

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD)	
)	
Petitioner)	
)	No. 18-1043
v.)	
)	Board Case No.
TRANSIT CONNECTION, INC.)	01-CA-179805
)	
Respondent)	
)	

JOINT MOTION
TO REMOVE THIS CASE FROM ABEYANCE AND
DISMISS THE BOARD’S APPLICATION FOR ENFORCEMENT
WITHOUT PREJUDICE

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

Pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure, the National Labor Relations Board (“the Board”) and Transit Connection, Inc. (“TCI”) (together, “the Parties”), by their respective counsel, jointly move this Court to remove this case from abeyance and dismiss the Board’s application for enforcement without prejudice. In support of their joint motion, the Parties show as follows:

1. On October 25, 2017, the Board issued a Decision and Order (“the Order”) against TCI in Board Case No. 01-CA-179805. *See Transit Connection, Inc.*, 365 NLRB No. 143, 2017 WL 4842015 (Oct. 25, 2017). The Board found

that TCI violated Section 8(a)(5) and (1) of the National Labor Relations Act (“the Act”), 29 U.S.C. § 158(a)(5) and (1), by failing and refusing to furnish Amalgamated Transit Union Local 1548 (“the Union”) with information that is necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of an appropriate unit of TCI’s employees.

2. On January 12, 2018, the Board filed an application for this Court to enforce its Order, which this Court docketed as Case No. 18-1043. Subsequently, the Court placed this case in abeyance pending review by the United States Court of Appeals for the Eleventh Circuit of the Board’s decision in *Transit Connection, Inc. (TCI I)*, 365 NLRB No. 9, 2016 WL 7634527 (Dec. 28, 2016), which found that TCI violated the Act by refusing to recognize and bargain with the Union as the unit’s exclusive collective-bargaining representative. On April 13, 2018, the Eleventh Circuit enforced the Board’s order in *TCI I* in full. *See Transit Connection, Inc. v. NLRB*, 887 F.3d 1097 (11th Cir. 2018).

3. The Board, TCI, and the Union have entered into an agreement to settle all claims in Board Case No. 01-CA-179805, thus dispensing with the necessity for further litigation at this time.

4. For these reasons, the Parties jointly request that the Court remove this case from abeyance and dismiss the Board’s application for enforcement without prejudice. *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); *NLRB v. Raytheon Co.*, 398 U.S. 25, 27-28 (1970) (same).

5. Each party is to bear its own costs.

6. TCI, by its counsel, has authorized the Board to execute this motion on its behalf.

WHEREFORE, the Parties respectfully request that the Court grant the relief set forth in this motion.

Respectfully submitted,

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Dated at Washington, DC
this 17th day of August 2018

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27(d)(2)(A) and 32(g)(1), the Board certifies that this motion contains 440 words of proportionally spaced, 14-point type, and the word-processing software used was Microsoft Word 2010. The Board further certifies that the PDF file submitted to the Court has been scanned for viruses using Symantec Endpoint Protection version 12.1.6 and is virus-free according to that program.

s/ Linda Dreeben
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Dated at Washington, DC
this 17th day of August 2018

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2018, I electronically filed the foregoing with the Clerk for the Court of the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. I further certify that this document was served on all parties or their counsel of record through the appellate CM/ECF system.

s/ Linda Dreeben

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Dated at Washington, DC
this 17th day of August 2018