

Nos. 16-495, 16-972

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE CEMENT LEAGUE, NEW YORK CITY AND VICINITY DISTRICT COUNCIL OF CARPENTERS

Petitioners/Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD

Respondent/Cross-Petitioner

and

NORTHEAST REGIONAL COUNCIL OF CARPENTERS

Intervenor

ON PETITIONS FOR REVIEW AND
CROSS-APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR
THE NATIONAL LABOR RELATIONS BOARD

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STATEMENT OF JURISDICTION

This case is before the Court on the petition of the Cement League (“the Cement League”) for review, and the cross-application of the National Labor

Relations Board (“the Board”) for enforcement, of a Board Decision and Order issued against the Cement League on February 12, 2016, and reported at 363 NLRB No. 117. The New York City and Vicinity District Council of Carpenters (“NYC Council”) was a Party in Interest before the Board and has also petitioned for review of the Board’s Order. The Northeast Regional Council of Carpenters (“Northeast Council”) has intervened in this case in support of the Board.

The Board had jurisdiction over the unfair-labor-practice proceeding below under Section 10(a) of the National Labor Relations Act, as amended (“the Act” or “the NLRA”). 29 U.S.C. § 160(a). The Board’s Order is final under Section 10(e) and (f) of the Act, and the Court has jurisdiction over this appeal because the underlying unfair labor practices occurred in New York. 29 U.S.C. § 160(e) and (f). The petitions and application are timely, as the Act provides no time limit for such filings.

STATEMENT OF THE ISSUE

Before the Board, Petitioners did not contest that the “full mobility” provisions of its collective-bargaining agreement with the NYC Council unlawfully give preference in hiring to employees based on their union membership, nor could they, given such encouragement of union membership by an employer is a black-letter violation of Section 8(a)(1) of the NLRA. Accordingly, the sole issue before the Court is whether the Board rightly rejected

Petitioners' defensive contention that the Board's Order setting aside those unlawful provisions conflicts with the anticorruption purposes of a consent decree secured against the NYC Council under RICO.

STATEMENT OF THE CASE

Acting on unfair labor practice charges filed by the Northeast Council, the Board's General Counsel issued a complaint alleging that the Cement League violated Section 8(a)(1) of the Act (29 U.S.C. § 158(a)(1)) by maintaining a collective-bargaining agreement with the NYC Council that gave a preference in hiring based on membership in the NYC Council. (JA 413; 198-203, 206.)¹ A hearing was held before an administrative law judge, and, on May 21, 2015, the judge issued a decision finding that the Cement League violated the Act as alleged. (JA 413-18.) The NYC Council, as a Party in Interest, filed exceptions, which were joined by the Cement League. On February 12, 2016, in agreement with the judge, the Board issued its decision finding the unfair labor practice and providing its reasoning for rejecting Petitioners' defense. (JA 410-12.)

¹ "JA" citations are to the joint appendix. References preceding semicolon are to the Board's findings; those following are to the supporting evidence.

I. THE BOARD'S FINDINGS OF FACT

A. **The NYC Council Has a Longstanding Bargaining Relationship with the Cement League, an Employer Association; the NYC Council is Monitored by the District Court for the Southern District of New York for Compliance with a 1994 Consent Decree Obtained Following Allegations of RICO Violations**

The Cement League is an organization of construction contractors based in New York City. (JA 413.) It bargains on behalf of its employer members with various labor organizations, including the NYC Council. (JA 413.) The NYC Council and the Northeast Council are separate regional councils of the United Brotherhood of Carpenters and Joiners of America. (JA 413; 15.) The NYC Council covers the New York City metropolitan area, and the Northeast Council covers New Jersey, Long Island, and parts of upstate New York. (JA 414; 87.)

In 1990, the United States Department of Justice filed a civil action under the Racketeer Influenced and Corrupt Organizations Act ("RICO") against the NYC Council in the Southern District of New York. (JA 414; 35-36, 45-46.) *United States of America v. District Council of NYC and Vicinity Carpenters, et al.*, 90 Civ. 5722 (S.D.N.Y.). This action included allegations that the NYC Council had connections to organized crime; had entered into unlawful arrangements for non-union individuals to work on projects "off the books" and for below bargained-for wages; and had bribed particular employers and shop stewards or union representatives to condone such activities. (JA 414; 35-36, 45-

46.) To resolve the Department of Justice's RICO lawsuit, the NYC Council entered into a consent decree on March 4, 1994, which established judicial oversight and a court-appointed monitor to oversee anticorruption measures that were to guide the NYC Council's procedures. (JA 414; JA 77-78.)

In their collective-bargaining agreements with the Cement League, the NYC Council had traditionally agreed to a hiring system where the individual employer retained complete discretion over the selection of up to one half of employees for a project but would agree to hire the other half of employees from the NYC Council's out-of-work list. (JA 414; 42.) *See also United States v. District Council of NYC & Vicinity of Carpenters*, 592 F. Supp. 2d 708, 711 (S.D.N.Y. 2009). Although the NYC Council administers the out-of-work list, and there is a strong probability that the people on the list would be members of the NYC Council, there is no evidence that the NYC Council prevents or precludes nonmembers from registering on the list. (JA 414, 416.)

Once the consent decree was entered into in 1994, referrals from the out-of-work list were required to be in the order employees were listed, with the exception that an employer could take an employee out of order if the employer had employed him or her in the previous six months. (JA 411 n.7.) *See District Council of NYC*, 592 F. Supp. 2d at 710-11. Subsequent collective-bargaining agreements ran afoul of the consent decree's first-listed, first-referred rule, and the

district court modified the hiring provisions in 2009 to remedy the breach by imposing a 67-33 ratio under which, without exception, 33 percent of the hires had to be referred from the out-of-work list in the order which they were listed. (JA 411 n.7; 36, 42.) *See also District Council of NYC*, 592 F. Supp. 2d at 721-22.

B. The NYC Council and the Cement League Alter Their Contractual Hiring Provisions To Allow for “Full-Mobility”

On October 23, 2013, the district court approved modifications to the NYC Council’s collective-bargaining agreement with the Cement League, relying on its earlier approval of an essentially identical collective-bargaining agreement between the NYC Council and another employer association, the Wall-Ceiling and Carpentry Industries of New York, Inc. (JA 410-11; 357-59.) *See United States v. District Council of New York City & Vicinity of Carpenters*, 90 Civ. 5722 (RMB) (S.D.N.Y. May 8, 2013). The new collective-bargaining agreements contained specific provisions the district court characterized as “anti corruption compliance provisions.” *District Council of NYC*, 90 Civ. 5722 (RMB) (S.D.N.Y. May 8, 2013). (JA 410-11; 49.) Those provisions required shop stewards to electronically report personnel and hours, allowed employees to access the system and insure its accuracy, and required the hiring of additional on-site inspectors. *District Council of NYC*, 90 Civ. 5722 (RMB) (S.D.N.Y. May 8, 2013). (JA 410-11, 414-15 n.3; 49-53, 231, 360.)

The district court also discussed and approved provisions that allowed for “full-mobility” in hiring that it did not characterize as “anti corruption compliance provisions.” These provisions enabled an employer to have a workforce completely of the employer’s choosing, as long as everyone the employer chose was a member of the NYC Council. (JA 410-11, 414-15; 226, 229, 231, 360, 364-65.) If the employer chose someone who was not a member of the NYC Council, the agreement required the employer to match that hire by choosing someone from the NYC Council’s out-of-work list in the order they were listed. (JA 410-11, 414-15; 226, 229, 231, 360, 364-65.)

As a result of the full-mobility hiring provisions, employers encouraged their steady employees to join the NYC Council so employers could bypass the out-of-work list when working on projects in New York City. (JA 416; 96, 98, 347-51.) Those employees included members of the Northeast Council, who were previously able to retain their membership while working in New York City. (JA 414, 416; 60-61.)

II. THE BOARD’S CONCLUSIONS AND ORDER

On February 12, 2016, the Board (Chairman Pearce and Members Miscimarra and Hirozawa) affirmed, in the absence of exceptions, the administrative law judge’s findings that the Cement League violated Section 8(a)(1) of the Act by maintaining or otherwise giving effect to hiring provisions in

its collective-bargaining agreement with the NYC Council that gave preference to employees based on their membership in that organization. (JA 410.) The judge had found that the full-mobility hiring provisions violated the Act “because the employers’ highly valued contractual right to bypass the out-of-work list hinged on their hiring union *members* and thus impermissibly encouraged union membership.” (JA 410.)

The Board rejected the Cement League and the NYC Council’s argument that invalidating the provisions would conflict with the district court’s oversight and approval of the collective-bargaining agreement for consistency with the 1994 RICO consent decree. (JA 411.) The Board concluded that setting aside the provisions that violate the NLRA does not conflict with the district court’s important anticorruption objectives. (JA 412.)

The Board’s Order requires the Cement League to cease and desist from the unfair labor practice found, or 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 NLRA. (JA 412.) Affirmatively, it directs the Cement League to notify all employers in its association that the unlawful provisions can no longer be maintained or given any force and effect, and to post remedial notices. (JA 412.)

STANDARD OF REVIEW

The Court’s review of Board orders is “quite limited.” *NLRB v. Katz’s Delicatessen of Houston St., Inc.*, 80 F.3d 755, 763 (2d Cir. 1996). Courts will uphold the Board’s “legal determinations if not arbitrary and capricious.” *Cibao Meat Products, Inc. v. NLRB*, 547 F.3d 336, 339 (2d Cir. 2008) (internal citation omitted). The Board’s findings of fact are “conclusive” if supported by substantial evidence on the record considered as a whole. Section 10(e) of the Act (29 U.S.C. § 160(e)); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 493 (1951).

With respect to the Board’s resolution of the alleged conflict with the RICO consent decree and its related orders, Petitioners must overcome a heavy presumption in order to show that the RICO consent decree must be read to conflict with the Act. “[W]hen two statutes are capable of co-existence . . . it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.” *Vimar Seguros y Reaseguros v. M/V Sky Reefer*, 515 U.S. 528, 533 (1995) (quoting *Morton v. Mancari*, 417 U.S. 535, 551 (1974)). Moreover, “[w]hen two statutes complement each other”—that is, when “each has its own scope and purpose” and imposes “different requirements and protections”—finding that one precludes the other would flout the congressional design. *POM Wonderful LLC v. Coca-Cola Co.*, 134 S. Ct. 2228, 2238 (2014). Accordingly, courts will harmonize overlapping statutes “so long as each reaches

some distinct cases.” *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Intern., Inc.*, 534 U.S. 124, 144 (2001). Implied repeal should be found only when there is an “irreconcilable conflict’ between the two federal statutes at issue.” *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 381 (1996) (quoting *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 468 (1982)).

SUMMARY OF ARGUMENT

It is unlawful for a collective-bargaining provision to give preference in hiring based on membership in a labor organization. The administrative law judge found that the full-mobility provisions of the Cement League’s contract with the NYC Council gave preference in hiring based on membership with the NYC Council. Although the collective-bargaining agreement does not require hiring NYC Council members directly, it conditions the employers’ highly-valued contractual right to bypass the out-of-work list on their having hired NYC Council members. Before the Board, neither the Cement League nor the NYC Council filed exceptions to this finding of the administrative law judge. As a result, the Court is jurisdictionally barred, by Section 10(e) of the Act (29 U.S.C. § 160(e)), from entertaining any belated challenge to this finding.

Petitioners’ only claim is that the Board’s act of remedying this unfair labor practice, by ordering the Cement League to cease giving effect to offending hiring provisions from the collective-bargaining agreement, conflicts with the approval

given to the contract by the U.S. District Court for the Southern District of New York, which monitors the parties' collective-bargaining agreements for compliance with the anticorruption measures embodied in the NYC Council's 1994 RICO consent decree. The Board properly rejected this argument because remedying the violation does not undermine the district court's important anticorruption objectives or its orders in support of those objectives. Indeed, the district court earlier approved, as sufficiently compliant with the consent decree's anticorruption purposes, a number of the parties' previous collective-bargaining agreements that did not contain the unlawful hiring provisions. Here, not only did the district court order not characterize the full-mobility provisions as an anticorruption measure, but the court noted that, under the very terms of the collective-bargaining agreement, the full-mobility provisions are subject to dramatic curtailment if the stated anticorruption measures prove ineffective in eradicating corruption. Accordingly, the Board's requiring that the Cement League cease giving effect to the unlawful hiring provisions does not undermine the district court's important anticorruption objectives or its orders in support of those objectives.

ARGUMENT

THE BOARD RIGHTLY REJECTED PETITIONERS' DEFENSIVE CONTENTION AND THEREFORE IS ENTITLED TO ENFORCEMENT OF ITS ORDER

A. There Is No Dispute in this Case that the Collective-Bargaining Agreement's Provisions Giving Preference in Hiring Based on Membership in the NYC Council Violated Section 8(a)(1) of the Act

It is unlawful for a collective-bargaining provision to give preference in hiring based on membership in a labor organization. *See generally Carpenters Local 43*, 354 NLRB 1013 (2009); *Bricklayers Local 1*, 308 NLRB 350 (1992); *Plasterers' Local 32*, 223 NLRB 486 (1976).² “The policy of the Act is to insulate employees’ jobs from their organizational rights.” *Radio Officers’ Union v. NLRB*, 347 U.S. 17, 40 (1954); *accord Lummus Co. v. NLRB*, 339 F.2d 728, 733 (D.C. Cir. 1964).

The administrative law judge found that the full-mobility provisions gave preference in hiring based on membership with the NYC Council. Although the collective-bargaining agreement does not require hiring NYC Council members directly, it conditions the employers’ highly valued contractual right to bypass the out-of-work list on their having hired NYC Council members. (JA 411, 416.) The

² In the Act’s statutory scheme, Section 7 (29 U.S.C. § 157), among other guarantees, protects the rights of employees to join or refrain from joining labor organizations. Section 8(a)(1) of the Act (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 their Section 7 rights.

full-mobility hiring provisions thus prompted Cement League employers to encourage their steady employees—including members of the Northeast Council—to join the NYC Council. (JA 416; 96, 98, 347-51.) Indeed, the Northeast Council, which previously received about 25 requests per year to transfer out of their regional council to another regional council, received approximately 275 transfer requests between 2013 and 2015. (JA 96.)

Before the Board, Petitioners never disputed the finding that the full-mobility hiring provisions violated the Act. (JA 410, 416.) Neither the Cement League nor the NYC Council filed an exception to this finding in the administrative law judge's decision.³ As a result, the Act jurisdictionally bars this Court from considering Petitioners' challenge (CL Br. 3-4, NYC Br. 34-37) to the finding that the full-mobility provisions violate the Act. 29 U.S.C. § 160(e) ("No 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."); *Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 665-66 (1982) ("[T]he Court of Appeals lacks jurisdiction to review objections that were not urged before the Board."); *accord KBI Sec. Serv., Inc. v. NLRB*, 91 F.3d 291, 294 (2d Cir. 1996).

³ Petitioners' exceptions were not included in the Joint Appendix, but they are in the record filed with the court. Fed.R.App.P. 30(a)(2).

It should be noted, however, that contrary to Petitioners' representations (CL Br. 2-4, NYC Br. 34-36), hiring practices that encourage union membership are unlawful even where they encourage an employee to transfer from one union affiliate to another. *See Carpenters Local 43*, 354 NLRB at 1013; *Carpenters Local 2396*, 287 NLRB 760 (1987). Moreover, the record shows that Petitioners are also wrong to allege (CL Br. 4, NYC Br. 37) that no employees have been harmed by the full-mobility provisions. For Northeast Council members who had not yet vested in the Northeast Council's pension fund because they had not reached 5 years, the pressure to transfer in order to maintain steady employment also meant losing their contributions to the pension fund and starting the 5-year vesting process anew. (JA 65, 98, 105-07.) Northeast Council members also lose their access to retiree medical benefits if they transfer before completing 10 years of continuous coverage by the Northeast Council's benefit funds, and need to complete 15-20 years with the NYC Council in order to be eligible for that council's retiree coverage. (JA 111-12, 118-19.) The risk of losing eligibility for retiree healthcare in order to find steady work is especially dire for employees only a few years from retirement. (JA 106-07, 112.)

B. The Board's Remediating the Unfair Labor Practice Does Not Undermine the District Court's Important Anticorruption Objectives or Its Orders in Support of those Objectives

The Board's Order requires the Cement League to cease giving effect to the full-mobility provisions of the collective-bargaining agreement because they give preference in hiring based upon membership in the NYC Council. (JA 412.) The Cement League and the NYC Council argue (CL Br. 2, NYC Br. 28-30), however, that their collective-bargaining agreement has been approved by the U.S. District Court for the Southern District of New York and that the Board's invalidation of the full-mobility provisions is inconsistent with the purpose and terms of the court's consent decree and related orders.

By way of background, and as set forth in the facts above, in 1994 the NYC Council settled a civil action—brought under RICO by the U.S. Department of Justice—by entering into a consent decree monitored by the U.S. District Court for the Southern District of New York. (JA 414.) Part of this monitoring required the district court to review and approve the collective-bargaining agreements that the NYC Council entered into to ensure that they furthered anticorruption goals. (JA 414.) When the NYC Council entered into the consent decree in 1994, its collective-bargaining agreements with various employer organizations provided that the employers could choose 50 percent of their employees from any source, without regard to union membership, and had to hire the other 50 percent from the

NYC Council's out-of-work list, which also allowed nonmembers to register. (JA 414; 42.) The consent decree required that, as an anticorruption measure, the referrals from the out-of-work list comply with the principle of first-listed, first-referred, with the exception that an employer could take an employee out of order if the employer had employed him or her in the previous six months. (JA 411 n.7.) The district court found that subsequent collective-bargaining agreements ran afoul of the consent decree's first-listed, first-referred rule for the 50 percent of employees who were hired from the out-of-work list, and it modified the hiring provision by imposing a 67-33 hiring ratio, under which and without exception 33 percent of the hires had to be referred *in order* from the out-of-work list. *District Council of NYC*, 592 F. Supp. 2d at 722.

When these collective-bargaining agreements expired, the NYC Council entered into a new series of agreements with the various employer associations, including the Cement League here, modifying the hiring provisions yet again. (JA 410-11; 357.) As discussed in the facts above, while the current collective-bargaining agreement continued to prevent the NYC Council from violating the principle of first-listed, first-referred, for any referrals made from the out-of-work list, it also, for the first time, did not require the Cement League to use the out-of-work list at all. (JA 410-11, 414-15; 226, 229, 231, 360, 364-65.) Instead, as long as the Cement League hired employees who were members of the NYC Council,

the collective-bargaining agreement gave the employer the complete discretion to hire whomever it wished. (JA 410-11, 414-15; 226, 229, 231, 360, 364-65.)

The district court reviewed and approved these current hiring provisions in the context of the collective-bargaining agreement with another employer association, the Wall-Ceiling & Carpentry Industries of New York. *District Council of NYC*, 90 Civ. 5722 (RMB) (S.D.N.Y. May 8, 2013). The district court noted that the collective-bargaining agreement was freely bargained for with the NYC Council and that it was democratically approved according to the NYC Council's processes. (JA 410.) The court noted also that the agreement appears to have brought about higher wages. (JA 410.) As for whether the collective-bargaining agreement satisfied anticorruption objectives, the district court listed three separate affirmative measures in the agreement that seemed sufficient to prevent fraud and abuse in the workplace. (JA 411.) First, shop stewards were to electronically report personnel and hours. (JA 411.) Second, an electronic reporting system was established where carpenters could check any and all jobs to see the accuracy of the number of reported carpenters and their hours. (JA 411.) Third, additional on-site inspectors were hired to visit job sites and concentrate on one and two-person jobs where the agreement did not require a shop steward. (JA 411.) The district court's approval of the collective-bargaining agreement concluded by noting that, if the agreement's affirmative anticorruption measures

were insufficient to prevent violations of staffing, wage, and benefit requirements done “willfully and with bad intent,” the full-mobility provisions would be replaced by a requirement that at least 50 percent of the employer’s staffing requirement be filled nondiscriminatorily through the NYC Council’s out-of-work list. (JA 411.)

Turning to the dispute in the instant case, the Cement League and the NYC Council argue (CL Br. 2, NYC Br. 28-30) that the Board should be prohibited from ordering the Company to cease giving effect to the concededly unlawful full-mobility provisions because the full-mobility hiring provisions were an integral part of the collective-bargaining agreement that the district court approved in the course of its monitoring the NYC Council for compliance with the RICO consent decree. The Board’s rejection of this argument is premised on the correct conclusion that remedying the violation of the NLRA does not undermine the district court’s important RICO anticorruption objectives or its orders in support of those objectives. (JA 411.)

First, excising the collective-bargaining agreement’s full-mobility hiring provisions does not remove provisions that play a role as an anticorruption measure. There were no full-mobility provisions in any of the collective-bargaining agreements the district court approved since undertaking its oversight of the agreements after the 1994 RICO consent decree. Accordingly, these earlier

collective-bargaining agreements met anticorruption goals without needing to resort to provisions that violate the NLRA. Indeed, as the Board noted, “other hiring provisions have been approved by the district court in the past and surely could be again.” (JA 411.) Moreover, the district court order does not even label the full-mobility hiring provisions as provisions that would serve an anticorruption purpose. *District Council of NYC*, 90 Civ. 5722 (RMB) (S.D.N.Y. May 8, 2013). (JA 410-11.) Instead, as discussed above, it reserves that label for three different and distinct provisions in the agreement.

Perhaps most significantly, as the district court’s decision itself observed, if the several anticorruption measures that the collective-bargaining agreement does contain end up proving ineffective in preventing violations of “staffing, wage, and benefit requirements” done “willfully and with bad intent,” the contract itself specifies that the right to full-mobility “would be subject to loss.” *District Council of NYC*, 90 Civ. 5722 (RMB) (S.D.N.Y. May 8, 2013). Instead, the Cement League would be required to use the out-of-work list “for at least 50% of their staffing requirements.” *Id.* Accordingly, if—by the terms of the parties’ own agreement—the right to full-mobility hiring is lost when the anticorruption goals are not met, the presence of the full-mobility hiring provisions can hardly be seen as one of the anticorruption measures itself. (JA 411.) Thus, as the Board rightly concluded, “full mobility is a privilege that would be taken away as a sanction—a

benefit to persuade compliance and not itself an anticorruption mechanism.” (JA 411.)

In sum, the Board’s Order does not undermine the district court’s important anticorruption objectives or its orders in support of those objectives. Indeed, as the Board noted (JA 411), while the district court did review the entire contract, nothing in the district court’s order even acknowledges that the Act was relevant in analyzing the lawfulness of the full-mobility provisions. As a result, there is absolutely nothing in the district court’s order that supports an argument that the district court saw the full-mobility provisions as important anticorruption measures, let alone ones that should be approved in the face of a conflict with the Act.⁴

⁴ Petitioners’ collective-bargaining agreement states that, if the full-mobility hiring provisions are invalidated, then the entire agreement is null and void, and the terms of the 2006-2011 agreement would come back into effect (as modified by the district court’s imposition of the 67-33 hiring ratio). (JA 412 n.8, 415; 276.) The Board, however, noted that its Order does not preclude “the parties from bargaining further and reaching a new agreement.” (JA 412 n.8.)

CONCLUSION

For the foregoing reasons, the Board respectfully requests that the Court enter a judgment denying the petitions for review and enforcing the Board's Order in full.

Respectfully submitted,

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Deputy Associate General Counsel

September 2016

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

THE CEMENT LEAGUE, NEW YORK CITY)	
AND VICINITY DISTRICT COUNCIL)	
OF CARPENTERS)	
)	
Petitioners/Cross-Respondent)	
)	Nos. 16-495, 16-972
v.)	
)	Board Case No.
NATIONAL LABOR RELATIONS BOARD)	03-CA-126938
)	
Respondent/Cross-Petitioner)	
)	
and)	
)	
NORTHEAST REGIONAL COUNCIL OF)	
CARPENTERS)	
)	
Intervenor)	

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the Board certifies that its brief contains 4,420 words of proportionally-spaced, 14-point type, the word processing system used was Microsoft Word 2010, and the PDF file submitted to the Court has been scanned for viruses using Symantec Endpoint Protection version 12.1.6 and is virus-free according to that program.

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Dated at Washington, DC
this 29th day of September, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2016, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

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