FINAL BRIEF

ORAL ARGUMENT NOT YET SCHEDULED

No. 21-1209

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

INTERNATIONAL BROTHERHOOD OF BOILERMakers, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL 627, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

and

HAWAIIAN DREDGING CONSTRUCTION COMPANY, INC. Intervenor.

ON PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

FINAL BRIEF OF INTERVENOR FOR RESPONDENT HAWAIIAN DREDGING CONSTRUCTION COMPANY, INC.

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Certificate as to Parties, Rulings Under Review, and Related Cases

1. **Parties, Intervenors, and Amici.** All parties, intervenors, and amici who appeared in the administrative proceedings before the National Labor Relations Board and before this Court are:

   a. **Petitioner International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 627.** The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 627 was the Charging Party before the National Labor Relations Board.

   b. **Respondent National Labor Relations Board.** Its Acting General Counsel was a party before the National Labor Relations Board.

   c. **Intervenor for Respondent Hawaiian Dredging Construction Company, Inc.** Hawaiian Dredging Construction Company, Inc. is engaged in the construction business in Hawaii, including the construction of commercial buildings, condominiums, power and industrial systems, water infrastructures, and roads and bridges. Hawaiian Dredging Construction Company, Inc. is a Hawaii corporation, wholly owned by Kajima International Inc., a Delaware corporation. Kajima International Inc. is a wholly-owned subsidiary of Kajima U.S.A. Inc., which is also a Delaware corporation. Kajima U.S.A. Inc. is a wholly-owned subsidiary of Kajima Corporation, a publicly-held Japan
corporation. No other publicly-held company owns 10% or more of the equity of Hawaiian Dredging Construction Company, Inc.

2. **Rulings Under Review.** Petitioner International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 627 seeks review of the Board’s Supplemental Decision and Order which was entered on June 17, 2019 and reported at 368 N.L.R.B. No. 7.

3. **Related Cases.** All related cases are listed in the Appellee’s Brief.
# TABLE OF CONTENTS

| I.       | INTRODUCTION ......................................................................................... | 2 |
| II.      | JURISDICTIONAL STATEMENT ....................................................................... | 2 |
| III.     | STATEMENT OF THE ISSUES ....................................................................... | 2 |
| IV.      | RELEVANT STATUTES ................................................................................ | 2 |
| V.       | SUMMARY OF ARGUMENT ........................................................................... | 3 |
| VI.      | ARGUMENT ............................................................................................... | 3 |
| VII.     | SUPPLEMENTAL STATEMENT OF THE CASE ................................................ | 3 |
| A.       | Hawaii Dredging’s Termination Letter Arose from the Board’s Determination that the Parties Did Not Have an Agreement ................................................................. | 3 |
| B.       | Hawaiian Dredging Actively Supports the Thirteen Discharged Welders ................................................................. | 5 |
| VIII.    | CONCLUSION ............................................................................................. | 6 |
# TABLE OF AUTHORITIES

**STATUTES**

National Labor Relations Act ........................................................................................................2
GLOSSARY

Board (or NLRB)  National Labor Relations Board
Boilermakers  International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 627
NLRB (or the Board)  National Labor Relations Board
Hawaiian Dredging  Hawaiian Dredging Construction Company, Inc.
Pipefitters  Local Union 675 of the United Association of Journeymen and Apprentice Plumbers & Pipefitters of the U.S. & Canada
I. INTRODUCTION

The Brief for the Respondent effectively captures the jurisdictional, procedural, and legal posture of this case. Intervenor Hawaiian Dredging submits this brief to supplement the factual record with relevant details that further establish that the Court should deny the Boilermakers’ petition for review. Simply put, the full factual record thoroughly demonstrates that the Board reasonably determined that Hawaiian Dredging lawfully discharged thirteen welders following the expiration of its Section 8(f) collective bargaining agreement (“CBA”) with the Boilermakers. As such, the Board’s decision should stand.

II. JURISDICTIONAL STATEMENT

Hawaiian Dredging agrees with the statement of jurisdiction in the Brief for Appellee. Appellee’s Brief at 1-2.

III. STATEMENT OF THE ISSUES

As stated in the Appellee’s Brief, the issue is whether the Board reasonably determined that Hawaiian Dredging’s discharge of thirteen welders did not violate the National Labor Relations Act. Appellee’s Brief at 2.

IV. RELEVANT STATUTES

All applicable statutes are contained in the Brief for the Respondent. See Addendum to Appellee’s Brief.
V. **SUMMARY OF ARGUMENT**

Hawaiian Dredging agrees with the summary of the argument contained in Appellee’s Brief. Appellee’s Brief at 10-12.

VI. **ARGUMENT**

Hawaiian Dredging agrees with the arguments contained in Appellee’s Brief. Appellee’s Brief at 13-39.

VII. **SUPPLEMENTAL STATEMENT OF THE CASE**

This brief supplements the Appellee’s statement of the case in two critical respects. First, this brief provides excerpts of the language contained in the NLRB’s dismissal of Hawaiian Dredging’s ULP seeking to enforce the recently-negotiated CBA. Second, this brief offers additional details regarding Hawaiian Dredging’s exceptional support for the thirteen welders after the expiration of its Section 8(f) CBA with the Boilermakers. This additional context further establishes that the Board reasonably determined that Hawaiian Dredging lawfully discharged the thirteen welders.

A. **Hawaii Dredging’s Termination Letter Arose from the Board’s Determination that the Parties Did Not Have an Agreement**

Hawaiian Dredging reached agreement with the Boilermakers on a CBA in October 2010. Tr. 198 (JA-202);\(^1\) see also RX 6 & 7 (JA-406, JA-408).

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\(^1\) Record citations in this brief are to the transcript (“Tr.”), Employer’s exhibits cont’d...
The agreement was ratified by the bargaining unit and Hawaiian Dredging prepared a revised CBA which included the negotiated agreements. *Id.* When the Boilermakers refused to sign the CBA, Hawaiian Dredging sought to enforce it by filing an unfair labor practice charge with the NLRB. Tr. 207 (JA-210); RX 11, 12 (JA-436, 437).

On February 14, 2011, the Board dismissed Hawaiian Dredging’s ULP Charge, concluding the parties did not have an agreement. The Board explained:

[I]t cannot be said that the [Boilermakers] acted in good faith and did not suspect the [Hawaiian Dredging] misunderstanding when the parties reached a tentative agreement on a proposal drafted by the [Boilermakers] that reflected a total package amount five cents higher than the current total package amount. Under these facts I have concluded that there was a unilateral mistake on the part of the [Boilermakers] regarding the terms of the parties’ agreement. . . . I therefore conclude that the parties did not reach a complete agreement on terms and conditions of employment.”

RX 19 (JA-447) at HDCC 000466.

This dismissal is significant because it demonstrates that Hawaiian Dredging believed it had an enforceable CBA with the Boilermakers from the...
cessation of negotiations in late October 2010 through February 17, 2011. Once the NLRB determined that there was no collective bargaining agreement between Hawaiian Dredging and the Boilermakers, Hawaiian Dredging promptly terminated its bargaining relationship with the Boilermakers, terminated its employees who were working under the Boilermakers CBA, and ceased performing all welding work. See Tr. 105-06, 218-20, 228-29 (JA-166-67, 221-23, 231-32); GCX 6-19 (JA-362-75). These were all consistent with Hawaiian Dredging’s 20-year practice of performing all craft work under a CBA.

B. Hawaiian Dredging Actively Supports the Thirteen Discharged Welders

Immediately after Hawaiian Dredging became a signatory to the Local Union 675 of the United Association of Journeymen and Apprentice Plumbers & Pipefitters of the U.S. & Canada’s (the “Pipefitters”) collective bargaining agreement, Hawaiian Dredging’s Superintendent Forrest Ramey personally contacted the Boilermaker welders and informed them of the news and expressed that the welders had an opportunity to continuing working for Hawaiian Dredging. Tr. 225-26, 274-76 (JA-228-29, 251-53). Superintendent Ramey explained that the Pipefitters required the welders to pass the Pipefitters’ welding test and advised the welders that they could use Hawaiian Dredging’s facilities, tools, equipment, and materials to practice for the test (e.g., warehouse workshop, welding machines, welding rods, gases, and other consumables). Tr. 175-76, 226, 231, 260-61, 277-78

VIII. CONCLUSION

For the reasons set forth herein an in Appellee’s Brief, Hawaiian Dredging respectfully requests that this Court deny the Boilermakers’ Petition for Review.


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NATIONAL LABOR RELATIONS BOARD,

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and

HAWAIIAN DREDGING CONSTRUCTION COMPANY, INC,

    Intervenor.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), Hawaiian Dredging certifies that this brief contains 925 words, double-spaced, using 14-point type and Microsoft Word 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2022, I filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia by using the Court’s CM/ECF system. I certify that service will be accomplished on the following parties through the Notice of Electronic Filing by the Court’s CM/ECF system:
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