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**Betterroads Asphalt, LLC and Betterrecycling Corporation, and Union Obreros Cemento Mezclado.**

Cases 12–CA–185172, 12–CA–186232, 12–CA–186243, 12–CA–189888, and 12–CA–192850

July 6, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN  
AND EMANUEL

The General Counsel seeks summary judgment in this case on the grounds that there are no genuine issues of material fact as to the allegations in the complaint, and that the Board should find, as a matter of law, that Betterroads Asphalt, LLC and Betterrecycling Corporation, a single employer (collectively, the Respondent), violated Section 8(a)(5) and (1) of the Act by failing to bargain with the Union Obreros Cemento Mezclado (Union) and Section 8(a)(1) of the Act by failing to remit union dues it had deducted from its employees' pay.

Pursuant to two charges filed by the Union on October 14, 2016, and other charges filed by the Union on September 28, 2016, December 15, 2016, and February 10, 2017, the General Counsel issued a consolidated complaint on March 31, 2017, a second consolidated complaint on May 31, 2017, and an amendment to the second consolidated complaint on March 7, 2019. The second consolidated complaint as amended (complaint) alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to make numerous payments to its bargaining unit employees and to other entities on behalf of its unit employees without providing the Union notice and opportunity to bargain and by failing and refusing to furnish the Union with certain relevant information. It also alleges that the Respondent violated Section 8(a)(1) of the Act when it failed to remit to the Union dues deducted from its employees' pay. The Respondent filed answers admitting with clarifications the allegations in the complaint, denying the legal conclusions, and asserting affirmative defenses.

On August 23, 2019, the General Counsel filed a Motion for Summary Judgment, and the Respondent did not file an opposition. On December 20, 2019, the Board

<sup>1</sup> While admitting to the allegations in Paragraphs 8(j) and (k) of the complaint, the Respondent clarifies that it was "not required to pay [a] health plan premium for the employees, but only [a] contribution to the trust fund ('Fondo de Bienestar') managed by the Union for medical and life insurance, among other benefits." Exh. 13. Because the Respondent admits to all the allegations in Paragraph 8, we find the clarification does not raise any genuine issues of material fact. To the extent the

issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response to the Notice to Show Cause.

Ruling on Motion for Summary Judgment

"It is a settled principle that for summary judgment to be appropriate the record must show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Conoco Chemicals Co.*, 275 NLRB 39, 40 (1985) (citing *Stephens College*, 260 NLRB 1049, 1050 (1982)).

The Respondent admits that it did not pay or remit various monies, that these payments and remittances were mandatory subjects of bargaining, and that it did not provide the Union notice and an opportunity to bargain regarding the withholding of these monies.<sup>1</sup> Thus, the Respondent admits to conduct that violates Section 8(a)(5) and (1) of the Act. See *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 199 (1991).

The Respondent also admits that since on or about July 1, 2016, it failed to remit to the Union dues it deducted from unit employees' pay pursuant to valid, unexpired, unrevoked dues-checkoff authorizations. The record shows that the parties' collective-bargaining agreement expired on January 19, 2015. As we recently held in *Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center*, 368 NLRB No. 139 (2019), an employer's obligation to deduct and remit dues to a union pursuant to the terms of a contractual dues-checkoff provision ceases with the expiration of the collective-bargaining agreement that contained the provision. Thus, an employer may lawfully stop deducting union dues from its unit employees' pay following the expiration of a collective-bargaining agreement containing a dues-checkoff provision.

However, an employer that continues, after the agreement expires, to deduct union dues from its employees' pay *may not* lawfully keep that money for itself. Doing so interferes with unit employees' exercise of their Section 7 rights. Section 7 guarantees employees the right, among others, to form, join, or assist labor organizations. Employees exercise their right to join and assist a labor organization when they pay union membership dues through authorized deductions from their pay. When their employer deducts dues amounts but then retains that money

clarification could affect how much money the Respondent owes, and to which fund or funds that money should be directed, we leave the resolution of those issues to the compliance phase of these proceedings. Similarly, we leave to compliance the determination of how much the Respondent owes based on its clarification that "payments to [Administración para el Sustento de Menores] were remitted on November 29, 2016."

for itself, it necessarily interferes with the exercise of these rights. Because dues amounts are still being deducted, employees are misled into believing that their union dues are being paid, so they will not make alternative arrangements to pay their dues as they could have if their employer had stopped deducting dues after the contract expired. Moreover, the employer's retention of deducted dues amounts doubles the economic burden on employees by forcing those who desire to remain in good standing with their union to pay dues in an amount equal to that already deducted from their pay—dues they may not be able to afford. Accordingly, the Respondent has admitted to conduct that interferes with the exercise of Section 7 rights and is therefore violative of Section 8(a)(1) of the Act. See *Duane Reade, Inc.*, 342 NLRB 1016, 1030 (2004); *Talaco Communications, Inc.*, 321 NLRB 762, 763 (1996).

Additionally, the Respondent admits that it did not provide the Union with information it requested that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit's employees, and the Respondent may not be heard to assert an affirmative defense of its failure to do so or of any of its alleged unlawful conduct.<sup>2</sup> Failing to furnish requested relevant information absent a legally sufficient defense violates Section 8(a)(5) and (1) of the Act. See *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979).

Therefore, we find that the Respondent has failed to raise a genuine issue of material fact warranting a hearing and that the General Counsel is entitled to judgment as a matter of law, and we grant the General Counsel's motion for summary judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, Respondent Betterroads, a Puerto Rico limited liability company with offices and places of business in Puerto Rico and the United States Virgin Islands, has been engaged in the production and sale of asphalt and the paving of roads. During the 12-month period preceding the issuance of the complaint, Respondent Betterroads, in conducting its operations, purchased and received at its Puerto Rico facilities goods valued in excess

of \$50,000 directly from points outside the Commonwealth of Puerto Rico.

At all material times, Respondent Bettercycling, a Puerto Rico corporation with offices and places of business in Puerto Rico and the United States Virgin Islands, has been engaged in the paving of roads with recycled materials and the performance of related services. During the 12-month period preceding the issuance of the complaint, Respondent Bettercycling, in conducting its operations, purchased and received at its Puerto Rico facilities goods valued in excess of \$50,000 directly from points outside the Commonwealth of Puerto Rico.

At all material times, Respondent Betterroads and Respondent Bettercycling have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations; and have held themselves out to the public as a single integrated business enterprise.

Based on the operations described above, we find that Respondent Betterroads and Respondent Bettercycling constitute a single integrated business enterprise, a single employer within the meaning of the Act, and an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.<sup>3</sup>

We further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Jorge Diaz	-	President and CEO
Arturo Diaz	-	Chairman of the Board
Linette Orta	-	Director of Human Resources

The following employees of the Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

<sup>2</sup> We reject the Respondent's affirmative defenses and treat the General Counsel's Motion for Summary Judgment as conceded because the Respondent did not file an opposition to the Motion or a response to the Notice to Show Cause. See Sec. 102.24(b) of the Board's Rules and Regulations ("If the opposing party files no opposition or response, the Board may treat the motion as conceded, and default judgment, summary judgment, or dismissal, if appropriate, will be entered.")

<sup>3</sup> In its second amended answer to the second consolidated complaint, Respondent Betterroads and Respondent Bettercycling admit to the factual allegations forming the basis of the single-employer allegation while also attempting to "clarify that the companies have operated as joint employers, but have never been a single integrated business enterprise." We find that the allegations admitted clearly establish single-employer status. See *Teckwal Corp.*, 263 NLRB 892, 894 fn. 5 (1982).

All production and maintenance employees of Respondent employed in the manufacture of asphalt in its plants located in Puerto Rico, including road crews; excluding all executive, administrative and professional personnel, office clerical and plant clerical employees, master mechanics, foremen, watchmen, timekeepers, buyers, guards and supervisors as defined in the Act.

Since on or before September 14, 2012, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from September 14, 2012, to January 19, 2015.

At all times since on or before September 14, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

#### *A. Payments and Remittances*

Since on or about a date in June 2016, the Respondent has failed to pay the employer's contribution for health insurance and other benefits to Fondo de Fideicomiso, Union Obreros Cemento Mezclado (the Fund) on behalf of employees in the Unit.

Since on or about a date in June 2016, the Respondent has failed to remit to the Fund the contributions the Respondent deducted from the wages of employees in the Unit for health insurance and other benefits.

Since on or about a date in June 2016, the Respondent has failed to remit to Cooperativa de Credito y Ahorro EMDI, a credit union, contributions by employees in the Unit that were deducted from their wages.

Since on or about a date in August 2016, the Respondent has failed to pay employees in the Unit their wages.

From on or about a date in August 2016 until November 29, 2016, the Respondent failed to remit to Administracion para el Sustento de Menores (ASUME) child support payments that the Respondent deducted from the wages of employees in the Unit.

Since on or about September 16, 2016, the Respondent has failed to pay employees in the Unit their vacation pay.

Since on or about September 16, 2016, the Respondent has failed to pay employees in the Unit their accrued sick leave pay.

Since on or about December 15, 2016, the Respondent has failed to pay employees in the Unit their annual Christmas bonus for 2016.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

#### *B. Information Requests*

Since on or about October 6, 2016, by text message, and since on or about October 12, 2016, by letter, the Union has requested that the Respondent furnish the Union with the following information: a list of medical plan contributions deducted from payroll for employees in the Unit and a list of union dues payroll deductions for the months of August and September 2016. The Respondent has failed and refused to furnish the Union with this information.

Since on or about October 12, 2016, the Union has requested, by letter, that the Respondent furnish the Union with the following information: a list of wages owed to employees in the Unit. The Respondent has failed and refused to furnish this information.

The information requested is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

#### *C. Union Dues*

Since on or about July 1, 2016, the Respondent has retained for itself union dues deducted from its employees' pay.

#### CONCLUSIONS OF LAW

By failing to pay and remit money it owed without providing the Union notice and an opportunity to bargain, and by failing to provide the Union with the necessary and relevant information it requested, the Respondent violated Section 8(a)(5) and (1) of the Act. By retaining for itself union dues deducted from employees' pay, the Respondent violated Section 8(a)(1) of the Act. By its conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by changing terms and conditions of employment of its unit employees without prior notice to the Union and without affording the Union an opportunity to bargain, we shall order the Respondent to make whole unit employees by paying them their unpaid wages since on or about August 2016, vacation pay since September 16, 2016, accrued sick leave pay since September 16, 2016, and

Christmas bonus for 2016. Such amounts are to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Additionally, we shall order the Respondent to compensate the unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award in accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), and to file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to remit monies deducted from its employees' wages to the Cooperativa de Credito y Ahorro EMDI for credit union savings since on or about June 2016, failing to remit monies deducted from its employees' wages to the Administracion para el Sustento de Menores (ASUME) for child support payments from on or about August 2016 until November 29, 2016, and failing to pay the employer contributions and to remit the employee contributions to the Fondo de Fideicomiso, Union Obreros Cemento Mezclado on behalf of unit employees for health insurance and other benefits since on or about June 2016, we shall order the Respondent to make all such delinquent payments and fund contributions on behalf of unit employees that have not been made since those dates, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).<sup>4</sup> Further, the Respondent shall be required to reimburse unit employees for any expenses ensuing from its failure to make the required fund contributions as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Such amounts shall be computed in the manner set forth in *Ogle Protection Service*, above, with interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above.<sup>5</sup>

In addition, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the

Union with information that is relevant to and necessary for the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees, we shall order the Respondent to furnish to the Union the list of medical plan contributions deducted from payroll and the list of union dues payroll deductions that the Union requested on or about October 6 and 12, 2016. We shall also order the Respondent to furnish to the Union the list of wages owed to unit employees that the Union requested on October 12, 2016.

Having found that the Respondent violated Section 8(a)(1) by retaining for itself union dues it deducted from its employees' pay since on or about July 1, 2016, we shall order the Respondent to return those funds to the employees, plus interest at the rate prescribed in *New Horizons*, above, compounded daily as prescribed in *Kentucky River Medical Center*, above.

We recognize that at times the Board has ordered union dues deducted from employees' pay and retained by the employer after the expiration of a collective-bargaining agreement to be remitted to the union. See, e.g., *Talaco Communications, Inc.*, 321 NLRB 762, 763–764 (1996); *Valley Stream Aluminum, Inc.*, 321 NLRB 1076, 1077–1079 (1996); *Able Aluminum Co.*, 321 NLRB 1071, 1072 (1996). However, in other cases the Board has held that dues deducted but not remitted after a collective-bargaining agreement expired should be returned to the employees. See *Gray's Cleaning Service*, 323 NLRB No. 195, slip op. at 2 fn. 2 (1997); *R.E.C. Corp.*, 296 NLRB 1293, 1293 fn. 3 (1989); *Peerless Roofing Co., Ltd.*, 247 NLRB 500, 506 fn. 17 (1980), enfd. 641 F.2d 734 (9th Cir. 1981); see also *Duane Reade, Inc.*, 342 NLRB 1016, 1019, 1030 (2004) (ordering a cease and desist remedy—and not requiring that the funds be remitted to the union—where an employer had already returned the dues to the employees). Today, we clarify that the appropriate remedy is to order the employer to return the deducted but retained union dues to the employees.

Preliminarily, we observe that *Talaco Communications* was the first case in which the Board ordered union dues deducted but not remitted after a collective-bargaining agreement expired to be furnished to the union rather than returned to the employees. As noted above, however, the Board held to the contrary in *R.E.C. Corp.* and *Peerless Roofing*, and the Board in *Talaco* did not cite those cases,

<sup>4</sup> We leave to compliance the determination of how much money the Respondent owes and to whom based on its clarification that it was "not required to pay [a] health plan premium for the employees, but only [a] contribution to the trust fund ('Fondo de Bienestar') managed by the Union for medical and life insurance, among other benefits." Likewise, we leave to compliance the determination of how much the Respondent owes, if anything, based on its clarification that "payments to ASUME were remitted on November 29, 2016."

<sup>5</sup> To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

acknowledge that it was departing from precedent, and explain why. Thus, in this respect, the *Talaco* decision was arbitrary and capricious. See, e.g., *ABM Onsite Services–West, Inc. v. NLRB*, 849 F.3d 1137, 1142 (D.C. Cir. 2017) (citing the Administrative Procedure Act and holding that “an agency’s unexplained departure from precedent is arbitrary and capricious”). The sole precedent cited regarding this issue in *Talaco Communications* was *Independent Stave Company*, 248 NLRB 219, 221 (1980). But in that case, the employer was legally bound to remit the retained dues to the union because the dues were deducted from employees’ pay during the term of a collective-bargaining agreement containing a dues-checkoff provision. Thus, *Independent Stave* did not address the remedial issue in *Talaco* and here, i.e., whether dues amounts deducted and retained after a collective-bargaining agreement containing a dues-checkoff provision has expired should be remitted to the union or returned to employees.<sup>6</sup>

Our conclusion that such amounts should be returned to the employees is further guided by our decision in *Valley Hospital Medical Center*, above. Restoring longstanding precedent,<sup>7</sup> we held that an employer’s obligation to check off union dues ends when its collective-bargaining agreement containing a checkoff provision expires. See 368 NLRB No. 139, slip op. at 1. We did not decide in *Valley Hospital* whether an employer may lawfully choose to continue deducting dues and remitting them to the union after the agreement expires,<sup>8</sup> and we need not decide that question here in order to find, as we have, that an employer, post-expiration, may not lawfully deduct union dues from its employees’ pay and keep that money for itself. However, in finding such a violation, the Board is not enforcing an obligation owed by the employer to the union, nor is it enforcing the employees’ individual checkoff authorizations. Rather, the Board is simply upholding employees’ Section 7 right to join or assist a labor organization. Thus, we hold that the proper remedy is to return the money to the employees whose rights were interfered with when the Respondent retained their dues—not to order that money remitted to the Union, whose statutory rights are not at issue here. Each employee will then

be able to choose to remit the refunded deductions to the Union or to refrain from doing so, as he or she sees fit. Either way, he or she will be exercising rights guaranteed by Section 7 of the Act.<sup>9</sup>

To the extent *Talaco Communications* and its progeny are inconsistent with this decision, those cases are overruled.

Finally, because the Respondent indicated that its employment relationship with its employees ceased in 2016, we shall order the Respondent to mail a copy of the attached notice, in both English and Spanish, to the Union and to the last known addresses of its former unit employees in order to inform them of the outcome of this proceeding.

#### ORDER

The National Labor Relations Board orders that the Respondent, Betterroads Asphalt, LLC and Betterrecycling Corporation, a single employer, San Juan, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Changing the terms and conditions of employment of its unit employees without first notifying Union Obremos Cemento Mezclado (Union) and giving it an opportunity to bargain.

(b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with information it requested that is relevant to and necessary for the Union’s performance of its functions as the collective-bargaining representative of the Respondent’s unit employees.

(c) Retaining union dues deducted from its employees’ pay.

(d) 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) Make the unit employees whole for any loss of earnings and other benefits resulting from the Respondent’s failure to make the required payments, in the manner set forth in the remedy section of this decision.

<sup>6</sup> Neither *Able Aluminum* nor *Valley Stream Aluminum* ameliorated *Talaco*’s noncompliance with the Administrative Procedure Act. In those decisions, the Board inappositely cited *Independent Stave* again and *Talaco* itself. See *Able Aluminum*, 321 NLRB at 1072 & fn. 4; *Valley Stream Aluminum*, 321 NLRB at 1077 & fn. 4.

<sup>7</sup> *Bethlehem Steel*, 136 NLRB 1500 (1962), remanded on other grounds sub nom. *Marine & Shipbuilding Workers v. NLRB*, 320 F.2d 615 (3d Cir. 1963), cert. denied 375 U.S. 984 (1964); *Tampa Sheet Metal Co.*, 288 NLRB 322, 326 fn. 15 (1988).

<sup>8</sup> 368 NLRB No. 139, slip op. at 6 fn. 18 (leaving undecided “whether Sec. 302 of the Labor Management Relations Act must be construed to prohibit dues checkoff upon expiration of a collective-bargaining agreement providing for checkoff, as some courts have held”).

<sup>9</sup> We also observed in *Valley Hospital* that discontinuing dues checkoff after a collective-bargaining agreement expires is an economic weapon an employer may choose to deploy to exert pressure in bargaining with the union for a successor agreement. *Id.*, slip op. at 7–8. And the Supreme Court has long since held that it is improper for the Board to function “as an arbiter of the sort of economic weapons the parties can use in seeking to gain acceptance of their bargaining demands.” *NLRB v. Insurance Agents’ International Union*, 361 U.S. 477, 497 (1960). We believe it is more consistent with these principles to order post-expiration dues amounts deducted and unlawfully retained to be returned to employees rather than remitted to a union against which the employer may be seeking to exert economic pressure.

(b) Make all required delinquent payments to the applicable funds on behalf of the unit employees, including any additional amounts due the funds, in the manner set forth in the remedy section of this decision.

(c) Reimburse unit employees for any expenses ensuing from the Respondent's failure to make the required payments to the funds, in the manner set forth in the remedy section of this decision.

(d) Return to its employees dues deducted from their pay, but not remitted to the Union, after the expiration of the collective-bargaining agreement, in the manner set forth in the remedy section of this decision.

(e) Compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 12, 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.

(f) 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.

(g) Furnish to the Union in a timely manner the information requested by the Union in its text message and letters sent on or about October 6 and 12, 2016.

(h) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"<sup>10</sup> in both English and Spanish to the Union and to all unit employees who were employed by the Respondent at any time since June 1, 2016. In addition to the mailing 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.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 12 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.

Dated, Washington, D.C. July 6, 2020

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES  
MAILED BY 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 mail 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 change the terms and conditions of employment of our unit employees without first notifying the Union Obreros Cemento Mezclado (Union) and giving it an opportunity to bargain.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with information it requested that is relevant to and necessary for the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT retain union dues deducted from your pay.

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 make unit employees whole for any loss of earnings and other benefits resulting from our failure to

<sup>10</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the

pay your wages, vacation pay, accrued sick leave pay, and Christmas bonuses, plus interest.

WE WILL make all delinquent payments to the Cooperativa de Credito y Ahorro EMDI, the Administracion para el Sustento de Menores (ASUME), and the Fondo de Fideicomiso, Union Obreros Cemento Mezclado, including any additional amounts due to the funds, and WE WILL reimburse you for any expenses ensuing from our failure to make the required payments.

WE WILL return to you union dues we deducted from your pay but did not remit to the Union after the collective-bargaining agreement expired, plus interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 12, 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 information requested by the Union in its text message and letters sent on or about October 6 and 12, 2016.

BETTERROADS ASPHALT, LLC AND  
BETTERRECYCLING CORPORATION, A SINGLE  
EMPLOYER

The Board's decision can be found at [www.nlrb.gov/case/12-CA-185172](http://www.nlrb.gov/case/12-CA-185172) 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.

