

**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 FURTHER SUPPLEMENTING
ITS REQUEST TO REOPEN THE RECORD FOR LIMITED PURPOSE OF
PRESENTING EVIDENCE OF CHANGED CIRCUMSTANCES**

Respondent Novelis Corporation (“Novelis” or “the Company”) hereby brings this motion, pursuant to Section 102.48(b) of the Rules and Regulations of the National Labor Relations Board, further 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. As articulated in its initial motion on June 5, 2015 and its subsequent filing on January 27, 2016, Novelis asserts that said

evidence is directly relevant to show that the extreme remedy of a bargaining order is unwarranted in this case.¹

Through the current motion, Novelis calls the Board's attention to continued and additional changed circumstances warranting reopening of the record. Specifically, in addition to the evidence presented in its June 5, 2015 and January 27, 2016 filings, Novelis seeks to introduce evidence that:

- Former Oswego Works Plant Manager Chris Smith, who was the member of senior plant management accused of making unlawful threats during the 25th Hour Speeches, and who announced to employees the alleged unlawful restoration of Sunday premium pay and other benefits, left the Company in all capacities in April 2016. This news has been announced by the Company and reported to the Oswego employees. *See* Declaration of Malcolm Gabriel ("Dec."), attached hereto as Exhibit 1, ¶ 5.²
- 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., ¶ 7.
- Since the Union election in February 2014, the Oswego facility has hired 255 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 therefore eligible to vote in the election. Dec., ¶ 9.
- Since the Union election in February 2014, 84 employees of the 599 who were eligible to vote are no longer maintenance or production hourly employees at the Oswego plant (of these 84 employees, 73 are no longer employed with the Company). These 84 current and

¹ For the reasons articulated in its exceptions to the ALJ's decision, Novelis vigorously denies violating the law in any respect and taking any action that unlawfully impacted employees' free choice.

² Duane Gordon, a formerly Oswego-based Novelis supervisor accused of a minor violation related to the distribution of union literature in a working area, also has left Novelis. Dec., ¶ 6. There are currently 103 local supervisors and managers at the Novelis Oswego Works Plant. Dec., ¶ 13. Although Novelis anticipates the General Counsel deflecting Mr. Smith's departure as insignificant (contrary to its prior positions), none of the 103 local supervisors and managers currently at the plant have been found to have engaged in any conduct that could possibly constitute a hallmark or even a serious violation of the Act. Indeed, 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 for a period of approximately two and a half years. Dec., ¶ 12.

former employees no longer fall within the definition of the bargaining unit as set forth in the parties' Stipulated Election Agreement. Dec., ¶ 10.

Accordingly, Novelis requests that the record to be reopened so that this highly critical evidence can be received and analyzed.

Respectfully submitted this 16th day of August, 2016.

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/s/Kurt A. Powell

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NOVELIS CORPORATION

CERTIFICATE OF SERVICE

I certify that on this 16th day of August, 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. Chris Smith, former Oswego Works Plant Manager, left the Company in all capacities in April 2016. This news has been announced by the Company and reported to the Oswego employees.
6. Duane Gordon, former Oswego-based manager, left the Company in all capacities in July 2016.
7. 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.
8. 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.

9. Since the Union election in February 2014, the Oswego facility has hired 255 hourly production, maintenance, quality control, shipping and receiving employees. These 255 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.

10. I have reviewed the list of employees who were eligible to vote in the February 2014 Union election. Of the 599 employees who were eligible to vote in February 2014, 84 are no longer maintenance or production hourly employees at the Oswego plant (of these 73 are no longer employed with the Company). These 84 formerly eligible voters no longer fall within the definition of the bargaining unit as set forth in the Stipulated Election Agreement.

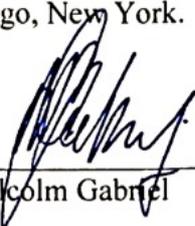
11. To my knowledge, the changes to the unit composition set forth above are not a direct result of any alleged unlawful conduct by Novelis, which Novelis denies committing in any event.

12. 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.

13. There are currently 103 supervisors and managers that work at the Oswego Works Plant.

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

Executed this 10th day of August, 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.

11. TALLY OF BALLOTS. Immediately upon the conclusion of the last voting session, all ballots cast will be comingled and counted and a tally of ballots prepared and immediately made available to the parties.

12. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

NOVELIS CORPORATION

(Employer)

By /s/Kenneth L. Dobkin 1/27/14
(Name) (Date)

Recommended: /s/Tom Miller 1/27/14
THOMAS A. MILLER, Field Examiner (Date)

Date approved: 1/27/14

/s/Rhonda P. Ley
Regional Director, Region 03
National Labor Relations Board

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS, INTERNATIONAL UNION, AFL-
CIO-CLC**

(Petitioner)

By /s/William A. Fears 1/25/14
(Name) (Date)