

MOTION INFORMATION STATEMENT

Docket Number(s): 18-1934, 18-2202 Caption [use short title] _____

Motion for: UNOPPOSED JOINT MOTION TO DISMISS NATIONAL LABOR RELATIONS BOARD'S NLRB v. Gross Electric, Inc.

APPLICATION FOR ENFORCEMENT AND GROSS ELECTRIC, INC.'S CROSS-PETITION FOR REVIEW

Set forth below precise, complete statement of relief sought:
Gross Electric and the Board respectfully request that their joint motion be granted
and that the Court enter an order dismissing the application for enforcement
without prejudice and the cross-petition for review with prejudice.

MOVING PARTY: NLRB
 Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: Gross Electric, Inc.

MOVING ATTORNEY: David Habenstreit
[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: Mark Couch

David Habenstreit; NLRB
1015 Half St. SE, Washington, D.C. 20570
AppellateCourt@NLRB.gov; 202-273-2960

Mark Couch; Couch Dale Marshall P.C.
1187 Troy Schenectady Rd., Latham, NY 12110
mcouch@couchdalemarshall.com; 518-220-9577

Court-Judge/Agency appealed from: NLRB

Please check appropriate boxes:
Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): _____
Opposing counsel's position on motion:
 Unopposed Opposed Don't Know
Does opposing counsel intend to file a response:
 Yes No Don't Know

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

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: _____

Signature of Moving Attorney: s/David Habenstreit Date: 09/06/2019 Service by: CM/ECF Other [Attach proof of service]

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

NATIONAL LABOR RELATIONS BOARD)	
)	
Petitioner/Cross-Respondent)	
v.	)	Case Nos. 18-1934
	)	18-2202
	)	Board Case No.
GROSS ELECTRIC, INC.	)	03-CA-187577
)	
Respondent/Cross-Petitioner)	

**UNOPPOSED JOINT MOTION TO DISMISS
NATIONAL LABOR RELATIONS BOARD’S
APPLICATION FOR ENFORCEMENT
AND GROSS ELECTRIC, INC.’S
CROSS-PETITION FOR REVIEW**

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

Pursuant to Federal Rule of Appellate Procedure 42(b), the National Labor Relations Board (“the Board”), by its Acting Deputy Associate General Counsel, and Gross Electric, Inc. (“Gross Electric”), by its counsel, respectfully jointly move to dismiss the Board’s application for enforcement without prejudice and Gross Electric’s cross-petition for review in the above-captioned case with prejudice, and show:

1. This case is before the Court on the Board's application to enforce, and Gross Electric's cross-petition to review, a Board Order issued against Gross Electric on May 9, 2018. *See* 366 NLRB No. 81 (2018).

2. The parties hereby notify the Court that pursuant to a settlement, Gross Electric has complied with the Board's Order in a manner satisfactory to the Board, thus dispensing with the need for further litigation at this time.

3. The parties therefore agree that the Board's application for enforcement should be dismissed without prejudice to the Board's right to file a future application for enforcement of its Order, if necessary. *See NLRB v. Mexia Textile Mills*, 339 U.S. 563, 567 (1950) (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). Accordingly, the parties jointly request that the Court dismiss the Board's application for enforcement in case number 18-1934 without prejudice.

4. The parties further agree that Gross Electric's cross-petition for review should be dismissed with prejudice. Accordingly, the parties jointly request that the Court dismiss the petition for review in case number 18-2202.

5. Each party is to bear its own fees and costs.

6. Counsel for Gross Electric has consented to the Board providing his signature below.

WHEREFORE, Gross Electric and the Board respectfully request that their joint motion be granted and that the Court enter an order dismissing the application for enforcement without prejudice and the cross-petition for review with prejudice.

Respectfully submitted,

s/Mark Couch
For Gross Electric
Mark Couch
Couch Dale Marshall P.C.
1187 Troy Schenectady Rd.
Latham, NY 12110
(518) 220-9577

s/David Habenstreit
For the Board
David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570
(202) 273-2960

Dated at Latham, NY
this 6th day of September, 2019

Dated at Washington, D.C.
this 6th day of September, 2019

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

NATIONAL LABOR RELATIONS BOARD)	
)	
Petitioner/Cross-Respondent)	
	)	Case Nos. 18-1934
v.	)	18-2202
	)	Board Case No.
GROSS ELECTRIC, INC.	)	03-CA-187577
)	
Respondent/Cross-Petitioner)	

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 483 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2016.

s/David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, D.C. 20570

Dated at Washington, D.C.
this 6th day of September, 2019

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

NATIONAL LABOR RELATIONS BOARD)	
)	
Petitioner/Cross-Respondent)	
	)	Case Nos. 18-1934
v.	)	18-2202
	)	Board Case No.
GROSS ELECTRIC, INC.	)	03-CA-187577
)	
Respondent/Cross-Petitioner)	

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served on all the parties or their counsel of record through the CM/ECF system.

/s/David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, D.C. 20570

Dated at Washington, D.C.
this 6th day of September, 2019