

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DOCKETING STATEMENT--CIVIL/AGENCY CASES**

Directions: Counsel must make a **docketing statement (civil/agency) filed** entry in CM/ECF within 14 days of docketing of the appeal, or within the due date set by the clerk's docketing notice, whichever is later. File with the entry the (1) docketing statement form with any extended answers and (2) any transcript order form. Parties proceeding pro se are not required to file a docketing statement. Opposing counsel who finds a docketing statement inaccurate or incomplete may file any objections within 10 days of service of the docketing statement using the ECF event-**docketing statement objection/correction filed**.

Appeal No. & Caption	16-2331, Henderson ex rel NLRB v. Bluefield Hosp. Co., LLC
Originating No. & Caption	1:16-CV-06305
Originating Court/Agency	U.S. District Court for the S.D. W.Va. (Bluefield Division)

Jurisdiction (answer any that apply)	
Statute establishing jurisdiction in Court of Appeals	28 U.S.C. 1291
Time allowed for filing in Court of Appeals	60 days
Date of entry of order or judgment appealed	September 20, 2016
Date notice of appeal or petition for review filed	November 18, 2016
If cross appeal, date first appeal filed	
Date of filing any post-judgment motion	
Date order entered disposing of any post-judgment motion	
Date of filing any motion to extend appeal period	
Time for filing appeal extended to	
Is appeal from final judgment or order?	<input checked="" type="radio"/> Yes <input type="radio"/> No
If appeal is not from final judgment, why is order appealable?	

Settlement (The docketing statement is used by the circuit mediator in pre-briefing review and mediation conducted under Local Rule 33. Counsel may make a confidential request for mediation by calling the Office of the Circuit Mediator at 843-731-9099.)	
Is settlement being discussed?	<input type="radio"/> Yes <input checked="" type="radio"/> No

Transcript (transcript order must be attached if transcript is needed and not yet on file)		
Is transcript needed for this appeal?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Has transcript been filed in district court?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Is transcript order attached?	<input type="radio"/> Yes	<input checked="" type="radio"/> No

Case Handling Requirements (answer any that apply)		
Case number of any prior appeal in same case		
Case number of any pending appeal in same case		
Identification of any case pending in this Court or Supreme Court raising similar issue		
	If abeyance or consolidation is warranted, counsel must file an appropriate motion.	
Is expedited disposition necessary?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
	If yes, motion to expedite must be filed.	
Is oral argument necessary?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does case involve question of first impression?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
Does appeal challenge constitutionality of federal or state statute in case to which federal or state government is not a party	<input type="radio"/> Yes	<input checked="" type="radio"/> No
	If yes, notice re: challenge to constitutionality of law must be filed.	

Nature of Case (Nature of case and disposition below. Attach additional page if necessary.)
See Attachment A.

Issues (Non-binding statement of issues on appeal. Attach additional page if necessary)

(1) Did the district court commit clear error by concluding that there was no record evidence of erosion of employee support for the Union?

(2) Did the district court abuse its discretion by concluding that injunctive relief is not warranted to prevent likely irreparable harm and to protect the public interest?

Adverse Parties (List adverse parties to this appeal and their attorneys; provide party's address if the party is not represented by counsel. Attach additional page if necessary.)

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Adverse Parties (continued)

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Attachment A: Nature of the Case

This is an appeal from the district court's denial of a temporary injunction under Section 10(j) of the National Labor Relations Act (29 U.S.C. §160(j)) pending resolution before the National Labor Relations Board of unfair-labor-practice charges against Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center and Greenbrier VMC, LLC d/b/a Greenbrier Valley Medical Center. Specifically, Greenbrier is charged with the violating Section 8(a)(5) and (1) of the Act by engaging in surface bargaining with the Union; issuing discretionary discipline and discharging a bargaining unit employee; refusing to provide necessary and relevant information; and by conditioning bargaining over discipline and providing the Union with information, on the Union's agreement to indemnify Respondent Greenbrier. Meanwhile, Bluefield is charged with violating Section 8(a)(5) and (1) by engaging in unlawful surface bargaining.

Section 10(j) was intended to prevent the potential frustration or nullification of the Board's remedial authority caused by the passage of time inherent in Board administrative litigation. *See Muffley v. Spartan Mining Co.*, 570 F.3d 534, 543-44 (4th Cir. 2009). Section 10(j) directs district courts to grant relief that is "just and

proper.” In the Fourth Circuit, district courts rely on traditional equitable principles to determine whether interim relief is appropriate. *Id.* at 541-42.

Accordingly, the Regional Director must establish (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in the Board’s favor, and (4) that an injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008). The traditional equitable criteria, including the threat of irreparable harm, should be considered in the context of the underlying purpose of Section 10(j), which is to preserve the Board's remedial powers. *Muffley*, 570 F.3d at 543, *citing Miller*, 19 F.3d at 459-60.