

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

DURHAM SCHOOL SERVICES, L.P.	)	
	)	
	)	Nos. 16-1074
Petitioner/Cross-Respondent	)	16-1116
	)	
v.	)	
	)	Board Case No.
NATIONAL LABOR RELATIONS BOARD	)	32-CA-165556
	)	
Respondent/Cross-Petitioner	)	

---

**JOINT MOTION TO VOLUNTARILY DISMISS APPEALS**

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

Pursuant to Federal Rule of Appellate Procedure 42(b), the National Labor Relations Board (“the Board”), by its Deputy Associate General Counsel, and Durham School Services, L.P. (“the Company”), by its counsel, respectfully move that the Court grant the parties leave to voluntarily dismiss their appeals as provided in paragraph 5 below. In support of this motion, the parties show as follows:

1. This case is before the Court on the Company’s petition to review, and the Board’s cross-application to enforce, a Board Order issued against the Company on February 19, 2016. *See* 363 NLRB No. 129. The Order is based on the Board’s finding that the Company unlawfully refused to recognize and bargain

with Teamsters Local 853 (“the Union”) as the exclusive collective-bargaining representative of an appropriate unit of employees at the Company’s Hayward and Livermore, California facilities.

The Order requires the Company to cease and desist from failing and refusing to recognize and bargain with the Union, and from in any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under the National Labor Relations Act. 363 NLRB No. 129, slip op. at 2. The Order further requires that the Company take certain affirmative actions: (1) bargain with the Union on request and embody any resulting understanding in a signed agreement, (2) post a remedial notice for 60 consecutive days, and (3) distribute the notice electronically as appropriate. *Id.*, slip op. at 2-3.

2. After the close of briefing in this case, the Court scheduled oral argument to take place on March 22, 2017.

3. On March 14, 2017, the Company notified the Board that it intended to comply with the Board’s Order. The Company informed the Court of its intentions by letter dated the same day. The Board filed a response to the Company’s letter the following day. In its response, the Board requested that the Court retain this case on its calendar until the Company took concrete steps to meet its remedial obligations under the Order.

4. Since March 14, the Company has taken several concrete steps towards compliance with the Order, by formally recognizing the Union as the employees' exclusive collective-bargaining representative, offering the Union specific dates to begin negotiations over a collective-bargaining agreement, and posting and mailing the required remedial notice.

5. The parties respectfully submit that the Company's compliance thus far, and its commitment to meet its remaining obligations under Order, eliminates the need for further litigation of the case at this time. Accordingly, the parties request that the Court dismiss the Company's petition for review with prejudice, and dismiss the Board's cross-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) (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); *SFO Good-Nite Inn, LLC v. NLRB*, 700 F.3d 1, 11 (D.C. Cir. 2012).

6. Each party is to bear its own costs.

7. The Company's attorney in this matter, Amanda A. Sonneborn, has authorized Board counsel to sign this motion on her behalf.

WHEREFORE, the parties respectfully request that the Court grant this joint motion, dismiss the Company's petition for review with prejudice, and dismiss the Board's cross-application for enforcement without prejudice, consistent with Paragraph 5 above.

<b>For Durham School Services, L.P.:</b>	<b>For the National Labor Relations Board:</b>
<u>/s/ Amanda A. Sonneborn</u> Amanda A. Sonneborn Seyfarth Shaw LLP 131 South Dearborn Street Suite 2400 Chicago, IL 60603 (312) 460-5000	<u>/s/ Linda Dreeben</u> 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 20th day of March, 2017

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

DURHAM SCHOOL SERVICES, L.P.	)	
	)	
	)	Nos. 16-1074
Petitioner/Cross-Respondent	)	16-1116
	)	
v.	)	
	)	Board Case No.
NATIONAL LABOR RELATIONS BOARD	)	32-CA-165556
	)	
Respondent/Cross-Petitioner	)	

---

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 742 words of proportionally-spaced, 14-point type, the word processing system used was Microsoft Word 2010.

/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, DC  
this 20th day of March, 2017

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

DURHAM SCHOOL SERVICES, L.P.	)	
	)	
	)	Nos. 16-1074
Petitioner/Cross-Respondent	)	16-1116
	)	
v.	)	
	)	Board Case No.
NATIONAL LABOR RELATIONS BOARD	)	32-CA-165556
	)	
Respondent/Cross-Petitioner	)	

---

CERTIFICATE OF SERVICE

I hereby certify that, on March 20, 2017, I electronically filed the foregoing Joint Motion with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. I further certify that all counsel of record are registered CM/ECF users and have been served through the CM/ECF system.

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

Dated at Washington, D.C.  
this 20th day of March, 2017