



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
**OFFICE OF THE GENERAL COUNSEL**  
Washington, D.C. 20570

June 28, 2017

Molly Dwyer, Clerk of Court  
U.S. Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

Re: *NLRB v. Noel Canning, A Division of  
the Noel Corporation*, Board Nos. 19-CA-  
145344 and 19-CA-169060

Dear Ms. Dwyer:

I am enclosing an application of the National Labor Relations Board for enforcement of its order in this case, and a proposed judgment. Respondent expressly consented to the entry of this judgment in a stipulation contained in the record. I am also transmitting the certified record, including the order and the underlying agreement.

Please serve a copy of the application on Respondent, whose addresses appear on the service list. I have served a copy of the Board's application and proposed judgment on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of all correspondence the Court sends to counsel in this case, and a copy of the judgment issued.

Very truly yours,

/s/ Linda Dreeben

Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, S.E.  
Washington, D.C. 20570  
(202) 273-2960

cc & documents to: Service List

## SERVICE LIST

### Respondent:

Rodger Noel  
Noel Canning  
PO Box 111  
Yakima, WA 98907-0111

Tel: (509) 248-4545  
Fax: (509) 575-1729

### Charging Party:

Leonard J. Crouch, Sec'y Treasurer  
Robert Koerner, Business Rep.  
1211 W. Lincoln Avenue  
Yakima, WA 98902-2535

Tel: (509) 452-7194  
Fax: (509) 452-7354  
E-mail: bob@teamsters760.org

### Regional Director:

Ronald K. Hooks, Rgnl. Dir.  
National Labor Relations Board  
915 2nd Avenue – Room 2948  
Seattle, WA 98174-1078

### Respondent's Counsel:

Gary Lofland  
Meyer, Fluegge & Tenney, P.S.  
230 South Second Street  
Yakima, WA 98907

Tel: (509) 575-8500  
E-mail: glofland@glofland.net

### Charging Party Counsel:

Reid, Pedersen, McCarthy  
& Ballew, LLP  
100 W. Harrison St.  
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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No.
Petitioner	:	
v.	:	
	:	Board Case Nos.:
NOEL CANNING, A DIVISION OF THE	:	19-CA-145344
NOEL CORPORATION	:	19-CA-169060
	:	
Respondent	:	

APPLICATION FOR ENFORCEMENT OF AN ORDER  
OF THE NATIONAL LABOR RELATIONS BOARD  
UPON STIPULATION OF THE PARTIES FOR CONSENT JUDGMENT

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

The National Labor Relations Board (the “Board”), pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)), applies to this Court for enforcement of its order against Noel Canning, A Division of the Noel Corporation (“Respondent”), issued in Board Case Nos. 19-CA-145344 and 19-CA-169060, on June 20, 2017. The Board is entitled to enforcement because Respondent has expressly consented to entry of this judgment in a stipulation that Respondent entered into during the proceedings before the Board. In support, the Board shows:

**A. Jurisdiction of this Court**

This Court has jurisdiction over this application under Section 10(e) of the Act (29 U.S.C. § 160(e)). Venue is proper in this Circuit because the activities

giving rise to this proceeding occurred in the State of Washington. The Board's final order issued on June 20, 2017.

**B. The Respondent Entered into a Stipulation  
Providing for Entry of an Order by the  
Board and a Consent Judgment by the Court**

1. On July 14, 2016, the National Labor Relations Board issued a decision in Case 19-CA-145344 finding that the Respondent had engaged in certain unfair labor practices. On November 14, 2016, the Board filed in this Court an application for enforcement of its decision.<sup>1</sup> On March 23, 2017, the Court granted the Board's unopposed motion to stay the appellate proceedings pending settlement. Having reached a settlement, on June 26, 2017, the Court granted the Board's unopposed motion to withdraw its enforcement application and dismiss pursuant to Rule 42(b).

2. On May 9, 2016, the Regional Director for Region 19 issued a complaint in Case 19-CA-169060. The Respondent filed an answer.

3. On March 27, 2017, Respondent Noel Canning, the Teamsters Local 760, and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation covering all allegations in both case nos. 19-CA-145344 and 19-CA-169060. The stipulation provided for the entry of a consent

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<sup>1</sup> Docket No. 16-73632

order by the Board and a consent judgment by an appropriate United States Court of Appeals.

4. On June 20, 2017, the Board entered an order against Respondent pursuant to the stipulation. The Board's order does not vary from the settlement's terms.

5. Paragraph VI of the stipulation authorized the Board to apply to an appropriate U.S. Court of Appeals for a judgment enforcing the Board's order, and provided that Respondent "waives all defenses to the entry of the judgment . . . ."

6. In support of this application, the Board is certifying and filing with this Court the record of proceedings before the Board, including the pleadings, stipulation, findings of fact, and order of the Board.

WHEREFORE, the Board respectfully requests that the Court, after serving a copy of this application upon Respondent, enter a consent judgment enforcing the Board's order in full. A copy of the proposed consent judgment is attached.

/s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, S.E.  
Washington, D.C. 20570

Dated in Washington, D.C.  
this 28th day of June, 2017

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	No.
Petitioner	:	
v.	:	
	:	Board Case Nos.:
NOEL CANNING, A DIVISION OF THE	:	19-CA-145344
NOEL CORPORATION	:	19-CA-169060
	:	
Respondent	:	

JUDGMENT

THIS CAUSE was submitted upon the application of the National Labor Relations Board for the enforcement of a certain order on consent issued by it against Noel Canning, A Division of the Noel Corporation, its officers, agents, successors, and assigns, on June 20, 2017, in Board Case Nos. 19-CA-145344 and 19-CA-169060; and upon the record in that proceeding, certified and filed in this Court enforcing the order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the Ninth Circuit that the order of the National Labor Relations Board be, and the same is hereby enforced; and that Noel Canning, A Division of the Noel Corporation, its officers, agents, successors, and assigns, shall abide by and perform the directions of the Board set forth in its order. (See Attached Order and Notice)

Endorsed, Judgment Filed and Entered

/s/ Molly Dwyer  
Molly Dwyer  
Clerk

# NATIONAL LABOR RELATIONS BOARD

v.

NOEL CANNING, A DIVISION OF THE NOEL CORPORATION

## **ORDER**

Noel Canning, A Division of the Noel Corporation, Yakima, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

- (a) Unilaterally changing the past practice of granting access to Union representatives for the purpose of posting a notice and investigating working conditions.
- (b) Abrogating the parties' collective-bargaining agreement by refusing to allow Union representatives access to investigate working conditions.
- (c) Refusing to meet and discuss in good faith with the Union regarding any proposed changes in wages, hours, and working conditions, including access by Union business agents.
- (d) Restricting the wearing of union hats worn by employees and the granting of employee wage increases.
- (e) Making changes to wages, hours, and working conditions without reaching an overall good faith impasse.
- (f) Issuing and enforcing policies such that employees are prohibited from wearing hats with union and other non-Respondent insignia in production areas.
- (g) Threatening, coercing and disciplining employees for wearing hats with union insignia in the production area.
- (h) Retaliating against employees who are subpoenaed to testify in Board proceedings.

- (i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions:

- (a) Within 14 days, remove from the Respondent's files all references to the February 4, 2016 verbal warning issued to Dean Berriman and notify him in writing that this has been done and that the verbal warning will not be used against him in any way.
- (b) Within 14 days, repeal the Respondent's rule preventing employees from wearing hats with union insignia in the production areas of its facility.
- (c) Within 14 days, revise its policies so that they do not restrict Section 7 rights such that employees are permitted to wear hats with union and other non-Respondent insignia in production areas.
- (d) Within 14 days, rescind any and all changes to employees' wages, hours, and working conditions if requested by the Union.
- (e) Within 14 days, rescind the unilateral change in the parties' practice regarding access to the plant by Union representatives to post union notices and investigate working conditions, and notify the Union in writing that this has been done.
- (f) Within 14 days of the Board Order, post at the Respondent's facility copies of the attached Notice to Employees ("Notice") marked Appendix A, on forms provided by Region 19, after being signed by the Respondent's authorized representative. Said Notice shall be posted by the Respondent and maintained for a period of sixty (60) days, in conspicuous places, including all places where notices to its employees are normally posted and which are accessible to employees who work for the Respondent at its facility. The Respondent will take reasonable steps to ensure that the Notices are not altered, defaced, or covered by any other material. The Respondent shall also duplicate and mail, at its own expense, a copy of the Notice to all former employees who have

worked for the Respondent at its facility at any time since January 29, 2015.

- (g) Within twenty (20) days of the issuance of the Board's Order, file with the Regional Director of Region 19 of the Board, a sworn affidavit from a responsible official describing with specificity the manner in which the Respondent has complied with the terms of the Board's Order, including providing the names and addresses of all former employees the Notice was mailed to, and the locations of the posted documents.

## **APPENDIX A**

### **NOTICE TO EMPLOYEES**

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER  
AND A CONSENT JUDGMENT OF ANY APPROPRIATE  
UNITED STATES COURT OF APPEALS**

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

Form, join, or assist a union;  
Choose representatives to bargain with us on your behalf;  
Act together with other employees for your benefit and protection;  
Choose not to engage in any of these protected activities.

**WE WILL NOT** do anything to prevent you from exercising the above rights.

Teamsters Local 760 (Union) is our employees' representative in dealing with us regarding wages, hours and other working conditions of the employees in the following unit: all our employees working in the job classifications of Lead Production, Industrial Mechanic, Lead Dock/Warehouse, Quality Control/Mixer, Production Employee, Dock/Warehouse, General Maintenance, Electric Mechanic, Construction Worker, Utility Worker, at our Yakima, Washington facility, excluding all other employees, guards, office clerical, owners, and supervisors as defined in the NLRA, as amended.

**WE WILL NOT** deny your Union representatives access to our Yakima, Washington facility for the purpose of posting a meeting notice.

**WE WILL NOT** deny your Union representatives access to our Yakima, Washington facility for any reason set forth in our collective-bargaining agreement with your Union, including to meet with your Union steward in order to investigate working conditions.

**WE WILL NOT** refuse to meet and discuss in good faith with your Union any proposed changes to your wages, hours, and working conditions, including access to our Yakima, Washington facility, wearing hats without our logo in the

production areas of the facility, and granting you wage increases, before putting such changes into effect.

**WE WILL NOT** stop you from wearing hats with union insignia in the production areas of our Yakima, Washington facility and **WE WILL** repeal our oral rule preventing you from wearing these hats.

**WE WILL NOT** threaten you with discipline or coerce you for wearing hats with union insignia in the production areas of our Yakima, Washington facility. You have the right to wear union hats while working and **WE WILL NOT** stop you from doing so.

**WE WILL NOT** discipline you because you wear a hat with union insignia in the production area of our Yakima, Washington facility. **WE WILL** remove from our files all references to the verbal warning we issued to Dean Berriman and **WE WILL** notify him in writing that this has been done and that the verbal warning will not be used against him in any way.

**WE WILL NOT** retaliate against you and prevent you from wearing non-Company issued hats in our cafeteria or other non-work areas, because you were subpoenaed to testify in a Board proceeding on behalf of the General Counsel.

**WE WILL NOT** make changes to your wages, hours, and working conditions without first bargaining with the Union and reaching an overall good faith impasse.

**WE WILL**, if requested by the Union, rescind any or all changes to your terms and conditions of employment that we made without first bargaining.

**WE WILL NOT** in any like or related manner interfere with your rights under Section 7 of the Act.

## **NOEL CANNING, A DIVISION OF THE NOEL CORPORATION**

The Board's decision can be found at [www.nlr.gov/case/19-CA-145344](http://www.nlr.gov/case/19-CA-145344) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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v.	:	
	:	Board Case Nos.:
NOEL CANNING, A DIVISION OF THE	:	19-CA-145344
NOEL CORPORATION	:	19-CA-169060
	:	
Respondent	:	

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, authorized by Section 102.115, Rules and Regulations of the National Labor Relations Board, Series 8 (29 C.F.R.), certifies that the documents annexed hereto constitute the entire record of a proceeding had before the Board and known upon its records as Case Nos. 19-CA-145344 and 9-CA-169060.

The attached documents are as follows:

<u>Date</u>	<u>Document Description</u>	<u>Pages</u>
06/26/17	Order, <i>NLRB v. Noel Canning, A Division of the Noel Corp.</i> , Order Granting Withdrawal NLRB’s Enforcement Application in Docket No. 16-73632	1
06/20/17	Decision and Order, <i>Noel Canning, A Division of the Noel Corporation and Teamsters Local 760</i> , Case Nos. 19-CA-145344 and 9-CA-169060	6

<u>Date</u>	<u>Document Description</u>	<u>Pages</u>
03/27/17	Formal Settlement, <i>Noel Canning, A Division of the Noel Corporation and Teamsters Local 760</i> , Case Nos. 19-CA-145344 and 9-CA-169060 w/exhibits	71

IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being duly authorized, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 28th day of June, 2017.

/s/ Gary Shinnors  
 Gary Shinnors  
 Executive Secretary  
 NATIONAL LABOR RELATIONS BOARD

(seal)

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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	:	
Respondent	:	

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for enforcement, proposed judgment, certificate of record and mediation questionnaire, in the above case, has this day been served by first class mail upon the following parties at the addresses listed below:

Rodger Noel  
Noel Canning  
PO Box 111  
Yakima, WA 98907-0111

Gary Lofland  
Meyer, Fluegge & Tenney, P.S.  
230 South Second Street  
Yakima, WA 98907

/s/ Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, S.E.  
Washington, D.C. 20570

Dated in Washington, D.C.  
this 28th day of April, 2017

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

NOEL CANNING, A DIVISION OF THE NOEL CORPORATION

Respondent

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ITEMS SHOWN ON BOARD'S CERTIFICATE  
OF RECORD ARE CONTAINED HEREIN