

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No. 20-2132
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

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 to not be required in this case, and shows as follows:

1. On December 1, 2020, the Court docketed the Board’s application for summary entry of a judgment enforcing its Order issued July 6, 2020, against Betterroads Asphalt, LLC and Betterrecycling Corporation, a single employer (“Betterroads”). On December 22, 2020, Betterroads filed a response. On January 5, 2021, the Board filed a reply.

2. The Board titled its December 1, 2020 filing as an “Application for *Summary* Entry of a Judgment Enforcing an Order of the National Labor Relations Board” (emphasis added) precisely because Betterroads failed to raise any issues

before the Board and, as a consequence, it forfeited any right to challenge those findings.¹ In its answer Betterroads 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 Betterroads did not respond to the General Counsel's motion for summary judgment or to the Board's notice to show cause why the motion for summary judgment should not be granted 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

¹ As explained in more detail in section C of the Board's application, if the opposing party files no opposition or response, the Board may treat the motion as conceded. *See* 29 C.F.R. 102.24 (b); *see also* 29 U.S.C. § 160(e)

absence of ‘extraordinary circumstances,’ to consider arguments not made to the Board”).

4. In its answer Betterroads 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 5th day of January 2021

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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 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.
this 5th day of January 2021

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 460 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 in Washington, D.C.
this 31st day of December 2020