United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued May 12, 2026 Decided August 21, 2026

No. 24-1384

PREFERRED BUILDING SERVICES, INC.,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 87,
INTERVENOR

Consolidated with 25-1042

On Petition for Review and Cross-Application
for Enforcement of an Order
of the National Labor Relations Board

Tyler M. Paetkau argued the cause and filed the briefs for petitioner.

Joel A. Heller, Attorney, National Labor Relations Board, argued the cause for respondent. With him on the brief were

Crystal S. Carey, General Counsel, *Ruth E. Burdick*, Deputy Associate General Counsel, *Meredith L. Jason*, Assistant General Counsel, and *Elizabeth A. Heaney*, Supervisory Attorney.

Corinne Johnson argued the cause for respondent-intervenor. With her on the brief were *Stacey Leyton* and *John D'Elia*. *Scott A. Kronland* and *Steven Ury* entered appearances.

Before: MILLETT, PILLARD, and WILKINS, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* MILLETT.

MILLETT, *Circuit Judge*: Twelve years ago, a group of janitors staged a series of pickets to protest their poor working conditions at Preferred Building Services, Inc. ("Preferred") and Ortiz Janitorial Services ("Ortiz"). A local union assisted the janitors' protests. In response, Preferred and Ortiz fired multiple employees who had picketed.

The union filed a charge with the National Labor Relations Board, and the Board's General Counsel issued a complaint alleging that Preferred and Ortiz had committed a variety of unfair labor practices proscribed by the National Labor Relations Act. Before an administrative law judge ("ALJ"), Preferred and Ortiz defended on the ground that the employees themselves had violated the Act by engaging in unlawful secondary and recognitional picketing. The administrative law judge ruled in favor of the General Counsel, but the Board reversed, holding that the employees had engaged in unlawful secondary picketing, in violation of 29 U.S.C. § 158(b)(4).

The Ninth Circuit granted the union's petition for review. That court held that the Board lacked substantial evidence to support its finding of secondary picketing.

On remand, Preferred argued that the ALJ had erroneously prevented it from presenting evidence to support its secondary-picketing defense, and it proffered evidence of an additional picket that the ALJ had not considered. The Board took the evidentiary proffer as true and determined that the new evidence did nothing to substantiate the secondary-picketing defense. The Board also rejected the recognitional-picketing defense, held that Preferred and Ortiz had violated the Act, and ordered a variety of remedies.

Preferred petitioned for review but Ortiz did not. The Board cross-petitioned for enforcement. We deny Preferred's petition and grant the Board's cross-petition.

I

A

Section 7 of the National Labor Relations Act ("Act") guarantees employees the right "to engage in * * * concerted activities for the purpose of collective bargaining[.]" 29 U.S.C. § 157. Section 8 of the Act protects those rights against the "unfair labor practice[s]" of both employers and labor organizations. *Id.* § 158(a)–(b). Unfair labor practices include interfering with an employee's exercise of her rights under Section 7, *id.* § 158(a)(1), and discharging an employee due to her participation in a labor organization, *id.* § 158(a)(3).

Picketing generally qualifies as a protected concerted activity. *See United Steelworkers of America, AFL-CIO v. NLRB*, 376 U.S. 492, 499 (1964); *Washington Serv.*

Contractors Coalition v. District of Columbia, 54 F.3d 811, 816 (D.C. Cir. 1995). This case involves two exceptions to that rule.

First, a labor organization's picketing violates the Act if it (1) "threaten[s], coerce[s], or restrain[s]" a neutral third party, 29 U.S.C. § 158(b)(4)(ii), with (2) the object of forcing that neutral party to cease doing business with the employer, which is referred to as the "primary employer," *id.* § 158(b)(4)(ii)(B). When picketing takes place at a site where both the primary employer and a neutral "secondary" business operate, the Board applies its test under *Sailors Union of the Pacific (Moore Dry Dock)*, 92 NLRB 547 (1950), to distinguish between lawful "primary" picketing and unlawful "secondary" picketing, *id.* at 549.

Moore Dry Dock sets out four factors that, when satisfied, generate a presumption that picketing at the secondary business's premises was lawful. *Moore Dry Dock*, 92 NLRB at 549; *see Local 560, Int'l Brotherhood of Teamsters*, 360 NLRB 1067, 1067 (2014). First, the picketing must be "strictly limited to times when" the secondary business and primary employer share a work site. *Moore Dry Dock*, 92 NLRB at 549; *see District 29, United Mine Workers of America v. NLRB*, 977 F.2d 1470, 1471 n.2 (D.C. Cir. 1992). Second, "at the time of the picketing[,] the primary employer [must be] engaged in its normal business" at the picketed location. *Moore Dry Dock*, 92 NLRB at 549. Third, the picketing must take place "reasonably close" to the shared work site. *Id.* Fourth, "the picketing [must] disclose[] clearly that the dispute is with the primary employer." *Id.* Even when all four factors are satisfied, Board precedent allows the employer to rebut the presumption by presenting independent evidence of an impermissible secondary object of the picketing. *Local 560, Int'l Brotherhood of Teamsters*, 360 NLRB at 1067–1068.

Second, the Act proscribes picketing with an organizational or recognitional object when a union representation petition has not been "filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing[.]" 29 U.S.C. § 158(b)(7)(C). Recognitional picketing aims to "forc[e] or requir[e] an employer to recognize or bargain with a labor organization as the representative of [its] employees[.]" *Id.* § 158(b)(7). Organizational picketing, on the other hand, seeks to "forc[e] or requir[e] the employees of an employer to accept or select such labor organization as their collective bargaining representative[.]" *Id.* Recognitional or organizational picketing is not an unfair labor practice when the "labor organization is currently certified as the representative of [the] employees[,]" *id.*, or when the picketing has "the purpose of truthfully advising the public * * * that an employer does not employ members of, or have a contract with, a labor organization," *id.* § 158(b)(7)(C) (the "publicity proviso").

B

Preferred Building Services provides janitorial services in the San Francisco Bay area. Over a decade ago, Preferred subcontracted with Ortiz Janitorial Services to clean several commercial office buildings in San Francisco, including 55 Hawthorne Street, 631 Howard Street, and One Kearny. A building management company called Harvest Properties managed 55 Hawthorne and 631 Howard.

In 2014, several janitors who worked for Preferred and Ortiz sought help from a local union, Service Employees International Union Local 87. The employees expressed concerns about poor working conditions, low pay, and sexual harassment. At the Union president's suggestion, the employees decided to picket to air their grievances.

On October 29, 2014, the employees picketed in front of 55 Hawthorne's main entrance. They walked in a circle on the sidewalk, carrying signs and chanting statements including "Up with the union, down with exploitation" and "We want justice. When? Now." J.A. 6 (Board Suppl. Decision). The signs bore messages that identified Preferred as the target of the workers' concerns, such as "Preferred Building Services unfair" and "We *Prefer* no more sexual harassment." J.A. 6 (formatting modified). The signs carried the Union's logo, and they stated in small print: "This is NOT a strike. It is an informational picket line. We are NOT calling for a boycott of this building. We are in a labor dispute with the cleaning contractor at this building." J.A. 6 n.6; J.A. 131 (ALJ Decision).

The picketers also handed out pamphlets that "identified the janitors' employer as Preferred and explained that they cleaned the offices of KGO Radio at 55 Hawthorne." J.A. 6. The pamphlets indicated that the employees were "calling on KGO [R]adio to take corporate responsibility in ensuring that their janitors receive higher wages" and requested that passersby "[j]oin [them] for a picket line outside the offices of KGO [R]adio." J.A. 131.

In the days following the picket, Rafael Ortiz, the founder of Ortiz Janitorial Services, lashed out at the participating employees. Among other things, he demanded that two of the employees provide documentation proving that they were legally in the United States and authorized to work. J.A. 7. Mr. Ortiz threatened another employee "that she would not work anymore because she attended the picket." J.A. 7. And he informed another employee that "she would no longer be able to clean certain offices * * * because '[Mr. Ortiz] was upset' by the picketing." J.A. 7.

On November 19th, the employees participated in a second picket outside 55 Hawthorne that featured similar signs, leaflets, and chants. Later that day, Preferred's executive vice president terminated its cleaning services contract with Harvest Properties for 55 Hawthorne and 631 Howard, and Preferred's subcontract with Ortiz.

That evening, Mr. Ortiz fired two of the picketing employees. In mid-December, as Preferred and Ortiz concluded their contracts to provide janitorial services at 55 Hawthorne and 631 Howard, Mr. Ortiz terminated several additional employees.

On December 18th, a third picket took place, this time outside of One Kearny. J.A. 7. The picketers distributed a flyer with some different text: "We have picketed outside the offices of KGO [R]adio, which we clean[.] * * * We are calling on tenants and clients to tell Preferred Building Service[s] to listen t[o] our demands[.] * * * We are demanding $15 per hour, a full 8-hour day[,] and the right to organize without retaliation." J.A. 145 (ALJ Decision); *see* J.A. 115 (Board Initial Decision) (affirming "the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order").

C

In April 2015, the Union filed a charge with the National Labor Relations Board alleging that Preferred and Ortiz had violated the National Labor Relations Act. After investigating, the Board's General Counsel issued a complaint alleging that Preferred and Ortiz had committed unfair labor practices by interfering with their employees' rights to act collectively, 29

U.S.C. § 158(a)(1), and discharging employees in retaliation for picketing, *id.* § 158(a)(3).

At an evidentiary hearing before an administrative law judge, Preferred and Ortiz raised several defenses. Of relevance here, they argued that the employees' picketing was unlawful because it (1) had an impermissible secondary object, in violation of 29 U.S.C. § 158(b)(4), and (2) was organizational or recognitional, in violation of 29 U.S.C. § 158(b)(7). In the middle of the hearing, the ALJ ruled that the employers could not present evidence to support those defenses, but she allowed them to make offers of proof.

The ALJ ultimately held that Preferred and Ortiz, operating as joint employers, had violated the Act by, among other things, discharging the janitorial employees in retaliation for their picketing. The ALJ rejected the employers' secondary picketing and organizational/recognitional picketing defenses. Although the ALJ found that the picketing was coercive, she held that it did not have an impermissible secondary object. J.A. 132. Nor did she discern any prohibited recognitional or organizational object. J.A. 134. The ALJ ordered a variety of remedies, including that the employees be reinstated with backpay. J.A. 149–150.

The Board reversed. The Board held that the ALJ had erred in refusing to allow Preferred and Ortiz to submit evidence concerning their secondary-picketing defense. J.A. 117. Despite that error, the Board concluded that the evidence in the record was sufficient to establish that the picketing had an impermissible secondary object: to convince neutral businesses Harvest Properties and KGO Radio to stop working with Preferred. J.A. 118.

The Union petitioned for review in the Ninth Circuit. *Service Emps. Int'l Union Loc. 87 v. NLRB*, 995 F.3d 1032, 1038 (9th Cir. 2021) ("*Preferred I*"). That court granted the petition, holding that the Board's finding of a prohibited secondary object was not supported by substantial evidence. *Id.* at 1039.[1] To start, the court held that the picketing was presumptively lawful under *Moore Dry Dock*. *Id.* at 1040. Weighing "the evidence as a whole[,]" the court held that "[t]he combination of the picket signs and the leaflets, considered in their entirety, clearly disclosed that the employees' dispute was with Preferred and not with any of the building's tenants." *Id.* The court next held that no evidence rebutted that presumption, and that reports that the building's tenants were "upset" by the picketing did not reveal an impermissible secondary object. *See id.* at 1041–1044. Accordingly, the court remanded to the Board.

On remand, Preferred, the Union, and the General Counsel submitted position statements to the Board. Ortiz did not participate in the remand proceeding. The Board then affirmed the ALJ's findings and conclusions that Preferred and Ortiz were acting as joint employers, that their affirmative defenses were meritless, and that they had violated the employees' rights under Sections 8(a)(1) and (a)(3), 29 U.S.C. § 158(a)(1), (a)(3). J.A. 6.

Three portions of the Board's decision are relevant to this appeal.

First, the Board rejected Preferred's argument that the ALJ's exclusion of its proffered defensive evidence had prejudiced its secondary picketing defense. In its position

[1] The Ninth Circuit did not reach the question of whether the picketing was coercive. *See Preferred I*, 995 F.3d at 1039.

statement, Preferred explained that it would have provided evidence about a December 24th protest at a fourth building, Millennium Towers, in which the Union and the janitorial employees "forcibly gained access to the lobby, struggled with security[,] * * * and threw coal into the lobby and at the security team." J.A. 10 (quoting J.A. 216 (Preferred Position Statement)). Preferred argued that this evidence would establish an impermissible secondary object under *Service Employees International Union Local 525* (*General Maintenance*), 329 NLRB 638 (1999), in which a janitorial union had stormed into building lobbies and directly targeted the building's tenants. *See* J.A. 216.

The Board accepted Preferred's proffered evidence as true and concluded that it did not establish a prohibited secondary purpose. J.A. 10. Unlike in *General Maintenance*, where the protests had occurred outside of the janitor's normal hours, Preferred did not claim that it was not present at the Millennium Towers building at the time of the December 24th protest. *See* J.A. 10 n.16. And even if the December 24th protest did have a prohibited secondary object, the Board reasoned, "the conduct on that date would not warrant concluding that [the] unlawful * * * object existed from the start of the picketing" back in October when the unfair labor practices began. J.A. 10 n.16.

Second, the Board rejected the recognitional-picketing defense. J.A. 11. The Board credited the ALJ's finding that "there [was] no evidence of a prohibited object, either by action or statement." J.A. 11. In particular, "the picket signs and leaflets were directed to the public rather than to employees"; "there were no requests that employees join the Union made in connection with the picketing"; "there was no evidence of a contemporaneous demand for recognition"; and there was no evidence "that a contract was tendered at the time of picketing, or that cessation of picketing was conditioned on signing a contract." J.A. 11.

Third, the Board amended the ALJ's remedy. Invoking *Thryv, Inc.*, 372 NLRB No. 22, 2022 WL 17974951 (Dec. 13, 2022), the Board ordered Preferred and Ortiz to:

> compensate the[] [discharged] employees for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful conduct, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings.

J.A. 20.

Preferred petitioned for review in this court, and the Board cross-petitioned for enforcement of its order. We granted the Board's motion for default judgment against Ortiz, which neither petitioned for review nor responded to the Board's cross-petition for enforcement, *see* FED. R. APP. P. 15(b)(2), and consolidated the cases.

II

This court has jurisdiction over Preferred's petition for review under 29 U.S.C. § 160(f). We have jurisdiction over the Board's cross-petition for enforcement under 29 U.S.C. § 160(e).

Preferred presses three arguments in its petition. First, it contends that the Board erred by failing to allow it to present evidence before the ALJ on its defenses. Second, it argues that the Board's holding that the employees' picketing was not recognitional or organizational was not supported by substantial evidence. Third, Preferred objects to the Board's *Thryv* remedy as unconstitutional and in excess of its statutory authority.

Because none of these arguments has merit, we deny Preferred's petition and grant the Board's cross-petition for enforcement.

A

Preferred insists that "[t]he Board erred, as a matter of law, by preventing Preferred from presenting evidence on its statutory affirmative defenses" to an ALJ. Preferred Opening Br. 23. Not so—the Board did not err, and the ruling did not prejudice Preferred regardless.

We review the Board's evidentiary rulings for abuse of discretion. *Quicken Loans, Inc. v. NLRB*, 830 F.3d 542, 551 (D.C. Cir. 2016). Absent a serious procedural defect, like lack of notice, we grant relief only if the abuse of discretion "unduly prejudiced the complaining party[,]" meaning the "admission of the excluded evidence would have compelled or persuaded to a contrary result." *Id.* (formatting modified); *see NLRB v. Blake Constr. Co.*, 663 F.2d 272, 279 (D.C. Cir. 1981).

Preferred has not pointed to any procedural defect at all, let alone one warranting remand without a showing of prejudice. Although Preferred tries to frame its challenge in broad terms, its disagreement with the Board is actually narrow. Preferred's claim is simply that, if given the chance, it would have presented evidence of a fourth picket at Millennium Towers during which "the [Union] and the alleged discriminatees forcibly gained access to the lobby, struggled with security (resulting in injuries to members of the security team) and threw coal into the lobby and at the security team."

Preferred Opening Br. 28–29. It insists that this evidence would have established secondary picketing under *General Maintenance*, which the Ninth Circuit had distinguished on the record before it, *see Preferred I*, 995 F.3d at 1044.[2]

The Board, however, did not refuse to hear and consider that evidence. Quite the opposite: It *assumed the truth* of Preferred's evidence and then concluded that such evidence would not alter the Ninth Circuit's holding that no secondary picketing had occurred. J.A. 10 n.16.

As the Board explained, the facts of *General Maintenance* and this case are materially different. In *General Maintenance*, the time of the picket was outside of the "janitors' normal hours[.]" 329 NLRB at 680; J.A. 10 n.16. Here, Preferred has "not claim[ed] that Preferred was not present at the time of the December 24 protest." J.A. 10 n.16. In *General Maintenance*, the employer introduced evidence that the picketing was aimed at a neutral third party: a public statement from one of the union organizers that the "tenants [we]re upset by" the trashing, and that "[m]any * * * sa[id] to their building owner, we want this settled." 329 NLRB at 680; *see* J.A. 10 n.16. Preferred, in contrast, proffered no evidence at all that "the demonstration was aimed at a neutral third party." J.A. 10 n.16.

Instead of engaging with the Board's reasoning, Preferred insists that its proffer would plug a gap in the record that the Ninth Circuit identified. *See* Preferred Opening Br. 29 ("This is precisely the type of evidence of explicit, direct targeting of

[2] Because Preferred has not proffered any evidence that, had it been admitted, might have established an organizational or recognitional object, Preferred has forfeited any prejudice argument as to that defense.

third parties that the Court of Appeals concluded was missing from the incomplete factual record[.]").

Not at all. In the decision on review before the Ninth Circuit, the Board originally had found secondary picketing under *General Maintenance* solely by relying on the "employees' reports that [55 Hawthorne's] tenants were 'upset' about the picketing[.]" *Preferred I*, 995 F.3d at 1044. The Ninth Circuit found that evidence irrelevant for two reasons. First, unlike in *General Maintenance*, where "the union directly targeted the building's tenants and owners with its coercive activity[,]" the Union here had "never engaged in coercive conduct *targeting Harvest* or any of the building's tenants." *Id.* (emphasis added). Second, "while in *General Maintenance* the tenants were upset about the union's trashing of their buildings, here the tenants were 'upset by what they had learned' from the demonstrations—presumably, that Preferred was not treating its employees well." *Id.*

Preferred's proffered evidence would not cure either deficiency. Simply pointing out that both the protest in *General Maintenance* and the protest here included a "trashing incident" in a secondary party's lobby is not enough. Preferred needed to proffer evidence that the conduct was aimed at a neutral third party. Preferred has done nothing to connect the picket at Millennium Towers back to the statement that tenants at 55 Hawthorne were upset.

Trying a different tack, Preferred summarizes some other cases in which this court held that the Board's serious procedural errors violated due process. None of that precedent applies here. The Board did not deprive Preferred of notice. *Contrast Blake Constr. Co.*, 663 F.2d at 279 (holding that the Board denied an employer due process by finding "violations [that] were neither alleged in the complaint nor litigated at the hearing"); *Bruce Packing Co. v. NLRB*, 795 F.3d 18, 24 (D.C. Cir. 2015) (setting aside the Board's decision to allow a late amendment to the complaint because the employer "lacked both actual notice of the new charge during the hearing and the opportunity to fairly litigate the issue").

Nor did the Board completely refuse to consider Preferred's defense. *Contrast United Food & Com. Workers Int'l Union Loc. No. 576 v. NLRB*, 675 F.2d 346, 356 (D.C. Cir. 1982) (faulting "[t]he Board's refusal to hear the Union's defense"). To the contrary, the Board listened to Preferred's arguments, accepted Preferred's evidence as true, reasonably analyzed the defenses, and rejected them on their merits. Having had its affirmative defenses fully considered by the Board and reasonably rejected, Preferred has nothing left to complain about.[3]

Anyhow, Preferred has not explained how evidence of a picket on December 24th could supply a defense to its unfair labor practices, all of which occurred before that date. *See* J.A. 139 (October 31st reduction in an employee's hours); J.A. 142–143 (November 19th firing of two employees); J.A. 144–145 (November 19th cancellation of Harvest Properties contract).[4]

---

[3] In its reply brief, Preferred claims that this court has "recognized that denial of the opportunity to present relevant and non-cumulative evidence is virtually always prejudicial." Preferred Reply Br. 2. But the case it cites, *Ozark Automotive Distributors, Inc. v. NLRB*, 779 F.3d 576 (D.C. Cir. 2015), remanded to the Board only after finding prejudice, *see id.* at 585–586.

[4] There are three employees whose exact firing dates do not appear in the record. *See* J.A. 7 n.9. But Preferred has not argued that any of the three were discharged after or based on the Millennium Towers picket. The Board instead found those

B

Preferred next argues that the Board's finding that the picketing was not recognitional or organizational was unsupported by substantial evidence.

The object of picketing is a "question of fact," so the Board's finding "must be upheld * * * if it is supported by substantial evidence." *General Serv. Emps. Union Loc. No. 73 v. NLRB,* 578 F.2d 361, 373 (D.C. Cir. 1978); *see also* 29 U.S.C. § 160(e) ("The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive."). "Substantial evidence is lacking only when, considering the record as a whole, no reasonable factfinder could have made the same finding as the agency." *Leggett & Platt, Inc. v. NLRB*, 988 F.3d 487, 496 (D.C. Cir. 2021).

Preferred has failed to make that showing.

The Board thoroughly examined the totality of circumstances surrounding the picketing and did not find any recognitional or organizational object. It reasonably adopted the ALJ's factual findings that (i) "the picket signs and leaflets were directed to the public rather than to employees[,]" (ii) "there were no requests that employees join the Union made in connection with the picketing[,]" (iii) "there was no evidence of a contemporaneous demand for recognition," (iv) "there was no evidence * * * that a contract was tendered at the time of

---

discharges to be unfair labor practices because they flowed from Preferred's illegal "cancellation of the contract and subcontract for janitorial services at 55 Hawthorne Street/631 Howard Street[,]" which occurred on November 19th. J.A. 18; *see* J.A. 17–18.

picketing," and (v) "there was no evidence * * * that cessation of picketing was conditioned on signing a contract." J.A. 11.[5]

The Board then reasonably explained why the stray facts pressed by Preferred did not change the result.

First, "the context surrounding th[e] chants" of "up with the Union; down with exploitation" and "we want a union, not corruption" "ma[d]e it clear that the employees (and the Union) did not have an organizational object." J.A. 11 n.19 (formatting modified). At the first picket, for instance, the employees "mentioned wanting justice, handed out flyers in which they presented arguments for a minimum wage increase, and noted that * * * [they] were in a 'labor dispute with the cleaning contractor at th[e] building.'" J.A. 11 n.19. At the second picket, they distributed flyers that "mentioned 'abusive and unsafe working conditions and sexual harassment[.]'" J.A. 11 n.19.

Second, the Board found, based on substantial evidence, that an employee's statement that "negotiations" were successful "only demonstrate[d] that the Union was involved in assisting the employees while they negotiated to have their issues addressed, *not* that they were negotiating for organizational purposes." J.A. 11 n.19. As the Board noted, the employee went on to recount that "the person that we wanted to leave, it seems has been let go"—indicating that the "negotiations were not related to organizing, but, rather, to the employees' issues with Rafael Ortiz." J.A. 11 n.19.

---

[5] The Board held that the picketing fell within Section 8(b)(7)(C)'s publicity proviso because "the purpose of the picketing was to inform the public and protest employees' working conditions[.]" J.A. 11. Because substantial evidence supported the Board's conclusion that the picketing lacked a recognitional or organizational object, we do not reach the publicity proviso.

Preferred chose not to engage with the Board's reasoning in its opening brief. Preferred instead asserts that "[t]he record does not support the Board's reading of the facts[,]" but does not explain why beyond a bare recitation of factual assertions that the Board rejected. Preferred Opening Br. 36. Because Preferred has supplied us with no argument that could undermine the Board's reasoned analysis, this challenge fails. *See Government of Manitoba v. Bernhardt*, 923 F.3d 173, 179 (D.C. Cir. 2019); *see also Al-Tamimi v. Adelson*, 916 F.3d 1, 6 (D.C. Cir. 2019) ("A party forfeits an argument by failing to raise it in his opening brief.").

C

Lastly, Preferred argues that the Board's *Thryv* remedy exceeds its remedial authority under the Act and violates the Constitution. Preferred also argues that the Board's "retroactiv[e] appl[ication]" of the *Thryv* remedy violates its due process rights. Preferred Opening Br. 44. In support, Preferred summarizes out-of-circuit cases, walks through legislative history, and block-quotes the dissent from *Thryv*.

Because Preferred did not raise any of these arguments before the Board, we lack jurisdiction to consider them. Under Section 10(e) of the Act, "[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." 29 U.S.C. § 160(e); *see Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 666 (1982) ("[T]he Court of Appeals lacks jurisdiction to review objections that were not urged before the Board[.]").

In a footnote in its reply brief, Preferred insists that it "specifically objected to the Board's request for *Thryv* remedies[,]" but it points only to a single word in a parenthetical in an otherwise irrelevant filing. Preferred Reply Br. 9 n.4; *see* J.A. 333–334 (arguing only that the General Counsel's motion to strike was "manifestly hypocritical" because the General Counsel's filing sought "(unauthorized) 'consequential damages'"). Preferred did not say another word, either in that filing or anywhere else, as to why the ordered remedies might be unlawful. Putting the word "unauthorized" in parentheses in one sentence in an unrelated brief does not satisfy Section 10(e)'s requirement that an objection be "urged before the Board[,]" 29 U.S.C. § 160(e). *See, e.g.*, *T-Mobile USA, Inc. v. NLRB*, 90 F.4th 564, 579 (D.C. Cir. 2024).[6]

Because Preferred failed to comply with Section 10(e), this court can consider its challenge to the *Thryv* remedy only if "extraordinary circumstances" excuse its failure. 29 U.S.C. § 160(e). None do.

[6] Preferred also notes that it objected to the General Counsel's request for backpay. *See* Preferred Reply Br. 9 (citing J.A. 217–221, which is Preferred's Position Statement arguing that "the * * * backpay remedy demanded by the General Counsel * * * is absolutely outrageous and devoid of any credible support"). But Preferred has not challenged the award of backpay on appeal, and objecting to one part of an ordered remedy did not "put the Board on notice" that Preferred would challenge a completely different aspect of the remedy on different grounds on appeal. *Vermont Info. Processing, Inc. v. NLRB*, 176 F.4th 690, 705 (D.C. Cir. 2026) (quoting *Consolidated Freightways v. NLRB*, 669 F.2d 790, 794 (D.C. Cir. 1981)).

In its opening brief, Preferred suggests that it "never had the opportunity" to challenge the *Thryv* remedy. Preferred Opening Br. 38 n.8. Preferred is wrong twice over.

First, Preferred readily admits in its reply brief that it had notice of, and opportunity to respond to, the General Counsel's "request for *Thryv* remedies" in motions practice before the Board. *See* Preferred Reply Br. 9 n.4.

Second, even if the Board had imposed the *Thryv* remedy *sua sponte*, Preferred would have been "required to file a motion for reconsideration to preserve its challenges." *HTH Corp. v. NLRB*, 823 F.3d 668, 673 (D.C. Cir. 2016); *see also Spectrum Health—Kent Cmty. Campus v. NLRB*, 647 F.3d 341, 349 (D.C. Cir. 2011) (When "the Board sua sponte decides an issue * * *, [a party's] objections will be preserved by a timely motion to reconsider.").

Preferred then retreats to arguing that it could not have met the standard for moving for reconsideration because the Board ordered the *Thryv* remedy over a dissent. Preferred Reply Br. 10. In so arguing, Preferred might be taken to suggest that any challenge to the *Thryv* remedy would have been futile—a circumstance we have held may excuse a party's failure to preserve an objection. *See HTH Corp.*, 823 F.3d at 674 ("The patent futility of a reconsideration motion excuses the failure to object, at least where the Board acts *sua sponte*."). But Preferred overreads the Board's analysis. The Board merely asserted that *Thryv* "remain[ed] valid precedent" "[f]or the reasons set forth in" a prior Board opinion. J.A. 20 n.42. And that prior opinion distinguished the Fifth Circuit's holding in *Thryv, Inc. v. NRLB*, 102 F.4th 727 (5th Cir. 2024), as reaching only "portions of the Board's underlying unfair labor practice findings on the merits." *Airgas USA, LLC*, 373 NLRB No. 102, 2024 WL 4251820, at *1 n.2 (Sept. 18, 2024). In any event, we have rejected the argument "that the majority's rejection of [a] dissenter['s] points suggests that moving for reconsideration would have been futile." *HTH Corp.*, 823 F.3d at 673. "[A] party may not rely on arguments raised in a dissent or on a discussion of the relevant issues by the majority to overcome the [Section] 10(e) bar; the Act requires the party to raise its challenges itself." *Id.*

Preferred did not. So we lack jurisdiction to consider its remedial arguments.

III

For the foregoing reasons, we deny Preferred's petition for review and grant the Board's cross-petition for enforcement.

So ordered.