

**UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

TINLEY PARK HOTEL AND CONVENTION	)	
CENTER, LLC	)	
Petitioner/Cross-Respondent	)	Nos. 19-1136
	)	19-1356
v.	)	
	)	
NATIONAL LABOR RELATIONS BOARD	)	
Respondent/Cross-Petitioner	)	

**OPPOSITION OF THE NATIONAL LABOR RELATIONS BOARD  
TO THE COMPANY’S MOTION TO STAY ENFORCEMENT  
OF THE BOARD’S ORDER**

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

The National Labor Relations Board (“the Board”), by its Assistant General Counsel, respectfully opposes the motion of Tinley Park Hotel and Convention Center, LLC (“the Company”) to stay enforcement of the Board’s Order in the above-captioned case and shows:

1. On January 17, 2019, the Company filed a petition for review of the Board’s Order, and on February 26, the Board cross-applied for enforcement of its Order. The Court has since consolidated the proceedings.

2. On February 28, the Company filed a motion (“Motion”) to stay enforcement of the Board’s Order pending the outcome of the appellate proceedings.

3. The Company has not cited any legal basis for a stay.

4. The Company alleges that compliance with the Board’s Order “during the pending appeal” is “impractical” and will cause it “financial harm.” (Motion pp. 3-4.) It is settled that the Board’s orders are not self-enforcing because the Board itself “is given no power of enforcement” under the National Labor Relations Act (“the Act”). *In re NLRB*, 304 U.S. 486, 495 (1938). *Accord NLRB v. P\*I\*E Nationwide, Inc.*, 894 F.2d 887, 890 (7th Cir. 1990) (Board order “is not self-executing”); *U.S. v. Int’l Bhd. of Teamsters*, 954 F.2d 801, 807 (2d Cir. 1992) (noting that Board orders “are not self-executing”). Accordingly, “[c]ompliance [with a Board order] is not obligatory until the court, on petition of the Board or any party aggrieved, shall have entered a decree enforcing the order . . . .” *In re NLRB*, 304 U.S. at 495. *Accord P\*I\*E Nationwide*, 894 F.2d at 890. At present, the Company is under no judicial compulsion to comply with any aspect of the Board’s Order. Consequently, there is nothing for the court to “stay” and issuance of any such “stay” is unnecessary.

5. The Company’s claims that compliance with some aspects of the Board’s Order would be impossible because the business has been sold, and that it has

already complied with one aspect of the Order, do not alter the above principles and provide no basis to grant the Company's Motion. As an initial matter, the Company concedes (Motion pp. 3-4) that there are other affirmative aspects of the Board's Order with which it has *not* complied *and* as to which compliance *would be possible*; and of course, the Order also requires the Company to cease and desist from taking certain actions. In any event, "the fact that a respondent has terminated its business is irrelevant in a petition by the Board for immediate and full enforcement of an order," and thus, "the Board is entitled to have its orders enforced despite claims that the respondent has discontinued operations." *NLRB v. Kostilnik*, 405 F.2d 733, 735 (3d Cir. 1969) (quotation marks omitted). *Accord NLRB v. Castaways Mgmt., Inc.*, 870 F.2d 1539, 1543 (11th Cir. 1989) ("[a]llegations of impossibility of compliance have not prevented courts from enforcing Board orders against employers who have discontinued their business operations") (quotation marks omitted). *Cf. NLRB v. ACME Mattress Co.*, 192 F.2d 524, 528 (7th Cir. 1951) (rejecting "the contention that enforcement of the Board's order should be denied . . . because the [company] has been judicially declared insolvent and is not now actively engaged in business" and holding that mere fact that insolvency "may make it impracticable or impossible for [company] to discharge any part of the obligations imposed upon it, is no reason for delaying the enforcement of the order"). If the Court enforces the Board's Order, the

Company will have the opportunity to present any impossibility defense in compliance proceedings before the Board, and, if necessary, in any contempt proceedings before a court. *See Castaways*, 870 F.2d at 1544; *Kostilnik*, 405 F.2d at 735.

And as to the Company's claimed compliance with a single aspect of the Board's Order, even full compliance with a Board order "is not a defense to enforcement and does not render the cause moot." *NLRB v. Ohmite Mfg. Co., Subsidiary of N. Am. Philips Corp.*, 557 F.2d 577, 579 (7th Cir. 1977). *Accord NLRB v. Howard Immel, Inc.*, 102 F.3d 948, 952 (7th Cir. 1996) ("compliance is not relevant to an enforcement proceeding," as it is "not a defense to an enforcement action, nor does [it] moot enforcement proceedings"). Indeed, as the Supreme Court has held, "the employer's compliance with an order of the Board does not render the cause moot, depriving the Board of its opportunity to secure enforcement from an appropriate court." *NLRB v. Mexia Textile Mills*, 339 U.S. 563, 567 (1950).

WHEREFORE, the Board respectfully requests that the Court deny the Company's motion.

/s/ David Habenstreit  
David Habenstreit  
Assistant General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, SE  
Washington, DC 20570  
(202) 273-2960

Dated at Washington, DC  
this 14th day of March, 2019

**UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

TINLEY PARK HOTEL AND CONVENTION	)	
CENTER, LLC	)	
Petitioner/Cross-Respondent	)	Nos. 19-1136
	)	19-1356
v.	)	
	)	Board Case No.
NATIONAL LABOR RELATIONS BOARD	)	13-CA-141609
Respondent/Cross-Petitioner	)	

**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its document contains 859 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2016.

Respectfully submitted,

/s/ David Habenstreit  
David Habenstreit  
Assistant General Counsel  
National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570

Dated at Washington, DC  
this 14th day of March 2019

**UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

TINLEY PARK HOTEL AND CONVENTION	)	
CENTER, LLC	)	
Petitioner/Cross-Respondent	)	Nos. 19-1136
	)	19-1356
v.	)	
	)	Board Case No.
NATIONAL LABOR RELATIONS BOARD	)	13-CA-141609
Respondent/Cross-Petitioner	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on March 14, 2019, I filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for Seventh Circuit by using CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ David Habenstreit  
David Habenstreit  
Assistant General Counsel  
National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570  
(202) 273-2960

Dated at Washington, DC  
this 14th day of March 2019