) Compensate certain employees who performed work for the Respondent and were not paid, in the manner set forth in the remedy section of this decision.

- (c) Make the affected employees whole for any loss of earning and other benefits suffered as a result of the Respondent's unlawful conduct, with interest, in the manner set forth in the remedy section of this decision.
- (d) Compensate employees for the adverse consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).
- (e) Make all contractually-required payments to the Union's benefit funds that have not been made on the employees' behalf since March 1, 2019, in the manner set forth in the remedy section of this decision.
- (f) Make unit employees whole for any expenses ensuing from the failure to make payments to the pension funds since March 1, 2019, in the manner set forth in the remedy section of this decision.
- (g) Post at its facility in Collinsville, Texas, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 16, 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, the Respondent shall duplicate and mail, at its own

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<sup>1</sup> If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed due to the Coronavirus pandemic, the notices must be posted within 14 days after the facilities reopen 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 the paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means.

expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2019.

- (h) Within 21 days after service by the Region, file with the Regional Director for Region 16 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 Southwest Laborers District Council and Laborers Local 154 (the Union) as the exclusive collective-bargaining representative of employees in the following unit by failing and refusing to pay you contractually-required wages in accordance with the March 1, 2019–April 30, 2020 collective-bargaining agreement (the Agreement). The unit is:

All laborers, skilled laborers, specialist laborers, industrial laborers, laborer foremen, and general foremen performing work covered by the Southwest Laborers' District Council Tri-State Agreement.

WE WILL NOT fail and refuse to pay employees who perform work for the company.

WE WILL NOT fail and refuse to make contractually required pension fund payments on your behalf in accordance with the March 1, 2019–April 30, 2020 Agreement.

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 pay you the contractually-required wages in accordance with the March 1, 2019–April 30, 2020 Agreement.

WE WILL pay certain employees who performed work for the company but were not paid.

WE WILL make all contractually required pension fund payments on your behalf in accordance with the March 1, 2019–April 30, 2020 Agreement.

### T-3 CONSTRUCTION LLC

The Board's decision can be found at [www.nlr.gov/case/16-CA-247162](http://www.nlr.gov/case/16-CA-247162) 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.



