

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD)

Petitioner/Cross-Respondent)

v.)

NEISES CONSTRUCTION CORP.)

Respondent/Cross-Petitioner)

Nos. 17-3587, 18-1125

JOINT MOTION OF THE PARTIES TO DISMISS THE APPLICATION FOR
ENFORCEMENT AND CROSS-PETITION FOR REVIEW OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

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

Pursuant to Fed. R. App. P. 42(b), the National Labor Relations Board (“the Board”) and Neises Construction Corporation (“the Company”), by their respective counsel, jointly move this Court to dismiss the application for enforcement, without prejudice, as well as the cross-petition for review, with prejudice. In support of their motion, the parties show as follows:

1. On September 11, 2017, the Board issued a Decision and Order in Neises Construction Corporation, 365 NLRB No. 129 (2017). On December 19, 2017, the Board filed an application for enforcement of this Order in the United States Court of Appeals for the Seventh Circuit (Case No. 17-3587). On January

17, 2018, Neises filed a cross-petition for review of the same Order (Case No. 18-1125).

2. Since then, the parties entered settlement negotiations through the Seventh Circuit's mediation program, reached a final agreement, and the Company has satisfied the required settlement obligations, dispensing with the necessity of further litigation.

3. In the parties' settlement agreement, the Company agreed that the Board would seek dismissal of its application for enforcement without prejudice to the Board's right to file a future application for enforcement of its Order in the event the Company fails to continue its compliance with the prospective relief in the Board's Order. *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 application for enforcement without prejudice.

4. In the parties' settlement agreement, the Company agreed to seek dismissal of its cross-petition for review with prejudice. Accordingly, the parties jointly request that the Court dismiss the petition with prejudice.

5. Each party is to bear its own costs.

6. Arthur Johnson, counsel for the Company, has authorized counsel for the Board to file this joint motion on the Company's behalf.

WHEREFORE, the parties respectfully request that the Clerk enter an order dismissing without prejudice the Board's application for enforcement of its Order and dismissing with prejudice the Company's cross-petition for review, with the parties bearing their own costs.

s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
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Counsel for the Board

s/ Arthur C. Johnson, II
Arthur C. Johnson, II
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250 East 90th Drive
Merrillville, IN 46410
Counsel for Neises Construction Corp.

Dated: June 27, 2019

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NEISES CONSTRUCTION CORP.)	Board Case Nos.
)	13-CA-135991, et al.
Respondent/Cross-Petitioner)	
)	

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its document contains 523 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2016.

Respectfully submitted,

/s/ David Habenstreit _____
David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 27th day of June 2019

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 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
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Dated at Washington, DC
this 27th day of June 2019