

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
:
: Petitioner :
v. : No. 20-1291
:
NSL COUNTRY GARDENS, LLC :
:
: Respondent :

MOTION OF THE NATIONAL LABOR RELATIONS BOARD
TO NOT REQUIRE THE RECORD TO BE FILED

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

The National Labor Relations Board (the “Board”), by its Assistant General Counsel, respectfully moves for the filing of the record not be required in this case, and shows as follows:

1. On March 11, 2020, the Court docketed the Board’s application for summary entry of a judgment enforcing its Order issued November 21, 2019, against NSL Country Gardens, LLC (“NSL”). On May 1, 2020, NSL filed a response. On May 8, 2020, the Board filed a reply.

2. The Board titled its filing as an “Application for *Summary* Entry of a Judgment Enforcing an Order of the National Labor Relations Board” (emphasis added) precisely because NSL failed to raise any issues before the Board and, as a

consequence, it forfeited any right to challenge those findings.¹ In its answer NSL does not deny or contest any of the elements in the Board’s application for summary enforcement. Consequently, the record is not in dispute, and no issues remain that would require the Court to consult the record. The sole remaining step is for the Court to apply settled law related to summary enforcement to the procedural facts at hand.

3. The uncontested fact that NSL did not file exceptions before the Board further highlights the summary nature of this case. *See* Section 10(e) of the Act, 29 U.S.C. 160(e) (“[n]o 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 because of extraordinary circumstances.”). *See also* *Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 665-66 (1982) (“the Court of Appeals lacks jurisdiction to review objections that were not urged before the Board.”). *Accord* *W & M Props. of Conn., Inc. v. NLRB*, 514 F.3d 1341, 1345 (D.C. Cir. 2008) (Section 10(e) imposes a “jurisdictional bar” in the face of which the Court is “powerless in the absence of ‘extraordinary circumstances,’ to consider arguments not made to the Board”).

¹ As explained in more detail in section C of the Board’s application, if no exceptions are filed to an administrative law judge’s recommended decision and order, the Board adopts that decision and order and all objections to that decision and order are deemed waived. *See* 29 C.F.R. 102.46 and 102.48; *see also* 29 U.S.C. § 160(e)

4. In its answer NSL raises issues of mootness and bankruptcy. These matters do not involve the record of proceedings before the Board. To prepare and file a record under these circumstances would result in the significant and unnecessary expenditure of time and resources.

WHEREFORE, for the reasons set forth above, the Board respectfully requests that its motion for the filing of the record to not be required be granted.

/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 4th day of June, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the First Circuit using the appellate CM/ECF system. I further certify that the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/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.
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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 513 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2016. This document also complies with the typeface and type-style requirements of FRAP 27(d)(1)(E) and the length limits of FRAP 27(d)(2)(A).

/s/ David Habenstreit
David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 4th day of June, 2020