

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD)	No. 20-1398
)	(09-CA-231106)
)	
Petitioner,)	
)	
v.)	
)	
JUSTICE ENERGY, INC.)	
)	
Respondent)	

ANSWER

Respondent Justice Energy, Inc., pursuant to Local Rule 15(b)(2), hereby files its Answer as follows:

The un-numbered sentences of Petitioner’s Application make only one factual allegation, namely, that Respondent filed no exceptions to the administrative law judge’s decision in the administrative proceedings. Respondent admits to this factual allegation. No response to the remaining allegations is required.

A. Jurisdiction of this Court

Respondent admits that Administrative Law Judge Geoffrey Carter held that the unfair labor practices alleged by Petitioner took place within the state of West Virginia. This Respondent further admits that the Board’s final order issued on February 3, 2020. The remaining allegations contained in the Jurisdiction section of Petitioner’s Application are legal conclusions to which no response is required.

B. Proceedings Before the Board

1. Respondent admits the allegations contained in Paragraph 1 of Petitioner’s Application.

2. Respondent admits the allegations contained in Paragraph 2 of Petitioner's Application.

3. Respondent admits the allegations contained in Paragraph 3 of Petitioner's Application.

4. Paragraph 4 of Petitioner's Application contains only recitations of statutory language and summaries of regulations. No response to these allegations is required.

5. Respondent admits the allegations contained in Paragraph 5 of Petitioner's Application.

6. Respondent admits the allegations contained in Paragraph 6 of Petitioner's Application.

C. Argument

The Petitioner is not entitled to summary entry of a judgment in this Court. Petitioner has failed to properly file the administrative record in this matter as is required by statute. 29

U.S.C. § 160(e) requires a party initiating a review or enforcement proceeding in this Court to:

[F]ile in the court the record in the proceedings as provided in section 2112 of Title 28." 28 U.S.C. § 2112 provides that the record in the proceedings below include, at a minimum, "the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the rules prescribed under the authority of section 2072 of this title designate to be included therein.

The statute referenced, 28 U.S.C. § 2072, authorizes the Supreme Court to create rules regarding the filing of the administrative record in enforcement or review actions. "Such rules may authorize the agency, board, commission or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit

the same or any part thereof to the Court.”¹ A rule to this effect has been issued: Fed R. App. P. 16: “The record on review or enforcement of an agency order consists of: (1) the order involved; (2) any findings or report on which it is based; and (3) the pleadings, evidence, and other parts of the proceedings before the agency.” In this case, the Petitioner has arguably filed a copy of the order involved. It appears, at least partially, to be incorporated into the Proposed Judgment filed by Petitioner. But the Petitioner has not filed the judge’s opinion, which contains the “findings or report upon which it is based”, or any other part of the administrative record. Petitioner’s failure to comply with 29 U.S.C. § 160(e) is fatal to their enforcement action, which should be dismissed on this basis. This Court should not enforce any administrative order without the opportunity to review the record.

Justice Energy has complied with the NLRB order and no further enforcement action is necessary. Dismissal of Petitioner’s Application will not prejudice any party to this proceeding because there is no need for court intervention or supervision.

Respectfully Submitted:

/s/ Christopher J. Schroeck
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¹ 28 U.S.C. § 2112(a).

Certificate of Service

I hereby certify that on April 28, 2020, a copy of the foregoing was served via certified mail, postage prepaid, upon the following:

David Habenstreit
National Labor Relations Board
1015 Half St., SE
Washington, D.C. 20570

/s/ Christopher J. Schroeck