



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

October 6, 2020

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

Re: *NLRB v. Sterett Crane & Rigging, LLC*,  
Board Case No. 25-CA-237121

Dear Ms. Hunt:

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 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 name and address 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: Service List

## SERVICE LIST

### RESPONDENTS COUNSEL:

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### CHARGING PARTYS COUNSEL:

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### REGIONAL DIRECTOR:

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### RESPONDENT:

Christopher Riccio  
Sterett Crane & Rigging  
34 Booth Field Road  
Owensboro, KY 42301

Phone: (270) 926-1646

### CHARGING PARTY:

International Union of Operating  
Engineers, Local 181  
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### CHARGING PARTY:

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IUOE Local No. 181  
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UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
STERETT CRANE & RIGGING, LLC	:	25-CA-237121
	:	
Respondent	:	

APPLICATION FOR SUMMARY ENTRY OF A  
JUDGMENT ENFORCING A SUPPLEMENTAL ORDER 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 against Sterett Crane & Rigging, LLC (“Respondent”). The Board is entitled to summary enforcement of its order in full because Respondent failed to file with the Board exceptions to the administrative law judge’s decision. 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 Kentucky. The Board’s final order issued on March 3, 2020.

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

1. On June 28, 2019, the Regional Director issued a complaint and notice of hearing in Case No. 25-CA-237121, charging Respondent with certain violations of the Act.

2. Following a hearing before Administrative Law Judge Kimberly R. Sorg-Graves, the judge issued a decision on January 21, 2020, 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 January 21, 2020, 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 February 18, 2020.

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 with the Board.

6. In the absence of any exceptions to the administrative law judge's decision, on March 3, 2020, 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 failing to file exceptions with the Board challenging the administrative law judge's decision, the Respondent failed to 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 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.*, 677 F.2d 31, 31 (6th Cir. 1982); *NLRB v. Globe-Wernicke Systems*, 336 F.2d 589, 589 (6th Cir. 1964). *Accord*, *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 Street, S.E.  
Washington, D.C. 20570

Dated in Washington, D.C.  
this 6th day of October 2020

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
STERETT CRANE & RIGGING, LLC	:	25-CA-237121
	:	
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 Sterett Crane & Rigging, LLC, its officers, agents, successors, and assigns, enforcing its order dated March 3, 2020, in Case No. 25-CA-237121, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Sterett Crane & Rigging, LLC, its officers, agents, successors, and assigns, shall abide by said order (See attached Order and Appendix).

ENTERED BY ORDER OF THE COURT

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Clerk

NATIONAL LABOR RELATIONS BOARD

v.

STERETT CRANE & RIGGING, LLC

**ORDER**

Sterett Crane & Rigging, LLC, Owensboro, Kentucky its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
  - (a) Refusing to bargain in good faith with International Union of Operating Engineers, Local 181, a/w International Union of Operating Engineers, AFL-CIO (Union) by failing and refusing to furnish in a timely manner information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of Respondent's unit employees.
  - (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) Furnish to the Union in a timely manner the following information requested by the Union on February 28, 2019:
    - (i) As it relates to Sterett Equipment, the name and contact information of the contractor on the Hopkinsville job referred to by Respondent together with any and all correspondence, contracts, invoices, change orders, text messages, emails, phone records and other instructional or billing instructions to the same within the custody of Respondent.
    - (ii) As it relates to Trifecta Steel, the name and contact information of the contractor on the Hopkinsville job referred to by Respondent together with any and all correspondence, contracts, invoices, change orders, text messages, emails, phone records and other instructional or billing instructions to the same within the custody of Respondent.

- (iii) The ownership and names of the ownership and control groups for Sterett Crane & Rigging and Trifecta Steel.
  - (iv) A description of the work done by Respondent, full descriptions of the type and scope of work of Respondent, Sterett Equipment, and Trifecta Steel.
  - (v) The last two years, all instances wherein Sterett Equipment provided an operator for equipment for which it rented, the names of those referrals, whether or not those referrals were within the bargaining unit represented by the Union.
  - (vi) All evidence that Respondent had that the crane Jamon Spore disassembled on the Hopkinsville, Kentucky site was a crane owned by that contractor.
- (b) Within 14 days after service by the Region, post at its Elberfeld, Indiana, and Owensboro, Kentucky, facilities copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 25, 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 expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 28, 2019.
- (c) Within 21 days after service by the Region, file with the Regional Director for Region 25 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**

#### **FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union

Choose a representative 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** refuse to bargain collectively with the International Union of Operating Engineers, Local 181, a/w International Union of Operating Engineers, AFL-CIO (the Union) by failing and refusing to furnish in a timely manner 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** in any like or related manner interfere with your rights under Section 7 of the Act.

**WE WILL** furnish to the Union in a timely manner the following information requested by the Union on February 28, 2019:

- (1) As it relates to Sterett Equipment, the name and contact information of the contractor on the Hopkinsville job referred to by us together with any and all correspondence, contracts, invoices, change orders, text messages, emails, phone records, and other instructional or billing instructions to the same within our custody.
- (2) As it relates to Trifecta Steel, the name and contact information of the contractor on the Hopkinsville job referred to by us together with any and all correspondence, contracts, invoices, change orders, text messages, emails, phone records, and other instructional or billing instructions to the same within our custody.
- (3) The ownership and names of the ownership and control groups for Sterett Crane & Rigging and Trifecta Steel.
- (4) A description of the work done by Sterett Crane & Rigging, full descriptions of the type and scope of work of Sterett Crane & Rigging, Sterett Equipment, and Trifecta Steel.
- (5) The last 2 years, all instances wherein Sterett Equipment provided an operator for equipment for which it rented, the names of those referrals,

whether or not those referrals were within the bargaining unit represented by the Union.

- (6) All evidence that Respondent had that the crane Jamon Spore disassembled on the Hopkinsville, Kentucky site was a crane owned by that contractor.

Sterett Crane & Rigging, 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)

Minton-Capehart Federal Building  
575 N. Pennsylvania Avenue, Room 238, Indianapolis, IN 46204-1577  
(317) 226-7381, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/25-CA-237121> 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 (317) 991-7644.

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
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STERETT CRANE & RIGGING, LLC	:	25-CA-237121
	:	
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:

J. Sale Gordon, Attorney  
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P.O. Box 1539  
Owensboro, KY 42302

Christopher Riccio  
Sterett Crane & Rigging  
34 Booth Field Road  
Owensboro, KY 42301

/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 6th day of October 2020