

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

NOVELIS CORPORATION

and

Cases

03-CA-121293

03-CA-121579

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

03-CA-122766

03-CA-123346

03-CA-123526

03-CA-127024

03-CA-126738

NOVELIS CORPORATION

Employer

and

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

Case

03-RC-120447

Petitioner

**GENERAL COUNSEL’S CONTINUING OPPOSITION TO RESPONDENT’S MOTION
TO REOPEN THE RECORD**

Counsel for the General Counsel (General Counsel), opposes Novelis Corporation’s (Respondent) most recent motion to reopen the record. The General Counsel renews her opposition to Respondent’s motion to submit evidence of changed circumstances for the reasons stated in her prior oppositions and fully incorporates her submissions to the Board, dated June 18, 2015 and February 17, 2016, herein.¹ As previously articulated by the General Counsel, the

¹ The General Counsel’s opposition to Respondent seeking to submit evidence concerning Respondent’s grant of five years of wage and benefits increases to bargaining unit employees raises a number of issues that are distinct from Respondent seeking to submit evidence concerning changed circumstances.

evidence Respondent seeks to admit is immaterial. The Board does not consider evidence of this nature in determining whether to impose a bargaining order and, even if it did so, it is not sufficient to dissipate the egregious unfair labor practices Respondent committed.

As detailed in our prior submissions, this evidence is not relevant as the appropriateness of a Gissel bargaining order is determined by the Board at the time the unfair labor practices occurred. See Milum Textile Services, Co., 357 NLRB 2047, 2056 (2011); California Gas Transport, Inc., 347 NLRB 1314 (2006); Evergreen America Corp., 348 NLRB 178, 181-182 (2006); Salvation Army Residence, 293 NLRB 944, 945 (1989), enfd. mem. 923 F.2d 846 (2d Cir. 1990). In the instant case, Respondent's pervasive unfair labor practices mandates that a bargaining order be imposed. Administrative Law Judge Michael A. Rosas found Respondent committed twenty-one unfair labor practices including "hallmark" violations: the threat of plant closure and business loss during several mandatory captive-audience meetings; the grant of premium pay benefits to the entire bargaining unit; and the demotion of the initial lead Union organizer. (ALJD p. 46-66). Administrative Law Judge Rosas concluded Respondent's violations of the National Labor Relations Act were so severe it eroded the Union's majority support and therefore the only appropriate remedy is a Gissel bargaining order. This is what the Board considers -- the unfair labor practices at the time they occurred -- in issuing a bargaining order. To do otherwise, according to the Board in Garvey Marine, Inc., 328 NLRB 991, 995 (1999) enfd. 245 F.3d 819 (DC Cir. 2001), would allow Respondent "to benefit from the effects of its wrongdoing. These effects include the delays inherent in the litigation process as well as employee turnover, some of which may occur as a direct result of the unlawful conduct. Thus, the employer would be rewarded for, or at a minimum, relieved of the remedial consequences of, its statutory violations." (citing Intersweet, Inc., 321 NLRB 1 (1996), enfd. 125 F.3d 1064 (7th

Cir. 1997)); see also, NLRB v. Big Ben Shoe Store, 440 F.2d 347, 353 (7th Cir. 1971) (“If any party should be penalized for the delay, it should be the employer, since his misconduct occasioned the proceeding.”).

Furthermore, even if such evidence was relevant the circumstances articulated by Respondent do not ameliorate the need for a bargaining order. Even assuming Respondent’s assertions are accurate a majority of the employees currently employed by Respondent were subject to the pervasive unfair labor practices that resulted in the bargaining order.² (The figures provided by Respondent indicate that at least 60% of bargaining unit employees are still employed at Respondent’s facility). Since a majority of the employees are still employed, Respondent cannot show that there is any “obvious danger that a bargaining order that is intended to vindicate the rights of past employees will infringe upon the rights of current ones to decide whether they wish to be represented by a union.” Charlotte Amphitheater Corp., 82 F.3d 1074, 1078 (DC Cir. 1996).

Similarly, any change in management fails to dissipate Respondent’s unlawful conduct. At this juncture the departure of Chris Smith, plant manager, or any other official does not convey to employees or anyone else that their departure is because of their unlawful conduct or that Respondent has mended its ways- for Respondent still vows that it did not violate the Act. In fact, Respondent ensured that each employee received this message as it notified employees in a mailing to their homes, in an e-mail, and at a meeting, that it did not violate the Act. (Tr. 1651, 1653 R. Exhs. 54 and 56). Accordingly, Respondent has had ample opportunity to continue to reinforce and condone its unlawful conduct, as there is no evidence that management has forsaken such directives. That Respondent has not altered course is reinforced by the fact that

² As Respondent failed to provide the specific job titles of the new hires, which are delineated in the stipulated election agreement, it is impossible to determine whether they would be included in the bargaining unit. Moreover, there is no documentary evidence that substantiates any of Respondent’s assertions.

the vast majority of its supervisory and management structure since the time of the unfair labor practices is still in place. Accordingly, Respondent presented no evidence that it has repudiated any of its unlawful conduct, quite the contrary. See American Directional Boring, Inc., 355 NLRB 1020, 1021 (2010)(finding a Gissel bargaining order appropriate and in doing so finding unavailing management turnover as the employer's unlawful activities were not disavowed.). Under these circumstances, management turnover is unpersuasive for Respondent remains under the same ownership and managerial directives that originated the unfair labor practices. See American Directional Boring, Inc., 355 NLRB at 1021; see e.g., Gerig's Dump Trucking, Inc., 320 NLRB 1017, 1026 (1996), enfd. 137 F.3d 936 (7th Cir. 1998) (enforcing bargaining order where company president and general manager either left or were not involved in management).

WHEREFORE, for the reasons stated herein and in the General Counsel's prior submissions in opposition to Respondent's motion to reopen the record, the General Counsel respectfully requests the Board deny Respondent's motions.

DATED at Buffalo, New York this 18th day of August, 2016.

Respectfully submitted,

\s\ Linda M. Leslie
LINDA M. LESLIE
Counsel for the General Counsel
National Labor Relations Board-Region 3
Niagara Center Building – Suite 630
130 S. Elmwood Avenue
Buffalo, New York 14202
Telephone: 716-551-4931
Facsimile: 716-551-4972
Linda.Leslie@nlrb.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 2016, I e-mailed a copy of the General Counsel's Opposition to Respondent's Motion Further Supplementing Its Request to Reopen the Record For the Limited Purpose of Presenting Evidence of Changed Circumstances in Novelis Corp., 03-CA-121296, et al, on the individuals identified below and filed it on August 18, 2016 with the NLRB's e-filing system.

Kurt A. Powell
Robert T. Dumbacher
Bank of America Plaza, #4100
600 Peachtree Street, NE
Atlanta, GA 30308
Email: kpowell@hunton.com
Email: rdumbacher@hunton.com

Kurt G. Larkin
Riverfront Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219
Email: klarkin@hunton.com

Kenneth L. Dobkin
Senior Counsel
Novelis Corporation
2560 Lenox Road, Suite 2000
Atlanta, Georgia
Email: ken.dobkin@novelis.com

Thomas G. Eron, Esq.
Bond, Schoeneck & King PLLC
One Lincoln Center
Syracuse, NY 13202
teron@bsk.com

Kenneth L. Wagner, Esq.
Blitman & King
443 North Franklin Street, Suite 300
Syracuse, NY 13204
klwagner@bklawyers.com

Brad Manzollilo, Esq.
USW Organizing Counsel
Five Gateway Center Room 913
Pittsburgh, PA 15222
bmanzollilo@usw.org

/s/ Linda M. Leslie
Linda M. Leslie

Counsel for the General Counsel
National Labor Relations Board-Region 3
Niagara Center Building
130 S. Elmwood Avenue, Suite 630
Telephone: (716) 551-4931
Facsimile: (716) 551-4972
Linda.Leslie@nlrb.gov