

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

NATIONAL LABOR RELATIONS
BOARD

Petitioner

and

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL
2015

Intervenor for Petitioner

v.

DYCORA TRANSITIONAL HEALTH
& LIVING – VISALIA LLC

Respondent

Case No. 18-1323

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD TO
DISMISS ENFORCEMENT APPLICATION WITHOUT PREJUDICE**

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

Pursuant to Federal Rule of Appellate Procedure 42(b), the National Labor Relations Board (“the Board”), through its Acting Deputy Associate General Counsel, respectfully moves this Court to dismiss, without prejudice, its application for enforcement in the above-captioned case.

1. On October 26, 2018, Dycora Transitional Health & Living – Visalia LLC (“Dycora”) petitioned the Court (No. 18-1295) for review of the Board’s

October 18, 2018 Decision and Order (“Order”) issued against Dycora, and reported at 367 NLRB No. 22; the Board subsequently filed a cross-application for enforcement of its Order (No. 18-1323); and Service Employees International Union, Local 2015 (“the Union”) intervened on behalf of the Board (collectively, “the Parties”). The Court consolidated these two cases.

2. In late March 2019, the Parties reached a written agreement that resolved all outstanding issues arising from the Board’s Order. Dycora has complied with that agreement and with the underlying Order in a manner satisfactory to the Board and the Union, thus dispensing with the necessity of further litigation at this time.¹

3. In their agreement, the Parties agreed that the Board’s application for enforcement should be dismissed without prejudice to the Board’s right to file a future application for enforcement of its Order in the event that Dycora fails to comply with the ongoing cease and desist obligation in the Board’s Order and with the terms of settlement. *See NLRB v. Mexia Textile Mills*, 339 U.S. 563, 567

¹ In early June, after the Parties had finalized and executed their agreement, Dycora’s counsel withdrew from the cases. The Court ordered Dycora to have new counsel enter an appearance by July 18 or the Court would dismiss Dycora’s case (No. 18-1295). The Court dismissed Dycora’s case when it failed to comply with that deadline, and terminated the consolidation of Dycora’s case and the Board’s enforcement case (No. 18-1323). As of the date of this motion, new counsel has not made an appearance for Dycora in the enforcement case, which remains pending.

(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). Therefore, the Board requests that this Court dismiss the Board’s application for enforcement without prejudice to the Board’s right to file a future application for enforcement.

4. Each party is to bear its own costs.

5. Counsel for the Union has informed Board counsel that the Union does not oppose this motion.

WHEREFORE, the Board respectfully requests that the Court enter an order dismissing without prejudice the Board’s application for enforcement of its Order.

Respectfully submitted,

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

Dated at Washington, DC
this 30th day of July 2019

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Respondent

No. 18-1323
Board Case Nos.
32-CA-206624, et al.

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 583 words of proportionally spaced, 14-point type, and that the word processing system used was Microsoft Word 2016.

/s/ David Habenstreit

David Habenstreit
Acting Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20032

Dated at Washington, DC
this 30th day of July 2019

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2019, I filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for District of Columbia 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
Acting Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20032

Dated at Washington, DC
this 30th day of July 2019