



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

August 14, 2020

Clerk United States Court of  
Appeals for the First Circuit  
John Joseph Moakley, U.S. Courthouse  
1 Courthouse Way, Suite 2500  
Boston, MA 02210

Re: *NLRB v. Bevilacqua Asphalt Corp.*,  
Board Case No. 01-CA-245510

Dear Ms. Hamilton:

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 addresses appear 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: Svc. List

## SERVICE LIST

### RESPONDENT COUNSEL:

James P. Allen, Esq.  
National Labor Relations Advocates  
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Cincinnati, OH 45202-4038

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### RESPONDENT:

Steve Bevilacqua, Owner  
Bevilacqua Asphalt Corp.  
586 Quaker Highway  
Uxbridge, MA 01569

Phone: (508) 409-6432  
Fax: (508) 779-7555

### REGIONAL DIRECTOR:

National Labor Relations Board  
10 Causeway Street – Room 601  
Boston, MA 02222-1072

### RESPONDENT REPRESENTATIVE:

Cyndi Sauter, Labor Relations Rep.  
Burdzinski & Partners Inc.  
2393 Hickory Bark Dr.  
Dayton, OH 45458-9424

Tel: (937) 885-3705  
Fax: (866) 645-7304  
Email: csauter@burdzinski.com

### CHARGING PARTY:

Michael Simone, Organizer/Trustee  
International Brotherhood of  
Teamsters Local 251  
121 Brightridge Ave.  
East Providence, RI 02914

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Email: mps251@yahoo.com

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
 :  
 :  
 : Petitioner :  
 : No.  
 :  
 v. :  
 :  
 :  
 : Board Case No.:  
 BEVILACQUA ASPHALT CORP. : 01-CA-245510  
 :  
 :  
 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 First 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 W.B. Mason Co., Inc. (Respondent). The Board is entitled to summary enforcement of its order 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 unfair labor practices occurred in Massachusetts. The Board's final order issued March 4, 2020 (reported at 369 NLRB No. 39) and was modified on June 3, 2020 (reported at 369 NLRB No. 96).

### **B. Proceedings Before the Board**

1. On October 28, 2019, the Board's General Counsel issued a complaint and notice of hearing in Case No. 01-CA-245510, 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 November 12, 2019, and that if the Respondent failed to file an answer, the allegations of the complaint August be deemed to be true.

2. Having not received an answer, counsel for the General Counsel, on December 12, 2019, sent the Respondent a letter advising that an answer had not been received. The letter informed Respondent that it has until December 18, 2019, to file an answer and that, if it failed to do so, the Board's Regional Office would file a motion for default judgment with the Board.

3. The Respondent did not file an answer.

4. On December 26, 2019, counsel for the General Counsel filed with the Board a Motion for Default Judgment.

5. By order dated January 3, 2020, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until January 17, 2020, to file with the Board in Washington, D.C., a response to the Motion for Default Judgment.

6. Respondent did not file a response. The allegations in the motion remained undisputed.

7. The Board, on March 4, 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 an answer, and entering an appropriate order against the Respondent.

8. On March 30, 2020, the General Counsel filed with the Board a Motion to Modify the Board's March 4, 2020 Order and Motion to Reconsider its Denial of Mailing Notices. The motions were served upon Respondent. Respondent did not respond.

9. On June 3, 2020, the Board issued an Order granting the Motion to Modify the Board's March 4, 2020 Order, granting in part the Motion to Reconsider its Denial of Mailing Notices, and entered a modified 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 appropriate answer to the unfair labor practice complaint in a timely manner, the Board August, pursuant to Board Rule 102.20, absent a showing of “good cause,” deem the complaint’s allegations admitted, and then August enter an order, essentially by default, against the respondent. No cause for Respondent’s failure to file an answer or respond to the Board was alleged or 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.” 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. Izzzi*, 343 F.2d 753, 755 (1st Cir. 1965); *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); *NLRB v. Dane County Dairy*, 795 F.2d 1313, 1319-21 (7th Cir. 1986); *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 alleged or 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 14th day of August, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
 : No.  
 Petitioner :  
 v. :  
 : Board Case No.:  
 BEVILACQUA ASPHALT CORP. : 01-CA-245510  
 :  
 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, Bevilacqua Asphalt Corp., its officers, agents, successors, and assigns, enforcing its order dated June 3, 2020, in Case No. 01-CA-245510, reported at 369 NLRB No. 96, and the Court having considered the same, it is hereby

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

BY THE COURT

Maria R. Hamilton, Clerk

/s/ TRUE COPY

ATTEST: \_\_\_\_\_  
Maria R. Hamilton, Clerk

NATIONAL LABOR RELATIONS BOARD

v.

BEVILACQUA ASPHALT CORP.

**ORDER**

Bevilacqua Asphalt Corp., Uxbridge, Massachusetts, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified and set forth in full below.

1. Cease and desist from
  - (a) Barring former employees from its plant because they engaged in union activities, including activities in furtherance of an organizing drive at the Respondent's facility, and to discourage employees from engaging in these activities.
  - (b) 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) Grant its former employee Daniel Hedquist, as an employee of one of its customers, access to its property on the same basis that it grants access to employees of other customers, and notify its customer, Daniel Hedquist's employer, of this in writing.
  - (b) Post at its facility in Uxbridge, Massachusetts, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by

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<sup>1</sup> If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed due to the Coronavirus pandemic, the notices must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of the paper

the Regional Director for Region 1, 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. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 25, 2019.

- (c) Mail a signed copy of the official notice to the Respondent's former employee, Daniel Hedquist, and to his current employer who is the Respondent's customer; and to all current and former truckdrivers employed by the Respondent at any time since July 25, 2019.
- (d) Within 21 days after service by the Region, file with the Regional Director for Region 1 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.

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notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means.

## 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 bar former employees from our plant because they engaged in union activities, including activities in furtherance of an organizing drive at our facility among our employee drivers.

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 grant our former employee Daniel Hedquist, as an employee of one of our customers, access to our property on the same basis that we grant access to employees of other customers and WE WILL notify our customer, Daniel Hedquist's employer, of this in writing.

BEVILACQUA ASPHALT CORP.

The Board's decision can be found at [www.nlr.gov/case/01-CA-245510](http://www.nlr.gov/case/01-CA-245510) 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 FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD :  
: No.  
Petitioner :  
v. :  
: Board Case No.:  
BEVILACQUA ASPHALT CORP. : 01-CA-245510  
:  
Respondent :

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for summary entry of judgment and proposed judgment, in the above-captioned case, has this day been served by first class mail upon the following parties at the addresses listed below:

James P. Allen, Esq.  
National Labor Relations Advocates  
312 Walnut Street, Suite 1600  
Cincinnati, OH 45202-4038

Cyndi Sauter, Labor Relations Rep.  
Burdzinski & Partners Inc.  
2393 Hickory Bark Dr.  
Dayton, OH 45458-9424

Steve Bevilacqua, Owner  
Bevilacqua Asphalt Corp.  
586 Quaker Highway  
Uxbridge, MA 01569

/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 14th day of August, 2020