

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 16-3076, 16-3570

Caption [use short title]

Motion for: To vacate the Court's judgment entered on March 15, 2018

Novelis Corporation

v.

National Labor Relations Board

Set forth below precise, complete statement of relief sought:
The Board upon direction of the clerk's office hereby
submits this motion to vacate the Court's March 15, 2018
judgment and attaches, pursuant to FRAP 19, its
proposed judgment to conform with the Court's
March 15, 2018 opinion.

MOVING PARTY: National Labor Relations Board

OPPOSING PARTY: Novelis Corporation

- Plaintiff Defendant
Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Linda Dreeben

OPPOSING ATTORNEY: Kurt Powell

[name of attorney, with firm, address, phone number and e-mail]
National Labor Relations Board
1015 Half Street, S.E., Washington, DC 20570
(202) 273-2960; appellatecourt@nlrb.gov

Hunton & Williams LLP, Bank of America Plaza, Suite 4100,
600 Peachtree St., NE, Atlanta, GA 30308
(404) 888-4000; kpowell@hunton.com

Court- Judge/ Agency appealed from:

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
Yes No (explain): This is a procedural motion requested
by clerk's office to be attached to the Board's proposed judgment

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below? Yes No
Has this relief been previously sought in this court? Yes No
Requested return date and explanation of emergency:

Opposing counsel's position on motion:
Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)
Has argument date of appeal been set? Yes No If yes, enter date: August 28, 2017

Signature of Moving Attorney:

Linda Dreeben Date: 3/27/2018 Service by: CM/ECF Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NOVELIS CORPORATION,)
)
 Petitioner/Cross-Respondent)
)
 and)
)
 JOHN TESORIERO, MICHAEL MALONE,)
 RICHARD FARRANDS, ANDREW DUSCHEN,)
)
 Intervenors)
)
 v.)
)
 NATIONAL LABOR RELATIONS BOARD,)
)
 Respondent/Cross-Petitioner)
)
 and)
)
 UNITED STEEL, PAPER AND FORESTRY, RUBBER,)
 MANUFACTURING, ENERGY, ALLIED)
 INDUSTRIAL & SERVICE WORKERS)
 INTERNATIONAL UNION, AFL-CIO, CLC,)
)
 Intervenor)
)

Nos. 16-3076,
16-3570

MOTION OF THE NATIONAL LABOR RELATIONS BOARD
TO VACATE THE COURT’S JUDGMENT OF MARCH 15, 2018

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

The National Labor Relations Board, by its Deputy Associate General Counsel,
respectfully moves this Court to vacate its judgment of March 15, 2018, and issue the

attached proposed judgment submitted by the Board with this motion, and shows as follows:

1. On March 15, 2018, this Court issued its opinion in the above-captioned case granting enforcement of the Board's order in part and remanding in part for further consideration. The Court issued judgment the same day as its opinion.

2. Rule 19 of the Federal Rules of Appellate Procedure provides that, when "the court files an opinion directing entry of judgment enforcing an agency's order in part, the agency *must* within 14 days file with the clerk . . . a proposed judgment conforming to the opinion." (emphasis added.) Pursuant to that rule, it is the Board's practice to submit a proposed order to the court of appeals when an order it has issued is enforced only in part.

3. Attached is a proposed judgment with attached order and appendix which the Board believes to be in conformity with the Court's opinion.

For the foregoing reasons, the Board respectfully requests that the Court vacate its judgment and issue the Board's proposed judgment.

Respectfully submitted,

/s/ Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

National Labor Relations Board

1015 Half Street, S.E.

Washington, DC 20570

(202) 273-2960

Dated at Washington, DC
this 27th day of March, 2018

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

NOVELIS CORPORATION,)

Petitioner/Cross-Respondent)

and)

JOHN TESORIERO, MICHAEL MALONE,)

RICHARD FARRANDS, ANDREW DUSCHEN,)

Intervenors)

v.)

Nos. 16-3076,
16-3570

NATIONAL LABOR RELATIONS BOARD,)

Respondent/Cross-Petitioner)

and)

UNITED STEEL, PAPER AND FORESTRY, RUBBER,)

MANUFACTURING, ENERGY, ALLIED)

INDUSTRIAL & SERVICE WORKERS)

INTERNATIONAL UNION, AFL-CIO, CLC,)

Intervenor)

**JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

Before: PARKER, LYNCH, and CARNEY, Circuit Judges.

THIS CAUSE came to be heard upon a petition filed by Novelis Corporation for review of an Order of the National Labor Relations Board issued August 26, 2016, in Board Case Nos. 03-CA-121293, 03-CA-121579, 03-CA-122766, 03-CA-123346, 03-CA-123526, 03-CA-127024, 03-CA-126738, and 03-RC-120447, reported at 364 NLRB No. 101 (2016), and upon a cross-petition filed by the

National Labor Relations Board for enforcement of said Order. The Court heard argument of the parties and has considered the briefs and transcript of record filed in this cause. On March 15, 2018, the Court, being fully advised in the premises, handed down its opinion granting in part the petition of Novelis Corporation, granting the Board's cross-petition for enforcement in part and remanding in part to the Board for further consideration. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Second Circuit that Novelis Corporation, its officers, agents, successors, and assigns, shall abide by said order as modified by the Court. (See attached Order and Appendix).

FOR THE COURT:

NATIONAL LABOR RELATIONS BOARD

v.

NOVELIS CORPORATION

ORDER

Novelis Corporation, Oswego, New York, its officers, agents, successors, and assigns shall

1. Cease and desist from

- (a) Threatening employees with job loss if they select the Union as their bargaining representative.
- (b) Threatening employees with a reduction in wages if they select the Union as their bargaining representative.
- (c) Threatening employees with more onerous working conditions if they select the Union as their bargaining representative.
- (d) Threatening employees that the Respondent would lose business if they select the Union as their bargaining representative.
- (e) Threatening employees by telling them that they did not have to work for the Respondent if they are unhappy with their terms and conditions of employment.
- (f) Threatening employees with layoffs if they select the Union as their bargaining representative.
- (g) Misrepresenting that the Union is seeking to have the Respondent rescind employees' pay and/or benefits and blaming the Union by telling employees that they would have to pay back wages retroactively as a result of charges filed by the Union.
- (h) Interrogating employees about their union membership, activities, and sympathies.
- (i) Prohibiting employees from wearing union insignia on their uniforms while permitting employees to wear antiunion and other insignia.
- (j) Selectively and disparately enforcing Respondent's posting and distribution rules by prohibiting union postings and distributions while permitting nonunion and antiunion postings and distributions.

- (k) Removing union literature from break rooms.
 - (l) Granting wage increases or other benefits in order to discourage employees from selecting union representation.
 - (m) Soliciting grievances and promising to remedy them in order to discourage employees from selecting union representation.
 - (n) Demoting or otherwise discriminating against employees for supporting the Union or any other labor organization or for engaging in protected concerted activities.
 - (o) 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 purposes of the Act.
- (a) On request by the Union, rescind the changes to Sunday premium pay and unscheduled overtime for its unit employees that were implemented on January 9, 2014.
 - (b) Within 14 days from the date of this Order, offer Everett Abare full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
 - (c) Make Everett Abare whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the amended remedy section of this decision.
 - (d) Compensate Everett Abare for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.
 - (e) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful demotion of Everett Abare, and within 3 days thereafter notify him in writing that this has been done and that the demotion will not be used against him in any way.
 - (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 Oswego, New York, copies of the attached Notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by Respondent's authorized representative, shall be posted by the 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, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 9, 2014.
- (h) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the 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 threaten you with job loss if you select the Union as your bargaining representative.

WE WILL NOT threaten you with a reduction in wages if you select the Union as your bargaining representative.

WE WILL NOT threaten you with more onerous working conditions if you select the Union as your bargaining representative.

WE WILL NOT threaten you with the loss of business if you select the Union as your bargaining representative.

WE WILL NOT threaten you by telling you that you can quit if you are unhappy with your terms and conditions of employment.

WE WILL NOT threaten you with layoffs if you select the Union as your bargaining representative.

WE WILL NOT misrepresent that the Union is seeking to have your pay and/or benefits rescinded and blame the Union by telling you that you will have to pay back wages retroactively as a result of charges filed by the Union.

WE WILL NOT interrogate you about your union membership, activities and sympathies.

WE WILL NOT prohibit you from wearing union insignia on your uniforms while permitting you to wear antiunion and other insignia.

WE WILL NOT selectively and disparately enforce our posting and distribution rules by prohibiting union postings and distributions while permitting nonunion and anti-union postings and distributions.

WE WILL NOT remove union literature from mixed use areas.

WE WILL NOT grant wage increases or other benefits in order to discourage you from selecting union representation.

WE WILL NOT solicit grievances from you and promise to remedy them in order to discourage you from selecting union representation.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the Union or any other labor organization or for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL on request, by the Union, rescind the changes to Sunday premium pay and unscheduled overtime for our unit employees that were implemented on January 9, 2014.

WE WILL rescind our unlawful solicitation/distribution rules.

WE WILL, within 14 days from the date of the Board's Order, offer Everett Abare full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL, make Everett Abare whole for any loss of earnings and other benefits suffered as a result of his unlawful demotion, plus interest.

WE WILL compensate Everett Abare for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful demotion of Everett Abare, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the demotion will not be used against him in any way.

NOVELIS CORP.

The Board's decision can be found at www.nlr.gov/case/03-CA-121293 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.



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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| Petitioner/Cross-Respondent |) | |
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| and |) | |
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| v. |) | Nos. 16-3076, |
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| INTERNATIONAL UNION, AFL-CIO, CLC, |) | |
| |) | |
| Intervenor |) | |
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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2018, I electronically filed the foregoing document with the Court for the United States Court of Appeals for the First Circuit using the appellate CM/ECF system. I further certify that the

foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Linda Dreeben
Linda Dreeben
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 27th day of March 2018

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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| |) | |
| Intervenor |) | |
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COMPLIANCE WITH VIRUS SCAN REQUIREMENTS

Pursuant to Interim Local Rule 25, the Board certifies that the electronic copy of this motion and attachment submitted in Portable Document Format (PDF)

has been scanned for viruses using the Symantec Antivirus, program version 12.1.6 (12.1 RU6 MP5) build 7004, and no virus has been detected.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, S.E.
Washington, D.C. 20570
(202) 273-2960

Dated at Washington, DC
this 27th day of March 2018