

FILED: May 26, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 20-1398  
(09-CA-231106)

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NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

JUSTICE ENERGY, INC.

Respondent

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J U D G M E N T

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The Board's proposed judgment and order are attached hereto and are adopted as the judgment of this court enforcing an order of the National Labor Relations Board.

The court's mandate shall issue forthwith.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

|                                |   |                 |
|--------------------------------|---|-----------------|
| NATIONAL LABOR RELATIONS BOARD | : |                 |
|                                | : | No.             |
| Petitioner                     | : |                 |
| v.                             | : | Board Case No.: |
|                                | : | 09-CA-231106    |
| JUSTICE ENERGY, INC.           | : |                 |
|                                | : |                 |
| Respondent                     | : |                 |

JUDGMENT ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Justice Energy, Inc., its officers, agents, successors, and assigns, enforcing its order dated February 3, 2020, in Case No. 09-CA-231106, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Justice Energy, Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

## NATIONAL LABOR RELATIONS BOARD

v.

JUSTICE ENERGY, INC.

**ORDER**

Justice Energy, Inc., McDowell County, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Modifying the 2016 memorandum of understanding without the Union's consent by substantially and materially changing the bargaining unit's health insurance benefit plan.
  - (b) Modifying the NBCWA of 2016 without the Union's consent by paying bargaining unit employees by wire transfer instead of by cash or check (causing some bargaining unit employees to incur wire transfer fees).
  - (c) Modifying the NBCWA of 2016 without the Union's consent by failing to issue bargaining unit employees a pay statement (also referred to as a plain statement) with their pay.
  - (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) Abide by the terms of the 2016 memorandum of understanding by providing bargaining unit employees a healthcare and prescription drug coverage plan that is consistent with the terms of the 2016 memorandum of understanding unless the Union consents to modifications.
  - (b) Make bargaining unit employees whole, in the manner set forth in the remedy section of this decision, for any loss of earnings and other benefits that they suffered, as well as for any additional health care expenses that they paid, as a result of Respondent's unlawful failure to provide a healthcare and prescription drug coverage plan consistent with the terms of the 2016 memorandum of understanding.

- (c) Abide by the terms of the NBCWA of 2016 by paying bargaining unit employees by cash or check, and by issuing bargaining unit employees a pay statement (also referred to as a plain statement) with their pay unless the Union consents to modifications.
- (d) Make bargaining unit employees whole, in the manner set forth in the remedy section of this decision, for any loss of earnings and other benefits that they suffered, as well as for any financial institution fees that they paid, as a result of Respondent's unlawful decision to pay them by wire transfer instead of by cash or check as required by the terms of the NBCWA of 2016.
- (e) Compensate bargaining unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 9, 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 year(s).
- (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 facility in McDowell County, West Virginia, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent's authorized representative, shall be posted by 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, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facilities involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former

employees employed by Respondent at any time since February 20, 2018.

- (h) 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 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 modify the 2016 memorandum of understanding without the Union's consent by substantially and materially changing the bargaining unit's health insurance benefit plan.

WE WILL NOT modify the NBCWA of 2016 without the Union's consent by paying bargaining unit employees by wire transfer instead of by cash or check (causing some bargaining unit employees to incur wire transfer fees).

WE WILL NOT modify the NBCWA of 2016 without the Union's consent by failing to issue bargaining unit employees a pay statement (also referred to as a plain statement) with their pay.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL abide by the terms of the 2016 memorandum of understanding by providing bargaining unit employees a healthcare and prescription drug coverage plan consistent with the terms of the 2016 memorandum of understanding unless the Union consents to modifications.

WE WILL make bargaining unit employees whole for any loss of earnings and other benefits that they suffered, as well as for any additional health care expenses that they paid, as a result of our unlawful failure to provide a healthcare and prescription drug coverage plan consistent with the terms of the 2016 memorandum of understanding.

WE WILL abide by the terms of the NBCWA of 2016 by paying bargaining unit employees by cash or check, and by issuing bargaining unit employees a pay statement (also referred to as a plain statement) with their pay unless the Union consents to modifications.

WE WILL make bargaining unit employees whole for any loss of earnings and other benefits that they suffered, as well as for any financial institution fees that they paid, as a result of our unlawful decision to pay them by wire transfer instead of by cash or check as required by the terms of the NBCWA of 2016.

WE WILL compensate bargaining unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 9, 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 year(s).

JUSTICE ENERGY, INC.

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov)

John Weld Peck Federal Building, 550 Main St., Room 3003, Cincinnati, OH 45202-3271  
(513) 684-3686  
Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at [www.nlrb.gov/case/09-CA-231106](http://www.nlrb.gov/case/09-CA-231106) 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 Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (513) 684-3733.

FILED: May 26, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUITNo. 20-1398, NLRB v. Justice Energy, Inc.  
09-CA-231106

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NOTICE OF JUDGMENT

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Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

**PETITION FOR WRIT OF CERTIORARI:** To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons.

([www.supremecourt.gov](http://www.supremecourt.gov))

**VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED**

**COUNSEL:** Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov), or from the clerk's office.

**BILL OF COSTS:** A party to whom costs are allowable, who desires taxation of costs, shall file a [Bill of Costs](#) within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

**PETITION FOR REHEARING AND PETITION FOR REHEARING EN**

**BANC:** A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

**MANDATE:** In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).