

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

INTERNATIONAL BROTHERHOOD	)	
OF ELECTRICAL WORKERS,	)	
LOCAL UNION 357, AFL-CIO	)	
	)	
Petitioner/Cross-Respondent	)	Nos. 19-70322, 19-70575
	)	
v.	)	Board Case No.
	)	28-CC-115255
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent/Cross-Petitioner	)	
	)	
and	)	
	)	
DESERT SUN ENTERPRISES LIMITED, d/b/a	)	
CONVENTION TECHNICAL SERVICES	)	
	)	
Intervenor	)	

**REPLY OF THE NATIONAL LABOR RELATIONS BOARD  
IN SUPPORT OF ITS MOTION TO HOLD BRIEFING IN ABEYANCE  
PENDING THE COURT’S RULING ON INITIAL HEARING *EN BANC***

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

The National Labor Relations Board (“the Board”), by its Acting Deputy Associate General Counsel, and in further support of its motion to hold the briefing schedule in abeyance pending the Court’s disposition of the Board’s petition for initial hearing *en banc*, submits the following reply to the opposition filed by International Brotherhood of Electrical Workers, Local Union 357 (“the Union”):

1. As noted in the Board's motion (Mot. ¶5), the Board's substantive response to the arguments in the Union's opening brief is largely dependent on the disposition of the still-pending initial *en banc* petition. Contrary to the Union (Opp. p. 3), the Board's position will necessarily change based on whether it is bound by existing circuit precedent as represented by the two panel opinions cited in the Board's initial *en banc* petition. The purpose of the present request to hold the remaining briefing schedule in abeyance is not to give the Board more time to formulate its arguments, but to ensure that the resources of the Court and the parties are not wasted by unnecessary or soon-to-be-mooted answering briefs.

2. The Union contends that holding the remaining briefing schedule in abeyance would "delay these proceedings to the detriment of [the Union]." (Opp. p. 2.) However, the Union has failed to articulate any material prejudice that it would suffer. The only party required to take any remedial action by the underlying Board Order is the Union itself, which the Board found to have violated federal law. Having initiated the present judicial proceeding, the Union has not been compelled to take any actions in furtherance of the Board's Order. The Board, which is cross-applying for enforcement of that Order, submits that it would be prudent to hold the case in abeyance. Intervenor Desert Sun Enterprises Limited, which was the charging party before the Board, does not oppose the

Board's motion. Moreover, for the reasons noted previously, it would directly serve the interests of the Court to grant the present motion.

3. Finally, the Court should disregard the Union's arguments (Opp. pp. 3-5) in opposition to the Board's pending petition for initial hearing *en banc*. The merits of the Board's petition are not directly relevant to the present motion, and the Court has not yet asked for a response to the Board's petition. *See* Fed. R. App. P. 35(e) ("No response may be filed to a petition for en banc consideration unless the court orders a response."); *see also* 9th Cir. R. 35-2 (guaranteeing other parties an opportunity to respond before hearing *en banc* is granted).

WHEREFORE, the Board respectfully reaffirms its request that the remaining briefing schedule be held in abeyance pending the Court's ruling on the Board's petition for initial hearing *en banc*. Once the Court rules on the Board's petition, the case can be taken out of abeyance and the parties will be able to properly evaluate their positions moving forward.

Respectfully submitted,

/s/ David Habenstreit  
David Habenstreit  
Acting Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street, S.E.  
Washington, D.C. 20570  
(202) 273-2960

Dated at Washington, D.C.  
this 9th day of September, 2019

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DESERT SUN ENTERPRISES LIMITED, d/b/a	)	
CONVENTION TECHNICAL SERVICES	)	
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**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its reply contains 481 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2016. The Board further certifies that the PDF file submitted to the Court has been scanned for viruses using Symantec Endpoint Protection version 12.1.6 and is virus-free.

Respectfully submitted,

/s/ David Habenstreit  
David Habenstreit  
Acting Deputy Associate General Counsel  
National Labor Relations Board  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 9, 2019, I electronically filed the foregoing document with the Clerk for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that the foregoing document will be served via the CM/ECF system on all parties or their counsel of record.

Respectfully submitted,

/s/ David Habenstreit  
David Habenstreit  
Assistant General Counsel  
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(202) 273-2960

Dated at Washington, D.C.  
this 9th day of September, 2019