

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD)	
)	
Petitioner)	No. 12-3524
)	
v.)	
)	
NEW VISTA NURSING AND)	Board Case No.
REHABILITATION, LLC)	22-CA-029845
)	
Respondent)	

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD TO
DISMISS THE BOARD’S APPLICATION FOR ENFORCEMENT OF ITS
ORDER**

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

The National Labor Relations Board, by its Assistant General Counsel,
respectfully moves, pursuant to F.R.A.P. Rule 42(b), to dismiss the Board’s
application for enforcement of its order in the above case, and shows:

1. On September 11, 2012, the Board applied for enforcement of its
order in the above-captioned case, which found that New Vista Nursing and
Rehabilitation, LLC (“New Vista”) violated Section 8(a)(1) and Section 8(a)(3) of
the National Labor Relations Act by taking certain actions directed at its licensed
practical nurses (LPNs). 29 U.S.C. §§ 151, 158(a)(1), 158(a)(3).

2. On November 14, 2012, the Court stayed the briefing scheduled in the instant case pending a decision in *NLRB v. New Vista Nursing & Rehabilitation*, 870 F.3d 113 (3d Cir. 2017) (*New Vista I*), wherein the Board sought enforcement of an Order requiring New Vista to recognize and bargain with 1199 SEIU United Healthcare Workers East, NJ Region, as the collective-bargaining representative of the LPNs. In so holding, the Board found that the LPNs were statutory employees under the Act, and not, as New Vista claimed, supervisors excluded from the Act's coverage.

3. On August 29, 2017, the Court determined that, in *New Vista I*, the Board relied on "inappropriate factors" under circuit law in finding that the LPNs were not supervisors. Accordingly, the Court vacated the Board's Order in *New Vista I* and remanded the case "for the Board to apply the correct legal test on the [supervisory] issue."

4. On November 20, 2018, the Court granted the Board's request for a continued stay pending a decision by the Board following remand in *New Vista I* on the supervisory status of the LPNs.

5. The Board has now decided not to seek enforcement of its order because the underlying charge has been withdrawn.

6. Each party is to bear its own costs.

7. Board counsel notified New Vista counsel of this motion on March 21, 2019, but as of filing, has not learned New Vista's position.

WHEREFORE, the Board respectfully requests that its application for enforcement in the above-captioned proceeding be dismissed pursuant to F.R.A.P. Rule 42(b).

/s/ David Habenstreit
David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, D.C. 20015
(202) 273-0979

Dated at Washington, D.C.
This 21st day of March 2019

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 455 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2016.

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 21st day of March 2019

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CERTIFICATE OF SERVICE

I certify that on March 21, 2019, I electronically filed the foregoing Motion with the Clerk of the Court for the U.S. Court of Appeals for the Third Circuit by using the appellate CM/ECF system. I certify that the foregoing document will be served via the CM/ECF on all counsel who are registered CM/ECF users.

s/David Habenstreit
David Habenstreit
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, D.C. 20570

Dated at Washington, D.C.
this 21st day of March 2019