

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

NOVELIS CORPORATION,)		
)		
AND	)	CASES:	03-CA-121293
	)		03-CA-121579
UNITED STEEL, PAPER AND	)		03-CA-122766
FORESTRY, RUBBER	)		03-CA-123346
MANUFACTURING, ENERGY, ALLIED	)		03-CA-123526
INDUSTRIAL AND SERVICE	)		03-CA-127024
WORKERS, INTERNATIONAL UNION,	)		03-CA-126738
AFL-CIO.)		

NOVELIS CORPORATION,)		
)		
AND	)	CASE:	03-RC-120447
)		
UNITED STEEL, PAPER AND)		
FORESTRY, RUBBER)		
MANUFACTURING, ENERGY, ALLIED)		
INDUSTRIAL AND SERVICE)		
WORKERS, INTERNATIONAL UNION,)		
AFL-CIO.)		

**RESPONDENT NOVELIS CORPORATION’S MOTION SUPPLEMENTING ITS
REQUEST TO REOPEN THE RECORD FOR LIMITED PURPOSE OF PRESENTING
EVIDENCE OF CHANGED CIRCUMSTANCES**

Respondent Novelis Corporation (“Novelis”) hereby brings this motion, pursuant to Section 102.48(b) of the Rules and Regulations of the National Labor Relations Board, supplementing its request that the Board reopen the record in the above-captioned proceeding for the limited purpose of receiving new evidence of changed circumstances since the date(s) of the alleged unfair labor practices. Said evidence is directly relevant to show that the extreme remedy of a bargaining order is not warranted in this case. This motion is proper and timely under Section 102.48(b) of the Board’s Rules which provides that upon the filing of exceptions, the

Board has authority to “reopen the record and receive further evidence.” *See* NLRB R. & REG. § 102.48(b); *see also* *NLRB v. Amalgamated Clothing and Textile Workers Union*, 662 F.2d 1044, 1045 n.1 (4th Cir. 1981) (recognizing that §102.48(d)(1) applies after the Board decision or order has issued, while § 104.48(b) applies before an order or decision by the Board has issued).¹

Novelis filed its initial motion requesting that the Board reopen the record for the purpose of receiving new evidence of changed circumstances on June 5, 2015. Through the current motion, Novelis calls the Board’s attention to continued and additional changed circumstances warranting reopening of the record.

I. Procedural History

This matter came before the Administrative Law Judge (“ALJ”) for a hearing over the course of 18 days between July 16 and October 21, 2014. The ALJ issued his Decision January 30, 2015 (corrected via Errata issued February 4, 2015) (referred to herein as the “Decision” and cited as “ALJ Dec.”). Based on the Decision (which was riddled with errors), the ALJ determined, *inter alia*, that Novelis committed “hallmark” violations of the National Labor Relations Act (the “Act”) and that a *Gissel* bargaining order was warranted. (ALJ Dec. at 62-69, 72.) Novelis filed its Exceptions to the ALJ’s Decision, and the parties have submitted briefs to the Board’s in support of and in opposition to Novelis’ Exceptions. Novelis filed its Motion to

¹ Section 102.48(b) applies to the reopening of the record after an ALJ’s decision but before the Board renders its decision, and it requires no special showing. *See* NLRB R. & REG. § 102.48(b); *see also* *Amalgamated Clothing*, 662 F.2d at 1045 n.1. Section 102.48(d)(1) permits the reopening of the record “after the Board decision or order” upon a showing of extraordinary circumstances, why the evidence was not present previously, and why it would require a different result. *See* NLRB R. & REG. § 102.48(d)(1) (emphasis added). This section applies only to reopening the record after the Board decision and thus is not applicable to the instant motion. *Id.* Nevertheless, even if Section 102.48(d)(1) applied, reopening of the record to receive evidence of changed circumstances would also be proper thereunder because it is new evidence not capable of being presented at the hearing on this matter. Additionally, as discussed *infra*, the courts and the Board have recognized that such evidence of changed circumstances must be accepted and considered, and the evidence which Novelis seeks to present compels a different result than that reached by the ALJ (*i.e.*, contrary to the ALJ’s Decision, a *Gissel* bargaining order is not warranted in this case).

Reopen the Record for Limited Purpose of Presenting Evidence of Changed Circumstances on June 5, 2015, requesting that the Board reopen the record to allow evidence of changed circumstances that will show that a fair and impartial election can be conducted and that a *Gissel* bargaining order is unwarranted, even if Novelis committed any unfair labor practices (which it specifically denies). The instant motion apprises the Board as to the continuing and ongoing changed circumstances that have occurred since the date(s) of the alleged unfair labor practices warranting a reopening of the record.

II. Evidence Of Changed Circumstances Must Be Considered

It is well established in the courts that “an employer must be allowed the opportunity to introduce evidence of changed circumstances that would mitigate the need for a bargaining order.” *Charlotte Amphitheater Corp. v. NLRB*, 82 F.3d 1074, 1080 (D.C. Cir. 1996). Numerous courts have repeatedly recognized that events subsequent to the commission of alleged unfair labor practices bear on the propriety of issuing a bargaining order. *See, e.g., Overnite Transp. Co. v. NLRB*, 280 F.3d 417, 437 (4th Cir. 2002) (passage of time and employee turnover are highly relevant factors); *Charlotte Amphitheater Corp.*, 82 F.3d at 1080; *NLRB v. USA Polymer Corp.*, 272 F.3d 289, 294 (5th Cir. 2001) (“The Board must consider evidence of changed circumstances when it evaluates the appropriateness of a *Gissel* bargaining order.”); *HarperCollins San Francisco v. NLRB*, 79 F.3d 1324, 1332-33 (2d Cir. 1996) (bargaining order not warranted in light of lapse of time, employee turnover rate, and employer’s cessation from further antiunion conduct); *J.L.M., Inc. v. NLRB*, 31 F.3d 79, 84-85 (2d Cir. 1994) (bargaining order not warranted in light of employee and management turnover and lapse of time); *DTR Indus., Inc. v. NLRB*, 39 F.3d 106, 114 (6th Cir. 1994) (changed circumstances can be “determinative” in evaluating the propriety of a bargaining order); *NLRB v. Cell Agr. Mfg. Co.*, 41 F.3d 389, 398 (8th Cir. 1994) (“The Board must consider any change of circumstances,

including the passage of time, employee turnover, and voluntary statements of cooperation by company officials, when deciding whether to issue a bargaining order.”); *NLRB v. LaVerdiere’s Enters.*, 933 F.2d 1045, 1055 (1st Cir. 1991) (refusing to enforce bargaining order due to passage of time and employee turnover); *Montgomery Ward & Co., Inc. v. NLRB*, 904 F.2d 1156, 1160 (7th Cir. 1990) (remanding case to the Board for a detailed consideration of the passage of time and change of circumstances in bargaining order determination); *Piggly Wiggly v. NLRB*, 705 F.2d 1537, 1543 (11th Cir. 1983) (passage of time and employee turnover play a role in the determination of a bargaining order, “particularly if the employees have reason to no longer fear company reprisals and harassment if they vote for the union”). As explained by the Second Circuit, “(a) mandatory part of the required analysis relates to events occurring after the unfair labor practices were committed but which are relevant to the question of whether a free and fair election is possible. Even in the case of serious and coercive unfair labor practices, mitigating circumstances subsequent to the unlawful acts, such as employee turnover or new management, may obviate the need for a bargaining order.” *NLRB v. Heads and Threads Co.*, 724 F.2d 282, 289 (2d Cir. 1983) (citation omitted) (denying enforcement of bargaining order due to Board’s failure to consider circumstances subsequent to the unfair labor practices).

For example, “where a significant number of employees who witnessed the Company’s ULPs have moved on, the chances for a fair election may vastly increase. Moreover . . . absent other indications that the chances of holding a fair rerun election would be slight, the issuance of a bargaining order in the face of significant employee turnover risks unjustly binding new employees to the choices made by former ones[.]” *J.L.M., Inc. v. NLRB*, 31 F.3d 79, 84 (2d Cir. 1994) (denying enforcement of bargaining order due to Board’s inadequate cursory consideration of change of circumstances evidence); *see also Charlotte Amphitheater Corp.*, 82 F.3d at 1078

(“Circumstances . . . may change during the interval between the occurrence of the employer’s unfair labor practices and the Board’s disposition of a case. There is, therefore, the obvious danger that a bargaining order that is intended to vindicate the rights of past employees will infringe upon the rights of the current ones to decide whether they wish to be represented by a union.”).

The courts require that the Board also consider the passage of time when evaluating the extraordinary remedy of a *Gissel* bargaining order. *See, e.g., Cogburn Health Center, Inc. v. NLRB*, 437 F.3d 1266 (D.C. Cir. 2006); *HarperCollins*, 79 F.3d at 1332-33; *J.L.M., Inc. v. NLRB*, 31 F.3d at 85. The passage of time is relevant because “a bargaining order must be appropriate *when issued*, not at some earlier date.” *J.L.M.* at 85 (emphasis in original). The passage of time “sheds doubt on ...[a] finding that ... employees continue to feel the effects of the ULPs.” *Id.* Further, the absence of unfair labor practices between the time of the original alleged unfair labor practices and the issuance of a bargaining order is also relevant to the propriety of a bargaining order. *See HarperCollins* at 1333 (holding that the Board erred in failing to consider that no unfair labor practices were committed between the time of a purportedly unlawful speech and the Board’s issuance of the bargaining order).

The Board itself has also recognized the propriety of considering changed circumstances. In *Audubon Regional Medical Center*, 331 NLRB 374, 377-78 (2000), in light of changed circumstances such as management turnover and passage of time, the Board found that a *Gissel* bargaining order was inappropriate. The Board specifically recognized Circuit Court law requiring the consideration of changed circumstances and found that given the change of circumstances in that particular case, a bargaining order would likely be unenforceable in the courts. *Id.* at 378 (*citing, inter alia, Charlotte Amphitheater Corp. v. NLRB*, 82 F.3d 1074, 1078

(D.C. Cir. 1996)). Likewise, in *Research Federal Credit Union*, 327 NLRB 1051, 1052 (1999), the Board found that a *Gissel* bargaining order was inappropriate in light of subsequent employee and managerial turnover and an undue delay between the unfair labor practices and the bargaining order determination. Again, the Board recognized that in light of these circumstances and Circuit Court law, a bargaining order likely would be unenforceable. *Id.*; see also *Camvac Intern., Inc.*, 302 NLRB 652, 653 (1991) (upon remand from the Sixth Circuit with direction to consider changed circumstances, the Board determined that a bargaining order was not warranted due to employee and managerial turnover and passage of time). Given the Board's recognition that a bargaining order may not be enforceable absent consideration of changed circumstances and the clear direction from the overwhelming majority of Circuit Courts to consider changed circumstances, Novelis' evidence of changed circumstances should be accepted for consideration in this proceeding.

III. Significant Turnover Among Novelis' Employees And Management, Absence Of Subsequent Unfair Labor Practices, Additional Growth At The Oswego Plant And The Passage Of Time Require That The ALJ's Recommendation For The Issuance Of A *Gissel* Bargaining Order Be Rejected

In his Decision, the ALJ concluded that a bargaining order was warranted under *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969). Novelis has taken exception to this conclusion on numerous grounds as set forth in Novelis' Exceptions, its Brief in Support of Its Exceptions, and its Reply Brief in Support of Its Exceptions. The evidence of changed circumstances which Novelis seeks to introduce further demonstrates that the extreme remedy of a *Gissel* bargaining order is improper in this case. Specifically, Novelis seeks to introduce evidence that:

- Phil Martens, former CEO and President of Novelis, and the only speaker accused of making unlawful plant closure threats during the 25th Hour Speeches, left the

Company in all capacities in mid-April 2015.² This news has been widely reported in the media³, announced by the Company and reported to the Oswego employees. *See* Declaration of Malcolm Gabriel (“Dec.”), attached hereto as Exhibit 1, ¶ 5.

- Jason Bro, a supervisor accused of engaging in a number of unfair labor practices, left the Company’s employment in August 2015. (Dec., ¶ 6.)
- In December 2014, the Oswego plant commissioned its newly built, \$48 million, 81,000 square foot recycling facility. (Dec., ¶ 7.)
- In February 2015, the Oswego plant ramped up its ongoing recruiting and hiring of workers to run its third CASH Line. Presently, the third CASH Line has 62 hourly employees. (Dec., ¶ 8.)
- Novelis continues to advertise and hire for positions at the Oswego plant, including hourly production and maintenance positions. Employees may be aware of this through a number of channels, including internal job postings, job postings on numerous internet job posting sites, local newspapers advertisements and social media channels. (Dec., ¶ 9.)
- Since the Union election in February 2014, the Oswego facility has hired 197 hourly production, maintenance, quality control, shipping and receiving employees that would have been included in the proposed bargaining unit as set forth in the parties’ Stipulated Election Agreement and eligible to vote in the election. (Dec., ¶ 11.)

² For the reasons set forth in Novelis’ Post-Hearing Brief and Brief in Support of Its Exceptions, none of Martens’ or any other management member’s comments constituted unlawful threats, and the ALJ’s decision in this regard is erroneous.

³ *See, e.g.*, <http://www.reuters.com/article/2015/04/20/novlis-ceo-idUSL1N0XH1BW20150420>; <http://www.kcentv.com/story/28846547/novelis-announces-steve-fisher-as-new-interim-president>; <http://af.reuters.com/article/metalsNews/idAFnASB09GSJ20150420>; <http://www.automotiveworld.com/analysis/departure-novelis-ceo-adds-industry-shake/>; <http://www.ajc.com/news/business/novelis-replaces-ceo-philip-martens-names-interim-/nkyY3/>; <http://www.bizjournals.com/atlanta/news/2015/04/20/novelis-names-fisher-interim-president-ceo-martens.html>.

- Since the Union election in February 2014, 58 individuals of the 599 who were eligible to vote are no longer maintenance or production hourly employees at the Oswego plant, for reasons including resignation, retirement and promotion, and no longer fall within the definition of the bargaining unit as set forth in the parties' Stipulated Election Agreement. (Dec., ¶ 12.)

As set forth fully in Novelis' Exceptions and briefs in support thereof, Novelis asserts that, even if the changed circumstances are not considered, a) a *Gissel* bargaining order is not warranted in this case; b) the ALJ's Decision should be rejected; and c) all unfair labor practice charges should be dismissed. However, the above developments and the passage of time since the election reinforce that a bargaining order is not warranted (or, alternatively, is no longer warranted to the extent it could be found it was previously warranted).

The widely-known departure of Mr. Martens, the former CEO and President of Novelis and the only speaker primarily accused of making unlawful plant closure threats during the 25th Hour Speeches, obviates any need for a bargaining order. *See NLRB v. Windsor Industries, Inc.*, 730 F.2d 860, 865 (recognizing that employee turnover and new management may obviate the need for a bargaining order); *Cogburn* at 1274-75 (holding that the Board improperly discounted the departure of two prominent executives who were significantly responsible for the alleged ULPs); *Flamingo Hilton-Laughlin v. NLRB*, 148 F.3d 1166, 1172-73 (D.C. Cir. 1998) (denying enforcement of bargaining order and remanding due to the ALJ's and the Board's failure to assess employee turnover and changes in management). The ALJ found that Mr. Martens committed hallmark violations of the Act by threatening plant closure, reduced pay and benefits, and more onerous working conditions, and that he further violated the Act by unlawfully disparaging the Union via his dissemination of the letter from Board Agent Petock. (ALJ Dec.

48-52, 65-66.) While Novelis maintains that Mr. Martens' conduct was lawful, given that he is no longer with Novelis, any concern that it would follow through on his alleged "threats" is alleviated, and his presence cannot possibly be considered as an impediment to a fair election. Thus, the absence of Mr. Martens, the main actor in the purported unfair labor practices, gives further support to a finding that a free and uncoerced election under current conditions is possible.

The departure of Mr. Martens is particularly significant because he is the only management official alleged to have made plant closure threats. As recognized by the Second Circuit in *NLRB v. Jamaica Towing, Inc.*, a threat of plant closure "is the one serious threat of economic disadvantage which is wholly beyond the influence of the union or the control of the employees." 632 F.2d 208, 213 (1980). Here, the ALJ's findings of plant closure threats were based on Mr. Martens making statements of personal commitments as compared to business decisions. With Mr. Martens' departure, the "personal" nature of any alleged threats beyond the employees' control - a point emphasized by the GC - have evaporated. Mr. Martens' departure, combined with the continued growth and expansion of the Oswego plant, undermine any alleged lingering effects from the alleged unfair labor practices.

In addition, the significant employee turnover militates against a bargaining order. *See, e.g., J.L.M., Inc. v. NLRB*, 31 F.3d at 84; *HarperCollins*, 79 F.3d at 1333. Given the passage of time, that 58 of the bargaining unit members that were eligible to vote during the original election are no longer employed, and that 197 new employees have been added to the bargaining unit since the original election (with recruitment and hiring continuing), it is likely that the effects of the alleged unfair labor practices no longer linger and a fair second election could be had. *See, e.g., J.L.M.* at 84 ("where a significant number of employees who witnessed the

Company's ULPs have moved on, the chances for a fair election may vastly increase."'). Moreover, "the issuance of a bargaining order in the face of significant employee turnover risks unjustly binding new employees to the choices made by former ones[.]'" *Id.* What is more, the hiring for and the operation of the new CASH Line, the opening of a \$48 million recycling facility, and the opening of a third CASH Line further demonstrate that the Company would not shut down the plant or lay people off if a union is elected.⁴

IV. Conclusion

In sum, evidence of changed circumstances, including employee turnover, management turnover, lapse of time, and lack of antiunion conduct, is highly relevant to the propriety of the extraordinary relief recommended by the ALJ. Such evidence is directly relevant to the determination of whether a bargaining order is warranted. "The issuance of a bargaining order is a rare remedy warranted only when it is clearly established that traditional remedies cannot eliminate the effects of the employer's past unfair labor practices." *J.L.M.*, 31 F.3d at 83. "An election, not a bargaining order, remains the preferred remedy. This preference reflects the important policy that employees not have union representation forced upon them when, by exercise of their free will, they might choose otherwise." *Id.* (internal quotations and citations omitted). "In determining the potential for a free and uncoerced election, . . . the Board must analyze not only the nature of the misconduct but the surrounding and succeeding events in each case." *Id.* (citation and quotations omitted). In light of these established principles and the

⁴ The passage of time since the election and the absence of any subsequent unfair labor practices also militate against a bargaining order. See *J.L.M.* at 85; *Cogburn* at 1275; *HarperCollins* at 1333. As the D.C. Circuit has directed, "[t]ime is a factor that should be considered by the Board, along with employee and management turnover." *Cogburn* at 1275 (emphasis in original). "[W]ith the passage of time, any coercive effects of an unfair labor practice may dissipate, employee turnover may result in a work force with no interest in the Union, and a fair election might be held which accurately reflects uncoerced employee wishes as of the present time." *Id.* (quoting *Peoples Gas System, Inc. v. NLRB*, 629 F.2d 35, 47 (D.C. Cir. 1980)). Evidence that the Company refrained from engaging in further anti-union conduct, as that which exists here, is also a relevant factor. See *HarperCollins* at 1333.

foregoing authorities, it is essential, indeed required, that evidence of changed circumstances be accepted into the record and given due consideration. Accordingly, Novelis requests that the record to be reopened so that this highly critical evidence can be received and analyzed.

Respectfully submitted this 27th day of January, 2016.

HUNTON & WILLIAMS LLP

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CERTIFICATE OF SERVICE

I certify that on this 27th day of January, 2016, I caused the foregoing to be electronically filed with the National Labor Relations Board at <http://nrlb.gov> and a copy of same to be served by e-mail on the following parties of record:

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/s/ Kurt A. Powell

Kurt A. Powell

EXHIBIT 1

DECLARATION OF MALCOLM GABRIEL

I, Malcolm Gabriel, testify and declare the following under the penalty of perjury:

1. I am over 21 years of age, am competent to testify as a witness, and have personal knowledge of the facts set forth in this declaration.

2. I am voluntarily providing this declaration to attorneys with Hunton & Williams LLP who I have been informed represent the Company.

3. I have not been promised any benefit for providing this declaration, nor have I been threatened with any reprisal, detriment or adverse action had I chosen not to provide this declaration.

4. I am employed by Novelis Corporation ("Novelis") and have served as the Human Resources Director at the Oswego Works Plant in Oswego, New York since July 2014.

5. Phil Martens, former CEO and President of Novelis, left the Company in all capacities in mid-April 2015. This information was widely reported by the media and was announced by the Company and reported to the Oswego employees via a letter directed to all employees and via Novelis' intranet.

6. Jason Bro, a former supervisor at the Oswego plant, left the Company's employment in August 2015.

7. In December 2014, the Oswego plant commissioned its newly built, \$48 million, 81,000 square foot recycling facility.

8. In February 2015, the Oswego plant ramped up its ongoing recruiting and hiring of workers to run its third CASH Line. Presently, the third CASH Line has 62 hourly employees.

9. Novelis continues to advertise and hire for positions at the Oswego plant, including hourly production and maintenance positions. Employees may be aware of this through a number

of channels, including internal job postings, job postings on numerous internet job posting sites, local newspaper advertisements and social media channels.

10. I have reviewed the Stipulated Election Agreement concerning the February 2014 Union election at the Oswego facility which includes a definition of the proposed bargaining unit and eligible voters. A true and accurate copy of the Stipulated Election Agreement I reviewed is attached hereto as Exhibit A.

11. Since the Union election in February 2014, the Oswego facility has hired 197 hourly production, maintenance, quality control, shipping and receiving employees. These 197 employees hired since the February 2014 election would have been included in the proposed bargaining unit as set forth in the Stipulated Election Agreement and eligible to vote in the February 2014 Union election at the Oswego facility.

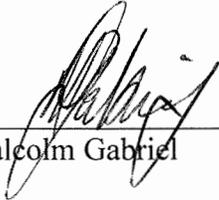
12. I have reviewed the list of individuals who were eligible to vote in the February 2014 Union election. Of the 599 individuals who were eligible to vote in February 2014, 58 are no longer maintenance or production hourly employees at the Oswego plant for reasons including resignation, retirement and promotion. These 58 employees no longer fall within the definition of the bargaining unit as set forth in the Stipulated Election Agreement.

13. To my knowledge, the changes to the unit composition set forth above are not a direct result of any alleged unlawful conduct by Novelis, which Novelis denies committing in any event.

14. Novelis has not been found to have engaged in any unfair labor practices subsequent to the conduct charged in the pending unfair labor practices cases currently before the Board on Novelis' exceptions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 22 day of January, 2016, in Oswego, New York.



Malcolm Gabriel

EXHIBIT A

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

Novelis Corporation

Case 03-RC-120447

The parties **AGREE AS FOLLOWS:**

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Novelis Corporation, a Texas corporation with its principal offices located at 3560 Lenox Road, Suite 2000, Atlanta, GA 30326 and a facility located at 448 County Road 1A, Oswego, NY 13126, the only facility involved, is engaged in the recycling, manufacturing and non-retail sale of rolled aluminum products. During the past 12 months, a representative period of time, the Employer purchased and received goods valued in excess of \$50,000, which goods were shipped directly to the Employer's Oswego, New York facility from points located outside the State of New York.

3. LABOR ORGANIZATION. The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

DATE: February 20 and 21, 2014 **HOURS:** 4:30 AM – 7:30 AM and
4:30 PM – 7:30 PM

PLACE: The West Wing Conference Room at the Employer's Oswego, New York facility.

If the election is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time employees employed by the Employer at its Oswego, New York facility, including the classifications of Cold Mill Operator, Finishing Operator, Recycling Operator, Remelt Operator, Crane Technician, Mechanical Technician, Welding Technician, Remelt Operations Assistant, Hot Mill Operator, Electrical Technician, Process Technician, Mobile Equipment Technician, Roll Shop Technician, Production Process & Quality Technician, Production Process & Quality Specialist, EHS Facilitator, Planner,

Shipping Receiving & Packing Specialist, Stores Technician, Maintenance Technician, Machinist, Facility Technician, and Storeroom Agent.

Excluded: Office clerical employees and guards, professional employees, and supervisors as defined in the Act, and all other employees.

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending January 12, 2014**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. ELECTION ELIGIBILITY LIST. Within seven (7) days after the Regional Director has approved this Agreement, the Employer shall provide to the Regional Director an election eligibility list containing the full names and addresses of all eligible voters. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *North Macon Health Care Facility*, 315 NLRB 359 (1994).

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of any voters or potential voters who only read a language other than English.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO-CLC? The choices on the ballot will be "Yes" or "No".

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer will post copies of the Notice of Election in conspicuous places and usual posting places easily accessible to the voters at least three (3) full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

10. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

