

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

NATIONAL LABOR RELATIONS BOARD)	
Petitioner/Cross-Respondent)	Nos. 19-2062
)	19-2159
and)	
)	Board Case No.
MICHQUA LEVI)	09-CA-224092
Intervenor)	
)	
v.)	
)	
MARBURN ACADEMY, INC.)	
Respondent/Cross-Petitioner)	
)	

**UNOPPOSED JOINT MOTION TO DISMISS WITH PREJUDICE
MARBURN’S CROSS-PETITION FOR REVIEW AND TO
DISMISS WITHOUT PREJUDICE THE BOARD’S APPLICATION
FOR ENFORCEMENT**

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

Pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure, the National Labor Relations Board (“the Board”), by its Assistant General Counsel, and Marburn Academy, Inc. (“Marburn”) (collectively, “the Parties”) respectfully move to dismiss with prejudice Marburn’s cross-petition for review, and to dismiss without prejudice the Board’s application for enforcement. Intervenor Michqua Levi concurs with the Parties’ motion. In support of their unopposed joint motion, the Parties show as follows:

1. On August 1, 2019, the Board issued a Decision and Order against Marburn, reported at 368 NLRB No. 38. The Board filed an application for enforcement of its Order on September 17, 2019, which was docketed as 6th Cir. Case No. 19-2062. Marburn filed a cross-petition for review of the Board's Order on October 8, 2019, which was docketed as 6th Cir. 19-2159. The charging party below, Michqua Levi, intervened in support of the Board.

2. The Parties completed briefing and the Court initially scheduled oral argument for June 11, 2020. However, based on productive settlement negotiations between Marburn and Ms. Levi, the Parties moved on May 26 to stay the oral argument and hold the case in abeyance pending settlement. The Court granted the Parties' motion and has held the case in abeyance since May 28, with the Parties filing status reports every 30 days.

3. Marburn and Ms. Levi have now executed a final written settlement agreement resolving all outstanding issues arising from the Board's Order in the present case. Marburn has initiated compliance with that agreement and with the underlying Board Order in a manner satisfactory to the Board, thus dispensing with the need for further litigation.

4. Accordingly, the Parties now move to dismiss Marburn's cross-petition for review with prejudice, and to dismiss the Board's application for enforcement without prejudice to the Board's right to file a future application for

enforcement, if necessary, in the event that Marburn does not comply with the Board's Order. *See NLRB v. Mexia Textile Mills*, 339 U.S. 563, 567 (1950) (explaining that 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).

5. Counsel for Ms. Levi, Justin A. Morocco, has indicated that Ms. Levi supports the Parties' joint motion.

6. The Parties agree that each party is to bear its own costs.

7. James R. Saywell, counsel of record for Marburn, has authorized the Board to execute this joint motion on Marburn's behalf.

WHEREFORE, the Parties respectfully request that the Court grant this unopposed joint motion to dismiss with prejudice Marburn's cross-petition for review and to dismiss without prejudice the Board's application for enforcement.

Respectfully submitted,

/s/ David Habenstreit
David Habenstreit
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/s/ James R. Saywell
James R. Saywell
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(Counsel for Marburn)

Dated at Washington, DC
this 14th day of August 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 491 words of proportionally spaced, 14-point type, and that 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 according to that program.

Dated at Washington, DC
this 14th day of August 2020

/s/ David Habenstreit
David Habenstreit
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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit 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.

Dated at Washington, DC
this 14th day of August 2020

/s/ David Habenstreit
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