No. 00-1563

In the Supreme Court of the United States

BEVERLY CALIFORNIA CORP., DBA BEVERLY ENTERPRISES, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

BARBARA D. UNDERWOOD
Acting Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
(202) 514–2217

JOHN E. HIGGINS, JR.
Acting General Counsel
JOHN H. FERGUSON
Associate General Counsel
NORTON J. COME
Deputy Associate General Counsel
JOHN EMAD ARBAB
Attorney
National Labor Relations Board
Washington, D.C. 20570

QUESTIONS PRESENTED

1. Whether, in the circumstances of this case, the National Labor Relations Board acted within its remedial authority in imposing on petitioner a corporate-wide cease and desist and notice-posting order.

2. Whether the court of appeals abused its discretion when it permitted petitioner to file a brief that significantly exceeded the page limits established in Federal Rule of Appellate Procedure 32, but denied petitioner's request to file an even longer brief.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

In the Supreme Court of the United States

No. 00-1563

BEVERLY CALIFORNIA CORP., DBA BEVERLY ENTERPRISES, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-49a) is reported at 227 F.3d 817. The decisions and orders of the National Labor Relations Board (Pet. App. 80a-151a, 405a-437a), and the decisions of the administrative law judges (Pet. App. 152a-402a, 438a-603a) are reported at 326 N.L.R.B. 153 and 326 N.L.R.B. 232.

JURISDICTION

A petition for rehearing was denied on January 8, 2001. The judgment of the court of appeals (Pet. App. 52a-74a) was entered on March 23, 2001. Pet. App. 50a-51a. The petition for a writ of certiorari was filed on

April 9, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner is a California corporation that owns and operates approximately 900 nursing homes throughout the United States. Pet. App. 2a, 154a-155a, 440a. Petitioner has a three-tiered organizational structure, "moving from the corporate level through the regional, and then down to the individual facilities." *Id.* at 3a. Petitioner formulates its labor relations policy at the corporate level. *Ibid.* Personnel at the regional level bargain with unions at individual facilities. Each facility's managers handle front-line labor relations. *Ibid.*

Petitioner has repeatedly violated the National Labor Relations Act (Act), 29 U.S.C. 151 *et seq.* Pet. App. 2a, 5a, 49a, 420a, 427a-428a. In a prior proceeding known as *Beverly I*, the Board found that, between 1986 and 1988, petitioner committed 135 unfair labor practices at 32 of its facilities. *Beverly California Corp.* (*Beverly I*), 310 N.L.R.B. 222, 228 (1993), enforcement granted in part and denied in part *sub nom. Torrington Extend-A-Care Employee Ass'n* v. *NLRB*, 17 F.3d 580 (2d Cir. 1994); see Pet. App. 3a-4a. The Board found that "this and earlier litigation reveal * * * [petitioner's] pattern of thwarting union organizing campaigns and otherwise disregarding the fundamental statutory rights of its employees." 310 N.L.R.B. at 231 (footnote omitted).

Petitioner persisted in that same unlawful pattern of conduct in the present cases. In August 1991, before administrative proceedings in *Beverly I* were completed, the Board's General Counsel issued a new consolidated complaint against petitioner in a proceeding

known as *Beverly II*, 326 N.L.R.B. 153 (1998); Pet. App. 4a, 152a-153a. That complaint alleged that petitioner had committed numerous unfair labor practices at 17 facilities. *Id.* at 4a, 388a. In June 1993, the General Counsel issued yet another consolidated complaint in a proceeding known as *Beverly III*, *id.* at 1a-49a, alleging that petitioner had committed numerous additional unfair labor practices at 11 facilities. *Id.* at 4a-5a, 439a.

2. Hearings in *Beverly II* and *Beverly III* were conducted before two administrative law judges (ALJs). Pet. App. 4a-5a, 153a, 439a. The Board issued a separate decision in each case. It found, in substantial agreement with the decisions of the ALJs, that petitioner had engaged in additional pervasive unfair labor practices. *Id.* at 80a-402a, 405a-603a.

a. In *Beverly II*, the Board found that petitioner committed 78 violations of the Act at 17 facilities in nine States. Pet. App. 426a. Among many other unfair labor practices, the Board found that petitioner: fired employees because of their support for a union at facilities in Lancaster, Pennsylvania, Clifton Forge, Virginia, Glasgow, West Virginia, and Monterey and San Francisco, California, contrary to Section 8(a)(3) of the Act,[1] *id.* at 85a, 175a-183a, 221a, 228a-232a, 236a-238a, 258a-261a, 263a-264a, 289a-292a, 294a-297a, 298a-299a, 311a-320a; unilaterally altered employees' terms of employment without bargaining with their union at facilities in Mount Lebanon, Tunkhannock, and East Stroudsburg, Pennsylvania, and Danbury, Connecticut, contrary to

[1] Section 8(a)(3), 29 U.S.C. 158(a)(3), makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

Section 8(a)(5) of the Act,[2] *id.* at 83a n.3, 184a-190a, 193a-194a, 197a-202a, 320a-321a, 325a-326a, 335a, 351a-352a, 361a-362a; and assisted employees in circulating a decertification petition at a facility in Fresno, California, and then withdrew recognition from the union based on that petition, contrary to Section 8(a)(5), *id.* at 362a-368a.

In *Beverly III*, the Board found that petitioner committed 28 violations of the Act at nine facilities in six States. Pet. App. 426a. Among many other unfair labor practices, the Board found that petitioner: timed a wage increase in order to stem a union organizing campaign at a facility in Lewistown, Pennsylvania, contrary to Section 8(a)(1) of the Act,[3] *id.* at 412a, 447a-454a; withheld a wage increase prior to an election at a facility in Panama City, Florida, and then granted the wage increase after the union lost the election, contrary to Section 8(a)(1) and (3), *id.* at 577a-582a; threatened employees with loss of their licenses and jobs if they supported the union at a facility in Deltona, Florida, contrary to Section 8(a)(1); and threatened to sell a facility in East Moline, Illinois, if the employees selected union representation, contrary to Section 8(a)(1), *id.* at 412a-413a, 419a, 469a, 471a, 473a, 476a-477a, 500a, 503a.

In *Beverly III*, the Board also found that "the evidence presented in *Beverly II* and *III* * * * over-

---

[2] Section 8(a)(5), 29 U.S.C. 158(a)(5), makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees."

[3] Section 8(a)(1), 29 U.S.C. 158(a)(1), makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7," 29 U.S.C. 157, among which is "the right * * * to bargain collectively through representatives of their own choosing."

whelmingly demonstrates that [petitioner] is a single employer within the meaning of the Act." Pet. App. 408a-409a, 441a-443a. That single-employer entity, the Board determined, "includes [petitioner's] central corporate headquarters in Fort Smith, Arkansas, and its various operating divisions and regions * * * and each of its individual facilities." *Id.* at 441a-442a. See also *id.* at 82a-83a, 162a (making similar finding in *Beverly II*). In particular, the Board found that the evidence reflected "the obvious truth that [petitioner] is in full control of its human resources and labor relations policies as carried out by its individual facilities." *Id.* at 445a.

b. To fashion an appropriate remedy for petitioner's unfair labor practices, the Board coordinated its decisions in *Beverly II* and *Beverly III*. Pet. App. 4a, 96a-97a, 420a-428a. In *Beverly III*, the Board adopted the ALJ's recommendation for "a broad nationwide cease-and-desist order and nationwide posting of the order at all of [petitioner's] facilities." *Id.* at 420a, 421a. The Board found that "a corporate-wide order is warranted on the basis of the record of violations committed during the total period covered by *Beverly I*, *Beverly II*, and *Beverly III*." *Id.* at 428a.

Noting that "[t]he Board has always recognized that it has the authority to issue employer-wide orders against a recidivist with a record of unfair labor practices in more than one facility" (Pet. App. 427a), the Board explained that petitioner is such a recidivist. *Id.* at 426a. The Board noted that "[t]he violations found in the three cases total approximately 240; they were committed at 54 different facilities in 18 states; and they include a number of differing types of coercive conduct within the meaning of Section 8(a)(1), as well as violations of Section 8(a)(3) and 8(a)(5)." *Ibid.* In

further support of a corporate-wide cease and desist order, the Board explained that "the involvement of divisional or regional personnel in unfair labor practices has continued since the period covered by *Beverly I*." *Ibid.* (footnote omitted). In particular, "[r]egional personnel were involved in the commission of more than a dozen unfair labor practices in *Beverly II* and *Beverly III*," and, in *Beverly III*, there was "corporate involvement" in violations at two facilities. *Id.* at 426a-427a. "These findings," the Board explained, "support the ultimate conclusion that [petitioner] exercises substantial control over labor relations policies and practices at the facility level." *Id.* at 427a.

In addition to the direct involvement of regional and corporate level personnel in the commission of unfair labor practices, the Board observed that labor relations at individual facilities were "under the direction and control of a regional director for human resources in each separate region." Pet. App. 427a. The Board emphasized that "[w]henever a union conducted an organizing campaign at a facility, human resources personnel were dispatched to conduct [petitioner's] antiunion campaign and assumed substantial control of many of the facility's actions during the critical period." *Ibid.* And, "[w]here a facility was already organized, the same regional personnel had the responsibility for conducting negotiations, executing labor agreements, and handling grievances beyond the preliminary steps." *Ibid.*

In sum, the *Beverly III* Board concluded that, in pursuing its "corporate policy" of "oppos[ing] unionization of its employees," petitioner "has regularly engaged in brinksmanship at the expense of its employees' Section 7 rights." Pet. App. 428a. Thus, "[t]he procession of violations in facility after facility of [petitioner's] opera-

tions and the continuing involvement of officials above the facility level in labor relations * * * warrants a remedial approach that is something other than business as usual." *Ibid.*

Accordingly, the Board, in *Beverly III*, issued "a broad order with corporate-wide application." Pet. App. 428a. The Board ordered petitioner, its operating divisions, wholly-owned subsidiaries, and individual facilities to cease and desist from engaging in specified unfair labor practices. *Id.* at 428a-431a. The Board also ordered petitioner, among other things, to "post at all of its facilities" copies of a specified notice. *Id.* at 432a, 434a-437a.

In issuing a corporate-wide cease and desist order, the *Beverly III* Board acknowledged that in *Torrington Extend-A-Care*, *supra*, the Second Circuit "declined to enforce a similar remedy in *Beverly I*." Pet. App. 420a. The Board explained, however, that "we are approaching the remedial issue on a full record different from that confronting the court of appeals in *Beverly I*." *Id.* at 428a. Noting the "continuing pattern of unfair labor practices" committed by petitioner after *Beverly I*, the Board concluded that the "cumulative effect" of its findings in *Beverly II* and *Beverly III* "significantly differentiates the record on which we issue the present order from the record" in *Torrington*. *Id.* at 426a-427a. Having "granted a corporatewide order" in *Beverly III*, the Board found it "unnecessary to grant a broad order" in *Beverly II*. *Id.* at 97a. Accordingly, in *Beverly II*, the Board issued "separate remedial orders * * * tailored to the violations found at each of the individual facilities." *Ibid.* See also *id.* at 97a-126a.

3. Petitioner and the Service Employees International Union filed petitions for review of the Board's orders in *Beverly II* and *Beverly III* in three courts of

appeals, including the Seventh Circuit. Pet. App. 5a. The petitions for review were consolidated before the Seventh Circuit. *Id.* at 1a-2a, 5a, 8a, 53a. The Board filed cross-applications for enforcement of its orders. *Id.* at 5a.

In the court of appeals, petitioner filed a motion for leave to submit an opening brief 272% longer than that permitted by Federal Rule of Appellate Procedure 32(a)(7). Pet. 8. Judge Diane P. Wood granted petitioner's motion in part, permitting it "to file an opening brief that does not exceed 19,600 words," *i.e.*, "a brief 40% longer than the rules normally permit." Pet. App. 6a, 75a-76a. Judge Wood's order stated that "[t]he court will not entertain a motion to reconsider this order." *Id.* at 76a.

Petitioner submitted a "motion for leave to file a motion for reconsideration, and request for en banc consideration of the motion or, alternatively, three-judge panel review." Pet. App. 78a. Judge Wood denied petitioner's motion. *Id.* at 77a-79a. In the course of ruling on the merits of petitioner's appeal, the court of appeals noted that "given the scope of this case and the kinds of arguments this court is entitled to consider, the case was manageable within the limitations we imposed." *Id.* at 9a.

On the substantive issues, the court of appeals enforced the Board's orders in part, vacated them in part, and remanded the cases to the Board for further proceedings. Pet. App. 1a-49a. The court noted that petitioner had "not challenged a significant number of the Board's findings of particular violations at particular facilities." *Id.* at 11a-12a; see also *id.* at 12a-14a (summarizing uncontested findings). The court examined the record evidence bearing on 42 challenged unfair labor practice findings, and concluded that

substantial evidence supported all but three of the Board's findings. *Id.* at 9a, 15a-46a.[4]

The court of appeals also held that "the Board did not abuse its discretion in principle in imposing a corporate-wide remedy." Pet. App. 3a. It explained that "[a] key point underlying the Board's approach to these cases is its finding * * * that Beverly is a single employer, a single integrated enterprise with a unified labor relations policy." *Id.* at 6a (emphasis omitted). "Viewed in this light, and also taking into account the mounting evidence that Beverly facilities continue to violate the law with regularity," the court found it "hardly surprising that the Board would have considered corporate-wide relief to be appropriate." *Id.* at 7a. The court elaborated:

> When an employer has many different facilities, all of which are affected by the same general policies, the Board is not required to proceed facility-by-facility, waiting for the next shoe, and the next shoe, to drop. It can instead require the company as a whole to eliminate the policies that lead to the commission of unfair labor practices by managers lower down on the corporate ladder.

Ibid.

The court found that "[p]erhaps the fact that most strongly supports the Board's chosen remedy * * * is the ubiquitous nature of the area personnel at local facilities whenever labor problems arose." Pet. App. 48a. Thus, "[i]n case after case, at facility after facility, the Board saw regional managers coming in to ensure that Beverly's overall corporate policy was imple-

---

[4] The court of appeals rejected the union's challenge to the Board's orders. Pet. App. 33a-34a, 41a-42a. The union has not sought review of that aspect of the decision below.

mented." *Ibid.* The court explained that, "in this instance the Board was entitled to conclude that nothing less than a corporate-wide order would do the job of correcting the proclivity this company has shown for committing or tolerating unfair labor practices at a significant number of its facilities." *Id.* at 48a-49a.

The court of appeals further concluded that "[n]othing in *Torrington Extend-A-Care* * * * is to the contrary; in that case the Second Circuit merely found that the record as of the time of *Beverly I* did not support corporate-wide relief." Pet. App. 7a. Thus, "as both the Board and the two ALJs here pointed out, the record now before us is a far richer one." *Id.* at 48a. The court found that "[t]he Board was entitled to conclude, especially after specific remedies in *Torrington* did not appear to stop the efforts from the company's central management to stop unions in any way possible, that the time was past for piecemeal relief." *Ibid.*

While concluding that "the Board is entitled to impose corporate-wide relief," in view of "Beverly's recidivism and the corporate direction the Board has found pervading its handling of union complaints," the court found that "[t]he specific order it entered * * * is problematic." Pet. App. 49a. The court was "concerned that much of it is nothing more than a laundry list of the particular violations committed at individual facilities." *Ibid.*; see also *id.* at 3a. The court, however, did "not consider it appropriate to go through the order in the first instance and decide which parts are properly directed to the corporation as a whole and which to particular facilities." *Id.* at 49a. Rather, the court

vacated the Board's order in *Beverly III* and "le[ft] this task to the Board on remand." *Ibid.*[5]

ARGUMENT

1. Petitioner contends (Pet. 15-29) that the Board abused its discretion in issuing a corporate-wide order. That contention is not ripe for review and, in any event, is without merit and does not warrant review.

a. Petitioner's challenge to the Board's corporate-wide order is not ripe for review, because there does not exist, at present, a judicially enforced corporate-wide order against petitioner. Although the court of appeals held that "the Board did not abuse its discretion *in principle* in imposing a corporate-wide remedy" (Pet. App. 3a (emphasis added)), the court vacated the Board's corporate-wide order, and remanded both *Beverly II* and *Beverly III* to the Board for further proceedings. *Id.* at 3a, 49a. On remand, the Board must determine "which parts [of a remedial order in *Beverly III*] are properly directed to the corporation as a whole and which to particular facilities." *Id.* at 49a. On remand, the Board must also fashion appropriate remedial notices for posting by petitioner in both *Beverly II* and *Beverly III*. See note 5, *supra*.

Because the court of appeals vacated and remanded the Board's order in *Beverly III*, it would be premature to address petitioner's abstract challenge to the Board's

---

[5] The judgment of the court of appeals requires petitioner to cease and desist from engaging in specified unfair labor practices only at the individual facilities involved in *Beverly II*. The court's judgment does not require petitioner to post a notice at those facilities. The question of appropriate notice-posting measures in *Beverly II*, and the entirety of the Board's corporate-wide remedy in *Beverly III*, were remanded to the Board for further proceedings consistent with the court's opinion. See Pet. App. 52a-74a.

issuance of a corporate-wide remedy. Once the Board issues a concrete order, and the court of appeals reviews that order, petitioner may seek review in this Court of that concrete order. In the present interlocutory posture of the case, review by this Court is not warranted. See, *e.g.*, *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (per curiam).

b. In any event, petitioner's challenge to the Board's choice of remedy in *Beverly III* is without merit and does not raise any issue that warrants review. Section 10(c) of the Act authorizes the Board to impose a cease and desist order upon "any person" whom the Board has found to have "engaged in * * * any * * * unfair labor practice." 29 U.S.C. 160(c). This Court has held that "[t]he test of the proper scope of a cease and desist order is whether the Board might have reasonably concluded from the evidence that such an order was necessary to prevent the employer before it 'from engaging in any unfair labor practice affecting commerce.'" *May Dep't Stores Co.* v. *NLRB*, 326 U.S. 376, 390 (1945). Thus, the Board may issue "an order restraining other violations" of the Act where "[the] danger of their commission in the future is to be anticipated from the course of [the employer's] conduct in the past." *Id.* at 392 (quoting *NLRB* v. *Express Publ'g Co.*, 312 U.S. 426, 437 (1941)).

Consistent with those principles, the Board, upheld by the courts of appeals, has found it appropriate to order corporate-wide cease and desist relief where the employer has manifested a "clear and longstanding proclivity * * * to commit similar violations at its other facilities." *J.P. Stevens & Co.*, 245 N.L.R.B. 198, 198 (1979), enforced in relevant part, 638 F.2d 676 (4th Cir. 1980). See also, *e.g.*, *J.P. Stevens & Co.*, 240

N.L.R.B. 33, 33 (1979) (ordering employer "to cease and desist from engaging in unfair labor practices on a corporationwide basis," given employer's "history of serious and similar violations of the Act and its disregard of past Board [o]rders") (footnotes omitted), enforced, 612 F.2d 881 (4th Cir.), cert. denied, 449 U.S. 918 (1980); *Florida Steel Corp.*, 222 N.L.R.B. 955, 956 (ordering employer "to cease and desist from such practices on a corporatewide basis," in view of its "recent history of similar violations"), enforced *mem.*, 536 F.2d 1385 (5th Cir. 1976). As the Second Circuit explained in *Beverly I*, "[a] corporate-wide order is properly remedial where * * * the evidence supports an inference that the employer will commit further unlawful acts at a substantial number of other sites." *Torrington Extend-A-Care Employee Ass'n* v. *NLRB*, 17 F.3d 580, 585 (1994).

Applying those settled principles, the Board acted well within its discretion in imposing a corporate-wide order on petitioner. In *Beverly I*, *Beverly II*, and *Beverly III*, the Board found that petitioner had engaged in 240 unfair labor practices at 54 facilities in 18 States. Those findings demonstrate that petitioner is a recidivist employer with a strong proclivity for violating the Act. Pet. App. 49a, 426a. Moreover, regional and corporate level personnel have continued to be involved in the commission of unfair labor practices, *id.* at 426a-427a, and petitioner's "unified labor relations policy" is enforced at individual facilities by regional managers, *id.* at 6a, 48a, 427a-428a. As the court of appeals concluded, in those circumstances, "the Board is not required to proceed facility-by-facility, waiting for the next shoe, and the next shoe, to drop." *Id.* at 7a. Rather, "[t]he Board was entitled to conclude, especially after specific remedies in *Torrington* [*i.e.*, *Beverly*

I] did not appear to stop the efforts from the company's central management to stop unions in any way possible, that the time was past for piecemeal relief." *Id.* at 48a.

Petitioner contends (Pet. 17-18) that the Board's corporate-wide order is "punitive and not remedial" because it "do[es] substantially more than what is necessary to remedy the consequences of the unfair labor practices in these cases." That contention, however, simply ignores the Board's findings that petitioner has systematically violated the Act at a substantial number of facilities, that regional and corporate level personnel were involved in the violations, that facility-specific relief has proven inadequate to halt petitioner's illegal conduct, and that petitioner can be expected to violate the Act at other facilities in the future absent a corporate-wide order.

Contrary to petitioner's suggestion (Pet. 22-23, 29), it is not punitive for the Board to place it "at risk of future contempt proceedings," should petitioner violate the Act at a facility where it has not previously committed unfair labor practices. A corporate-wide order is "properly remedial," not punitive, where, as here, "the evidence supports an inference that the employer will commit further unlawful acts at a substantial number of other sites." *Torrington*, 17 F.3d at 585. It is entirely proper for the Board to initiate a contempt proceeding against a party who flouts a judicially enforced Board order. See, *e.g.*, *May Dep't Stores*, 326 U.S. at 388; *Express Publ'g Co.*, 312 U.S. at 433; see also *NLRB* v. *Mexia Textile Mills, Inc.*, 339 U.S. 563, 567-568 (1950) (notwithstanding employer's voluntary compliance, Board is entitled to enforcement of cease and desist order, and to seek contempt sanctions if that order is violated).

Petitioner argues (Pet. 22) that "the record here * * * contains substantial record evidence demonstrating that the unfair labor practices in these cases * * * do not involve conduct or policies that extend beyond the location where the specific unfair labor practices occurred." The Board, however, found otherwise; and the court of appeals concluded that substantial evidence supports the Board's finding. Petitioner's fact-bound contention raises no issue warranting this Court's review. See *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 490-491 (1951).

Petitioner also contends (Pet. 26-27) that "[t]he record here shows that Beverly has a lawful written policy in place regarding its position on unionization," and, therefore, it is unlike J.P. Stevens & Co., an employer upon which the Board has imposed corporate-wide orders. Regardless of petitioner's announced policy, however, the Board's findings demonstrate that, in practice, petitioner's labor relations policies, and its centralized manner of enforcing those policies, have caused it to regularly violate its legal obligations under the Act. See Pet. App. 2a, 5a, 49a, 420a, 427a-428a. As a recidivist violator of the Act, petitioner is, like any other such employer, subject to a corporate-wide order. See *J.P. Stevens & Co*, 245 N.L.R.B. at 198.[6]

---

[6] Petitioner argues (Pet. 28) that "[t]he critical point in the *J.P. Stevens* line of cases is that the Board's order needed to be extended to other locations because the record showed that employees at those other locations knew about the unfair labor practices that were occurring elsewhere." But that was not the basis for the Board's imposition of corporate-wide relief against that employer. Instead, the Board's orders were premised on its findings that J.P. Stevens engaged in a systematic pattern of violations at numerous facilities. See, *e.g.*, *J.P. Stevens & Co*, 245 N.L.R.B. at 198 ("clear and longstanding proclivity of Respondent to commit similar viola-

Petitioner also contends (Pet. 29) that a corporate-wide remedy is unwarranted because, "[e]ven when all three cases are combined, the number of nursing homes involved in this aggregated litigation represent only 6% of Beverly's nursing homes over a six year period." But, as the court of appeals noted, only 10% of petitioner's facilities are unionized, and, in *Beverly II* and *Beverly III*, petitioner committed unfair labor practices at 15% of those facilities. Pet. App. 47a. Petitioner also committed violations during two out of the five, or 40%, of the representation elections held by the Board in 1990. *Id.* at 47a-48a. Numbers, moreover, do not tell the whole story. As already noted, regional and corporate level personnel were involved in the violations and facility-specific relief has failed to halt petitioner's pattern of illegal conduct. The Board therefore reasonably concluded that a corporate-wide order was appropriate.

Finally, petitioner errs in asserting (Pet. 20) that the Board's corporate-wide notice posting requirement is unwarranted because employees at facilities not involved in the present litigation are neither "victims of discrimination," nor "aware of the unfair labor practices." The purpose of a corporate-wide notice is to assure employees at all of the employer's facilities that, if they engage in union activity, they will be protected against the unlawful tactics which their employer has shown a proclivity for utilizing at other work sites where union activity has occurred. See *Express Publishing Co.*, 312 U.S. at 438 (posting of notices "advis[es] the employees of the Board's order and

---

tions at its other facilities"); *J.P. Stevens & Co.*, 240 N.L.R.B. at 33 ("history of serious and similar violations of the Act and its disregard of past Board [o]rders") (footnote omitted).

announc[es] the readiness of the employer to obey it"). A corporate-wide notice provision thus complements a corporate-wide cease and desist order. Where, as here, the Board has reasonably issued a corporate-wide cease and desist order to the employer, it is also reasonable for the Board to assure that the employees are apprised of the terms of that order by requiring the posting of notices at all of the employer's work sites.

2. Petitioner also contends (Pet. 11-12) that "[t]he 19,600 word limitation imposed by Judge Wood was a clear abuse of discretion because it operated to deprive Beverly of the meaningful opportunity to obtain review of the two orders issued by the Board." That contention is without merit and does not warrant review.

Courts of appeals have discretion to decide the extent to which they will allow briefing in excess of the limits established in Federal Rule of Appellate Procedure 32. See Fed. R. App. P. 32(d). The court of appeals in this case did not abuse that discretion. As the court noted, "the page limits that were imposed upon [petitioner's] briefing * * * allowed it to file a brief 40% longer than the rules normally permit." Pet. App. 6a. The court of appeals also had access to the entire record. There is therefore no reason to question the court of appeals' conclusion that, "given the scope of this case and the kinds of arguments this court is entitled to consider, the case was manageable within the limitations we imposed." *Id.* at 9a.

Moreover, petitioner has not shown that it was harmed by the court of appeals' refusal to grant petitioner's extraordinary request for a 272% increase in briefing space. Petitioner fails to proffer a single argument that it was prevented from making, much less demonstrate that any such argument would have transformed any of its non-meritorious substantial

evidence challenges into a meritorious one. In any event, the question whether the court of appeals abused its discretion in partially denying petitioner's extraordinary request is entirely fact-bound; it does not raise any issue of recurring importance that warrants this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

BARBARA D. UNDERWOOD
Acting Solicitor General

JOHN E. HIGGINS, JR.
Acting General Counsel
JOHN H. FERGUSON
Associate General Counsel
NORTON J. COME
Deputy Associate General Counsel
JOHN EMAD ARBAB
Attorney
National Labor Relations Board

JUNE 2001