

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GUNDERSON RAIL SERVICES, LLC)	
d/b/a GREENBRIER RAIL SERVICES)	Nos. 16-1232
)	& 16-1268
Petitioner/Cross-Respondent)	
)	Board Case Nos.
v.)	28-CA-093183
)	28-CA-103909
NATIONAL LABOR RELATIONS BOARD)	28-CA-104184
)	28-CA-106613
Respondent/Cross-Petitioner)	28-CA-111186
)	28-CA-112806

**JOINT MOTION OF THE NATIONAL LABOR RELATIONS
BOARD AND GUNDERSON RAIL SERVICES, LLC TO
VOLUNTARILY DISMISS THE PETITION FOR REVIEW AND
THE CROSS-APPLICATION FOR ENFORCEMENT**

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 Gunderson Rail Services, LLC d/b/a Greenbrier Rail Services (“Greenbrier”) by its counsel (collectively, “the parties”), respectfully move the Court for leave to voluntarily dismiss the petition for review and cross-application for enforcement of an order of the Board. In support of this motion, the parties show as follows:

1. This case is before the Court on Greenbrier’s petition to review, and the Board’s cross-application to enforce, a Board Order issued against Greenbrier on

June 23, 2016. *See* 364 NLRB No. 30. No briefs have been filed in this case; Greenbrier's opening brief is due November 1, 2017.

2. On August 23, 2017, the parties notified the Court that a settlement was reached in this case and that a joint motion to dismiss would be filed at a future time.

3. Greenbrier has complied with the Board's Order in a manner satisfactory to the Board, thus dispensing with the need for further litigation at this time.

4. Greenbrier therefore agrees to dismiss its petition for review with prejudice. Accordingly, the parties jointly request that the Court dismiss the petition for review in case number 16-1232 with prejudice.

5. The parties further agree 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 in the event the Company fails to comply 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). Accordingly, the parties

jointly request that the Court dismiss the Board's cross-application for enforcement in case number 16-1268 without prejudice.

6. Each party is to bear its own costs.

7. Counsel for Greenbrier, Frederick Miner, has authorized Board counsel to file this motion on his behalf.

WHEREFORE, Greenbrier and the Board respectfully request that the Clerk enter an order dismissing the petition for review with prejudice and dismissing the cross-application for enforcement without prejudice.

Respectfully submitted,

For the Board:

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

Dated: October 6, 2017

For Gunderson Rail Services, LLC
d/b/a Greenbrier Rail Services:

s/Frederick Miner
Frederick Miner
Littler Mendelson PC
2425 East Camelback Road
Suite 900
Phoenix, AZ 85016
(602) 474-3600

Dated: October 6, 2017

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 511 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 6th day of October, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2017, I electronically filed the foregoing document with Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half St SE
Washington, DC 20570

Dated at Washington, D.C.
this 6th day of October, 2017