

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
AGENCY APPEAL PRE-ARGUMENT STATEMENT (FORM C-A)**

APPLICATION FOR ENFORCEMENT

PETITION FOR REVIEW

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES.

CAPTION: National Labor Relations Board v. Local 713, International Brotherhood of Trade Unions	AGENCY NAME: Nat'l Labor Relations Board	AGENCY NO.: 29-CB-220367
	DATE THE ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT WAS ENTERED BELOW: September 9, 2019	ALIEN NO : (Immigration Only)
	DATE THE PETITION OR APPLICATION WAS FILED: September 25, 2019	Is this a cross-petition for review / cross-application for enforcement? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

Contact Information for Petitioner(s) Attorney:	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:
	David Habenstreit	Nat'l Labor Relations Board 1015 Half Street, S.E. Washington, D.C. 20570	(202) 273-2960	(202) 273-0191	E-mail: AppellateCourt@nlrb.gov

Contact Information for Respondent(s) Attorney:	Counsel's Name:	Address:	Telephone No.:	Fax No.:	E-mail:
	Bryan C. McCarthy	Bryan C. McCarthy, Esq. & Assocs, PC 1454 Route 22, Suite B101 Brewster, NY 10509-4359		Tel: (845) 363-1441 Fax: (845) 582-0698 Email: bcm@bcmassociates.org	

JURISDICTION OF THE COURT OF APPEALS (provide U.S.C. title and section): 29 USC § 160(e)	APPROX. NUMBER OF PAGES IN THE RECORD:	APPROX. NUMBER OF EXHIBITS IN THE RECORD:	Has this matter been before this Circuit previously? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
			If Yes, provide the following: Case Name:
			2d Cir. Docket No.: Reporter Citation: (i.e., F.3d or Fed. App.)

ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; AND (3) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT.

ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM: (1) THE RELIEF REQUESTED; (2) A LIST OF THE PROPOSED ISSUES; AND (3) THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.

PART A: STANDING AND VENUE

<u>STANDING</u>	<u>VENUE</u>
PETITIONER / APPLICANT IS: <input checked="" type="checkbox"/> AGENCY <input type="checkbox"/> OTHER PARTY <input type="checkbox"/> NON-PARTY (SPECIFY STANDING):	COUNSEL MUST PROVIDE IN THE SPACE BELOW THE FACTS OR CIRCUMSTANCES UPON WHICH VENUE IS BASED: Venue is proper because unfair labor practices occurred in New York.

IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

PART B: NATURE OF ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT
(Check as many as apply)

TYPE OF CASE:

- | | | | |
|--------------|---------------------------------------|-------|--|
| _____ | ADMINISTRATIVE REGULATION/ RULEMAKING | _____ | IMMIGRATION-includes denial of an asylum claim |
| _____ | BENEFITS REVIEW | _____ | IMMIGRATION-does NOT include denial of an asylum claim |
| <u> X </u> | UNFAIR LABOR | _____ | TARIFFS |
| _____ | HEALTH & SAFETY | _____ | OTHER: |
| _____ | COMMERCE | _____ | (SPECIFY) |
| _____ | ENERGY | | |

1. Is any matter relative to this petition or application still pending below? Yes, specify: _____ No

2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:

(A) Arises from substantially the same case or controversy as this petition or application ? Yes No

(B) Involves an issue that is substantially similar or related to an issue in this petition or application ? Yes No

If yes, state whether "A," or "B," or both are applicable, and provide in the spaces below the following information on the *other* action(s):

Case Name:	Docket No.	Citation:	Court or Agency:
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Name of Petitioner or Applicant:

Date: October 7, 2019	Signature of Counsel of Record: <i>/s/ David Habenstreit</i>
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NOTICE TO COUNSEL

Once you have filed your Petition for Review or Application for Enforcement, you have only 14 days in which to complete the following important steps:

1. Complete this Agency Appeal Pre-Argument Statement (Form C-A); serve it upon your adversary, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. Pay the \$500 docketing fee to the Clerk of the Second Circuit, unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 CALENDAR DAYS, YOUR PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT WILL BE DISMISSED. SEE LOCAL RULE 12.1.

ADDENDUM “A”

(1) A Brief Description of the Nature of the Action:

This is an action to enforce an NRLB order. On September 9, 2019, the Board entered an order against Respondent pursuant to a stipulation authorizing the Board to enter an order embodying its terms. The Board’s order does not vary from those terms. Paragraph I of the settlement agreement states, “the undersigned parties to this proceeding agree that, upon approval of this Stipulation by the National Labor Relations Board (the "Board"), a Board Order in conformity with the terms of the Stipulation will issue and a court judgment enforcing the Order will be entered.” The Board, pursuant to the terms of the settlement, seeks a judgment enforcing the Board’s order in full.

(2) The result below:

The Board entered an order against Respondent pursuant to a stipulation authorizing the Board to enter an order embodying its terms.

(3) Relevant Opinions and Orders: Attached.

ADDENDUM “B”

(1) Relief requested:

Enforcement of the September 9, 2019, Decision and Order of the National Labor Relations Board.

(2) List of Proposed Issues:

The Board, pursuant to the terms of the stipulation, is entitled to summary entry of a judgment enforcing its order against Respondent.

(3) Applicable standard of review:

The Board is entitled to enforcement because Respondent has expressly consented to entry of this judgment in a stipulation that Respondents entered into with the Board.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**LOCAL 713, INTERNATIONAL BROTHERHOOD
OF TRADE UNIONS (PLATINUM AMENITY
SERVICES LTD.)**

and

Case 29-CB-220367

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 32BJ**

DECISION AND ORDER

Statement of the Case

On November 28, 2018, Local 713, International Brotherhood of Trade Unions (Respondent Local 713); Service Employees International Union, Local 32BJ (Charging Party or Local 32BJ); and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

Findings of Fact

1. The Employer's business

At all material times, Platinum Amenity Services LTD (Platinum), a domestic corporation with an office and place of business located at 1370 60th Street, Brooklyn, New York (the Brooklyn facility), has been engaged in the business of providing building services to residential and commercial buildings throughout the New York City area,

including to a residential building located at 42-12 28th Street, Long Island City, New York (Tower 28).

During the 12-month period preceding the execution of the settlement stipulation, which period is representative of its annual operations generally, Platinum, in the course and conduct of its business operations described above, purchased and received goods and services at its Brooklyn facility and at Tower 28 valued in excess of \$50,000 directly from suppliers located outside the State of New York.

At all material times, Platinum has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

2. The labor organizations involved

At all material times, Respondent Local 713 has been a labor organization within the meaning of Section 2(5) of the Act.

At all material times, Charging Party Local 32 BJ has been a labor organization within the meaning of Section 2(5) of the Act.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that the Respondent, Local 713, International Brotherhood of Trade Unions, Long Island City, New York, its officers, agents, and representatives shall:

1. Cease and desist from restraining and coercing employees in the exercise of their Section 7 rights, including:

(a) Representing employees of Respondent Platinum working at Tower 28, located at 42-12 28th Street, Long Island City, New York for the purpose of collective bargaining.

(b) Accepting voluntary recognition from any employer, including Respondent Platinum, at a time when Respondent Local 713 does not represent an uncoerced majority of such employees in an appropriate unit.

(c) Executing or giving effect to a collective-bargaining agreement with any employer, including agreements containing a union-security clause requiring membership in Respondent Local 713 as a condition of employment, at a time when Respondent Local 713 does not represent an uncoerced majority of such employees in an appropriate unit.

(d) Engaging in all organizational activity in furtherance of becoming the new exclusive collective-bargaining representative of any employees of Respondent Platinum, Dynamic Building Services, Inc., and/or PBS Services Inc. (collectively referred to herein as “the employers”), including entering into collective-bargaining agreements, soliciting union membership and/or authorization cards and/or discussing the benefits of Local 713 membership with any employee employed by Respondent Platinum, Dynamic Building Services, Inc, and/or PBS Services, Inc., for a period of nine (9) months following the signing of this Settlement Agreement by the Regional Director; provided, however, Respondent Local 713 shall not be required to disclaim interest in any bargaining unit where Respondent Local 713 currently represents an uncoerced majority of the employees. Respondent Local 713 may solicit union authorization cards and discuss benefits of Local 713 membership with any new employees hired into bargaining units covered by collective-bargaining agreements where Respondent Local 713 currently represents an uncoerced majority of employees prior to the approval of this agreement by the Regional Director. Respondent Local 713 is not precluded from renewing collective-bargaining agreements where Respondent Local 713 currently represents an uncoerced majority of employees prior to the approval of this agreement by the Regional Director.

(e) Using or relying on any Local 713 International Brotherhood of Trade Unions membership cards that were signed on or before the date that Respondent Local 713 signs this Stipulation in an effort to seek certification by the National Labor Relations Board as the exclusive collective-bargaining representative of any Platinum employees for the purpose of collective bargaining.

(f) Using or relying on any Local 713 International Brotherhood of Trade Unions membership cards that were signed on or before the date that Respondent Local 713 signs this Stipulation in an effort to seek Platinum’s voluntary recognition as exclusive representative of any Platinum employee for the purpose of collective bargaining through a card count performed by an independent arbitrator or any other means.

(g) In any other manner restraining or coercing employees of Respondent Platinum or any other employer in the exercise of their right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days of notification from Region 29 of the amounts due, reimburse all present and former full-time and regular part-time doormen, unarmed security guards and partners employed by the Platinum Amenity Services at 42-12 28th Street, Long Island City, New York (unit employees) for all dues, initiation fees, and other money paid by employees or withheld from employees’ pay pursuant to the November 2017

collective-bargaining agreements between Respondent Local 713 and Respondent Platinum covering unit employees at Tower 28, located at 42-12 28th Street, Long Island City, New York. Respondent Local 713 shall also pay the interest on those reimbursements, pursuant to the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), enforcement denied sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

(b) Accept Respondent Platinum's withdrawal of recognition of Respondent Local 713 as the exclusive collective-bargaining representative of unit employees.

(c) Within 14 days of service by the Region, post at its facility, located at 400 Garden City Plaza, Suite 106, Garden City, NY 11530, copies of the attached notice (Appendix A). Copies of the notice, on forms provided by Region 29, after being signed by Respondent Local 713's authorized representative, shall be posted by Respondent Local 713 and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. In addition to physical posting of paper notices, Respondent Local 713 shall duplicate and mail, at its own expense, a copy of the notice to all current and former unit employees employed by Respondent Platinum since October 24, 2017 to the date of the mailing.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Local 713 has taken to comply with this Order.

(e) Within 21 days Respondent Local 713 will schedule with Region 29 of the NLRB a mandatory 45-minute training session for all Local 713 officials, organizers and representatives, to be conducted at Respondent Local 713's office located at 400 Garden City Plaza, Suite 106, Garden City, NY 11530. The training session will cover "the law of organizing" under the National Labor Relations Act and will include time for questions and answers. A designee of the Regional Director for Region 29 will conduct the training session at an agreed upon date and time. Should the parties fail to agree upon a training date and/or time, the Regional Director of Region 29 shall have sole discretion to select the date and time for the training session. Respondent Local 713 will instruct all Local 713 officials, organizers and representatives that the training session is mandatory. Respondent Local 713 will create an attendance list including the names of all Local 713 officials, organizers and representatives in attendance at the mandatory training and will provide a copy of that document to the Regional Director within 14 days from the day of the training session.

Dated, Washington, D.C., September 9, 2019.

Lauren McFerran, Member

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

**NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER
AND A CONSENT JUDGMENT OF ANY APPROPRIATE
UNITED STATES COURT OF APPEALS**

Local 713 is No Longer Your Union at Tower 28

Based on charges filed by Service Employees International Union, Local 32BJ, the National Labor Relations Board and Local 32BJ entered into a settlement agreement with Platinum Amenity Services LTD regarding its Tower 28 building and with Local 713 International Brotherhood of Trade Unions.

In that agreement, Platinum Amenity Services and Local 713 agreed that Platinum Amenity Services no longer recognizes Local 713 as the union representing Platinum Amenity Services concierges/doormen and porters at Tower 28.

The collective-bargaining agreement Local 713 and Platinum Amenity Services signed is no longer in effect. Platinum Amenity Services will no longer take Local 713 union dues out of your paycheck.

Pursuant to that agreement, Local 713 states:

Federal Law Gives You The Right To:

Form, join, or assist a union;
Choose a representative to bargain with your employer 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 do anything to prevent you from exercising the above rights.

WE WILL STOP enforcing the collective-bargaining agreement with Platinum Amenity Services LTD covering employees employed at Tower 28.

WE WILL NOT charge you union dues or other fees under the collective-bargaining agreement that we had with Platinum Amenity Services LTD at Tower 28.

WE WILL NOT accept recognition from Platinum Amenity Services as your union, or from any other employer, at a time when we do not represent an uncoerced majority of employees in an appropriate unit.

WE WILL NOT sign a collective-bargaining agreement with Platinum Amenity Services LTD covering employees employed at Tower 28, or with any other employer, if we do not represent an uncoerced majority of employees in an appropriate unit.

WE WILL pay you for all union dues and other fees that you paid under the collective-bargaining agreement that we had with Platinum Amenity Services LTD covering the employees at Tower 28.

WE WILL accept Platinum Amenity Services LTD's withdrawal of recognition of Local 713 as the union representing concierges/doormen and porters working at Tower 28, unless and until the National Labor Relations Board certifies Local 713 to be your union

**LOCAL 713, INTERNATIONAL BROTHERHOOD
OF TRADE UNIONS**

The Board's decision can be found at <http://www.nlr.gov/case/29-CB-220367> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

