

**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)	

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD
CONSENTING TO AN ENTRY OF JUDGMENT AGAINST THE BOARD**

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, respectfully files this motion with the Court consenting to an entry of judgment against the Board. In support of its motion, the Board shows as follows:

1. On December 27, 2018, the Board issued its Decision and Order in *International Brotherhood of Electrical Workers, Local Union 357*, which is

reported at 367 NLRB No. 61. The Board’s Decision and Order applies the Board’s longstanding “unqualified-threat rule,” which governs the lawfulness of union statements to neutral third-parties threatening picketing at common worksites. (D&O 1-3.) As the Board acknowledged in its decision, this Court has previously rejected the Board’s legal rule in two opinions, *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry, Local 32 v. NLRB*, 912 F.2d 1108 (9th Cir. 1990) (“*Plumbers Local 32*”), and *NLRB v. Ironworkers Local 433*, 850 F.2d 551 (9th Cir. 1988). (D&O 2-3.)

2. On February 5, 2019, International Brotherhood of Electrical Workers, Local Union 357 (“the Union”), the respondent before the Board, filed a petition for review of the Board’s Order, and the Board subsequently filed a cross-application for enforcement. On April 4, the Court granted an unopposed motion to consolidate the Union’s petition and the Board’s cross-application. On July 9, the Court granted a motion to intervene filed by Desert Sun Enterprises Limited d/b/a Conventional Technical Services (“Desert Sun”), the charging party below.

3. On April 24, 2019, the Board filed a petition requesting that the Court grant initial hearing *en banc* to reconsider the panel opinions in *Plumbers Local 32* and *Ironworkers Local 433*. The Union filed its opening brief on May 30, 2019.

4. On December 13, 2019, the Court denied the Board's petition for initial hearing *en banc* and directed the Board to file its answering brief by January 13, 2020.

5. In light of the Court's denial of the Board's motion for initial hearing *en banc*, the Board concedes that enforcement of the Board's Order is foreclosed by binding circuit precedent. Accordingly, the Board no longer contests the Union's petition for review, no longer seeks enforcement of its Order, and consents to the entry of judgment against the Board.

WHEREFORE, the Board consents to the Court entering judgment against the Board by granting the Union's petition for review and denying the Board's cross-application for enforcement.

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 6th day of January, 2020

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 403 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 January 6, 2020, 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
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570
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