

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD)	
)	
)	
Petitioner)	No. 16-3148
)	
v.)	
)	
LIFEWAY FOODS, INC.)	
)	
)	Board Case No.
Respondent)	13-CA-156570

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD
TO VOLUNTARILY DISMISS APPLICATION FOR ENFORCEMENT**

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

Pursuant to Federal Rule of Appellate Procedure 42(b), the National Labor Relations Board (“the Board”), by its Deputy Associate General Counsel, respectfully moves that the Court grant the Board leave to voluntarily dismiss its application for enforcement without prejudice. In support of this motion, the Board shows as follows:

1. On May 24, 2016, the Board issued a Decision and Order finding that Lifeway Foods, Inc. (“the Company”) had violated the National Labor Relations Act by refusing to bargain with the Bakery, Confectionary, Tobacco Workers, and Grain Millers International Union, Local Union No. 1, as the duly certified collective-bargaining representative of an appropriate unit of company employees.

See 364 NLRB No. 11. The Board’s Order required the Company to cease and desist from the unfair labor practice found, and from any like or related unlawful conduct, and to take certain affirmative remedial actions.

2. The Board filed an application for enforcement of its Order on August 10, 2016.

3. Before briefing began in the enforcement action, the Company agreed to voluntarily comply with the Board’s Order. In view of the Company’s commitment, the Board requested that the Court hold further litigation of the enforcement action in abeyance pending completion of the compliance process. The Court granted this request.

4. The compliance process is now complete.

5. The Board respectfully submits that the Company’s voluntary compliance with the Board’s Order eliminates the need for litigation to enforce the Order. Accordingly, the Board requests that the Court dismiss the Board’s application for enforcement without prejudice to the Board’s right to file a future application for enforcement in the event that the Company fails to meet its prospective obligations under the Order. *See NLRB v. Mexia Textile Mills*, 339 U.S. 563, 567 (1950) (holding that 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); *NLRB v. Curwood Inc.*, 397 F.3d 548, 552 (7th Cir. 2005). See *NLRB v. Alwin Mfg. Co.*, 78 F.3d 1159, 1163 (7th Cir. 1996) (“The Supreme Court and this Court have repeatedly made it clear that compliance does not moot an enforcement proceeding, because the Board’s Orders impose a continuing obligation, and compliance today may evaporate tomorrow.”) (citing cases).

6. Each party is to bear its own costs.

WHEREFORE, the Board respectfully requests that the Court dismiss the Board’s application for enforcement without prejudice.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

Dated at Washington, D.C.
this 28th day of November 2016

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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2016, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Seventh 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, D.C.
this 28th day of November 2016