

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

<hr/>)	
PROFESSIONAL JANITORIAL SERVICE OF HOUSTON, INC.)	
)	
Petitioner/Cross-Respondent)	Case No.
)	15-60858
v.)	
)	
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent/Cross-Petitioner)	
<hr/>)	

JOINT MOTION OF THE PARTIES TO SEVER AND DISMISS

To the Honorable, the Judges of the United States
Court of Appeals for Fifth Circuit:

The National Labor Relations Board (“the Board”), Professional Janitorial Service of Houston, Inc. (“the Company”), and Service Employees International Union (“the Union”), by their respective counsel, jointly move this Court to sever an already-decided issue, and issue judgment and mandate on that issue. With respect to the remaining, undecided portions of the case, the parties further jointly move to dismiss the petition for review with prejudice, and the cross-application for enforcement without prejudice. In support of their motion, the parties show as follows:

1. On November 24, 2015, the Board issued a Decision and Order finding that the Company had committed several violations of Section 8(a)(1), 29

U.S.C. § 158(a)(1), of the National Labor Relations Act, as amended (“the Act”), 29 U.S.C. § 151, et seq. *Prof’l Janitorial Serv. of Houston, Inc.*, 363 NLRB No. 35. Specifically, the Board found that the Company had violated Section 8(a)(1) by maintaining a mandatory arbitration policy that: 1) waives employees’ right to maintain class or collective actions in any forum, arbitral or judicial (“the class action waiver finding”); 2) employees would reasonably understand to limit or restrict their access to the Board and its processes; and 3) contains an overly broad confidentiality provision that unlawfully restricts employee discussion of statements and other information made or revealed during arbitration.

2. On December 9, the Company filed a petition with this Court seeking review of the Board’s Order, and the Board filed a cross-application for enforcement on June 14, 2016. On June 10, the Court granted the motion for leave to intervene filed by the Union.

3. On July 27, the Company filed an opposed motion seeking partial summary disposition in its favor with regard to the violation based on the class-action waiver. On September 14, the Court granted the motion and issued a revised briefing schedule for the two remaining unfair-labor-practice findings. The Company’s opening brief is due November 23.

4. During later stages of appellate litigation, the parties have diligently sought to resolve the case without further litigation and associated costs. The

parties have reached final agreement and the Company is in the process of satisfying the required settlement obligations, dispensing with the necessity of further litigation regarding the remaining two unfair-labor-practice findings.

5. Consistent with the Court's September 15 order, which granted the Company's petition for review, and denied the Board's cross-application for enforcement, with respect to the class action waiver finding, the parties respectfully request that the Court sever that decided issue and thereafter issue judgment and mandate thereon.

6. With respect to the remaining two undecided unfair-labor-practice findings, the Company agrees to dismiss its petition for review with prejudice. The Company further agrees that the Board's cross-application for enforcement should be dismissed without prejudice to the Board's right to file a future application for enforcement of its Order regarding the two remaining unfair-labor-practice findings in the event the Company fails to comply with the Order and with the terms of settlement. *See NLRB v. Mexia Textile Mills*, 339 U.S. 563, 567 (1950) (because "[a] Board order imposes a continuing obligation" and because "the Board is entitled to have [any] resumption of the unfair practice barred by an enforcement decree," an employer's compliance does not deprive the Board of the right to secure enforcement of the order from an appropriate court); *accord NLRB v. Raytheon Co.*, 398 U.S. 25, 27-28 (1970).

7. Each party is to bear its own costs.

8. Counsel for the Company and counsel for the Union authorized counsel for the Board to file this joint motion to sever, issue judgment regarding the decided portion of the case, and dismiss the undecided portion of the case on the Company's and Union's behalf.

WHEREFORE, the parties respectfully request that the Court enter an order severing the decided class-action-waiver finding, and issue judgment and mandate thereon, and dismissing with prejudice the Company's petition for review, and dismissing without prejudice Board's cross-application for enforcement, of the remaining, undecided portions of the Board's Order.

Respectfully submitted,

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570
Counsel for the Board

/s/ Timothy Rybacki
Timothy Rybacki
LITTLER MENDELSON, P.C.
1301 McKinney Street
Suite 1900
Houston, Texas 77010
Counsel for the Company

/s/ Michael Rubin
Michael Rubin
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Counsel for the Union

Dated this 22nd day of November, 2016

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

<hr/>)	
PROFESSIONAL JANITORIAL SERVICE OF HOUSTON, INC.)	
)	
Petitioner/Cross-Respondent)	Case No.
)	15-60858
v.)	
)	
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent/Cross-Petitioner)	
<hr/>)	

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2016, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 22nd day of November, 2016