

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

INGREDION, INC., d/b/a	)	
PENFORD PRODUCTS CO.	)	
Petitioner/Cross-Respondent	)	
	)	
v.	)	Nos. 18-1155 & 18-1244
	)	
NATIONAL LABOR RELATIONS BOARD	)	
Respondent/Cross-Petitioner	)	
	)	
and	)	
	)	
LOCAL 100G, BAKERY, CONFECTIONERY,	)	
TOBACCO WORKERS & GRAIN MILLERS	)	
INTERNATIONAL UNION, AFL-CIO, CLC	)	
Intervenor	)	

**OPPOSITION OF THE NATIONAL LABOR RELATIONS BOARD TO  
THE COMPANY’S MOTION TO FILE OVERLENGTH BRIEFS**

To the Honorable, the Judges of the United States  
Court of Appeals for the District of Columbia Circuit:

The National Labor Relations Board (“the Board”), by its Deputy Associate General Counsel, hereby opposes the motion of Ingredion, Inc., d/b/a Penford Products Co. (“the Company”) for leave to file overlength briefs, and shows as follows:

1. On May 14, 2018, the Company filed a petition for review of the Board’s Decision and Order dated May 1, 2018 (366 NLRB No. 74). Following the Board’s denial of a motion to reopen the record below, and voluntary dismissal of

the Company's initial petition to the Court, the Company filed a second petition for review on September 11, 2018.

2. On June 4, 2018, the Board filed a cross-application for enforcement of its Order against the Company, which the Court later consolidated with the Company's second petition for review. Local 100G, Bakery, Confectionery, Tobacco Workers & Grain Millers International Union ("the Union") intervened in support of the Board.

3. On October 10, 2018, the Court issued an order setting the briefing schedule such that the Company's opening brief is currently due November 26. On November 13, the Company filed the present motion to file overlength briefs, requesting 20,000 words for the parties' principal briefs, 10,000 words for the Union's intervenor brief, and 10,000 words for the Company's reply brief.

4. The Board opposes the Company's motion for the reasons set forth below. In the event that the Company's motion is denied, and the Company requires additional time to edit and file a complying brief, the Board would not oppose a request for a reasonable extension of time.

## **ARGUMENT**

The Court "disfavors motions to exceed limits on the length of briefs," and will grant such motions only for "extraordinarily compelling reasons." D.C. Cir. Rule 28(e)(1). The Company has not demonstrated that any compelling reasons

are present here, or that the parties require additional words beyond the Court's normal length limitations.

The size of the record in this case does not warrant special treatment. It is not extraordinary, or even unusual, for the transcript in a Board proceeding to exceed one thousand pages, and for there to be dozens of accompanying exhibits. In the experience of Board counsel, such cases are routinely briefed on review—where parties tend to narrow and focus their arguments—within the standard word limits envisioned by the Court's rules. The Court is likely familiar with examples in other areas of the law, many of which tend to have larger records than Board proceedings.

Moreover, the substance of the Board's underlying unfair-labor-practice Order does not warrant overlength briefs. The Board principally found that the Company committed an unfair labor practice by unlawfully implementing contract terms without having reached a valid bargaining impasse with the Union. As the Company acknowledges in its motion (Mot. 5 ¶ 11), the multi-factor legal standard for determining whether parties failed to reach valid impasse is well established. The Board further found that, in the same bargaining-related course of conduct, the Company engaged in unlawful direct dealing, unlawfully threatened employees and denigrated the Union, and unlawfully delayed providing relevant information. The applicable legal standards for these additional violations are also well

established and, again, were not in dispute below. Instead, review or enforcement of the Board's Order largely turns on the Board's factual findings and credibility determinations, and on its application of settled law to the facts. Although the Company has indicated its intention to challenge one of the remedies ordered by the Board, the Company devoted less than one page to challenging that remedy in its filings before the Board.

Contrary to the Company's motion (Mot. 4 ¶ 9), the lengths of the post-hearing briefs to the administrative law judge are of little relevance, as there the parties must marshal all of the record evidence presented at the hearing before the judge has made recommended findings of fact. Such briefing is not subject to normal length limitations, and is typically much longer than briefing on exceptions to the Board or on review to a court. With respect to this case in particular, several unfair-labor-practice allegations at issue in the General Counsel's complaint and in the post-hearing briefing were dismissed by the administrative law judge, and are no longer at issue. Numerous additional unfair-labor-practice allegations found meritorious by the administrative law judge were not adopted by the Board and, again, are not before the Court. The length of the judge's recommended decision (66 pages as cited by the Company, 33 pages as formatted in the Board's Decision and Order) is not remarkable, particularly given that a significant portion of the

judge's analysis concerned independent unfair-labor-practice findings not adopted by the Board.

WHEREFORE, the Board requests that the Court reject the Company's motion to file overlength briefs.

Respectfully submitted,

s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street S.E.  
Washington D.C. 20570  
(202) 273-2960

Dated at Washington, D.C.  
this 15th day of November, 2018

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TOBACCO WORKERS & GRAIN MILLERS	)	
INTERNATIONAL UNION, AFL-CIO, CLC	)	
Intervenor	)	

**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its opposition to the company’s motion contains 905 words of proportionally spaced, 14-point type, and that the word processing system used was Microsoft Word 2016.

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2018, I filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for District of Columbia Circuit by using CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, SE  
Washington, DC 20570

Dated at Washington, DC  
this 1st day of November 2018