UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DHSC, LLC, d/b/a AFFINITY MEDICAL CENTER Petitioner/Cross-Respondent	)	
v.	)	Nos. 15-1426, 15-1499
NATIONAL LABOR RELATIONS BOARD Respondent/Cross-Petitioner	)	
and	)	
NATIONAL NURSES ORGANIZING COMMITTEE Intervenor	)	

OPPOSITION OF THE NATIONAL LABOR RELATIONS BOARD TO THE HOSPITAL'S MOTION TO REMAND

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

The National Labor Relations Board ("the Board"), by its Deputy Associate General Counsel, respectfully opposes the motion to remand filed by DHSC, LLC, d/b/a Affinity Medical Center ("the Hospital"). In support of this opposition, the Board shows as follows:

1. On October 26, 2016, the Court granted the parties' motions to continue holding the instant case in abeyance pending the Court's resolution of *Hospital of Barstow, Inc. v. NLRB*, Case Nos. 15-1426, 15-1499. The Court

directed the parties to file motions to govern future proceedings within 30 days of the Court's disposition of *Barstow*. Order, Dkt. No. 1642931.

2. On July 31, 2018, the Court issued its decision in *Hospital of Barstow, Inc. v. NLRB*, 897 F.3d 280, and resolved the authority of the Board's Regional Director for which the instant case was held in abeyance.

3. On August 27, the Board filed a motion to lift abeyance and proceed to briefing, given the Court's resolution of the Regional Director's authority.

4. On September 6, the Hospital moved to remand the case so it could ask the Board to reconsider the remedies required under the Board's Order. Specifically, the Hospital seeks remand "so that the Board may receive evidence concerning [the closure], and evaluate the efficacy of the remedy . . . in light of the fact that [the Hospital] no longer owns or operates an acute healthcare facility, and no longer employs any employees represented by the Union." (Mot. Remand at 2-3).

5. The Hospital's stated reasons for remand are insufficient and will only further delay this case. While a closure of the facility might later affect the Hospital's ability to comply with certain portions of the Board's Order, the Hospital is hardly the first employer to have closed a facility during the pendency of a review proceeding and been denied remand on that basis. *Cf. Fallbrook Hosp.*

Corp. v. NLRB, 785 F.3d 729, 739-40 (D.C. Cir. 2015) (denying hospital's request to remand for the Board to take additional evidence based on facility closure).

Further, the proper time for the Hospital to raise contentions about its ability to comply with the Board's Order is after the Court enforces that Order and the case moves to the compliance phase. During such a subsequent compliance proceeding, the Hospital will have the opportunity to do exactly what it prematurely seeks to do now: bring forth evidence that limits its ability to comply with the Board's Order, including evidence of a facility closure. Indeed, the asserted changed circumstances pressed by the Hospital here are precisely the type of facts that are routinely addressed in compliance proceedings.

Finally, remand at this time will only further delay resolution of the back pay remedy. That delay will leave the discriminatee in this case, nurse Ann Wayt, waiting months, if not years, longer for her Board-ordered monetary remedy—a portion of the Board's Order that a facility closure would not affect.

WHEREFORE, the Board respectfully requests that the Court deny the Hospital's motion to remand.

Respectfully submitted,

/s/ Linda Dreeben

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

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CERTIFICATE OF SERVICE

I certify that on September 17, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. I also certify that the foregoing was served on all parties or their counsel of record through the CM/ECF system as all counsel are registered users.

/s/ Linda Dreeben
Linda Dreeben
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National Labor Relations Board
1015 Half Street SE
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Dated at Washington, D.C.
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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27(d)(2), the Board certifies that this motion contains 529 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2010.

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Dated at Washington, D.C.
This 17th day of September 2018