



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

November 30, 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. Betterroads Asphalt, LLC and
Betterrecycling Corporation, a single
employer*, Board Case Nos. 12-CA-
185172, 12-CA-186232, 12-CA-
186243, 12-CA-189888 and 12-CA-
192850

Dear Clerk:

I am enclosing an original of 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.
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(202) 273-2960

cc & documents to: Service List

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No.
Petitioner	:	
v.	:	Board Case Nos.:
	:	12-CA-185172
BETTERROADS ASPHALT, LLC AND BETTERRECYCLING CORPORATION, A SINGLE EMPLOYER	:	12-CA-186232
	:	12-CA-186243
	:	12-CA-189888
Respondent	:	12-CA-192850

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 Betterroads Asphalt, LLC and Betterrecycling Corporation, a single employer (“Respondent”). The Board is entitled to summary enforcement of its order because Respondent failed to respond to both the General Counsel’s Motion for Summary Judgment and the Board’s Notice to Show Cause. Consequently, the Board found that the General Counsel was entitled to judgment as a matter of law. 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 Puerto Rico. The Board's final order issued on July 6, 2020 and is reported at 369 NLRB No. 114.

B. Proceedings Before the Board

1. 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 Respondent filed answers thereto, admitting to the allegations in the complaint, providing clarifications, denying the legal conclusions, and asserting affirmative defenses.

2. On August 23, 2019, the General Counsel filed a Motion for Summary Judgment with the Board stating that, in light of Respondent's answers to the allegations made in the complaints, no genuine material issues or questions of fact warranting a hearing had been raised and that summary judgment in favor of the General Counsel was appropriate. Respondent did not file a response to the Motion for Summary Judgment.

3. By order dated December 20, 2019, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until January 3, 2020, to show in writing, why summary judgment should not be granted in favor of the General Counsel. Respondent did not file a response to the Notice to Show Cause.

4. In the absence of a response, on July 6, 2020, the Board issued its Decision and Order, granting the General Counsel's Motion for Summary Judgment, rejecting the Respondent's affirmative defenses, and issuing an appropriate order.¹

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. If an opposing party files no opposition or response to a motion, the Board may treat the motion as conceded, and default judgment, summary judgment, or dismissal, if appropriate, will be entered. *See* Sec. 102.24(b) of the Board's Rules and Regulations.

It is settled that the Board is entitled to have that 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." This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982).

¹ The Board noted that, to the extent that Respondent's clarifications in its answers could affect how much money Respondent owes and to which fund that money should be directed, those issues would be left to the compliance phase of the proceedings for resolution. It is the Board's standard practice to leave the particulars of a backpay obligation to the compliance stage, a bifurcated procedure that has met with approval. *See* *Sure-Tan v. NLRB*, 467 U.S. 883, 902 (1984).

Interpreting that requirement, courts have consistently held that a respondent's failure to assert a defense before the Board entitles the Board, absent extraordinary circumstances, to summary enforcement of its order. *See, e.g., NLRB v. Izzi*, 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). 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 30th day of November 2020

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
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v.	:	Board Case Nos.:
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	:	12-CA-186243
	:	12-CA-189888
Respondent	:	12-CA-192850

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, Betterroads Asphalt, LLC and Betterrecycling Corporation, a single employer, its officers, agents, successors, and assigns, enforcing its order dated July 6, 2020, in Case Nos. 12-CA-185172, 12-CA-186232, 12-CA-186243, 12-CA-189888 and 12-CA-192850, reported at 369 NLRB No. 114, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent Betterroads Asphalt, LLC and Betterrecycling Corporation, a single employer, 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.

BETTERROADS ASPHALT, LLC AND
BETTERRECYCLING CORPORATION, A SINGLE EMPLOYER

ORDER

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 Obreros 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.
 - (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" 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.

APPENDIX

NOTICE TO EMPLOYEES

MAILED 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 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 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 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

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CORPORATION, A SINGLE EMPLOYER	:	12-CA-186243
	:	12-CA-189888
Respondent	:	12-CA-192850

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:

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/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 30th day of November 2020