

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

BOZZUTO’S INC.,)
)
 Petitioner/Cross-Respondent)
)
 v.) Nos. 18-125(L),
) 18-331(XAP)
 NATIONAL LABOR RELATIONS BOARD,)
)
 Respondent/Cross-Petitioner)

MOTION TO AMEND THE COURT’S JUDGMENT

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

The National Labor Relations Board (the “Board”), by its Acting Deputy Associate General Counsel, respectfully moves this Court to amend its judgment issued on June 24, 2019, in the above captioned case and shows as follows:

1. On January 12, 2018, Bozzuto’s Inc. filed a petition with this Court seeking review of the Board’s Order issued December 12, 2017, reported at 365 NLRB No. 146 (2017). The Board filed a cross petition for enforcement of its Order and the Court consolidated the matter in dockets 18-125(L) and 18-331(XAP). On June 24, 2019, the Court issued its opinion granting Bozzuto’s Inc. petition for review in part and enforcing the Board’s order in part. Additionally, the Court issued a judgment in the case on June 24, 2019.

2. Rule 19 of the Federal Rules of Appellate Procedure states, “When the court files an opinion directing entry of judgment enforcing the agency’s order in part, the agency must within 14 days file with the clerk and serve on each other party a proposed judgment conforming to the opinion.”

3. Pursuant to the directive in FRAP Rule 19, the Board has attached its proposed judgment which has been modified to conform with the Court’s opinion issued June 24, 2019.

WHEREFORE, the Board respectfully requests that the Court grant the Board’s motion to amend the Court’s judgment and incorporate the Board’s attached proposed judgment.

/s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 2nd day of July, 2019

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

BOZZUTO’S INC.,)	
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Petitioner/Cross-Respondent)	
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v.)	Nos. 18-125(L),
)	18-331(XAP)
NATIONAL LABOR RELATIONS BOARD,)	
)	
Respondent/Cross-Petitioner)	

**AMENDED JUDGMENT ENFORCING IN PART
AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD**

Before: KEARSE, LIVINGSTON, and CARNEY, Circuit Judges.

THIS CAUSE came to be heard upon a petition filed by Bozzuto's, Inc. for review of an Order of the National Labor Relations Board issued December 12, 2017, in Board Case Nos. 01-CA-115298 and 01-CA-120801, reported at 365 NLRB No. 146 (2017), and upon a cross-petition filed by the National Labor Relations Board for enforcement of said Order. The Court heard argument of the parties and has considered the briefs and transcript of record filed in this cause. On June 24, 2019, the Court, being fully advised in the premises, handed down its opinion granting in part the petition of Bozzuto's, Inc. and granting in part the Board’s cross-petition for enforcement. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Second Circuit that Bozzuto's, Inc., its officers, agents, successors, and assigns, shall abide by said order as modified by the Court. (See attached Order and Appendix).

FOR THE COURT:

NATIONAL LABOR RELATIONS BOARD

v.

BOZZUTO'S INC.

ORDER

Bozzuto's Inc., Cheshire, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Discharging, suspending, or discipline employees because they engage in protected concerted activities.
 - (b) Announcing or granting wage increases in order to dissuade employees from supporting the Union.
 - (c) Maintaining a policy of conditioning continued employment on an agreement by employees to refrain from talking about any discipline that they have received or from talking about their terms and conditions of employment.
 - (d) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Rescind the rule conditioning continued employment on an agreement by employees to refrain from talking about any discipline that they have received or from talking about their terms and conditions of employment and notify the employees in writing that this has been done and that the rule is no longer in force.
 - (b) Make Todd McCarty whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the judge's decision as amended in the Board's Decision and Order reported at 365 NLRB No. 146.
 - (c) Compensate Todd McCarty for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 1, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for him.

- (d) Compensate Todd McCarty for his search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings.
- (e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful actions against Todd McCarty, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful actions will not be used against him in any way.
- (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (g) Within 14 days after service by the Region, post at its Cheshire, Connecticut facility, copies of the attached notices marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 2013.
- (h) Within 21 days after service by the Region, file with the Regional Director for Region 1 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge, suspend, or discipline any of you for engaging in protected concerted activities.

WE WILL NOT announce or grant wage increases to dissuade you from supporting United Food and Commercial Workers Union, Local 919 or any other labor organization.

WE WILL NOT maintain a policy of conditioning continued employment on an agreement by you to refrain from talking about any disciplines you may have received or from talking about your terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL make Todd McCarty whole for any loss of earnings and other benefits resulting from the discrimination against him, less any net interim earnings, plus interest.

WE WILL compensate Todd McCarty for the adverse tax consequences, if any, of receiving lump sum backpay awards, and WE WILL file with the Regional Director for Region 1, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL compensate Todd McCarty for his search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful actions against Todd McCarty and WE WILL within 3 days thereafter, notify in writing that this has been done and that the discipline will not be used against him in any way.

BOZZUTO'S INC.

**UNITED STATES COURT OF APPEALS
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Petitioner/Cross-Respondent)	
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NATIONAL LABOR RELATIONS BOARD)	
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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served on all the parties or their counsel of record through the CM/ECF system.

/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 2nd day of July, 2019

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 18-125(L), 18-331(XAP)

Caption [use short title]

Motion for: TO AMEND THE COURT'S JUDGMENT

BOZZUTO'S INC.,

v.

NATIONAL LABOR RELATIONS BOARD

Set forth below precise, complete statement of relief sought:

The Board requests, pursuant to FRAP Rule 19, that the Court amend its June 24, 2019 judgment. The Board provides the Court an attached proposed judgment.

MOVING PARTY: National Labor Relations Board

OPPOSING PARTY: Bozzuto's Inc.

- Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: David Habenstreit

OPPOSING ATTORNEY: Miguel A. Escalera Jr.

[name of attorney, with firm, address, phone number and e-mail]

National Labor Relations Board 1015 Half Street, S.E., Washington, D.C. 20570 Tel: (202) 273-2960 Email: david.habenstreit@nlrb.gov

Kainen, Escalera & McHale, P.C. 21 Oak Street, Suite 601, Hartford, CT 06106 Tel: (860) 493-0870 Email: mescalera@kemlaw.com

Court- Judge/ Agency appealed from:

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below? Has this relief been previously sought in this court? Requested return date and explanation of emergency:

Opposing counsel's position on motion: Unopposed Opposed Don't Know

Does opposing counsel intend to file a response: Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date: not applicable

Signature of Moving Attorney:

/s/ David Habenstreit Date: 07/2/2019 Service by: CM/ECF Other [Attach proof of service]