



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

December 22, 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. Badger Packaging
Corporation*, Board Case Nos. 18-CA-
248224, 18-CA-256426 and 18-CA-257051

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

cc & documents to: Service List

SERVICE LIST

RESPONDENT:

James Anderson, President
Badger Packaging Corporation
2035 Stonebridge Road
West Bend, WI 53095

Telephone: (262) 247-0491

Fax: (262) 338-1887

Email: james.anderson@badgerpackaging.com

REGIONAL DIRECTOR:

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Federal Office Building
212 3rd Ave. S, Suite 200
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Tel: (612) 348-1757

CHARGING PARTY:

Amanda M. Fisher, Asst. Gen. Counsel
United Steel, Paper and Forestry,
Rubber, Manufacturing, Energy,
Allied-Industrial and Service Workers
International Union, AFL-CIO/CLC,
on behalf of its Local 2-00598
60 Boulevard of the Allies
Pittsburgh, PA 15222

Telephone: (412) 562-2567

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UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
 : No.
 Petitioner :
 v. : Board Case No.:
 : 18-CA-248224
 BADGER PACKAGING CORPORATION : 18-CA-256426
 : 18-CA-257051
 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 Badger Packaging Corporation (“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 Wisconsin. The Board’s final order

issued on July 31, 2020, and is reported at 370 NLRB No. 1.

B. Proceedings Before the Board

1. On April 17, 2020, the General Counsel issued a consolidated complaint and notice of hearing in Case Nos. 18-CA-248224, 18-CA-256426 and 18-CA-257051, 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 May 1, 2020, 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 May 5, 2020, counsel for the General Counsel sent Respondent a letter stating that no answer had been received regarding the consolidated complaint and notice of hearing. The letter notified Respondent that if an answer is not received by May 12, 2020, 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 May 15, 2020, 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 June 4, 2020, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until June 18, 2020, 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 July 31, 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 22nd day of December 2020

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No.
Petitioner	:	
	:	
v.	:	Board Case No.:
	:	18-CA-248224
BADGER PACKAGING CORPORATION	:	18-CA-256426
	:	18-CA-257051
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, Badger Packaging Corporation, its officers, agents, successors, and assigns, enforcing its order dated July 31, 2020, in Case Nos. 18-CA-248224, 18-CA-256426 and 18-CA-257051, reported at 370 NLRB No. 1, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Badger Packaging Corporation, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Judge, United States Court of
Appeals for the Seventh Circuit

NATIONAL LABOR RELATIONS BOARD

v.

BADGER PACKAGING CORPORATION

ORDER

Badger Packaging Corporation, West Bend, Wisconsin, its officers, agents, successors, and assigns shall:

1. Cease and desist from
 - (a) Failing and refusing to bargain with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, on behalf of its Local 2-00598, as the exclusive collective-bargaining representative of the employees in the bargaining unit.
 - (b) Unilaterally changing the terms and conditions of employment of its unit employees.
 - (c) Failing and refusing to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to make required benefit fund contributions.
 - (d) Refusing to bargain collectively with the Union by failing and refusing to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive 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 regular full-time and regular part-time employees employed by the Employer in the following classifications: Flexo Folder Glue

Operator, Flexo Folder Glue Helper, Printer/Slotter Operator, Printer/Slotter Helper, Rotary Die Cutter Operator, Rotary Die Cutter Helper, Autoplaten Operator, Autoplaten Helper, Die Mounter, Finishing Operator, Bander Operator, Shipping/Dispatch, Material Handler, Truck Driver, Maintenance, Maintenance Helper, and Lead Man Adder.

- (b) Before implementing any changes in wages, hours, or other terms and conditions of employment of bargaining unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of unit employees.
- (c) Rescind the changes in the terms and conditions of employment of its unit employees that were unilaterally implemented about April and June 2019.
- (d) Continue in effect all the terms and conditions of employment contained in its collective-bargaining agreement effective September 1, 2017, to August 31, 2019 as extended.
- (e) Make the Union whole by remitting to the International Union dues that were deducted from unit employees' paychecks but not remitted from April 2019 until the expiration of the collective-bargaining agreement as extended, with interest, in the manner set forth in the remedy section of this decision.
- (f) Return to employees any dues deducted but not remitted to the Union after the expiration of the extended contract, with interest, in the manner set forth in the remedy section of this decision.
- (g) Make whole its unit employees by making all contractually required benefit fund contributions that have not been made since June 2019, pursuant to the 2017 - 2019 collective-bargaining agreement as extended, with interest, in the manner set forth in the remedy section of this decision.
- (h) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's failure to remit dues and make benefit fund contributions, with interest, in the manner set forth in the remedy section of this decision.
- (i) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum back-pay awards, and file with the Regional Director for Region 18, within 21 days of the date the amount of back-

pay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

- (j) Furnish to the Union in a timely manner the relevant and necessary information requested on May 15 and August 26, 2019.
- (k) 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.
- (l) Post at its West Bend, Wisconsin facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 18, 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.
- (m) Within 21 days after service by the Region, file with the Regional Director for Region 18 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 with United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC on behalf of its Local 2-00598 (collectively "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 without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT fail and refuse to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to make required benefit fund contributions.

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 exclusive collective-bargaining representative of our unit employees.

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 regular full-time and regular part-time employees employed by us in the following classifications: Flexo Folder Glue Operator, Flexo Folder Glue Helper, Printer/Slotter Operator, Printer/Slotter Helper, Rotary Die Cutter Operator, Rotary Die Cutter Helper, Autoplaten Operator, Autoplaten Helper, Die Mounter,

Finishing Operator, Bander Operator, Shipping/Dispatch, Material Handler, Truck Driver, Maintenance, Maintenance Helper, and Lead Man Adder.

WE WILL, before implementing any changes in wages, hours, and 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 rescind the changes in your terms and conditions of employment that were implemented about April and June 2019.

WE WILL continue in effect all the terms and conditions of employment contained in the collective-bargaining agreement effective September 1, 2017, to August 31, 2019 as extended.

WE WILL remit to the International Union dues that were deducted from your paychecks pursuant to valid dues checkoff authorizations and that have not been remitted from April 2019 until the expiration of our collective-bargaining agreement as extended, with interest.

WE WILL return to you union dues that we deducted from your paychecks but did not remit to the Union after the collective-bargaining agreement as extended expired, with interest.

WE WILL make you whole for your loss of earnings and other benefits suffered as a result of our unlawful cessation of dues remittance to the Union and contractually required benefit contributions, with interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 18, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL furnish to the Union in a timely manner the relevant and necessary information requested on May 15 and August 26, 2019.

BADGER PACKAGING CORPORATION

The Board's decision can be found at www.nlr.gov/case/18-CA-248224 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

NATIONAL LABOR RELATIONS BOARD	:	
	:	No.
Petitioner	:	
v.	:	Board Case No.:
	:	18-CA-248224
BADGER PACKAGING CORPORATION	:	18-CA-256426
	:	18-CA-257051
Respondent	:	

CERTIFICATE OF SERVICE

The undersigned certifies that one copy 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 address listed below:

James Anderson, President
Badger Packaging Corporation
2035 Stonebridge Road
West Bend, WI 53095

/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 22nd day of December 2020