

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

UNITED STEEL, PAPER & FORESTRY,)	
RUBBER, MANUFACTURING, ENERGY)	
ALLIED INDUSTRIAL & SERVICE)	
WORKERS INTERNATIONAL UNION,)	
)	
Union)	
)	
and)	Case 15-RM-246203
)	
AM/NS CALVERT, LLC,)	
)	
Petitioner)	

AM/NS CALVERT, LLC’S REQUEST FOR REVIEW

COMES AM/NS Calvert LLC (“Petitioner” or “Stipulating Employer”) and, pursuant to 29 C.F.R. §102.67, requests the National Labor Relations Board review and reject Region 15’s Regional Director’s “Order Directing Mail-Ballot [Card-Check-Style] Election” (“EO” or Att. A) in reply to the Stipulating Employer’s Response to Notice to Show Cause (Att. B), but without hearing (EO p. 2), for a card-check-style mail-in ballot election in disregard of Petitioner’s Stipulation, which Region 15 accepted, with United Steel, Paper & Forestry, Rubber, Manufacturing, Energy Allied Industrial & Service Workers International Union (“Stipulating Union”), directing an in person election (“Secret Ballot Stipulation”), and says as follows:¹

Introduction

Refusing hearing, trampling law and emasculating employee free choice in favor of result-oriented goals devoid of legitimate basis, Region 15’s EO discarding the Secret Ballot Stipulation for a card-check-style mail-in fiasco fits neither law nor facts here, and must be rejected:

¹ Though not numbered, EO pages will be cited as though each of its 17 pages bore a number.

(1) **The law requires hearing**; the Region ignores the Board mandate to provide a hearing before trashing in-person balloting for an admittedly inferior mail-in version.

(a) Board law requires an in-person hearing consistent with the Administrative Procedures Act and the due process clause.

(b) It does no good to claim falsely that the Regional Director obviated the need for a hearing by accepting all the employer's proffered facts when the Region's outdated fact pronouncements concerning pandemic were false when made, contradict the employer's undisputed evidence, and absurdly suggest greater safety in the New Orleans office COVID squalor than in the employer's suggested COVID-free plant voting and vote-counting conditions.

(c) The Region cannot dodge a hearing to test its own pronouncements' evidentiary merit at hearing by pretending that hearings weigh only employer evidence.

(2) **The law and facts require in-person balloting**; the Region is not free to ignore the parties' binding Secret Ballot Stipulation without showing impossibility, nor ignore the evidence the Regional Director claims she accepts as true.

(a) Ignoring the parties' Secret Ballot Stipulation does not prevent the Stipulation from barring the Region from violating the parties' mandate as a matter of law.

(b) Ignoring the unique record evidence of **this** Stipulating Union's past coercion of **these voting employees** makes no sense.

(c) Ignoring virtually COVID-free VOTERS' statistics—almost all of whom kept working at the Alabama plant as the Regional Director “sheltered” with the Regional Office's four COVID cases—does not make populations elsewhere logistically relevant.

Facts

Petitioner (Stipulating Employer) is a steel manufacturer located in Calvert, Alabama. Att.

B, Ex. 1. This matter began when the Union sought to force Petitioner's employees, who had never chosen Union representation, to accept the Union as their exclusive bargaining representative pursuant to a so-called "neutrality agreement" to which Petitioner was not a party. The Union launched a card-check campaign in January 2019 and sent its organizers onto Petitioner's property to solicit signatures on authorization cards. The Union made numerous materially false statements to employees concerning the organizing process, the legal effect of signing a card, and the Union's ability to secure gains through collective bargaining.

After over two months of effort, the Union apparently had not succeeded in convincing enough employees to sign cards, so it filed an arbitration demand against Petitioner, seeking an additional three months to solicit. An arbitrator on April 5, 2019, ordered Petitioner (1) to allow the Union back into its plant for three additional months to organize its employees by card check, and, in violation of NLRA §7 rights, (2)(a) to forbid any employee or employee group to speak against the interloper, and (b) to punish any violators. *Id.*, Exs. 2 & 3.

Left with no means to review this lawbreaker's abomination, Petitioner either had to comply or risk the arbitrator's "bargaining order." The decision forced Petitioner to discriminate against employees opposed to unionization, to provide the Union with unlawful organizing assistance, and to engage in unlawful pre-representation bargaining with the Union regarding the ultimate fate of salaried, non-management Specialists and Planners. Unfair labor practice charges by employees against Petitioner and the Union followed. These included a charge, to which Petitioner admitted guilt and which (Petitioner understands) the Region has recommended a finding of merit, declaring the neutrality agreement itself to be a §8(a)(2) violation. *Id.*, Ex. 4.

The Union notified Petitioner it had collected a card majority during the time the arbitrator unlawfully crushed dissent. Despite the foregoing, employees nonetheless at the same time

presented petitioner a petition reflecting most employees opposed the Union. Reports of some employees signing BOTH a union authorization card AND the petition against union representation confused matters further.

To resolve the conflict between the Union's alleged card majority and the employee "Right to Vote Committee" petition's verifiable employee signature majority rejecting unionization, Petitioner proposed to the Union that the matter be decided through a NLRB-supervised secret ballot election. The Union refused the company's proposal. Petitioner therefore on August 8, 2019, filed its RM petition. Att. B, Ex. 5.

After months of delaying tactics, the Union on March 9, 2020, finally entered into a Stipulation with Petitioner governing the voting unit, the voting location, voting procedures and the election date. Exhibit 6. The Region accepted. *Id.*, Ex. 7. However, the Region then put off the election during the state's Stay at Home Order, which expired April 30, 2020. *Id.*, Ex. 8. **Petitioner has continued to operate the plant without interruption as an essential business with 90% of voting unit employees onsite.** Att. B p. 2. Despite precautions, *Id.*, Exs. 10-12, the Region's EO (Att. A), which now *ex parte* changes the election method from an onsite secret ballot to a card-check-style mail-in vote, eviscerates the parties' Secret Ballot Stipulation.

Argument

This case IS DIFFERENT. It differs in four ways from most petitions to restore an in-person election over a mail in ballot card check-style election. First, the Region denied hearing. Second, the Regional Director displaced the parties' own Stipulation's choice for an in-person vote without proving impossibility. Third, this voting unit has experienced a long history of attempts—through intimidation, unlawful agreements by outsiders and by punishing dissent to force the Union on these employees without them ever having a secret

ballot choice. **Finally**, in-person plant voting is safer for voters and Board agents when 90% of the 1,047 voters² have worked at the plant throughout the spring COVID-free while the Region’s small New Orleans mail-ballot counting office during the same period had four COVID cases.

1. **This case is different; the Regional Director actually refused even to provide a hearing--falsely claiming to accept of all employer facts, foreclosing the chance for affected employees to speak, and denying any chance to challenge groundless Region pronouncements.**³

a. The Regional Director’s own EO at p. 1 n.1 admission of disputes over unit inclusion guts her contention that no hearing is necessary because “there is no dispute among the parties regarding the composition of the unit.” EO pp. 5-6.

b. The Regional Director cannot say she has “accepted as true all facts and evidence proffered” (EO p. 6) when she shows she prefers pandemic pronouncements that are one to three months old as of the EO’s issuance over the plant’s current COVID-free conditions,⁴ demographics other than the COVID-free voting unit over the actual health of that unit,⁵ and

² EO, p. 1 n.1 explains that there are 1,047 potential voting employees. The Stipulating Employer and Union have agreed that 892 of the 1,047 would be eligible voters, with an additional 155 of the 1,047 to vote subject to challenge.

³ Compare EO p. 5 with *BASF Corp.*, Case No. 07-RC-259428 (May 14, 2020)(rejects even Skype hearing and orders in-person hearing consideration).

⁴ See EO pp. 7-8 (March 13 and 19 federal and state shutdowns long ago lifted, e.g., *id.* p. 8, before EO’s June 9 issuance, EO p. 16).

⁵ See EO p. 8 (discusses state and county numbers and “upticks” but nowhere mentions COVID-free plant and work force), p. 9 (discusses New Orleans and Louisiana COVID cases threatening the COVID-infested Board office where mail ballots would be counted, but ignores COVID-free plant where in-person election ballots would be counted), p.10 (lists Memphis and Little Rock as though both were quarantined—neither are—or that travel from there requires traversing COVID hotbeds –such as New Orleans—neither does), pp. 10-11 (discusses threats to Board agents being exposed when exposure at COVID-free plant whose status she is supposed to have accepted offers a more hospitable place to count votes than the Region’s office in New Orleans).

excuses for placing Board agent convenience over the agency's responsibility to create an election that reflects employees' will.⁶

c. The Regional Director cannot honestly claim she met her responsibility by denying a hearing that would flesh out through testimony unique firsthand real world experiences;

(1) why individual voters fear card check-style mail-in ballot election begs for a repeat of the Union's past voter intimidating home visits, card signing pressure, and brute force campaign giving life to the Union's paper coercion through illegal "neutrality" provisions in which they had no say and which forced them into silence; and

(2) why individuals, who otherwise would vote, lack faith in the integrity of any card check-style mail-in sham.

d. The Regional Director cannot seriously claim she need not conduct a hearing because she has "accepted as true all fact and evidence proffered" (EO p. 6); a hearing is not just for presenting evidence, but for challenging, through cross-examination and rebuttal, bald pronouncements on which the Regional Director relies as though they were facts. EO pp. 8-11.

(1) How does she know voters will brave Union intimidation gauntlets to vote at all—let alone to vote as they wish—when, despite the past, she will not even listen to their stories?

(2) How does she know her Regional Office's four case COVID squalor is safer for officials and observers than an almost COVID-free plant if she will not allow the evidence to be put before her?

⁶ Compare EO pp. 10-11 (discusses cost and trouble for board agents in conducting most inclusive kind of election) with *Kerryville Bus Co.*, 257 NLRB 176, 177 (1981)(Board policy is to afford broadest possible participation in election); *Noveau Elevator Indus. Inc.*, 326 NLRB 470, 471 (1998)(in-person elections are more inclusive).

2. **This case is different.** *Law and facts foreclose the Region's mail-in card-check-style election.*

a. **This case is different.** Although the Regional Director's EO ignores it, the Secret Ballot Stipulation compels a manual secret ballot election absent a showing of impossibility the Region failed to make.

(1) Despite her understandable silence, the Regional Director is bound by an accepted stipulation's direction of an in-person secret ballot election absent proof that such an election is **impossible**. *T&L Leasing*, 318 NLRB 324, 326 (1995) (EO nowhere discussed).

(2) The Regional Director, on March 10, 2020, previously accepted the Secret Ballot Stipulation. Att. B, Ex. 7.

(3) Circumstances calling for a **different election location or time do not establish impossibility** that would justify a card-check-style mail-in ballot in contravention of the Secret Ballot Stipulation to which the parties and Region agreed. 318 NLRB at 326.

(4) Silence is surrender; as the Region offers **nothing showing impossibility** of an in-person election, the EO compelling a card-check-style mail-in election must be set aside.

b. **This case is different.** Past facts, which the Regional Director says she **accepts as true**, and which is absent in other reported decisions, compel the Secret Ballot Stipulation's in-person election.

(1) Past efforts by the Stipulating Union to force employees to accept its representation without the chance to ascertain by secret ballot whether a majority in fact want it make this group of voters uniquely susceptible to coercion unless the stipulated free choice of a secret ballot is honored. Att. B p. 2.

(2) Specific undisputed evidence, among the proof the Regional Director **accepts as true**, establishes **past** coercion, and the Stipulating Union's current opposition to being held to its bargain shows **intent to continue** its coercion absent in-person election.

(a) The Stipulating Union previously has tried to force AM/NS to accept a "neutrality agreement" provision that prohibited employee free choice, mandated that employees only speak in favor of the Stipulating Union, and obligated the employer to take the Union's word that it had a majority of employees' support based on what the Stipulating Union claimed were employee signatures on cards they did not complete privately. *Id.* pp. 2 & 6.

(b) After (a) failed, the Stipulating Union secured a decision from an arbitrator compelling the employer to count the cards as though they were not coercively obtained, and to punish any employee who dared speak against the Union. *Id.*

(c) When employees filed NLRB charges claiming that the "neutrality" agreement was unlawful employer-union collusion (a position we understand the Region accepted) and that employees had been punished for speaking against the Stipulating Union, the Stipulating Union then asked a court in Indiana, which lacked jurisdiction to do so, to order the employees in Alabama to recognize it as their sole bargaining agent without being selected by secret ballot or a coercion-free card check. *Id.* p. 6.

(d) The current election petition resulted when the Stipulating Union showed cards and claimed a majority of employees wanted its representation, while an employee group offered a petition **showing** most employees oppose the Union. *Id.* p. 2.

(3) Card-check-style mail-in ballots offer a ready-made means of coercion not presented by the manual secret ballot to which the parties stipulated. *Thompson Roofing, Inc.*, 291 NLRB 743, 743 n. 1 (1988).

(4) Unless they preside over an in person the distribution, execution, and collection of ballots, Board agents cannot guarantee an uncoerced choice made in secret, and the Stipulating Union’s predictably vigorous opposition confirms it knows this is so.

(5) Board decisions recognize lower participation rates in card-check-style mail-in ballots over manual elections. *Noveau Elevator Indus. Inc.*, 326 NLRB 470, 471 (1998)(so held); cf. *Kerryville Bus Co.*, 257 NLRB 176, 177 (1981)(Board policy is to afford broadest possible participation in election).⁷

c. **This case is different**; it is not just unrealistic—it is **ABSURD**—to suggest that the unsupervised collection of signatures of employees on so-called mail-in ballot documents somehow will reflect an uncoerced employee majority for one side or another when both the Stipulating Employer and the Stipulating Union knew enough to agree to the Secret Ballot Stipulation and when the Petition here was prompted by dueling employee petitions and the problems with a previous attempt a card check. *See Thompson Roofing*, 291 NLRB at 743 n.1 (“mail in ballot elections are more vulnerable to the destruction of laboratory conditions than are manual ballots because of the absence of direct Board supervision over the employees’ voting.”).

3. ***Conditions compel an in-person election.***

a. The Regional Director offers nothing contradicting the facts she accepts regarding the voting unit’s condition—the only employee group that matters in deciding whether to order an in-person election as this Region has held elsewhere in recent weeks.

(1) A voting unit of 1,047 employees far exceeds in size any contested

⁷ If the possibility that voters with high body temperatures might conceivably be excluded concerns the Regional Director in the absence of any such possibility as a fact matter, it is difficult to understand why the Regional Director pursues adamantly a mail-in card-check-style voting method shown over the years to disenfranchise more voters than in-person voting ever has.

case voting unit during the pandemic months to which a card-check-style mail-in election was ordered; even the Region has expressed doubts about attempting a card-check-style mail-in election with a unit this size.

(2) In-person secret ballot elections prevail over card-check-style mail-in ballots when the voting unit is not scattered by geography, labor disputes, or otherwise.

(3) As the Regional Director recognizes, this 90% of voting unit of 1,047 individuals has continued to work through the pandemic months at a single plant and the remaining 10% lives nearby. Att. B p. 2.

(4) As the Regional Director recognizes, this unit is not geographically scattered.

(5) As the employees remain union-free, the unit is not scattered by labor unrest.

(6) As the unit employees know how to conduct their business onsite safely, they are not scattered by COVID-19 cases; none has occurred in the plant, and only two in 1,047 has been reported within 14 days of working at the plant.

(7) What the Regional Director feels about state wide or county wide statistics or statistics from other places may make it more dangerous for employees to circulate among outsiders to cast a mail-in ballot, but is of no concern if they vote in-person at the plant.

(8) Whatever Board agents face in the COVID squalor the Regional Director's picture of New Orleans paints may be relevant to the risk faced by counting mail-in card-check-style ballots in a Board office that itself has more cases than the entire Alabama plant, but it has no relevance whatsoever to an in-person election count at a plant with voters who for months have worked effectively among precautions without this scourge.

(9) The Regional Director names not a single voter out of the 1,047 who would be actually disenfranchised by a high temperature—an absurd notion that could have been quickly discarded if challenged at a legitimate hearing—and such a rare circumstance is easily handled as would be any other individual illness the day of an in-person election. EO p. 11.

(10) The Regional Director cites not a single instance in which the number of participants in a mail-in card-check-style election would ever come close to the 90% guaranteed if an in-person election received the ballots of who have been working and NO ONE ELSE VOTED. *See Nouveau Elevator*, 326 NLRB at 471 (“voter turnout is considerably higher in manual as opposed to mail in ballot elections, and maximizing voter turnout is a legitimate objective in all elections”); *Int’l. Total Servs.*, 272 NLRB 201 (1984)(mail-in card-check-style elections create confusion and undermine process’s integrity).

b. The Regional Director’s oft-cited shelter-in-place orders and other extraordinary measures have been lifted for the past month at the plant where an in-person election would be held, and have suffered none of the “uptick” the Regional Director reports for locations relevant only for a compelled mail-in ballot card check-style election.

(1) The plant has continued to operate with only 10% of the voting unit furloughed. Att. B p. 2.

(2) Measures that might affect travel by others in the past have been lifted and pose no barrier to the Secret Ballot Stipulation’s execution now.

4. **Wild speculation about in-person election logistics flies in the face of reality.**

a. Locations offered onsite ensure any in-person election environment remains as COVID-free for voters, observers, and officials as working conditions have been for more than 1,000 people and more COVID-free than the offices from which the officials come.

(1) Tents onsite discussed below provide safe and efficient voting places, enabling voters to follow a release schedule that facilitates proper social distancing, minimal work disruption, and time for thoughtful private choice in marking a ballot.

(2) Proper sanitizer, masks, and gloves regularly available to employees and visitors protects against transmission from person to person.

(3) Available tongs ensures that one voter will touch one ballot without the need for a Board official to change gloves for each voter.

(4) Certified cleaning contractors regularly ensure that voting and waiting area surfaces remain sanitized even though CDC guidelines currently hold that surface to human transfer is unlikely.

b. Card-check-style mail-in ballots offer none of the foregoing.

(1) Contacts while completing ballots are uncontrolled—both from the potential for coercion and from a health standpoint (CDC says most COVID-19 cases occur in homes to which ballots would be mailed)—where in-person ballots are completed.

(2) Contacts while mailing ballots (whether at post office or at a mailbox) likewise are uncontrolled.

(3) Contacts as the Region counts ballots are uncontrolled in an office environment history says is about 250 times more likely to produce a COVID-19 case than the plant where in-person ballots would be counted.

Conclusion

WHEREFORE, Petitioner respectfully requests that the Board reverse the Region's EO and order an in-person election, or, alternatively, order a proper hearing where evidence can be offered, rebuttal can be considered, and both can be challenged by cross examination.

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of June, 2020, I caused the foregoing to be filed electronically with the Regional Director through the National Labor Relations Board's e-file system and a copy of the same to be served via email and first class mail on the following parties of record:

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Attachment A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

* * * * *

AM/NS CALVERT, LLC

Employer/Petitioner

and

Case 15-RM-246203

**UNITED STEEL, PAPER & FORESTRY,
RUBBER, MANUFACTURING, ENERGY
ALLIED INDUSTRIAL & SERVICE
WORKERS INTERNATIONAL UNION**

Union

* * * * *

ORDER DIRECTING MAIL-BALLOT ELECTION

On August 8, 2019, AMNS Calvert, LLC (Employer/Petitioner) filed a petition under 9 (c) of the National Labor Relations Act (the Act), as amended, seeking to determine if a majority of the production and maintenance employees¹ working at its Calvert, Alabama facility (Employer’s facility) wished to be represented by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC (Union). Shortly thereafter, the Union filed unfair labor practice charges in Cases 15-CA-246354 and 15-CA-248402, followed by a request to block the processing of the petition and an offer of proof. I determined the processing of the petition should be blocked, and the petitioner

¹ The Employer and Union have agreed that out of 1047 employees, 892 are eligible voters, and 155 employees would vote subject to challenge.

remained blocked from August 13, 2019 until February 2020 when the Union requested that the Region resume processing the petition. On March 10, 2020, I approved a Stipulated Election Agreement providing for a manual election to be held at the Employer's facility on March 23 and 24, 2020. However, on March 19, 2020, citing the ongoing COVID-19 pandemic, the Board issued a general order suspending all representation elections until April 3. Consequently, the election was cancelled.

On April 1, the Board issued an order resuming elections as of April 6. Nevertheless, the order noted that, while conducting representation elections is core to the Board's mission, "appropriate measures are available to permit elections to resume in a safe and effective manner, which will be determined by the Regional Director." Because there is a dispute in this matter, pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Accordingly, I issued a Notice to Show Cause on April 23, 2020, and based on the responses submitted by the parties, I make the following findings and conclusions.

I. ISSUES UNDER CONSIDERATION

This case requires me to consider and decide two issues: (a) whether it is necessary to hold a hearing to determine why I should not order a mail-ballot election; and (b) whether I should order a mail-ballot election due to the COVID-19 pandemic. As will be explained in further detail below, I have determined that it is unnecessary to hold a hearing in this matter and that a mail-ballot election should be conducted in light of the continuing "extraordinary circumstances" created by COVID-19.

II. POSITIONS OF THE PARTIES

A. The Employer/Petitioner's Position

On May 5, 2020, the Employer filed its Response to the Region's Notice to Show Cause. The Employer requests a hearing be held to establish an evidentiary record and to meet the minimums set forth under the Administrative Procedures Act and Due Process Clause. However, the Employer also admits the facts in this matter are not in dispute and failed to offer any indication of what additional information would be disclosed at a hearing which it had not already provided to the Region in its response to the Notice to Show Cause.

The Employer argues that a mail ballot election is not appropriate because (1) the Regional Director lacks authority to revoke approval of the Stipulated Election Agreement to order a mail ballot election since a manual election is not impossible to perform, (2) mail ballots are particularly vulnerable to certain problems and issues, including the potential of transmission of COVID-19 through the handling of mail ballots, and (3) precautions to protect Board agents, observers, and voters in a manual election are effective, feasible, and pose no issue. In this regard, the Employer proposes to hold a manual election during June 2020 at three separate voting locations with four different polling periods over a two-day period.

The Employer notes it has instituted temperature checks for all visitors seeking access to its facility, specifically noting it will deny access to any individual whose temperature registers at 100 Fahrenheit or above. It indicates it can provide well-ventilated 30 ft. by 30 ft. tent areas for individuals voting and waiting in line to vote, and it will provide ground markings placed at distances of six feet, allowing room for social distancing of voters, observers, and Board agents. The Employer proposes extending each voting session to at least six hours to allow employees to be released to vote in smaller groups to further facilitate social distancing. The Employer will

supply ample hand sanitizer, masks, gloves, and single use writing utensils to for voters, observers, and the Board agents, and will place hand washing stations with soap outside each tent. The Employer suggests the use of plexiglass on each table to shield the Board agent and observers from voters who approach the table for identification and to receive a ballot. The Employer asserts it will contract with a housekeeping contractor to sanitize the voting tent during voting time, including wiping off the voting booth after each use.

The Employer contends a mail ballot election will pose more serious risk factors in relation to the COVID-19 pandemic, including the same exposure to and transmission of the coronavirus via its presence on mail that would be found in-person. The Employer further argues there are additional and separate risk factors present in conducting a mail ballot election which weigh in favor of a manual election; arguing employees will lose confidence in the election process and will be disenfranchised by a mail ballot election. In this regard, the Employer argues that a manual election will enhance the opportunity of voters to vote, and that a mail ballot election will produce lower participation rates.

B. The Union's Position

On April 28, 2020, the Union filed its response to the Region's Notice to Show Cause. The Union does not believe a hearing is necessary in this matter, and that, because of the COVID-19 pandemic, it is not currently safe to conduct an in-person manual election at this facility. Citing CDC guidelines, the Union raises concerns that employees may be required to forfeit their right to vote should they or a household member be diagnosed or exhibit symptoms of COVID-19, requiring them to self-quarantine or an employee may feel obligated to appear to vote even if they or a household member were showing signs of infection. The Union further notes that a manual election will require gatherings at or in the polling places as well as

unnecessary interstate travel for union and Board officials to the Employer's facility which could lead to further spread of the virus in the local community as well as in the communities from which Union and Board officials come from. The Union further raises logistical concerns regarding how voters will be checked off the voter list, how to handle challenged ballots, how to ensure the voting area is sanitized, and other logistical considerations necessary due to the COVID-19 pandemic and argues all logistical complexities presented by a manual election can easily be avoided by conducting a mail ballot election. Based on the foregoing, the Union argues the only way to ensure all employees will be given the opportunity to safely vote is via mail ballot.

III. ANALYSIS AND FINDINGS

A. A Hearing is Unwarranted

A pre-election hearing is typically convened when it is necessary to resolve disputed issues concerning the composition of a petitioned-for-unit. At the hearing, a hearing officer is charged with developing a complete record and, to achieve that end, the parties are permitted to proffer testimonial and documentary evidence to support their respective positions regarding how the disputed issues should be resolved. The purpose of this exercise is to enable a Regional Director to discharge his or her duty under Section 9(c) of the Act to determine whether a question concerning representation exists.

Here, the Employer requests that I hold a hearing in order to enable it to outline its proposal to hold a manual election. Some compelling facts convince me that it is unnecessary to hold a hearing to determine why I should not order a mail-ballot election in this case. First, convening a hearing is unwarranted because there is absolutely no dispute among the parties regarding the

composition of the unit. Previously, the parties agreed which employees would, and would not be, permitted to vote in the election and consummated their agreement in a stipulated election agreement. The parties also agreed which employees would vote subject to challenge. Neither party has sought to revoke their previous agreement regarding the unit composition or proposed any modifications to the unit in response to the Notice to Show Cause. Therefore, it is unnecessary to incur the expense of convening a hearing to develop a record to resolve traditional hearing issues, such as unit scope and voter eligibility issues, since the unit composition issue is firmly settled.

Second, a hearing is not warranted because I have accepted as true all facts and evidence proffered, and representations made, by the Employer/Petitioner in its answer to the Notice to Show Cause including, *inter alia*, the fact that the employees in this instance are not scattered and the precautions it intends to take to ensure that a manual election is safely and effectively conducted at its facility. In its response, the Employer never indicated that it has, or would like the opportunity to present, additional facts supporting its position at a hearing. The Employer's answer constituted its full and complete response to the Notice to Show Cause, and I have thoroughly reviewed and thoughtfully considered the evidence and arguments supporting the response. Accordingly, it is unnecessary to expend Agency resources holding a hearing since doing so will only result in the Employer presenting the same evidence it submitted, and I have accepted, in response to the Notice to Show Cause. Further, contrary to any traditional need for a hearing to present evidence regarding disputed issues, the only issue to be determined is whether Agency employees will be put at unnecessary risk outside of the Employer's control given the circumstances surrounding the COVID-19 virus.

In light of the above, I have concluded that a hearing is not necessary and will not be held in this matter.

B. A Mail-Ballot Election is Warranted

In light of my decision not to hold a hearing, the only remaining issue is whether a mail-ballot election should be conducted in this case. While I fully recognize that Board elections should, as a general rule, be conducted manually, I find that the “extraordinary circumstances” created by COVID-19 warrant deviating from this method.

I note the Board has held in *San Diego Gas & Electric*, 325 NLRB 1143 (1998), that a regional director does not abuse her discretion if she orders a mail-ballot election based solely on the safety of Board agents. See, *Atlas Pacific Engineering Company*, 27-RC-258742 (May 8, 2020). There is no dispute the Board prefers manual elections. Also, however, there is no dispute mail-ballot elections are a normal part of the Board’s procedures; in other words, they are not an *ad-hoc* procedure the Board recently concocted. While, normally, mail-ballot elections are conducted because employees are “scattered” (as that term is meant in Board law), the Board’s rules and regulations do not account for the current circumstances – a global pandemic. The regulations do, however, as elucidated by *San Diego Gas & Electric*, allow for Regional Directors to exercise discretion when scheduling elections based on “extraordinary circumstances.”

In exercising my discretion to order a mail-ballot election in this case, I rely on several factors. As an initial matter, I take administrative notice of the pandemic health situation that currently exists in the United States, and which continues to affect the way that individuals, businesses organizations, and governments conduct their daily operations. The COVID-19

virus is infecting people and spreading easily from person to person. On March 11, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization. On March 13, the President of the United States proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency. This situation poses a serious public health risk. I note that, under order of the President of the United States, federal government employees are to avoid unnecessary social contact and that government business should be conducted remotely when possible.

In Alabama where the election will be held, Governor Kay Ivey declared a state public health emergency in the State of Alabama on March 13, 2020. Beginning on March 19, 2020, the Alabama State Health Officer issued a series of Stay at Home orders suspending certain public gatherings to protect Alabamians and to mitigate the spread of COVID-19 by decreasing the opportunities for transmission of the virus and in an effort to decrease the risk of community spread. On May 8, 2020, the Alabama State Health Officer issued a Safer at Home order, and the State moved into Phase One of reopening. Since the State began reopening, the state has seen an uptick in diagnosed COVID-19 cases. As of May 26, 2020, the Alabama Department of Public Health had reported 15,194 confirmed COVID-19 cases, reflecting a two week increase of 4,743. Of the 15,194 cases reported in Alabama as of May 26, 2020, 65 cases have been reported in Washington County where the Employer's facility is located. As of May 26, 2020, Alabama has also recorded 566 COVID-19 related deaths, five of which have been reported in Washington County.²

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The majority of agents who would be assigned to conduct this election manually would be traveling from Louisiana, where the COVID-19 pandemic has resulted in significantly more illnesses and deaths than Alabama. Louisiana Governor Jon Bel Edwards issued a State of Emergency for Louisiana. He issued a Stay at Home Order on March 22, 2020, directing all Louisiana residents to shelter at home and limit movements outside of their homes beyond essential needs. That Stay at Home Order was repeatedly extended until May 14, 2020 when Louisiana began Phase One of reopening. As of May 26, 2020, there have been 37,809 confirmed COVID-19 cases resulting in 2,585 deaths in Louisiana.³

The situation in New Orleans where the Region 15 office is located has been even more dire than that of the State of Louisiana. In March 2020, New Orleans was quickly identified as a hotbed for COVID-19, and the local government took swift action to control the spread. New Orleans Mayor Latoya Cantrell declared a State of Emergency in the City of New Orleans due to COVID-19 on March 11, 2020. On March 16, 2020, Mayor Cantrell issued a Mayoral Proclamation to Promulgate Emergency Orders during the State of Emergency due to COVID-19 in an effort to implement the guidelines of the CDC and mitigate the further spread of COVID-19; since the public health and safety threats of COVID-19 continued despite the Emergency orders in place since March 16, 2020, Mayor Cantrell issued a Mayoral Proclamation to further promulgate Emergency Orders on April 15, 2020. On May 15, 2020, Mayor Cantrell issued a Proclamation on for Phase One of Reopening. As of May 26, 2020, there have been 7,005 positive cases of COVID-19 in the City of New Orleans, 502 of which have resulted in patient deaths.⁴

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Additionally, conducting a manual election in this case will require a significant degree of exposure, not only to the Board Agents, but also to the observers and employees. Conducting a manual election will require travel on the part of at least twelve Board Agents, the majority of whom are based out of Region 15 New Orleans office. As noted earlier, New Orleans has been a known hot-bed for infections since mid-March 2020. Due to the number of agents required to conduct this election manually, the election could not be fully staffed from the Regional Office in New Orleans. As such, Board agents from Region 15's Memphis and/or Little Rock office would be required to travel to Alabama, and the Region would likely also need to send agents from Region 10's Birmingham Office in order to fully staff this election. The Employer's facility is located hundreds of miles from each of these offices, thereby requiring anywhere between 2.5 and 7.5 hours of travel one-way depending on the Regional office from which the agent is traveling. Furthermore, since carpooling is necessarily at odds with CDC guidelines regarding social distancing, Board agents would need to travel in separate vehicles at great expense to the Agency. As noted above, this is a large and complex election spanning multiple days which would require Board agents to spend three nights in a hotel given that the election would end at 9:30 p.m. and then the count would need to take place immediately after, thereby exposing hotel workers and restaurant employees to a dozen Agents coming from multiple states across the southeast, including Louisiana where there are over 30,000 confirmed COVID-19 cases. In addition, Board agents would then be in the polling place for a total of 24 hours under the Employer's proposal that the four polling times be extended to six hours each, followed by the count of over 1,000 ballots. Holding a mail ballot election, and minimizing travel, would be the safest option as non-essential travel should generally be avoided at this time.

While various precautions would be taken by the Employer to ensure safety, a manual election would place around 1,047 employees, observers, and Board agents in very close proximity to each other for a substantial period of time. While helpful, the accommodations offered by the Employer do not alleviate my concern that multiple Board agents would be placed at risk.

In addition to the safety concerns noted above, a manual election is also undesirable in the current climate because such an election could lead to decreased voter turnout and voter disenfranchisement. If a manual election is ordered, unit employees would be required to appear at the facility in order to exercise their right to vote. However, an employee who is ill or manifesting symptoms unrelated to COVID-19 may opt to remain at home, and not vote, due to fear of failing the Employer's screening protocol. Alternatively, given the importance of the election, the ill employee may feel compelled to report to the facility in order to allow his voice to be heard in the election. While the Employer plans to screen employees when they arrive to work on the day of the election, these screening procedures are not infallible and may result in a COVID-infected employee, particularly those that are asymptomatic, entering the facility. Further, the testing procedures proposed by the Employer will also result in the disenfranchisement of employees who have high temperatures not caused by COVID-19 since all employees who have fevers will be sent home and not allowed to cast a vote. The risks of low voter turnout and voter disenfranchisement are simply not present with a mail-ballot election since all unit employee will have an opportunity to vote.

While I appreciate the extraordinary efforts that the Employer has offered to facilitate a manual election, the Region cannot safely hold a manual election at this time at this location given the current dangers posed by COVID-19. Furthermore, the safety measures proposed can

introduce new problems. For example, the long polling sessions, lasting several hours increases the time the Board agents and observers must spend together carrying out their election-related duties all while wearing masks. As with the other issues noted above, a mail-ballot election alleviates this exposure and guarantees overall safety. Therefore, I conclude that a mail-ballot election is warranted and will protect, not only the rights, but also, the safety of all parties.

IV. ADDITIONAL FINDINGS

Based on the stipulated election agreement signed by the parties, I hereby make the following additional findings:

The Employer/Petitioner is a limited liability company incorporated in the State of Delaware with an office and place of business in Calvert, Alabama where it is engaged in the business of providing steel components. Within the past twelve (12) months, a representative period, the Employer purchased and received goods and materials at its Calvert, Alabama facility valued in excess of \$50,000 directly from points located outside the State of Alabama. Based on this, the Employer is engaged in commerce that affects commerce within the meaning of Section 2(6) of the Act.

The Union is a Labor Organization within the meaning of Section 2(5) of the Act.

The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All hourly full-time and regular part-time production and maintenance employees employed by the Employer at its Calvert, Alabama facility

Excluded: All office clerical and technical employees, Test Lab Operators and Test Lab Specialists, temporary employees, guards, professional and confidential employees and supervisors as defined in the Act.

V. CONCLUSION

The risks of COVID-19 are somewhat unknown and, while these employees are required to appear at work because no other alternative exists for them, there is an alternative to a manual election – a mail-ballot election. A mail-ballot election would limit and/or avoid all in-person contact between the Board agent(s), observers, and voters. Therefore, in an effort to ensure the safety of everyone during the ongoing pandemic, I believe a mail-ballot election is warranted.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the groups found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC . The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

Eligibility to Vote

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or 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. Unit employees 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 since the designated payroll period; 2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and 3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

List of Eligible voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 US 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before June 10, 2020. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply

with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to 504-589-4069. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01am of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: June 9, 2020

/s/

M. KATHLEEN McKINNEY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 15
600 South Maestri Place – 7th Floor
New Orleans, LA 70130-3413

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

AM/NS CALVERT, LLC

Employer/Petitioner

and

Case 15-RM-246203

**UNITED STEEL, PAPER & FORESTRY,
RUBBER, MANUFACTURING, ENERGY ALLIED
INDUSTRIAL & SERVICE WORKERS
INTERNATIONAL UNION**

Union

AFFIDAVIT OF SERVICE OF: Order Directing Mail Ballot Election, dated June 9, 2020.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on June 9, 2020, I served the above documents by electronic mail upon the following persons, addressed to them at the following addresses:

Marcel L. Debruge, Esq.
Burr & Forman LLP
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Joel Stadtlander, HR Director
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1 Steel Drive
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Myriam Aerts, Chief Administrator Officer
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Brad Manzolillo, Organizing Counsel
Five Gateway Center
Pittsburgh, PA 15222
bmanzolillo@usw.org

June 9, 2020

PAMPLA ROBERTSON, Designated Agent
of NLRB

Date

Name

/s/

Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

* * * * *

AM/NS CALVERT, LLC

Employer/Petitioner

and

Case 15-RM-246203

**UNITED STEEL, PAPER & FORESTRY,
RUBBER, MANUFACTURING, ENERGY
ALLIED INDUSTRIAL & SERVICE
WORKERS INTERNATIONAL UNION**

Union

* * * * *

CORRECTED ORDER DIRECTING MAIL-BALLOT ELECTION

On August 8, 2019, AMNS Calvert, LLC (Employer/Petitioner) filed a petition under 9 (c) of the National Labor Relations Act (the Act), as amended, seeking to determine if a majority of the production and maintenance employees¹ working at its Calvert, Alabama facility (Employer’s facility) wished to be represented by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC (Union). Shortly thereafter, the Union filed unfair labor practice charges in Cases 15-CA-246354 and 15-CA-248402, followed by a request to block the processing of the petition and an offer of proof. I determined the processing of the petition should be blocked, and the petitioner

¹ The Employer and Union have agreed that out of 1047 employees, 892 are eligible voters, and 155 employees would vote subject to challenge.

remained blocked from August 13, 2019 until February 2020 when the Union requested that the Region resume processing the petition. On March 10, 2020, I approved a Stipulated Election Agreement providing for a manual election to be held at the Employer's facility on March 23 and 24, 2020. However, on March 19, 2020, citing the ongoing COVID-19 pandemic, the Board issued a general order suspending all representation elections until April 3. Consequently, the election was cancelled.

On April 1, the Board issued an order resuming elections as of April 6. Nevertheless, the order noted that, while conducting representation elections is core to the Board's mission, "appropriate measures are available to permit elections to resume in a safe and effective manner, which will be determined by the Regional Director." Because there is a dispute in this matter, pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Accordingly, I issued a Notice to Show Cause on April 23, 2020, and based on the responses submitted by the parties, I make the following findings and conclusions.

I. ISSUES UNDER CONSIDERATION

This case requires me to consider and decide two issues: (a) whether it is necessary to hold a hearing to determine why I should not order a mail-ballot election; and (b) whether I should order a mail-ballot election due to the COVID-19 pandemic. As will be explained in further detail below, I have determined that it is unnecessary to hold a hearing in this matter and that a mail-ballot election should be conducted in light of the continuing "extraordinary circumstances" created by COVID-19.

II. POSITIONS OF THE PARTIES

A. The Employer/Petitioner's Position

On May 5, 2020, the Employer filed its Response to the Region's Notice to Show Cause. The Employer requests a hearing be held to establish an evidentiary record and to meet the minimums set forth under the Administrative Procedures Act and Due Process Clause. However, the Employer also admits the facts in this matter are not in dispute and failed to offer any indication of what additional information would be disclosed at a hearing which it had not already provided to the Region in its response to the Notice to Show Cause.

The Employer argues that a mail ballot election is not appropriate because (1) the Regional Director lacks authority to revoke approval of the Stipulated Election Agreement to order a mail ballot election since a manual election is not impossible to perform, (2) mail ballots are particularly vulnerable to certain problems and issues, including the potential of transmission of COVID-19 through the handling of mail ballots, and (3) precautions to protect Board agents, observers, and voters in a manual election are effective, feasible, and pose no issue. In this regard, the Employer proposes to hold a manual election during June 2020 at three separate voting locations with four different polling periods over a two-day period.

The Employer notes it has instituted temperature checks for all visitors seeking access to its facility, specifically noting it will deny access to any individual whose temperature registers at 100 Fahrenheit or above. It indicates it can provide well-ventilated 30 ft. by 30 ft. tent areas for individuals voting and waiting in line to vote, and it will provide ground markings placed at distances of six feet, allowing room for social distancing of voters, observers, and Board agents. The Employer proposes extending each voting session to at least six hours to allow employees to be released to vote in smaller groups to further facilitate social distancing. The Employer will

supply ample hand sanitizer, masks, gloves, and single use writing utensils to for voters, observers, and the Board agents, and will place hand washing stations with soap outside each tent. The Employer suggests the use of plexiglass on each table to shield the Board agent and observers from voters who approach the table for identification and to receive a ballot. The Employer asserts it will contract with a housekeeping contractor to sanitize the voting tent during voting time, including wiping off the voting booth after each use.

The Employer contends a mail ballot election will pose more serious risk factors in relation to the COVID-19 pandemic, including the same exposure to and transmission of the coronavirus via its presence on mail that would be found in-person. The Employer further argues there are additional and separate risk factors present in conducting a mail ballot election which weigh in favor of a manual election; arguing employees will lose confidence in the election process and will be disenfranchised by a mail ballot election. In this regard, the Employer argues that a manual election will enhance the opportunity of voters to vote, and that a mail ballot election will produce lower participation rates.

B. The Union's Position

On April 28, 2020, the Union filed its response to the Region's Notice to Show Cause. The Union does not believe a hearing is necessary in this matter, and that, because of the COVID-19 pandemic, it is not currently safe to conduct an in-person manual election at this facility. Citing CDC guidelines, the Union raises concerns that employees may be required to forfeit their right to vote should they or a household member be diagnosed or exhibit symptoms of COVID-19, requiring them to self-quarantine or an employee may feel obligated to appear to vote even if they or a household member were showing signs of infection. The Union further notes that a manual election will require gatherings at or in the polling places as well as

unnecessary interstate travel for union and Board officials to the Employer's facility which could lead to further spread of the virus in the local community as well as in the communities from which Union and Board officials come from. The Union further raises logistical concerns regarding how voters will be checked off the voter list, how to handle challenged ballots, how to ensure the voting area is sanitized, and other logistical considerations necessary due to the COVID-19 pandemic and argues all logistical complexities presented by a manual election can easily be avoided by conducting a mail ballot election. Based on the foregoing, the Union argues the only way to ensure all employees will be given the opportunity to safely vote is via mail ballot.

III. ANALYSIS AND FINDINGS

A. A Hearing is Unwarranted

A pre-election hearing is typically convened when it is necessary to resolve disputed issues concerning the composition of a petitioned-for-unit. At the hearing, a hearing officer is charged with developing a complete record and, to achieve that end, the parties are permitted to proffer testimonial and documentary evidence to support their respective positions regarding how the disputed issues should be resolved. The purpose of this exercise is to enable a Regional Director to discharge his or her duty under Section 9(c) of the Act to determine whether a question concerning representation exists.

Here, the Employer requests that I hold a hearing in order to enable it to outline its proposal to hold a manual election. Some compelling facts convince me that it is unnecessary to hold a hearing to determine why I should not order a mail-ballot election in this case. First, convening a hearing is unwarranted because there is absolutely no dispute among the parties regarding the

composition of the unit. Previously, the parties agreed which employees would, and would not be, permitted to vote in the election and consummated their agreement in a stipulated election agreement. The parties also agreed which employees would vote subject to challenge. Neither party has sought to revoke their previous agreement regarding the unit composition or proposed any modifications to the unit in response to the Notice to Show Cause. Therefore, it is unnecessary to incur the expense of convening a hearing to develop a record to resolve traditional hearing issues, such as unit scope and voter eligibility issues, since the unit composition issue is firmly settled.

Second, a hearing is not warranted because I have accepted as true all facts and evidence proffered, and representations made, by the Employer/Petitioner in its answer to the Notice to Show Cause including, *inter alia*, the fact that the employees in this instance are not scattered and the precautions it intends to take to ensure that a manual election is safely and effectively conducted at its facility. In its response, the Employer never indicated that it has, or would like the opportunity to present, additional facts supporting its position at a hearing. The Employer's answer constituted its full and complete response to the Notice to Show Cause, and I have thoroughly reviewed and thoughtfully considered the evidence and arguments supporting the response. Accordingly, it is unnecessary to expend Agency resources holding a hearing since doing so will only result in the Employer presenting the same evidence it submitted, and I have accepted, in response to the Notice to Show Cause. Further, contrary to any traditional need for a hearing to present evidence regarding disputed issues, the only issue to be determined is whether Agency employees will be put at unnecessary risk outside of the Employer's control given the circumstances surrounding the COVID-19 virus.

In light of the above, I have concluded that a hearing is not necessary and will not be held in this matter.

B. A Mail-Ballot Election is Warranted

In light of my decision not to hold a hearing, the only remaining issue is whether a mail-ballot election should be conducted in this case. While I fully recognize that Board elections should, as a general rule, be conducted manually, I find that the “extraordinary circumstances” created by COVID-19 warrant deviating from this method.

I note the Board has held in *San Diego Gas & Electric*, 325 NLRB 1143 (1998), that a regional director does not abuse her discretion if she orders a mail-ballot election based solely on the safety of Board agents. See, *Atlas Pacific Engineering Company*, 27-RC-258742 (May 8, 2020). There is no dispute the Board prefers manual elections. Also, however, there is no dispute mail-ballot elections are a normal part of the Board’s procedures; in other words, they are not an *ad-hoc* procedure the Board recently concocted. While, normally, mail-ballot elections are conducted because employees are “scattered” (as that term is meant in Board law), the Board’s rules and regulations do not account for the current circumstances – a global pandemic. The regulations do, however, as elucidated by *San Diego Gas & Electric*, allow for Regional Directors to exercise discretion when scheduling elections based on “extraordinary circumstances.”

In exercising my discretion to order a mail-ballot election in this case, I rely on several factors. As an initial matter, I take administrative notice of the pandemic health situation that currently exists in the United States, and which continues to affect the way that individuals, businesses organizations, and governments conduct their daily operations. The COVID-19

virus is infecting people and spreading easily from person to person. On March 11, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization. On March 13, the President of the United States proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency. This situation poses a serious public health risk. I note that, under order of the President of the United States, federal government employees are to avoid unnecessary social contact and that government business should be conducted remotely when possible.

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² See

<https://alpublichealth.maps.arcgis.com/apps/opsdashboard/index.html#/6d2771faa9da4a2786a509d82c8cf0f7>

The majority of agents who would be assigned to conduct this election manually would be traveling from Louisiana, where the COVID-19 pandemic has resulted in significantly more illnesses and deaths than Alabama. Louisiana Governor Jon Bel Edwards issued a State of Emergency for Louisiana. He issued a Stay at Home Order on March 22, 2020, directing all Louisiana residents to shelter at home and limit movements outside of their homes beyond essential needs. That Stay at Home Order was repeatedly extended until May 14, 2020 when Louisiana began Phase One of reopening. As of May 26, 2020, there have been 37,809 confirmed COVID-19 cases resulting in 2,585 deaths in Louisiana.³

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Additionally, conducting a manual election in this case will require a significant degree of exposure, not only to the Board Agents, but also to the observers and employees. Conducting a manual election will require travel on the part of at least twelve Board Agents, the majority of whom are based out of Region 15 New Orleans office. As noted earlier, New Orleans has been a known hot-bed for infections since mid-March 2020. Due to the number of agents required to conduct this election manually, the election could not be fully staffed from the Regional Office in New Orleans. As such, Board agents from Region 15's Memphis and/or Little Rock office would be required to travel to Alabama, and the Region would likely also need to send agents from Region 10's Birmingham Office in order to fully staff this election. The Employer's facility is located hundreds of miles from each of these offices, thereby requiring anywhere between 2.5 and 7.5 hours of travel one-way depending on the Regional office from which the agent is traveling. Furthermore, since carpooling is necessarily at odds with CDC guidelines regarding social distancing, Board agents would need to travel in separate vehicles at great expense to the Agency. As noted above, this is a large and complex election spanning multiple days which would require Board agents to spend three nights in a hotel given that the election would end at 9:30 p.m. and then the count would need to take place immediately after, thereby exposing hotel workers and restaurant employees to a dozen Agents coming from multiple states across the southeast, including Louisiana where there are over 30,000 confirmed COVID-19 cases. In addition, Board agents would then be in the polling place for a total of 24 hours under the Employer's proposal that the four polling times be extended to six hours each, followed by the count of over 1,000 ballots. Holding a mail ballot election, and minimizing travel, would be the safest option as non-essential travel should generally be avoided at this time.

While various precautions would be taken by the Employer to ensure safety, a manual election would place around 1,047 employees, observers, and Board agents in very close proximity to each other for a substantial period of time. While helpful, the accommodations offered by the Employer do not alleviate my concern that multiple Board agents would be placed at risk.

In addition to the safety concerns noted above, a manual election is also undesirable in the current climate because such an election could lead to decreased voter turnout and voter disenfranchisement. If a manual election is ordered, unit employees would be required to appear at the facility in order to exercise their right to vote. However, an employee who is ill or manifesting symptoms unrelated to COVID-19 may opt to remain at home, and not vote, due to fear of failing the Employer's screening protocol. Alternatively, given the importance of the election, the ill employee may feel compelled to report to the facility in order to allow his voice to be heard in the election. While the Employer plans to screen employees when they arrive to work on the day of the election, these screening procedures are not infallible and may result in a COVID-infected employee, particularly those that are asymptomatic, entering the facility. Further, the testing procedures proposed by the Employer will also result in the disenfranchisement of employees who have high temperatures not caused by COVID-19 since all employees who have fevers will be sent home and not allowed to cast a vote. The risks of low voter turnout and voter disenfranchisement are simply not present with a mail-ballot election since all unit employee will have an opportunity to vote.

While I appreciate the extraordinary efforts that the Employer has offered to facilitate a manual election, the Region cannot safely hold a manual election at this time at this location given the current dangers posed by COVID-19. Furthermore, the safety measures proposed can

introduce new problems. For example, the long polling sessions, lasting several hours increases the time the Board agents and observers must spend together carrying out their election-related duties all while wearing masks. As with the other issues noted above, a mail-ballot election alleviates this exposure and guarantees overall safety. Therefore, I conclude that a mail-ballot election is warranted and will protect, not only the rights, but also, the safety of all parties.

IV. ADDITIONAL FINDINGS

Based on the stipulated election agreement signed by the parties, I hereby make the following additional findings:

The Employer/Petitioner is a limited liability company incorporated in the State of Delaware with an office and place of business in Calvert, Alabama where it is engaged in the business of providing steel components. Within the past twelve (12) months, a representative period, the Employer purchased and received goods and materials at its Calvert, Alabama facility valued in excess of \$50,000 directly from points located outside the State of Alabama. Based on this, the Employer is engaged in commerce that affects commerce within the meaning of Section 2(6) of the Act.

The Union is a Labor Organization within the meaning of Section 2(5) of the Act.

The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All hourly full-time and regular part-time production and maintenance employees employed by the Employer at its Calvert, Alabama facility

Excluded: All office clerical and technical employees, Test Lab Operators and Test Lab Specialists, temporary employees, guards, professional and confidential employees and supervisors as defined in the Act.

V. CONCLUSION

The risks of COVID-19 are somewhat unknown and, while these employees are required to appear at work because no other alternative exists for them, there is an alternative to a manual election – a mail-ballot election. A mail-ballot election would limit and/or avoid all in-person contact between the Board agent(s), observers, and voters. Therefore, in an effort to ensure the safety of everyone during the ongoing pandemic, I believe a mail-ballot election is warranted.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the groups found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC . The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

Eligibility to Vote

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or 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. Unit employees 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 since the designated payroll period; 2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and 3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

List of Eligible voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 US 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01am of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: June 10, 2020

/s/

**M. KATHLEEN McKINNEY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 15
600 South Maestri Place – 7th Floor
New Orleans, LA 70130-3413**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

AM/NS CALVERT, LLC

Employer/Petitioner

and

Case 15-RM-246203

**UNITED STEEL, PAPER & FORESTRY,
RUBBER, MANUFACTURING, ENERGY ALLIED
INDUSTRIAL & SERVICE WORKERS
INTERNATIONAL UNION**

Union

**AFFIDAVIT OF SERVICE OF: Corrected Order Directing Mail Ballot Election,
dated June 10, 2020.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on June 10, 2020, I served the above documents by electronic mail upon the following persons, addressed to them at the following addresses:

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June 10, 2020

PAMLA ROBERTSON, Designated Agent
of NLRB

Date

Name

/s/

Signature

Attachment B

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

UNITED STEEL, PAPER & FORESTRY,)	
RUBBER, MANUFACTURING, ENERGY)	
ALLIED INDUSTRIAL & SERVICE)	
WORKERS INTERNATIONAL UNION)	
ON BEHALF OF ITS LOCAL UNION NO 735)	
)	
Union)	
)	
and)	Case 15-RM-246203
)	
AM/NS CALVERT, LLC)	
)	
Petitioner)	

AM/NS CALVERT, LLC'S RESPONSE TO NOTICE TO SHOW CAUSE

Comes the Petitioner in this matter, AM/NS Calvert, LLC, for and in response to the April 22, 2020 "Notice to Show Cause" ("Notice") and, in opposition to the Union's Response to Regional Director's Notice to Show Cause ("Union brief"), and says as follows:

Introduction

The Region by its Notice asks to know if a hearing might be necessary to determine why the Region should not simply disregard the stipulated secret ballot manual election and order a card check-style mail-in ballot election. The Region alternatively asks (1) when could a manual election be safely held; and (2) a proposal for how a manual election could be conducted to ensure the safety of all participating including addressing any travel that will be required of agency personnel, whether there would be masks and gloves available for all participants and steps to ensure the current social distancing guidelines are met, and whether the parties' position on any of the terms of the stipulation election agreement has changed, and if so, what terms? The short answers to the foregoing are as follows:

- (1) The law does not allow a card check-style mail-in ballot election to displace the employees' right to a stipulated secret ballot onsite election under these circumstances.
- (2) The facts make clear a card check-style mail-in ballot election would eviscerate the employee's right to cast an interference-free secret ballot in this instance.
- (3) The circumstances easily facilitate the protection of employee and board agent health while guaranteeing the protection of §9(c) rights the Board is expected to ensure.

Facts

Petitioner is a steel manufacturer located in Calvert, Alabama. Exhibit 1. This matter began when the Union sought to force Petitioner's employees, who had never chosen Union representation, to accept the USW as their exclusive bargaining representative pursuant to a so-called "neutrality agreement" to which Petitioner was not a party. The Union launched a card check campaign in January 2019 and sent its organizers onto Petitioner's property to solicit signatures on authorization cards. The Union made numerous materially false statements to employees concerning the organizing process, the legal effect of signing a card, and the union's ability to secure gains through collective bargaining.

After over two months of effort, the Union apparently had not succeeded in convincing enough employees to sign cards, so it filed an arbitration demand against Petitioner, seeking an additional three months to solicit cards. An arbitrator on April 5, 2019, ordered Petitioner to allow the Union back into its plant for three additional months to organize its employees by card check and, in violation of NLRA §7 rights, to forbid any employee or employee group to interfere with the interloper and to punish any violators. Exhibit 2; see Exhibit 3 (clarification).

Petitioner had no means to seek review of the arbitration order and therefore had to comply with it or risk issuance of a "bargaining order" by the arbitrator. The arbitrator forced Petitioner to discriminate against employees opposed to unionization and to provide the union with unlawful organizing assistance. Petitioner also was forced to engage in unlawful pre-representation bargaining with the union regarding the ultimate fate of salaried, non-management Specialists and Planners. Unfair labor practice charges by employees against Petitioner and the Union followed, including a charge to which Petitioner admitted guilt and which (Petitioner understands) the Region has recommended a finding of merit, declaring the neutrality agreement itself to be a §8(a)(2) violation. See Exhibit 4.

The Union notified Petitioner it had collected a majority of cards during the period of the arbitrator's mandated unfair labor practices under the unlawful agreement. At the same time, employees presented Petitioner with a petition containing signatures of a majority of employees opposing the Union. To confuse matters further, there were numerous reports of some employees signing both a union authorization card AND the Petition against union representation.

To resolve the conflict between the Union's alleged majority of signed cards, and the verifiable majority of employee signatures against unionization on the Petition of the "Right to Vote Committee", Petitioner proposed to the Union that the matter be decided through a NLRB-supervised secret ballot election. The Union refused the company's proposal. Petitioner therefore on August 8, 2019, filed its RM petition. Exhibit 5.

After months of delaying tactics, the Union and Petitioner on March 9, 2020, entered into a Stipulation governing the voting unit, the voting location, voting procedures and the election date, Exhibit 6, and the Region accepted. Exhibit 7. The Region then put off the election during the state's Stay at Home Order, which expired April 30, 2020. Exhibit 8. **Petitioner has continued to operate the plant as an essential business with 90% of voting unit employees.** The Region's Notice which now purports to change the election method from an onsite secret ballot to a card-check style mail-in vote, Exhibit 9, eviscerates the parties' Stipulation.

Argument

1. When, as here, the parties have stipulated to an onsite secret ballot election, the Regional Director lacks authority to disregard the Stipulation and instead adopt a card check mail-in ballot election.

a. NLRA §9(c) considers onsite secret ballot elections the proper and preferred means for enabling employees to decide, without coercion, if they wish Union representation.¹

b. NLRA §9(c) forbids disturbing the parties' terms for a stipulated election, 29 U.S.C. §159(c)(4), when, as here, that Stipulation calls for onsite secret ballot elections—not a card check-styled mail-in ballot election.

(1) The Regional Director lacks authority to revoke approval of a stipulation.

(a) The Regional Director approved the parties' Stipulation on March 11, 2020. Exhibit 7.

(b) The Regional Director remains bound by the Stipulation's terms "absent unusual circumstances making it **impossible** to perform." T&L Leasing, 318 NLRB 324, 326 (1995) (emphasis added).

(2) The Region cannot show the Stipulation's chosen method of election is "impossible," when Petitioner's plant where the parties stipulated as the election location has continued to operate with 90% of the voting unit (and 10% furloughed who live in the area) without a single solitary diagnosed COVID-19 case and when Petitioner has offered safe means by which to adhere to the existing release schedule.

(a) Union brief pp. 3-4's speculative rant flies in the face of Petitioner's successful safe COVID-free operation of the plant throughout 2020 with the "1000 potential voters" that comprise the bulk of the workforce without a single COVID-19 case during this period.²

(b) Though the Union has successfully conducted an entire campaign without the out of state visitors it now considers essential, Union brief p. 5, no state shelter in place order prevents any of them from traveling to join involved local Union officials to observe the voting live.³

(c) Petitioner details below how precautions, which have kept

¹ NLRB v. Gissel Packing Co., 395 U.S. 575, 602 (1969).

² Unlike those furloughed employees covered by the USW-AMUSA labor contract at steel plants in the midwest, almost all those at Calvert continue to earn a paycheck, and the few on furlough there, unlike the union represented midwest employees have a definite return date.

³ See, e.g., Califano v. Gautier Torres, 435 U.S. 1, 4 n.6 (1978) (per curiam).

its plant with over 1200 employees operating COVID-free can provide a safer manual election than the card-check style mail-in election that all agree compromise secret ballot security essential given past Union coercion.

(3) Even if the Region could meet its burden, the Region can only find a different **location** or **time** for election by the stipulated method—not force a different **method**.

(a) The Board held "the [card check-style mail in ballot] election was conducted contrary to [Stipulation] terms [because] the Stipulation provided for a **manual election**, and the Regional Director materially breached the Stipulation by ordering a [card check-style] **mail ballot election**." *Id.* at 326 (emphasis added); accord, *St. Vincent's Health Sys.*, 330 NLRB 1051 n.4 (March 24, 2000)(rejected card check-style mail in ballot election for second election when initial stipulation had chosen manual election.

(b) Modifying the **locations** and logistics onsite make sense, but it does not change the mandated **method**.

1- Even if circumstances made the manual election "impossible to perform" at the stipulated location and/or time, *id.* at 324, *T&L Leasing* held the Regional Director still was forbidden to **discard** a live manual secret ballot election and substitute a card check-style mail ballot **method**. *Id.* at 326.

2- *T&L Leasing* anticipates small location and logistics modifications to achieve the Stipulation's aim.

(c) Delaying the election **time** until June makes sense, but it does not change the mandated **method**.

1- The Board previously addressed past crises (as here) by putting off the election until the stipulated method can be honored. *E.g.*, *A-B Hvac Servs. Inc.*, No. JD (NY)-44-13, 2013 WL 5305832, at *1 (Sept. 19, 2013) (election postponed due to the after effects of Hurricane Sandy); see also, *Kauai Coconut Beach Resort*, 317 NLRB 996 (1995).

2- *T&L Leasing* does not allow forging ahead sooner with a card check-style mail ballot election that contradicts the stipulated method and common sense.

c. Even if the Stipulation did not bar a card check-style mail-in ballot election, the Regional Director still cannot conduct one when, as here, the Region cannot prove that one of the three exceptions allowing for such elections applies.⁴

(1) Eligible voters are not "scattered;" the plant as an essential business has operated and 90% of the voting unit has been employed throughout the current COVID health concerns, CO<https://www.gulfshores.com/plan/coronavirus/>, the remaining 10% live within a short commute of the plant and retain access, and—even if it were relevant to an essential

⁴ See *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (July 21, 1998).

business—the broad state Stay at Home Order expired effective May 1, 2020.

(2) Eligible voters are not "scattered" as would be over the road truckers,⁵ and not otherwise "scattered" by work schedule, but can vote by the schedule identified in the parties' Stipulation.⁶

(3) As the employer's facility currently is Union free, there is no ongoing labor dispute that would "scatter" the voters or interfere with the vote.⁷

(4) Besides the Board's three exceptions outlined above (the sole instances the Board identifies as warranting a card check-style mail-in ballot election), no other circumstances justify abandoning the Stipulation's onsite secret ballot guarantee for a card check-style mail-in ballot election.

(a) A proper onsite secret ballot election could be held anytime during the month of June; the plant has never stopped operating, the shelter-in-place order was lifted April 30, the final State Order will be lifted May 15, proper precautions are and have been available now as throughout the plant's operation, and this small delay in an election on an August 2019 RM petition filed by the employer prejudices no one.

(b) As current operation without a single COVID-19 case demonstrates, appropriate safety measures easily facilitate the health of employees and board agents in ensuring the protection as well of employee §9(c) rights.

(5) Card check-style mail in election here makes no sense because no evidence even suggests this potentially coercive method, if chosen over the parties' selected onsite manual method, would "enhance the opportunity of all to vote." NLRB Casehandling Manual Pt. 2 § 11301.2 (Jan. 2017).

(a) Mail-in elections generally produce lower participation rates than do onsite manual elections; press accounts of political elections reflect a card check-styled mail-in method reduces voter participation when compared to the Stipulation's in-person manual secret ballot method. E.g., www.nytimes.com/2020/04/10/us/politics/vote-by-mail.

(b) Mail-in ballots offer no guarantee of voter safety from COVID-19 that Petitioner's own guidelines that onsite election at THIS plant---a plant 90% of the voting workforce have operated safely throughout the pandemic.

(c) Mail-in ballots remove any basis for confidence in the election process when the Board Agent cannot be present to ensure the sanctity of the secret ballot here any more than during past coerced card check with which the workforce is only too familiar.

⁵ E.g., UPS Group Freight v. NLRB, 921 F.3d. 251, 256 (D.C. Cir. 2019).

⁶ Stip.; see supra note 2.

⁷ See supra note 2.

See NLRB v. State Plating & Fin Co., 778 F.2d 733, 739-740 (6th Cir. 1984).

2. This case's unique fact circumstances compel the Region to follow its statutory obligation and proceed with the Stipulation's secret ballot manual election.

a. As indicated by past Union tactics with which the Region is all too familiar, this particular workforce has endured considerable coercive efforts by the Union to force recognition without a secret ballot election.

(1) The Union has gone to great lengths to strip these employees of their right to a secret ballot election.

(2) Petitioner's RM petition is predicated on a petition signed by a majority of eligible voters who demand their right to a secret ballot election conducted by the NLRB; this painful history cannot be disregarded.

(3) The Union tried to force illegal recognition through a so-called neutrality agreement purporting to cover petitioner's employees even though petitioner was not a signatory; that agreement currently is the subject of Unfair Labor practice charge 15-CA-244523 which claims a §8(a)(2) violation to which Petitioner admits and to which petitioner understands the Region has recommended a finding of merit.

(4) Currently there is pending in the U.S. District Court for the Northern District of Indiana a lawsuit, SteelWorkers v. AM/NS, et al., No. 2:19-cv-00360, in which the Union has asked the District Court, which lacks jurisdiction to do so, to usurp the NLRB's authority to conduct an election and instead to order employees, on pain of civil contempt, to pledge allegiance to the Union as certified bargaining representative without any kind of election whatsoever. See Doc. 1 Count II Prayer for Relief ¶b.

(5) The Union sought to circumvent employee rights completely by demanding that petitioner recognize the Union based on a card check when Petitioner had before it a petition executed by a majority of employees indicating they did not wish the Union to be their certified bargaining representative; petitioner filed a petition seeking a secret ballot election to resolve this conflict.

b. Petitioner filed its petition after having received both the employees' petition reflecting they did not want this Union to represent them and a notification that the Union had a majority of cards that the Union contended reflected that the employees' did want such representation; the very nature of these conflicting documents—both completed **without the benefit** of a guaranteed **confidential** board-certified secret ballot election booth—illustrates more than anything else why a card check-style mail-in ballot option could not possibly serve as an effective tool in this instance to measure accurately employee desires respecting this Union's representation.

c. If the Region's goal is to carry out its statutory obligation to determine whether a majority of these employees support or oppose this Union as their certified bargaining representative, the sole means of accomplishing that goal in this setting is for this Region to conduct onsite the secret ballot election required by the statute.

3. The Notice offers no legitimate reason for not conducting the Stipulation's onsite secret ballot election here.

a. The Region may not discard the stipulated election method because the Notice offers nothing reflecting that the stipulated method is impossible, and, as set forth above, objections concerning location, logistics, and timing simply do not suffice.

b. Even assuming *arguendo* there was not stipulated election method, San Diego Gas and Electric does not allow the Region to discard a manual election for a card check-style mail in one.

(1) The Notice seems to presume a “scattered” workforce based on a false assumption of a long shuttered plant with a skeletal workforce and the bulk of the voters sheltered in place.

(2) Contrary to the Notice's false assumption, nearly all members of the voting unit are and have been reporting to work as usual throughout this year, including during the campaign leading up to the original election date, at the time the Region chose to cancel the original election date, and up to the present.

(a) Even the most cursory investigation would reveal that the plant is and has been conducting business as usual with approximately 90% of its workforce reporting and performing their usual jobs at their usual locations during their usual shifts and also reporting for their usual all-employee meetings because this business is an essential business.

(b) The handful impacted by the furlough live within a geographically tight area close to the plant, and continue to have credentials that would give them easy access.

(c) None of the plant employees travel or have other scheduling barriers that would prevent them from meeting the voting schedule stipulated by the parties and accepted by the Region previously. *See supra* note 5.

(d) As these employees, contrary to the Union's past misrepresentations, have never been represented by a labor organization, there is not a strike or other work stoppage that would satisfy the third San Diego Gas and Electric reason for conducting a card check-style mail-in ballot election in derogation of secret ballot rights. *See supra* note 7.

c. The Notice's reasons offered to justify disregarding the Stipulation's secret ballot requirements, though not establishing T&L Lewis “impossibility” of stipulated voting method, and though not meeting San Diego Gas and Electric justifications for card check-style mail in election even absent any stipulation, do not warrant abandoning conducting a secret ballot election otherwise.

(1) Whether or not the NLRB is working at home, as set forth above, the Petitioner's employees are not; NLRA protects employee rights, and it is the Region's obligation to ensure that happens.

(2) There is nothing "unknown" about when COVID-19 will be "sufficiently contained" in the Region's pronouncement:

(a) The plant is and has remained open, remains COVID-free, and is and has been conducting employee meetings and other meetings involving groups of the size called for by the election while still complying with distancing requirements, wearing masks and gloves, and utilizing proper PPE and sanitizing gel successfully.

(b) Though frankly not relevant to the conduct of this election (Respondent as an essential business has remained open), the Governor of Alabama already has opened most businesses April 30, and is expected to reopen remaining nonessential businesses (barber shops, tattoo parlors, etc.) by mid-May.

(3) To suggest that delay until June would be "unreasonable" is absurd.

(a) This petition was filed by AM/NS Calvert in August of 2019, and literally 7-8 months have passed since that time.

(b) By that point the USW had been conducting its organizing campaign for at least eight months.

(c) One more month is not going to change anything.

(4) The Union's contention that COVID-19 shelter orders foreclose its various representatives from being able to travel from faraway places to be present in person is nonsense.

(a) They can travel. *Supra* note 3.

(b) They are not needed; the Region surely is familiar with the local representatives the Union has utilized throughout the past year to deal with the many issues that have arisen.

(c) The USW has a strong organizing presence in the State of Alabama and Petitioner is confident it can deploy Alabama-based organizers and union officials to attend a secret ballot election in Calvert.

(d) The suggestion that only out-of-state higher ups can be entrusted with the process of watching the count in person not only is nonsense, but is a telling reminder of how the Union, through its unlawful "neutrality agreement," far-away lawsuit, and other tactics, has sought to manage local Alabama workers like an absentee landlord.

d. Board representatives previously involved in this case can avoid travel concerns by managing the election remotely with assistance from Alabama-based Region 15 agents present in the local area, and Region 10 agents to whom no state Stay at Home Order will apply after April 30.

4. There are no circumstances preventing an election in June; though, contrary to the

Notice, it is the Region's burden to explain with evidence why it wishes to avoid having to carry out a statutorily prescribed secret ballot election, petitioner is happy to explain why the Region cannot meet that burden.

a. Thus far, Petitioner has conducted its business COVID-free throughout the duration of this pandemic, including meetings considerably larger than any that would take place as part of the employees exercising their statutory right to secret ballot in accordance with the parties' Stipulation; with this experience, **Petitioner easily can add additional voting locations using tents in the extraordinarily large outside designated areas around the existing voting locations to ensure 6 foot separation and can continue to make available for voters gloves, masks, and hand sanitizers as it has successfully during all shifts throughout this pandemic.**

b. Thus far, Petitioner's day to day management of the pandemic has been quite successful; though conducting a workplace with more than 1,200 voting employees, **Petitioner has yet to have a single solitary employee test positive for COVID-19.**

c. Contrary to Union brief pp. 5-6 citation-free hysterics, Petitioner can support its position calling for a traditional secret ballot election as the statute prescribes because Petitioner has evidence concerning how the election properly would be administered.

(1) Employee precautions to date pose no issue.

(a) AM/NS is and has been performing temperature checks on all individuals coming onsite using a no-touch forehead thermometer; individuals with a temperature of 100.0 or more are not allowed on premises and are taken for a further temperature check using a traditional single-use thermometer.

(b) Visitor access to AM/NS premises has been prohibited except for existing contractors who are subject to the same safety requirements as AM/NS employees.

(c) Business travel has been prohibited since mid-March except in critical situations which require the employees to complete a travel intake form.

(d) Social distancing of six feet or more has been enforced on premises to date; in the limited circumstances when social distancing of six feet or more is not possible, employees have been provided N-95 or KN-95 masks and required to wear the masks.

(e) Meetings of ten or more individuals have been prohibited; for meetings with less than ten employees, social distancing of six feet or more is required.

(f) Onsite food services have been shut down.

(g) Employees have been instructed to regularly wash their hands with soap for 20 or more seconds and/or use hand sanitizer, which is available throughout the facilities.

(h) The Company has consulted with the local office of the

Occupational Safety and Health Administration and has complied with all recommended protocols.

(i) Mill safety representatives regularly conduct audits of the facilities and breakrooms to ensure that adequate social distancing is being observed.

(j) The Company employs a full-time RN nurse who has been involved in all aspects of the Company's safety planning for COVID-19.

(2) Voting locations pose no issue.

(a) The Stipulated Election Agreement designated three voting locations which consisted of a conference room in each of the social buildings for the Hot Strip Mill, Cold Roll Mill, and Hot Dip Galvanized Line.

1- To provide for greater social distancing and continuous ventilation for the Board agents, observers, and voters, the Company will place 30 ft. by 30 ft. tents in the parking lot of each of the social buildings as the voting locations.

2- Attached as "Exhibit 10" are photos of the areas in the social building parking lots where the tents will be placed.

(b) Inside the tents, three 12 ft. tables will be placed more than 6 feet apart for (1) the voters with last name beginning with A through M at each location, (2) the voters with last name beginning with N through Z at each location, and (3) the challenged voters at each location.

1- At each table, the Board agent will sit in the center of the table and an observer will sit on each end.

2- The voting booth will be placed more than six feet from the tables. A virtual illustration of the plan for the layout of the voting tents is attached as "Exhibit 11."

(c) The voting tent will be supplied with lighting as well as fans and/or portable air conditioners.

(d) Plexiglass will be placed on top of each table in the front with an opening of sufficient size for the ballot to be exchanged which will shield the Board agents and observers from the voters.

(e) Ground markings at distances of six feet will be used to designate locations for voters to stand in line to wait to vote.

(f) An additional tent shall be located next to the voting tent with lighting and fans/portable air conditioners for voters to wait in line for their time to vote ("waiting tents"). Ground markings at least six-feet apart will be designated to ensure that voters maintain adequate social distancing.

(g) In the event of inclement weather, the Company will make available voting locations in the on-site AIDT Building's Crane Bay and meeting rooms 102 A and B with the same distances between tables and voting booths as discussed above; photos of these rooms are attached as "Exhibit 12."

(h) Hotels are open for business in nearby Saraland, Alabama, and are taking sanitary precautions due to COVID-19. Restaurants in the area are open for take-out service.

(i) By June Petitioner anticipates that area restaurants will be open for regular business.

(3) Voter precautions are effective, feasible and pose no issue.

(a) All individuals entering premises will undergo a temperature check using a no-touch forehead thermometer. Anyone with a temperature of 100 or higher will not be allowed on the premises.

(b) The Stipulated Election Agreement sets forth four voting sessions of 5:00 a.m. to 9:30 a.m. and 5:00 p.m. to 9:30 p.m. on two consecutive days.

1- Because of a modified work schedule as a result of reduced customer demand due to COVID-19, five voting sessions will be needed to ensure that all employees have an adequate time to vote during the scheduled work.

2- The Company proposes extending the voting times to at least six hours so that less employees can be released in smaller groups at each time to facilitate social distancing.

(c) A no-touch hand sanitizer dispensing station will be placed in each of the voting tents and the waiting tents.

1- Sufficient hand sanitizer to refill the dispensers at least three times will be provided in the voting tent.

2- The supply of hand sanitizer will be checked after each voting session.

3- The Company currently has 150 gallons of hand sanitizer available and more can be obtained.

(d) All Board agents and observers will be provided masks and gloves. Replacements will be available, if needed.

(e) A hand-washing station with soap will be placed outside each tent. The supply of soap will be checked after each voting session.

(f) KN95 masks and gloves will be provided for voters who

wish to use them.

(g) The Company will contract with Diversified Maintenance to provide a housekeeping contractor to sanitize the voting tent during voting times, including wiping off the voting booth after each use.

(4) Ballot concerns pose no issue.

(a) Board agents handling the ballots will be provided with gloves to use at all times as well as replacements. Disinfectant wipes will also be made available for the Board agents.

(b) Single-use pencils or pens will be provided for each voter to mark the ballot and discard after use.

(c) As set forth above, no-touch hand sanitizer dispensing stations will be available in each voting and waiting tents; all voters will be instructed not to touch their faces while voting and to utilize hand sanitizer and the hand-washing stations immediately after voting.

(d) Unlike mail ballots, which will require not only the Board agent to handle the ballot, but also the postal service to handle the envelope enclosing the ballot, with the plan discussed here, only the Board agent and the voter will touch each ballot.

d. In the end, this is simply a matter of getting the election done the best way to satisfy the existing stipulated method and guarantee each voter can cast a secret ballot free of coercion that attended card signing and other past tactics.

5. Having offered a statutory and evidentiary basis for why the Region's proposed Notice violates employee rights, and having prescribed evidence from daily demonstrated precautions under settings involving far more social contact than an election, Petitioner has satisfactorily explained why the Region must do its duty and conduct a secret ballot election during the month of June.

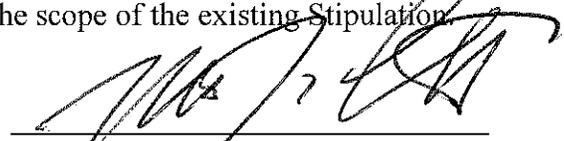
a. As the evidence is undisputed, a hearing may not be necessary; however, if the Region determines that it is not willing to perform its statutory obligation and conduct the Stipulation's manual secret ballot election, then Petitioner will require an evidentiary record, and will expect a hearing meeting the minimums under the Administrative Procedure Act and the Due Process Clause.

b. If the Region declines to conduct the Stipulation's manual secret ballot election, Petitioner will have no alternative but to seek extraordinary relief compelling the Region to comply with the law, and anticipates employees may do likewise.⁸

⁸ See Leedom v. Kyne, 358 U.S. 184 (1958).

Conclusion

WHEREFORE, premises considered, Petitioner respectfully requests that the Region order that the election be reset in accordance with the parties' Stipulation for the month of June, 2020, and direct the parties to resolve logistical concerns within the scope of the existing Stipulation.



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CERTIFICATE OF SERVICE

I certify that on the 5th day of May, 2020, I caused the foregoing to be filed electronically with the Regional Director through the National Labor Relations Board's e-file system and a copy of the same to be served via email on the following parties of record:

Rebecca Dormon
Assistant Regional Director
National Labor Relations Board; Region 15
600 South Maestri Place
New Orleans, Louisiana 70130-3414
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United Steelworkers
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OF COUNSEL

EXHIBIT 1

EXHIBIT 1

UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STEEL, PAPER & FORESTRY)
RUBBER, MANUFACTURING, ENERGY)
ALLIED INDUSTRIAL & SERVICE)
WORKERS INTERNATIONAL UNION,)
AFL-CIO/CLC)

CASE NO.: 2:19-CV-00360

Plaintiff,)

v.)

ARCLEORMITTAL USA and AM/NS,)

Defendants.)

Declaration of Joel Stadlander

I, Joel Stadlander, declare under penalty of perjury as follows:

1. My name is Joel Stadlander. I am a resident of Alabama over 21 years of age, and I am competent to make this declaration based on my own personal knowledge acquired through my role as a Director Human Resources of AM/NS Calvert LLC.

2. AM/NS Calvert LLC owns and operates steel mill located in Calvert, Alabama; employees have always been union free.

3. Calvert lies primarily within Mobile County, Alabama.

4. AM/NS Calvert LLC does not operate any steel mills in the State of Indiana and has no employees who are assigned, on a permanent basis, to perform work in Indiana.

5. AM/NS Calvert LLC is a limited liability company formed under Delaware law. AM/NS Calvert LLC's headquarters and principal place of business are in Mobile County, Alabama.

6. AM/NS Calvert LLC has two members: (1) ArcelorMittal Calvert LLC and (2) Nippon Steel North America, Inc.

7. The first of these members, ArcelorMittal Calvert LLC, is also a Delaware limited liability company, and its sole member is ArcelorMittal North America Holdings LLC.

8. Through other limited liability companies, Ispat Inland S.a.r.l. of Luxembourg owns ArcelorMittal North America Holdings LLC. ArcelorMittal S.A., also of Luxembourg, wholly owns Ispat Inland S.a.r.l. ArcelorMittal S.A. is the Luxembourgish equivalent of a corporation and has its principal place of business in Luxembourg.

9. Regarding the second of the AM/NS Calvert LLC's members, Nippon Steel North America, Inc. is a New York corporation with its principal place of business in New York.

10. I am familiar with the entity ArcelorMittal USA LLC. ArcelorMittal USA, LLC is a Delaware limited liability company headquartered in Chicago, Illinois. ArcelorMittal USA, LLC owns other entities operating facilities in, among other places, in East Chicago, Indiana; Cleveland, Ohio; Warren, Ohio; Riverdale, Illinois; Burns Harbor, Indiana; Conshohocken, Pennsylvania; Coatesville, Pennsylvania; Steelton, Pennsylvania; Virginia, Minnesota; and Weirton, West Virginia.

11. ArcelorMittal USA has no ownership interest, direct or indirect, in AM/NS Calvert LLC. Instead, ArcelorMittal USA LLC and AM/NS Calvert LLC are sister entities. ArcelorMittal North America Holdings LLC--which owns AM/NS Calvert LLC's member ArcelorMittal Calvert, LLC--also wholly owns ArcelorMittal USA Holdings II LLC. It is ArcelorMittal USA Holdings II LLC owns ArcelorMittal USA, LLC.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12 day of December, 2019.

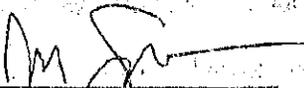

Joel Stadlander

EXHIBIT 2

ARBITRATOR'S AWARD

In the Matter of the Arbitration
Between

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers, International Union, AFL-CIO/CLC
(herein the Union)

and

ArcelorMittal/Nippon Steel Calvert,
Calvert, Alabama
(herein the Employer)

David A. Dilts
Arbitrator

April 4, 2019

APPEARANCES:

For the Union:

Anthony P. Resnick, Attorney
Patrick Gallagher, District 1, Sub-District Director

For the Employer:

Richard J. Morgan, Attorney
Meryl Cowan, Attorney

RECEIVED

APR - 5 2019

USW LEGAL DEPARTMENT

Hearings in the above cited matter were conducted on March 19 and 20, 2019 at the Fairfield Inn in Saraland, Alabama. The parties stipulated that the present matter is properly before the Arbitrator pursuant to Neutrality Agreement of the current Basic Labor Agreement (Article Two, Section E; Joint exhibit 1) between ArcelorMittal and the United Steelworkers. The record in this matter was closed upon receipt of the agreed-upon post-hearing submissions on April 1, 2019. The award in this matter is due on April 5, 2019.

ISSUE

Each party accuses the other of having violated Article Two, Section E of the parties current (2018) Basic Labor Agreement (herein BLA). The Union alleges that the Employer has violated its obligations to remain neutral during its organizing campaign by several of its actions. The Employer alleges that the Union also began its campaign without proper notice and violated the terms of the neutrality agreement resulting in the Company's actions. The parties ask the Arbitrator to weigh the propriety of their various claims, and to order the appropriate remedy should violations be found.

INTRODUCTION

ArcelorMittal and the United Steelworkers negotiated a successor agreement effective September 2018 (Joint exhibit 1). Included in the successor agreement was language referred to as the Neutrality Agreement (Article Two, Section E). This language of the BLA provides for a card check procedure for determining whether the Union represents a majority of the bargaining unit and should be recognized by the Company. The language of this Section also requires that the Employer adopt a position of neutrality concerning the unionization of its employees, except under explicitly identified circumstances.

The parties agree that ArcelorMittal/Nippon Steel Calvert (herein AM/NS or Employer)

is a joint venture between the companies whose names appear together on the Calvert facility. AM/NS is currently operating as a non-union steel mill. As a result of ArcelorMittal being a 50 percent owner of AM/NS, the neutrality language of the Basic Labor Agreement (herein BLA) between ArcelorMittal and the United Steelworkers applies to this matter. The United Steelworkers turned its attention to organizing the Employer's employees sometime in the Fall of 2018.

On January 2, 2019 the Union notified the Employer of its intent to conduct a union organizing campaign at the Calvert facility and submitted the Union's proposed bargaining unit. Discussions occurred concerning the bargaining unit proposal, however, there is no record that there was a meeting of the minds concerning the exact scope of the bargaining unit. In January of 2019 union organizers were given access to specific areas in the Calvert facility and over next few weeks the areas open to organizers were expanded through mutual agreement between the Union and Employer.

Between January 2, 2019 and the middle of March there were events arising from the union organizing campaign that both the Employer and the Union believed were violations of the neutrality provisions of the BLA. The result of these events was that both the Union and the Employer made allegations that the other had violated their obligations under the neutrality language of the BLA. Unable to amicably resolve these respective allegations the parties invoked the arbitration process detailed in Article Two, Section E 7 of the BLA.

This Arbitrator received a letter, dated March 10, 2019 from Patrick Gallagher, which states:

Pursuant to the provisions of Article Two, Section E, Neutrality, Paragraph 7, Dispute Resolution, sub-paragraphs a. thru c. of the 2018 Basic Labor Agreement between the United Steelworkers and ArcelorMittal USA, the United Steelworkers (the Union) and AM/NS Calvert *the company) (jointly herein after "the Parties") are requesting your availability to serve as the arbitrator in resolving a dispute between Parties. The USW submitted a letter (attached) on March 1, 2019 to the company requesting arbitration. The hearing is to be held within ten (10) days of the submission and the decision within five days thereafter.

The hearing will be held in the Mobile, Alabama area, at a location yet to be determined by the parties. Due to the time constraints the parties respectfully request a prompt response of your availability. Thank you in advance for your consideration in this matter.

The parties agreed that hearings in this matter would be conducted beginning on March 19 and continuing on following dates as needed and that the award would submitted on or before April 5, 2019. The arbitration hearings were conducted on March 19 and 20, 2019 at the Fairfield Inn in Saraland, Alabama. The parties stipulated that the present matter is properly before the Arbitrator pursuant to Neutrality Agreement of the current Basic Labor Agreement between ArcelorMittal and the United Steelworkers. The record in this matter was closed upon receipt of the agreed-upon post-hearing submissions on April 1, 2019. The award in this matter is due on or before April 5, 2019.

UNION'S POSITION

The Union's position is that the Employer repeatedly violated the neutrality language of Article Two, Section E of the BLA. The Company conducted captive audience and group meetings with employees in which management personnel made statements concerning

unionization, including several misrepresentations. These meetings were conducted during January of 2019. These actions are clearly prohibited by Article Two, Section E.

The Company conducted several smaller group meetings, mandatory shift meetings, (around January 28) in which a power point presentation was made and focused on unionization. The Union requested a copy of these presentations and a list of dates when these meetings occurred and, to date, the Employer has refused the Union's information requests. At one of these meetings anti-union literature was distributed, and petitions for the revocation of bargaining authorization cards were placed on tables. This, was allegedly accomplished, by Calvert employees who were anti-union rather than by management personnel. AM/NS admits to giving mill access to a group of anti-union employees who opposed the Union organizing the Calvert mill. The Employer claims that it did nothing more than provide the exact same access that it granted the union.

In addition, the Chief Executive Officer of AM/NS (Mr. MacNair) sent several emails, over the Company's email system, which were entered into the record of this hearing. As can be readily gleaned from this evidence, there are numerous comments which are improper under the neutrality language. Further, the CEO made several allegations of misconduct by the Union, and offered no proof, save the testimony at hearing, of a few anti-union witnesses. Worse still, one of the emails contained anti-union statements made by a local Congressman. Further, the CEO was not called to testify. Without Mr. MacNair's testimony a proper foundation for the emails cannot be laid, nor can the Union cross-examine him concerning these emails.

The Company has repeatedly misrepresented the terms of existing collective bargaining agreements negotiated by the United Steelworkers, including the ArcelorMittal Basic Labor

Agreement. Management has told its employees that employees of unionized mills “up north” could bump into jobs at Calvert if those northern employees had greater seniority than the employees in Calvert. In fact, that claim is total falsehood. Seniority, once established under the BLA, can be exercised in other locations in so far as, if a job becomes open, the senioritized employee can claim that job before a “new hire” is recruited. There is no bumping right associated with such preferential hiring arrangements. This argument was proffered by management to make Calvert employees afraid of losing their current positions should the Union succeed in their organizing efforts.

The Company’s allowing access to third-party opponents of unionization is entirely barred by its neutrality obligations. The granting of such access to anti-union groups is not contemplated by the BLA, and is proscribed by Article Two, Section E which requires the Company to remain neutral “except as explicitly provided herein” and nothing explicitly provides for the Company to permit a third-party (with whom it shares the opinion of remaining non-union) to have the access provided for in the neutrality agreement. To permit employees to engage in the anti-union conduct, to have consultants/attorneys on site, and to do so with the same conditions as the Union clearly violates Article Two, Section E and cannot be permitted under the BLA.

The Union also found that the Company failed to “grant continuous access to well-traveled areas of its facilities to the Union for the purposes of distributing literature and meeting with unrepresented Company employees.” The clear intent of this provision is to provide the Union with an ability to communicate with members of the proposed bargaining unit with respect to union representation. The Employer has repeatedly thwarted this intent by unreasonably

limiting the areas to which the Union has access and assigning “overseers” to inhibit the Union’s ability to communicate with employees free from Company intimidation. As time progressed the Employer relaxed some of the more heinous restrictions, but even as the campaign entered March the overseers were still present and there were areas in which organizers were still barred from speaking with employees – all in violation of Article Two, Section E 3 (d)(4).

The Employer has violated Article Two, Section E 3(d)(1) and (3) by failing to provide requested information concerning 150 or so employees that the Employer claims are properly included in the bargaining unit. The information requested are common factor tests used by the National Labor Relations Board to determine appropriate bargaining units. The consequence of the Employer’s delay in providing that information is that the Section E 3(d)(1) notice has not yet been posted – this, in combination with the anti-union activities of the Employer makes this violation especially egregious.

The Employer has also violated the language of Article Two, Section E by attempting to add language that was never negotiated. The Employer called for secret ballot elections, contrary to the card check process found in the BLA. Such a blatant attempt at amending the BLA cannot be permitted, nor can this Employer action be deemed anything but a thinly veiled anti-union action.

The Company claims that the Union has made false statements and has therefore given license to the Employer to make appropriate responses to clear the record. In fact, that claim is without merit.

The clear preponderance of evidence demonstrates that the Employer has violated its obligations to remain neutral (defined in Section E 2b.) The Employer’s defense that it was

permitted to respond to misrepresentations made by the Union. That the Employer believed it had been released from its neutrality obligations because on a couple of occasions (both of which were immediately corrected) a union supporter mis-spoke concerning the issue of what a bargaining authorization card did, and whether a secret ballot election could occur. Section E 2c specifically and clearly speaks to what conditions must be met for the Employer to be released from its neutrality obligations -- and those conditions were no place to be found in this record of evidence.

The Union urges this Arbitrator to find in its favor on the basis of the record of evidence before him. The Union requests that the Arbitrator make a remedy which will restore Article Two, Section E rights to the Union without further interference from the Employer.

The Union proposes that the appropriate remedy for the Employer's violations should include: a cease and desist order; that organizers be granted appropriate access including the ST1 break room; and that the Employer will provide all requested information regarding bargaining unit issues. Further, the Union asks that the Joint Committee prepare a written statement in which the Company disavows any non-neutral statements, and reaffirm its commitment to neutrality -- including that the Employer will not have access to bargaining authorization cards so that it knows who signed such instruments. This statement will be read by the Employer's CEO in an appropriate employee meeting and subsequently distributed via the Employer's email system. Finally, the Union asks that the time limit for its organizing campaign be extended 90 days commencing on the date that the Article Two, Section E 3d(1) notice is properly posted in the mill.

EMPLOYER'S POSITION

The case before this Arbitrator is a simple matter of the Union violating Article Two, Section E and the Employer responding to these proven violations as explicitly authorized by Article Two, Section E 2.c. of the BLA. The Employer urges the Arbitrator to find that the Union breached its obligations under the neutrality provisions of Article Two, Section E and did so intentionally and repeatedly. Further, the Employer abided by the letter and the spirit of neutrality provisions of the BLA contrary to the meritless allegations proffered by the Union in this matter.

There is no doubt that the Union distributed bargaining authorization cards in the three months prior to January 2, 2019. In fact, the Union does not deny this fact. Three Employer witnesses testified without rebuttal that they were solicited and given bargaining authorization cards before January 2, 2019. One testified that it was in October that he received his, while the other two were in November and December of 2018. The clear language of Article Two, Section E 3.a. requires the Union to provide Written Notification of its intent to organize and a proposed bargaining unit before it distribute bargaining authorization cards. Clearly the Union violated this requirement.

Article Two, Section E 3d.5 clearly prohibits the Union from misrepresenting facts concerning employment at AM/NS and from unfairly demeaning the character or integrity of the Company. The record of evidence demonstrates that the Union clearly misrepresented material facts concerning the Union organizing at the Calvert facility. Beside general personal attacks on the character and integrity of individual management personnel, the Union engaged in intentional

misrepresentations concerning what signing a bargaining authorization card actually authorized the Union to do, what the collective bargaining process is and how it works and false information concerning relevant current wage rates for union organized steel mills and for employees at the Calvert mill.

The record shows that at least one Union witness admits and three Company witness claim that they were informed by the Union that signing a bargaining authorization card simply permitted there to be a secret ballot election. Clearly, that misrepresents what would occur here, a majority signing authorization cards would get the Union recognized as the exclusive bargaining representative. Albeit, many of the team members at the Calvert facility have expressed to management that they would prefer a secret ballot and were fearful of reprisals from the Union should it lose.

It is also clear that the bargaining authorization card must unambiguously state that the execution of that card authorizes the Union to be the exclusive bargaining representative of the employee. The Company received numerous complaints from employees that the cards were represented to do other things, including requests for information to a request for a secret ballot. Article Two, Section E 3 d (2) explicitly states that "*authorization cards must unambiguously state that the signing employees desire to designate the Union as their exclusive representative.*"

The Union seemed to have taken the position that the BLA, as applied to ArcelorMittal unionized mills was just the starting point for what would result from collective bargaining in Calvert. Union organizers were promising things would accrue to the employees in Calvert through the existing contract and that more could be expected, i.e., higher wages, more benefits, etc. In fact, that's not how collective bargaining works and the give and take exhibited in that

process is not something that can be predicted with any degree of certainty. To represent the BLA as a starting point and that things could only get better for the employees is a very serious misrepresentation.

Finally, the wage rates provided on the Union fliers are not consistent with the correct information provided by the Employer. The Union attempted to confound the hourly wage rate by its presentation (or lack thereof) of profit sharing. That Union effort at misleading the employees could not be allowed to stand unchallenged, and therefore management simply corrected the record as Article Two, Section E 2.c. allows.

The Union's complaint that it was not provided with access to well-traveled areas of its facility is not only unfounded, but clearly exceeds what the authors of the BLA contemplated. The record shows that the Union was provided with access to areas in the facility where it had access to Calvert employees. The Company went to great lengths to provide safe areas where union organizers could approach employees without unreasonably interfering with production or jeopardizing the safety organizers or employees. The record also shows that when requested other areas were considered by management and in several cases, additional access was permitted. Clearly, this Union claim has no merit.

The Union's proposed bargaining unit sought to have included "all full-time and regular part-time production and maintenance employees." That broad description includes planners and specialists to which the Union now seems to object. It is the Union who proposed this bargaining unit, it is not for the Employer to justify exclusions from the Union's proposal. If the Union wishes to modify its proposal it is the duty of the Union to identify who should be excluded, not the Employer. This Union complaint is also without merit.

The record shows that the determination of the bargaining unit was not completed by January 2 or, for that matter, March 20. The record also shows that the representatives of the Union and Employer continued to meet in an attempt to resolve issues concerning the bargaining unit - to no avail. There is no violation to be found in the determination of the bargaining unit, it was just a matter of not reaching a meeting of the minds as soon as may have been contemplated by the framers of the BLA.

Only because the Union misrepresented several of the facts relevant to its organizing campaign did the Employer become involved. The clear language of Article Two, Section E 2.b. authorizes the Employer to cease its obligations under the neutrality if the Union misrepresents facts or demeans the character or integrity of the Company during the Union organizing campaign. Clearly the Union misrepresented facts and forced the Employer's hand to correct the record. The Employer was left with no alternative except to correct the misrepresentations broadcast by the Union.

The Union also complains that the Employer giving the opponents to unionization was somehow improper. Nothing could be further from the truth. Neutrality, means exactly that, if there are those who which to be represented by a union and those who actively oppose such representation, then a truly neutral position is to provide both side with exactly the same access and that is exactly what the Employer did. There is nothing in the language of the BLA that bars the Employer from providing access to employee groups who take a position different from that taken by the Union. To claim that this neutral stance violates Article Two, Section E is without merit.

The variety of complaints brought by the Union alleging the Employer violated its

neutrality obligations are without merit. Most of these complaints are simple smoke screens to divert the Arbitrator's attention from those misrepresentations and demeaning actions committed by the Union. All that has occurred from the Employer side in this case were responses to Union violations which are contemplated by Article Two, Section E 2 c.

The Employer asks that the Arbitrator formulate a remedy that will remedy the Union's violations. The Union should be ordered to cease organizing efforts immediately and for a period of one year from the Arbitrator's award. During that one year period, the neutrality requirements on the Employer should cease, the Union should desist from further violations of the BLA, and the Union agrees to abide by all Employer rules, policies and procedures if ever permitted on Company property again. Further, the Union should prepare a written apology for violating the neutrality agreement and retract all violative comments which should be posted in the mill for thirty, on the facebook page for thirty days, and read aloud to all team members by a designated Union representative. The Union should also be ordered to strictly adhere to the requirements of BLA and if it engages in future misrepresentations or attempts to organize before giving notice or otherwise violates the neutrality agreement it forfeits its rights to the card-check process and the Company's neutrality.

ARBITRATOR'S OPINION

The disputes between these parties arises from a union organizing campaign that is covered by specific contract language of the BLA between one of the two parent companies (ArcelorMittal) of this Employer and United Steelworkers. There is no dispute that the BLA,

including Article Two, Section E applies to these parties with respect the subject union organizing campaign.

The relevant language of the BLA applicable in this case is the Neutrality Agreement memorialized in Article Two, Section E of the 2018 BLA (Joint exhibit 1). Each party alleges that the other has violated specific provisions of this section of the BLA. The Employer contends that it is authorized to cease abiding by the neutrality requirements if the Union engages in the types of misconduct it claims is proven here. The Union, claims that the Employer was in no way relieved of its neutrality obligations and that the conduct proven here shows the Union complaints to be meritorious. Each party has also requested specific remedies to correct the perceived wrong committed by the other.

The parties have contentions with respect to failures under Article Two, Section E of the BLA. The Company claims that the Union distributed authorization cards prior to the required notice of the organizing campaign (Article Two, Section E 3.a.). Both parties complain that there was no meeting of the minds concerning the appropriate bargaining unit Article Two, Section E (2)(3). These two matters are allegations separate and apart from matters specifically proscribed in Article Two, Section E 2.c. which involve charges of misrepresentations or demeaning the character or integrity of the Company or its representatives. The Arbitrator will examine the allegations of violations of Article Two, Section E 3.a. (Bargaining Authorization Card Distribution) and Article Two, Section E c. (Misrepresentations and Demeaning the Company or Its Representatives) before examining the contentions brought by the parties concerning Article Two, Section E (2)(3) (The Appropriate Bargaining Unit).

Article Two, Section E 3.a. [Organizing Procedures]

Article Two, Section E 3.a. of the BLA states:

Prior to the Union distributing authorization cards to non-represented employees at a facility owned, controlled or operated by the Company, the Union shall provide the Company with written notification (Written Notification) that an organizing campaign (Organizing Campaign) will begin. The Written Notification will include a description of the proposed bargaining unit.

The BLA language cited above states that “prior to the Union distributing authorization cards” that written notification will be given to the Employer that an organizing campaign is going to begin. The date of the required notice is not in dispute, and that was January 2, 2019. Three Employer witnesses (Poellnitz, McDonald, and Lane) testified that they obtained bargaining authorization cards before the January 2, 2019 Written Notice. A Union witness (Burton) testified that he had cards before the January 2 notice, but was instructed sometime prior to January 2019 not to distribute those cards until the Notice was given to the Employer. The testimony of at least one other Union witness was consistent with the cards being in his possession but being instructed not to distribute the cards (Whatly).

In examining the above cited language there is no identified remedy/penalty for the early distribution of bargaining authorization cards; as is the case of Article Two, Section E 2 c violations where the remedy/penalty for transgressions on its requirements are explicitly identified. The timing of the distribution of bargaining authorization cards does not taint the process of deciding whether to sign those cards. The authors of the BLA contemplated problems may occur with cards, and language was included Article Two, Section E provides for for a

safeguard against such violations. The language of the Article Two, Section E d(1)8 states: *"Employee signatures on the authorization cards will be confidentially verified by a neutral third party chosen by the Company and the Union."* Verification of the bargaining authorization card means that a neutral third party will determine that the card was properly signed pursuant to the requirements of the parties' BLA. Clearly, for a card to be properly executed it must be signed after the date of the Written Notice, and the card provides for date it was signed. In examining the subject bargaining authorization card (Employer exhibit 6) the fourth line from the top is for the date and signature. The bottom full line on the authorization card is for the signature of a witness. Further, the verification of these cards is required to be performed by an independent neutral party mutually selected by the Union and Employer.

There were three Employer witness, all who claimed they did not sign their authorization over to the Union, one of whom was a leader of an anti-union group, is not persuasive evidence of repeated, serious irreparable violation of the language of Article 2, Section E. Further, two Union witnesses testified that they were instructed not to distribute the cards, albeit days after they obtained them, until after proper notice was given to the Company.

Moreover, had there been evidence of significant card distribution, the requirement of independent card verification is persuasive that adequate safe-guards are in place to prevent the abuse complained of by the Employer. Therefore, while it is clear that cards were given to union activists for distribution, the evidence is not persuasive that anything untoward occurred that would not have been corrected in the verification process or in any way permitted any repudiation of the Company neutrality obligations.

Article Two, Section E 2 c. [Misrepresentations, Demeaning Conduct]

Both parties made allegations concerning the conduct of the other under this language of the Neutrality Agreement. In this case, the Employer *may* cease its neutrality only with a showing that the Union *is intentionally or repeatedly (after having the matter called to the Union's attention) materially misrepresenting to the employees the facts surrounding their employment or is unfairly demeaning the integrity or character of the Company or its representatives* (Article Two, Section E2 c.)

The Company's obligation concerning neutrality is outlined in Article Two, Section E, 2 a. and b. Paragraph b. defines neutrality for the purposes of this Agreement:

Neutrality means that except as explicitly provided herein, the Company will not in any way, directly or indirectly, involve itself in any matter which involves the unionization of its employees, including but not limited to efforts by the Union to represent the Company's employees or efforts by employees to investigate or pursue unionization.

This is a high bar, the Company is to cannot involve itself in any matter which involves the unionization of its employees. Neutral means that the Employer has no role to play, nothing to communicate, or any indirect influence in unionization matters. The exception to these high bar is through demonstration to the arbitrator that proscribed behaviors intention or repeatedly occurred and the later only after the complaint was first brought to the Union for voluntary remedy.

Clearly the Company has involved itself in both directly and indirectly in matters

involving the unionization of its employees. The Company claims that the explicit language of Article Two, Section E 2 c. provides for the Company to cease its neutrality when *the Union is intentionally or repeatedly (after having the matter called to the Union's attention) materially misrepresenting to the employees the facts surrounding their employment or is unfairly demeaning . . . the Company or its representatives*. Therefore, the Company may cease its neutrality if, and only if, it can show with a preponderance of the credible evidence that the Union engaged in one or more of the proscribed behaviors; otherwise the Employer's communications are contrary of its neutrality obligations; in violation of its obligations to remain neutral.

The Employer accuses the Union of several misrepresentations and of demeaning the integrity and character of the Employer's representatives. These accusations are that the Union misrepresented the collective bargaining process, misrepresented the preferential hiring provisions of the BLA, misrepresented what the bargaining authorization cards are, misrepresented the collective bargaining process, misrepresented wages, and demeaned the character of Employer representatives. Each of these matter will be examined, in turn, in the following paragraphs of this Arbitrator's opinion.

Did the Union misrepresent the preferential hiring provisions of the BLA?

The Employer alleges that the Union misrepresented the preferential hiring provisions of the BLA to AM/NS employees. It is alleged by the Company that BLA permits the bumping of AM/NS employees by employees from other facilities and other locations. The

misrepresentation charged by the Company is that the Union claimed that the Company's interpretation was inaccurate. Clearly the Employer alleges that the BLA permits seniority to be the basis to bump employees and should the BLA be adopted in Calvert employees in Alabama would be put at risk – regardless of Union assurances otherwise.

Nothing in the plain language of Article 5, Section E (Seniority) 10 (Permanent Vacancies and Transfer Rights or Section H (Manning New Facilities) suggests that bumping rights exist for employees in other location for positions in Calvert. Article 5, Section E clearly identifies competitive seniority how it is earned and where it may be exercised. The unambiguous language does not support the Employer's position, but does support the Union's claim that employees from other facilities or in other locations cannot exercise their plant or department seniority earned elsewhere in the AM/NS Calvert mill.

The contention that Calvert employees can lose jobs to union members who earned their seniority elsewhere is not a sales point to the Calvert employees. Without credible evidence, with a sound foundation, this contention appears to an anti-union talking point.

Did the Union misrepresent what the bargaining authorization cards are?

The Company alleges that the Union misrepresented what the Union bargaining authorization cards are. The Company called three witnesses who testified concerning their understanding of the bargaining authorization cards (Poellnitz, McDonald, and Reed) two of the three testified that they understood that the cards were not to authorize the Union to bargain on their behalf, but were requests for a secret ballot election. The third testified that the bargaining

card was simply a request for information and he was unsure of what rights he was signing away so he did not sign it.

The record of evidence in this matter contains three witnesses of the thousand plus Calvert employees. No corroboration of this testimony was offered by independent observers, nor is there credible and reliable results of an investigation into this matter – just the claims of these three employees, at least two of whom exhibited their negative attitude toward the Union and its organizing efforts.

The best evidence is the bargaining authorization card which clearly states what it is and its purpose. Employer exhibit 6 is a Union bargaining authorization card and it states: "*YES! I WANT UNITED STEELWORKERS REPRESENTATION HEREBY AUTHORIZE THE [The Steelworkers] TO REPRESENT ME IN COLLECTIVE BARGAINING.*"

The card itself speaks to what its purpose is and there is nothing on its face that could be mistaken for dual representation or consistent with the interpretation offered by the Employer's three witnesses. On the back of the card there is further explanation:

This card will be used to secure Union recognition and collective bargaining rights. Initiation fees are waived for all current employees and no dues will be paid until your first contract has been accepted.

There are a number of emails concerning the issue of bargaining authorization cards in this record. In the main, these emails are from Howie MacNair, CEO of AM/NS to the employees at Calvert. In an email, dated January 12, 2019 (Union exhibit 5), Mr. MacNair

writes, in pertinent part:

Dear Team Members:

During the past several days we have received numerous questions and complaints from team members who say they signed Steelworker union authorization cards under false pretenses, such as:

After being assured that signing a card was merely a request for more information;

After being assured that there would be a secret ballot election conducted at some later date;

After being assured that signing a card would guarantee receipt of a large cash bonus;

After being threatened that the union is getting in to AM/NS, so members had better sign a card or they would somehow be singled out later for refusing to support the union; and

After being solicited prior to January 2, 2019, which was the earliest date the USW was authorized to begin soliciting signed cards.

If true, such misconduct on the part of the USW and/or its agents constitutes a serious violation of the Neutrality Agreement. Therefore, if any team member believes that he or she signed a card under such circumstances, or otherwise believes their rights have been violated, you are welcome to report your concerns to management. We will investigate and take appropriate action depending on the circumstances. You certainly are not required to share your concerns with management; this is your choice.

Albeit, conclusions were distributed to employees and investigations were promised if such complaints were brought to management. There is no evidence, whatsoever, in this record of any investigation giving rise to this email. Further complicating the Employer's position on

this matter is the author, Mr. McNair, was not call to testify – albeit, he authored a large number of such emails in this record.

Moreover, there are the requirements that the alleged misrepresentations be intentional or repeatedly made after the issue was brought to the Union's attention in the clear language of Article Two, Section E 2. The one Union witness who testified stated he had mistakenly said the card was for a secret ballot election and that he was corrected by Mr. Gallagher. The witness also testified the mistake was not repeated. There is no evidence that this was ever brought to the Union except by the this very public admonishment – itself a violation by the Company. The Company's claims of neutrality later in this same email, ring hollow. One does not directly call out the Union, using words such as are present here and then suggest that this is consistent with neutrality.

Simply put, this Arbitrator is not persuaded that the Company maintained its neutrality with respect to these issues as required by the BLA. The Company's allegations concerning bargaining authorization cards is without merit and its communication to employees is not authorized by Article Two, Section E 2 c.

Did the Union misrepresent the collective bargaining process?

The Company alleges that the Union misrepresented the collective bargaining process. There is no evidence of an investigation by the Company, only it having received a complaint from a couple of employees, both of whom testified at hearing. There is no evidence that this allegation was brought to the attention of the Union without the allegation being made public,

and no evidence that once it was made public that the alleged behavior continued.

The Company claims that the misrepresentation the Union made was that the BLA between the Union and ArcelorMittal was simply a starting point and that any negotiations would only improve upon those wages and working conditions. Two witnesses, without evidence of an investigation or corroboration of any kind is a very thin record upon which to find misconduct which "intentional or repeated."

This Arbitrator was provided no context to judge whether the claims were stated as fact or as opinion. The witnesses presented no specific time and were made reference to a particular meeting. If these events occurred and in a public forum corroboration and foundation must be presented to find such claims credible. In this case, the Arbitrator simply was not persuaded these events occurred.

The record concerning this matter is not persuasive that the Union engaged in any misrepresentation contemplated by the framers Article Two, Section E 2 c.

Did the Union Misrepresent Wages?

Perhaps this allegation is the one left with the least supporting evidence and is the one lacking the most in face validity. Union exhibit 14 is an email to Calvert employees from Mr. MacNair which states, in pertinent part:

From: MacNair, Howie
Sent: Wednesday, February 27, 2019 2:00 PM
Subject: Clarification of Misrepresentations

As expressed throughout this attempt to organize, I continue to provide factual information in an effort to ensure our team member are informed with accurate data. This week, the USW released a handout comparing wages at AM/NS Calvert to USW represented plants. Unfortunately, this handout was not a fair or accurate comparison and did not fully illustrate the wage differences. The handout only displayed the AM/NA Calvert base wages and did not account for the production bonus based off defined Key Performance Indicators. The chart below shows a comparison which include AM/NS Calvert base rates plus incentive bonus. There are two scenarios shown, one which reflects the actual 2018 incentive bonus payout of 12.77% and a second showing the target of 20%. You will immediately notice that our wages are significantly higher, even without a target payout. Our goal is to always meet our KPI targets so that we can achieve the full 20% payout. Working together as a team and ensuring our focus is on the business will help us achieve these targets.

In comparing the Employer's data in the chart in Union exhibit 14 to the data Mr. MacNair complains of; it is discovered that the wage data is exactly the same. What is not included in the Union data is incentive pay. MacNair choose to label this "misrepresentation" when, in fact, what he is objecting to is that the incentive pay data for Calvert was not presented in the Union's document.

The Employer could have remained neutral and simply posted its incentive pay number without the editorializing that he was the source of factual information and that the Union was being unfair and inaccurate. A difference in presentation, or communication style cannot be rationally characterized as misrepresentation. This Arbitrator is persuaded that this email is a clear violation of the neutrality requirements of Article Two, Section 2 c. v Without persuasive evidence presented at hearing, such a partisan communication is improper under the clear language the Neutrality Agreement.

Did the Union demean the character of Employer representatives?

The Employer complains that the Union has demeaned the Company and its representatives. What Article Two, Section E 2.c. explicitly proscribes is:

. . . . The Union is intentionally or repeatedly (after having the matter called to the Union's attention) materially misrepresenting to the employees the facts surrounding their employment or is unfairly demeaning the integrity or character of the Company or its representatives.

The conduct proscribed is specific and there must be a showing of intent or repeated occurrences after the matter was called to the Union's attention. There are several alleged instances of demeaning statements or publications complained of by the Company.

The Company two exhibits (Employer exhibits 7 and 39) which are graphics. Employer exhibit 7 is a little dog with his nose up the posterior of a larger dog with a caption of "We all have that one co-worker that's like this with the boss." While in bad taste, the subject matter is a co-worker who is implied to be a brown-nose; not the Company nor its representatives. This alone should be discouraged, but it is not a proscribed behavior under Article Two, Section E 2 c.

The second graphic is allegedly a picture of Mr. MacNair with two persons behind him, in front of a sign with AM/NS Calvert in red letters. The caption in this graphic is "Howie out here running AM/NS like death row records!!!" From the two African American individuals standing behind Mr. MacNair, this Arbitrator takes the graphic to imply that death row records, is the record label which handled several rap artists, including Snoop Doggy Dog and Dr. Dre, among others. This label had periods where it was controversial, and periods when it was quite

profitable. As with anything like this the implication is going to vary from individual to individual, and this Arbitrator seriously doubts that many people in South Alabama are fans of this label or know much about its history. This Arbitrator is not persuaded that this is credible evidence of demeaning the integrity or the character of Mr. MacNair.

Union exhibit 12 in paragraph #4 states, in pertinent part: *Mr. Thompson made statements on social media that we consider to be demeaning to the integrity and character of the owner of ArcelorMittal and his family.* Employer exhibit 32 is a picture of a social media interaction between K. Thompson and T. Hurt. Mr. Hurt made the statement: *I believe there was no raises for 8 years as soon as they hear the union is coming you recent [sic] we don't pay for healthcare why because the company makes billions of dollars and when I get old and your bones are broken and you can't breath you should have a proper health care plan and pension to live off of, why because you help mittal and his family become billion it's a stronger voice for better living wage and a safe work environment I can shut down equipment and don't feel like I will have any retaliation because the union is backing me.* In response to Mr. Hurt's comments, Mr. Thompson wrote *"I agree with everything u saying. My point in my last statement was that people up north have unions and keep them because they are good if u mis interpreted my post."* This Arbitrator read Mr. Thompson's post and is not at all persuaded that he, in anyway, demeaned the integrity or character of the Company or its representatives or in this case owners of the business.

In sum, there is no evidence in this record that supports the Company's position that it was given license to cease its neutrality under the provisions of Article Two, Section E 2.c. of the BLA.

Article Two, Section E (2)(3) [Employee Lists and Determination of Appropriate Unit]

There is no dispute that the Union's Notice of January 2, 2019 had attached a proposed bargaining unit. The parties also agree that bargaining unit determination procedures contained in Article Two, Section E (2)(3) have not been completed.

The Union contends that the Company has not provided information it has requested in order to make accurate assessments of which employees should be included and which employees should be excluded from the bargaining unit. From the record made before this Arbitrator it is clear that much of what was testified to by Employer witness Geary was information useful in determining the appropriate bargaining unit. It is also clear to this Arbitrator that Union representative Gallagher and Employer representative Stadlander (respective members of the dispute resolution team) have had a productive and professional relationship, albeit, that relationship evolved over the period of the Union's organizing campaign.

The evidence in this record is not sufficient for a finding of a willful violation of the neutrality agreement with respect to the appropriate establishment of the bargaining unit at Calvert. What is persuasive with respect to this issue, is that there is information and expertise available which will permit the parties to arrive at an agreeable bargaining unit with good faith bargaining between the members of this committee. It is also clear to this Arbitrator that with the Company's available expertise this is not burdensome task and can be completed relatively

quickly. Therefore, this issue is properly remanded to the parties for further consideration and an expeditious and reasonable determination of the proper bargaining unit, based on the factors normally considered by the National Labor Relations Board.¹

The language of Article Two, Section E, 3.d.(3) states:

As soon as practicable following Written Notification, the parties will meet to attempt to reach an agreement on the unit appropriate for bargaining. In the event that the parties are unable to agree on an appropriate unit, either party may refer the matter to the Dispute Resolution Procedure contained in Paragraph 7 below. In resolving any dispute over the scope of the unit, the arbitrator shall apply the principles used by the National Labor Relations Board.

All excuses laid aside, the parties will meet and confer in an attempt to agree on the appropriate scope of the bargaining unit. If, within seven calendar days, an agreement is not reached on the appropriate bargaining unit the matter will be resolved on the basis of the March 20, 2019 submission to this Arbitrator.

Conclusions Concerning Article Two, Section E 2.c. Allegations

In careful consideration of the record made before this Arbitrator concerning the

¹ *Basic Guide to the National Labor Relations Act*, Washington D.C.: GPO, 1997, p. 7: How the appropriateness of a unit is determined. Generally, the appropriateness of a bargaining unit is determined on the basis of a community of interest of the employees involved. Those who have the same or substantially similar interests concerning wages, hours, and working conditions are grouped together in a bargaining unit. In determining whether a proposed unit is appropriate, the following factors are also considered: 1. Any history of bargaining, 2. The desires of the employees concerned, and 3. The extent to which employees are organized (Section 9(c)(5) forbids the Board from giving this factor controlling weight.

Company's claim that it was permitted by the clear language of Article Two, Section E 2.c. to cease remaining neutral. The record does not show that the Union violated the proscriptions of misrepresentation or demeaning the integrity or character of the Company or its representatives. Further, there is little to nothing in this record that shows the Union's intent nor is there evidence that any of these alleged transgressions were properly brought to the Union before the Company simply waded into the public arena with their improper communications.

By failing to demonstrate merit in any of the charges brought against the Union, the Employer has acted as though it had the explicit exceptions fulfilled for it to cease neutrality, when in fact it was bound by its neutrality obligations. By reading the entire first sentence it is apparent that this cessation is not the Employer's call – the language says: *The Company's commitment to remain neutral as defined above may only cease upon the Company demonstrating to the arbitrator . . . [emphasis added]* The Union is entitled to an appropriate remedy for these Employer violations.

There are three remaining issues of which the Union complained. The Union complained that it was not given proper access to the facility so that it could contact employees of AM/NS Calvert. The Union claims that this violation was aggravated because the Company had utilized captive audience speeches to make direct comments concerning issue surrounding the Union's organizing campaign. The second is whether the Union's Organizers were given proper access, the third issue is the Company providing access on the same basis as union organizers to an employee "group" opposed to the unionization of the Calvert facility. Finally, the fourth issue was the Employer's oft demanded secret ballot be substituted for the card check process.

Each of these issues will be examined by this Arbitrator in the following paragraphs of

this opinion.

Employee Meetings with Management

Union exhibit 17 is a thumb drive which contains recordings of Company meetings in which Calvert employees were addressed by management personnel, primarily the CEO concerning a range of issues, which included topics surrounding the Union organizing campaign. The Company claims that these were not captive audience speeches, but the employees were simply invited to attend. The cause, according to the Company was its need to properly communicate concerning issues surrounding the Union organizing campaign.

Whether these are truly captive audience speeches is of little consequence under the language of Article Two, Section E. What is of consequence is that the Employer's speakers made utterances which are clearly in breach of the obligation to remain neutral. Neutral in this case is not a difficult concept, it is defined in Article Two, Section E 2 b. and requires the Employer to absolutely refrain from *involving itself in any matter which involve the unionization of its employees* . . . Such involvement is clearly identified to include both direct and indirect involvement.

Closely related was the local Congressman's opinion concerning unionization. Such opinions are outside the scope of this arbitration, but when the Employer brings this in to influence employees it aggravates the violations contained in the meetings and emails.

This Arbitrator is persuaded that these meetings and their associated communications are improper and violate Article Two, Section E 2 of the BLA.

Access by Union Organizers

The record shows that the Employer was slow to provide proper access to areas of the facility that the Union believed necessary to be able to have access to employees. As time went on, and there was interaction between the Union and Employer representatives, access became more acceptable to the Union and broader across the facility. In this Arbitrator's considered opinion, with the final break room addition (ST1), the Union appears to have few problems with the access now granted, with one exception.² The Union objects to the overseers accompanying organizers in the facility.

In non-working areas such as break rooms and parking lots overseers are not appropriate. However, in areas of the facility where production occurs and other work is routine which involves hazards or sensitive materials, a designated escort is not unreasonable – but that escort cannot be privy to any discussions between employees and organizers. It must be remembered there is a balance of rights – the Union has the right to organize, but the Employer has the right to control the business.

This Arbitrator is not persuaded from the evidence presented that any further access is necessary and should be ordered. Further, it appears that over time the Union and Company has been able to work through any of their difficulties with respect to access. In any event, the Arbitrator will retain jurisdiction over this issue to resolve any dispute that may arise in the Union having proper access to employees.

² In all respects the law governing organizer access to the facility is appropriate guidance under Article Two, Section E of the 2018 BLA.

Equal Access to Anti-Union Groups

The language adopted by the authors of the Basic Labor Agreement binds the parties and this Arbitrator. The Arbitrator's grant of authority derives from the BLA and Article Five, Section I 6.b. states the authority of the Arbitrator³:

The member of the Board (arbitrator) chosen in accordance with Paragraph 7(a) below shall have the authority to hear and decide any grievance appealed in accordance with the provisions of the grievance procedure as well as disputes concerning the Insurance Agreement. The arbitrator shall not have jurisdiction or authority to add to, detract from or alter in any way the provisions of this Agreement or the Insurance Agreement.

The dispute before this Arbitrator is the proper interpretation of Article Two, Section E and its application to the facts and circumstances presented by the parties. As previously cited Article Two, Section E b defines neutrality and uses very specific language. The operable language is ". . . *the Company will not in any way, directly or indirectly, involve itself in any matter which involves the unionization of its employees . . .*

The Union complains that the Company has provided the exact same access to Calvert employees as has been granted the Union. The Union contends that this violates the neutrality agreement in that the anti-union group now provided the same access as the contract provides the Union is an indirect involvement by the Company. The anti-union position taken by this anti-union group provides the contrary case to employees which is barred to the Company by the

³ This restricted authority also applies to disputes under Article Two, Section E (Neutrality).

BLA.

The Union's position has merit, it is not unreasonable to view the Company's actions as an indirect involvement in the matter of whether employees should decide to unionize. Moreover, the authors of the BLA focused Article Two, Section E on the Union and the Employer; and provided no rights or recognition to any other outside group. Without clear language which identifies the anti-union (or any other outside group) as a party to the neutrality agreement the Company violates Article Two, Section E by granting access as though the BLA permitted such. This is a matter of contract between the parties, and not an issue of public policy which is not an issue with the BLA in this application.

The record of evidence before this Arbitrator and the plain language of Article Two, Section E persuades the Arbitrator that the granting of access for the purposes of presenting a contrary view to the Union's organizing the Calvert employees is improper under the BLA and is a violation of the Employer's neutrality obligations. This Arbitrator's most generous view of this Employer conduct is that this is indirect involvement that is barred.

Secret Ballot

Numerous email communications authored by Mr. MacNair speak to the idea of a secret ballot. Article 2, Section E 3d (5) clearly and unambiguously requires a card check process. Nothing in Article Two, Section E identifies a secret ballot election as an option.

A simple reading of the entirety of the Article Two, Section E makes plain and clear that the authors of the BLA intended that the card check process be used. Mr. MacNair wrote in part

(Employer exhibit 28):

Dear Team Member,

The USW's most recent communication acknowledge on undeniable fact. That is the USW remains unwilling to let you have a secret ballot election to determine whether they will become your "exclusive representative." My request for a secret ballot election was based on my belief that a number of misrepresentations have caused unnecessary confusion about the process and consequences of unionization.

The BLA requires the card check, to claim the Union is granted discretion is not consistent with the clear language of the binding contract. It appears that the Employer is attempting to rewrite the contract to conform to their personal beliefs. This is clear evidence of a lack of regard for the contractual requirements contained in the BLA, and is convincing that the Employer violated its neutrality obligations.

CONCLUSION AND AWARD

I. The Company has violated its neutrality obligations under Article Two, Section E of the BLA. The Company failed to show that the Union had violated the proscriptions of Article Two, Section E 2 c. and therefore it was obliged to strictly adhere to its neutrality obligations and it did not. Therefore, the Union's requested remedy is herein ordered, insofar as it is consistent with the record and the spirit and intent of the BLA:

A. Complicating the Employer's position is the clear language of Article Two, Section E

where a showing to the Arbitrator is necessary before cessation of neutrality by the Employer.

2. The Company is ordered to provide access to employees in all non-working areas of the mill including the ST1 break room, and other such areas as the Company had permitted prior to March 10, 2019. The Company is ordered to refrain from the use of overseers or observers of union organizers in the non-working areas of the mill, and that such observers will be permitted when necessary for security or safety in working areas of the mill but must keep a reasonable distance such that they are not privy to the discussions between union organizers and employees.

3. Access to employees by groups other than the Union shall not be permitted by the Employer on company time or property if the purpose of that group is to present a case contrary to that presented by the Union. This constitutes improper, indirect involvement in unionization issues.

4. The parties are to meet and confer concerning the appropriate bargaining unit immediately upon receipt of this award. The Employer will provide the information necessary for the bargaining unit determination, including but not limited to, employee lists, job descriptions, job qualifications and methods of compensation. If the parties are unable to agree upon an appropriate bargaining unit within seven calendar days, this Arbitrator will then apply appropriate factors to the employees and their jobs (description, qualifications etc.) and determine the bargaining unit. The Employer will strictly adhere to the requirements of Company neutrality.

5. Any complaint of a violation of Article Two, Section E 2.c. will be investigated thoroughly by the joint dispute committee and their findings reported to this Arbitrator for a

determination of whether the neutrality obligations continue to bind the Employer pursuant to Article Two, Section E 2c.

6. Notice will be given of the new Union organizing campaign within ten days of the receipt of this award.

7. The BLA requires a card check process, consistent with that noticed by the National Labor Relations Act as amended. A secret ballot is not and has not been contemplated by Article Two, Section E of the 2018 BLA.

8. The conclusion section of this award shall be posted on bulletin boards where the Calvert employees have access and may read the findings and orders.

At Fort Wayne, Indiana
April 4, 2019



David A. Dilts
Arbitrator

EXHIBIT 3

RESPONSE TO APPLICATION FOR COMPLIANCE HEARING AND CLARIFICATION

In the Matter of the Request for a Compliance Hearing
and Clarification of the Arbitrator's Award of April 5, 2019 in the Case of:

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers, International Union, AFL-CIO/CLC
(herein the Union)

and

ArcelorMittal/Nippon Steel Calvert,
Calvert, Alabama
(herein the Employer)

David A. Dilts
Arbitrator

April 19, 2019

APPEARANCES:

For the Union:

Anthony P. Resnick, Attorney
Patrick Gallagher, District 1, Sub-District Director

For the Employer:

Richard J. Morgan, Attorney
Meryl Cowan, Attorney

The Employer submitted a request for an award clarification and compliance hearing on
April 8, 2019. The Union responded to that request on April 9, 2019.

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USW LEGAL DEPARTMENT

INTRODUCTION

The Employer submitted a request for a Compliance Hearing pursuant to Article Five, Section I 6.f. of the BLA. The Union objects claiming the request is substantively meritless and inappropriate procedurally. The Employer requests a supplemental clarification order and interim abeyance order. The Union asserts that there is no basis for the Company's request relief, and no reason to further delay matters by revisiting issues that were conclusively settled by the Award.

ARBITRATOR'S OPINION

Compliance Hearing

Pursuant to the Code of Professional Responsibility of the National Academy of Arbitrators¹, 6. *Post Hearing Conduct, D. Clarification or Interpretation of Awards*, to wit: "No clarification of an award is permissible without the consent of both parties. Under agreements

¹ The Code of Professional Responsibility can be found on the NAA's website and is subscribed to by the Federal Mediation and Conciliation Service and the American Arbitration Association. Elkouri and Elkouri, *How Arbitration Works, eighth edition*. Arlington, VA: Bloomberg BNA, 2016, p 7-2, states, in pertinent part: *Arbitration procedures are shaped by legal requirements, the agreement of the parties, and the directions of the arbitrator [FN deleted] If the parties have agreed to arbitrate under the rules of an administrative or appointing agency, some procedural matters will be governed by those rules [FN deleted]. In addition the conduct of the arbitrator is generally subject to the Code of Professional Responsibility [FN deleted].*

which permit or require clarification or interpretation of an award, an arbitrator must afford both parties an opportunity to be heard.”

The Company submitted an April 8, 2019 application for clarification, an abeyance order, and request for a Compliance Hearing.

The Union’s response to the Employer’s request for a compliance hearing is that such a request is inappropriate and procedurally defective. The Union asserts that the Company has made no effort to comply with the award or even discussed the matter with the Union. The Employer’s application makes no reference to disagreements with the Union, or for that matter, any discussions with the Union concerning the application of the award and ordered remedies. Therefore, without explicitly identified disagreements with the Union there is no basis for a compliance hearing. Article Five, Section I 6.f states:

Where the parties are in disagreement with respect to the meaning and application of a decision, either party may apply to the Board for a compliance hearing in accordance with rules that the Board shall prescribe. Such application shall be given priority and be resolved by the Board within thirty (30) days.
[emphasis added]

A compliance hearing is not a vehicle for the party to re-litigate a cause of action in which they did not prevail. There are conditions imposed in above cited language concerning the granting of a compliance hearing. The condition is that the parties must be *in disagreement with respect to the meaning and application of a decision*. Without a record of even discussions concerning the meaning or application of any remedy, the Arbitrator is not persuaded that a compliance hearing can be granted. Further complicating matter, is the Union’s allegation that

the Employer cancelled an April 8 meeting which was scheduled for discussing the award and remedies. This assertion was not denied by the Employer.

Remedies

The Employer makes numerous claims and assertions concerning the ordered remedies; the Union makes no requests for clarification except a general "welcomes any clarification to the Award's remedy the Arbitrator deems appropriate in light of the parties' submissions."

Section 6 E a. of the Code of Professional Responsibility of the National Academy of Arbitrators:

a. Unless otherwise prohibited by agreement of the parties or applicable law, an arbitrator may retain remedial jurisdiction without seeking the parties' agreement. If the parties disagree over whether remedial jurisdiction should be retained, an arbitrator may retain such jurisdiction in the award over the objection of a party and subsequently address any remedial issue that may arise.

The retention of remedial jurisdiction is limited to the question of remedy and does not extend to any other parts of the award. An arbitrator who retains remedial jurisdiction is still bound by Paragraph D above, entitled "Clarification or Interpretation of Awards," which prohibits the clarification or interpretation of any other parts of an award unless both parties consent.

The parties' BLA speaks specifically to the remedial authority of an Arbitrator under the Neutrality Agreement and the grievance procedure; including Article Two, Section E, 7.a. and Article Five, Section I. 6.e. which states: *In cases involving violations of the same or similar provisions of the Agreement, including the provisions of the grievance procedure, the arbitrator shall fashion a remedy designed to significantly deter such repeated violations.*

In this case the Employer made repeated violations of the neutrality agreement and those require remedy to assure that the bargain contained in Article Two, Section E is meaningful.²

Clearly the parties intended for there to be broad remedial powers vested in their arbitrators, consistent with the authority normally granted the arbitrators of labor disputes in the United States (and in particular under the Code of Professional Responsibility of National Academy of Arbitrators (and adopted by the FMCS and AAA).

The remedial authority granted the arbitrator under the neutrality agreement of the BLA is quite broad. In general, the Employer's claims that the remedies ordered are beyond the scope of the Arbitrator's authority is entirely inconsistent with the clear language of the BLA and inappropriate under these facts and circumstances.³ However, each of the Employer's requests are also specifically faulty.

Paragraph 2 of Employer's Request [Access]

In Paragraph 2, the Employer contends that an inconsistency exists in the order. In fact, the ordered remedy is based on the parties' agreed-upon current access to the facility; the only difference is that overseers, as objected to by the Union, must not be utilized in parts of the facility where security or safety is not an issue which requires an escort, and where it is, the overseers must keep out of ear-shot of conversations between organizers and employees. On ts

² Award pp. 33-34.

³ The parties are referred to Elkouri and Elkouri, *How Arbitration Works, eighth edition*, Arlington, VA: Bloomberg BNA, 2016, chapter 18 for further discussion of remedial authority of arbitrators.

face, this request for clarification is without merit and must be denied.

For the Employer to take one part of one sentence out of context and attempt to characterize the Arbitrator's words as inconsistent is not only puzzling, but inaccurate.⁴

Paragraph 3 of Employer's Request [Anti-union access]

The Employer attempts to re-litigate this arbitration by asserting that the National Labor Relations Act somehow intervenes in the Neutrality Agreement and permits the Employer to revoke its neutrality with respect to granting access to anti-union groups on the same basis that access was granted to the Union. This theory of the case is clearly not supported by the language of Article Two, Section E. It is not clear whether the Employer does not believe that voluntary recognition procedures can be negotiated, or whether they prefer that they had not been – in any

⁴ What the Award actually says is (p. 30): *The record shows that the Employer was slow to provide proper access to areas of the facility that the Union believed necessary to be able to have access to employees. As time went on, and there was interaction between the Union and Employer representatives, access became more acceptable to the Union and broader across the facility. In this Arbitrator's considered opinion, with the final break room addition (ST1), the Union appears to have few problems with the access now granted, with one exception. The Union objects to the overseers accompanying organizers in the facility.*

In non-working areas such as break rooms and parking lots overseers are not appropriate. However, in areas of the facility where production occurs and other work is routine which involves hazards or sensitive materials, a designated escort is not unreasonable – but that escort cannot be privy to any discussions between employees and organizers. It must be remembered there is a balance of rights – the Union has the right to organize, but the Employer has the right to control the business.

This Arbitrator is not persuaded from the evidence presented that any further access is necessary and should be ordered. Further, it appears that over time the Union and Company has been able to work through any of their difficulties with respect to access. In any event, the Arbitrator will retain jurisdiction over this issue to resolve any dispute that may arise in the Union having proper access to employees.

event it is irrelevant. The clear language of Article Two, Section E 2.b. states:

Neutrality means that, except as explicitly provided herein, the Company will not in any way, directly or indirectly, involve itself in any matter which involves the unionization of its employees, including but not limited to efforts by the Union to represent the Company's employees or efforts by its employees to investigate or pursue unionization. [*emphasis added*]

The Employer has a contractual obligation to refrain from involving itself "in an matter which involves the unionization of its employees." To provide access to employees or groups who oppose unionization is a clear breach of neutrality which finds no support whatsoever in the BLA. For the Employer to assert that the anti-union groups and employees have a federally protected right to present a contrary case to the unionization of its workforce is not an issue in this matter. What is an issue is the Employer's failure to abide by its neutrality obligation by assisting those who wish to make the case contrary to unionization.⁵ This action by the Employer is a clear violation which is ordered to cease, and there is no room for good-faith exception to this remedy.

Paragraph 4 [Meet and confer concerning bargaining unit]

The card check process and the posting of Notice to employees (Article Two, Section E 3.(1)) critically depends on the establishment of a proper bargaining unit. The order of a specific

⁵ See Elkouri and Elkouri, *How Arbitration Works, eighth edition*. Arlington VA: Bloomberg BNA, 2016 pp.17-156-159 citing Cooper, *Privitizing Labor Law: Neutrality/Card Check Agreements and the Role of the Arbitrator*. 83 *Industrial Law Journal* 1589 (No. 4, Fall 2008)

time for the parties to determine the appropriate bargaining unit is within the Arbitrator's remedial authority and the actions taken by the Employer have effectively thwarted a timely determination of the appropriate bargaining unit. The parties will immediately meet and confer concerning the establishment of the appropriate bargaining unit.

The original ten days have come and gone, because of the Employer's failure to adhere to the clear order to meet and confer, but rather to engage in requests for clarification and compliance hearings, when no movement toward the application of the ordered remedies is in evidence in this matter. The Employer's conduct is inconsistent with both the letter and spirit of the remedy ordered with respect to its original misconduct.

The Employer's conduct with respect to this remedy ignores the obligation to respect the fact that the Award is final and binding⁶. The ten days ordered in the Award will be strictly adhered to and will begin immediately upon receipt of this order.

Paragraph 5 [Investigation of Complaints]

The Employer claims that this aspect of the remedy amounts to the Arbitrator re-writing the BLA. Unfortunately, again, the Employer's assertion is inconsistent with the clear and unambiguous language of the BLA and the credible facts in this matter. Article Two, Section E 7.a. states:

Any alleged violation or dispute involving the terms of this Section may be

⁶ BLA, Article Five, Section I 6.d.

brought to a joint committee of one (1) representative each from the Company and the Union. If the alleged violation or dispute cannot be satisfactorily resolved by the parties either party may submit such dispute to the arbitrator. A hearing shall be held within ten (10) days following such submission and the arbitrator shall issue a decision within five (5) days thereafter. Such decision shall be in writing and need only succinctly explain the basis for the findings. All decisions by the arbitrator pursuant to this article shall be based on the terms of this Section and the applicable provisions of the law. The arbitrator's remedial authority shall include the power to issue an order requiring the Company to recognize the Union where, in all the circumstances, such an order would be appropriate.

The time limits imposed, have now been violated by the Company's actions in its delay of the implementation of this award. The Joint Dispute Resolution Committee is the proper mechanism to initiate resolution of complaints, with appeal to the Arbitrator if the complaints are not amicably resolved. The Employer's failure to abide by the unambiguous requirements in this section of the Award, and hence the BLA is improper and contrary to its obligations in Article Two, Section E of the BLA.⁷

Paragraph 6 [Notice of Union Organizing Campaign]

The Employer makes the unfounded assertion that the ordered ten days to provide notice violates the neutrality agreement. In fact, the Employer was found to have repeatedly violated

⁷ Further, the next paragraph of Article Two, Section E, 7. (Paragraph b.) states: *The arbitrator's award shall be final and binding on the parties and all employees covered by this Section. Each party expressly waives the right to seek judicial review of said award; however, each party retains the right to seek judicial enforcement of said award.* Final and binding, means just that. For the Employer to seek clarification and compliance hearings under these facts and circumstances is a clear violation of this Section of the BLA. The lack of ambiguity in the award and clear language in the contract is clearly not recognized by the Employer – that lack of recognition is troubling.

the neutrality obligations of Article Two, Section E and the Union was provided with a remedy which would permit adequate time to restart its organizing campaign. This Arbitrator is persuaded that to require Notice prior to the ten days could potentially prejudice the Union's ability to properly execute an organizing campaign. In any event the control of the timing of this matter is within the Union's discretion, but with an upward time limit. This remedial authority is clearly within the prerogative of the Arbitrator and does not constitute a re-writing of that authority as mistakenly asserted by the Employer.⁸

Again, the plain language of the BLA (cited in the award) explicitly states the duration of the organizing campaign. In the Union's response to the Employer's request, it properly identified the contractually authorized duration as another 90 days. Article Two, Section E 3.b. states:

The Organizing Campaign shall begin immediately upon provision of Written Notification and continue until the earliest of: (1) the Union gaining recognition under Paragraph 3(d)(5) below; (2) written notification by the Union that it wished to discontinue the Organizing Campaign; or (3) ninety (90) days from provision of Written Notification to the Company.

The Employer also makes assertions concerning what cards will be counted for purposes of the Organizing Campaign. Clearly the BLA, contemplates as does the award, that the cards were gathered by the Union shall be those distributed in the ordered remedial Organizing Campaign. (Article Two, Section E 3.a). The remedy results from the fact that the Employer made an issue of the cards, without providing a preponderance of credible evidence that such

⁸ The parties are referred to Elkouri and Elkouri, *How Arbitration Works, eighth edition*, Arlington, VA: Bloomberg BNA, 2016, pp. 18-2 though 18-9 for further discussion of remedial authority of arbitrators in cases such as the present one.

early-signed cards were offered for the card check process and the witnesses called were few and at least two were not credible.⁹

The Employer assertions in support of this request are at odds with the facts, the BLA, and the clear language of the award.

Paragraph 7 [Secret Ballot]

This Employer, if nothing else, persists in its attempt to change the BLA to suit its own selfish purposes, and to invalidate the bargain reached through negotiations between the parties to the BLA. It is clear that the parties chose to privatize the Union recognition and certification process with the adoption of the card check process. To attempt to invalidate that bargain between the parties to the BLA is not reasonable, nor permissible under this contract language.

⁹ At pp. 14 and 15 the Award states: *In examining the above cited language there is no identified remedy/penalty for the early distribution of bargaining authorization cards; as is the case of Article Two, Section E 2 c violations where the remedy/penalty for transgressions on its requirements are explicitly identified. The timing of the distribution of bargaining authorization cards does not taint the process of deciding whether to sign those cards. The authors of the BLA contemplated problems may occur with cards, and language was included Article Two, Section E provides for a safeguard against such violations. The language of the Article Two, Section E d(1)8 states: "Employee signatures on the authorization cards will be confidentially verified by a neutral third party chosen by the Company and the Union." Verification of the bargaining authorization card means that a neutral third party will determine that the card was properly signed pursuant to the requirements of the parties' BLA. Clearly, for a card to be properly executed it must be signed after the date of the Written Notice, and the card provides for date it was signed. In examining the subject bargaining authorization card (Employer exhibit 6) the fourth line from the top is for the date and signature. The bottom full line on the authorization card is for the signature of a witness. Further, the verification of these cards is required to be performed by an independent neutral party selected by the Union and Employer. The assertion that the award renders Article Two, Section E3.a "a nullity" is absurd and the theory that cards can be distributed for any length of time is a complete misstatement of the award, its findings of fact, and the remedy.*

The parties's BLA, in article Two, Section E is silent on the issue of secret ballot elections for bargaining representation. The Employer contends that because the BLA is silent on the issue the parties are free to negotiate such an amendment to Article Two, Section E and dispense with the card check process that was negotiated by the authors of the BLA (Article 2, Section E 3.d (5)).

The BLA sets forth the process to be used in Union Organizing Campaigns and specifies a card check process to establish a majority for recognition and collective bargaining. It is not clear to this Arbitrator that the authors of the BLA contemplated local bargaining for amendments to such agreements.¹⁰

Paragraph 8, [Posting on bulletin board]

The Employer requested just such a remedy should it prevail on the merits of the dispute concerning the neutrality agreement. To argue for such a remedy and then now argue (once the Employer loses) that such a remedy is beyond the Arbitrator's authority is, at best, completely disingenuous.

Article Two, Section E.7.a. clearly contemplates remedial authority being vested in the arbitrator to provide remedies which will effectuate the purpose of the BLA and its various provisions. Such a posting is necessary to correct the harm created by the Employer's violation of its neutrality obligations.

¹⁰ See Article Five, Section A 5. for a clear bar to local bargains which conflict with the BLA; otherwise the BLA is silent on bargaining to change Article Two, Section E by the authors of the BLA.

Not only is this remedy clearly within the authority of the Arbitrator, it is clear that the Employer believed that was the case when it argued originally that it was entitled to the very remedy it now incorrectly argues is beyond the contractual grasp of the trier of fact.

Paragraph 9 [Alleged Flawed Approach in Award]

Again, the Employer attempts to re-litigate the issues concerning its violations of the Neutrality Agreement. The Employer relied primarily on argument, and presented bargaining unit witnesses who were clearly vested in an anti-union position. Without evidence of an impartial, independent investigation or the calling of witnesses who made claims of discovery, the Employer's case failed.

For the Employer to now make claims such as "*the remedies imposed reflect a fundamentally flawed approach to this Decision and Award*" is again, improper and lacks supporting evidence. The claim alone is insufficient, to prevail requires credible evidence and none was proffered which could be reasonably determined to support this unfounded and improper assertion.

The Employer's approach was taken to task by Union counsel, and accurately so: ". . . *There is no basis for the Company's requested relief, and no reason to further delay matters by revisiting issues that were conclusively settled by the award.*" Not only would the Employer deny the Union its rights under Article Two, Section E; it would re-write a contract negotiated between the Union and the parent company.

In examining the requests made by the Employer it is clear that there was no attempt to

resolve these issues, as required by the BLA, before bringing the complaints to the Arbitrator. In aggregate, and individually, the Employer's positions on the issue of Clarification and Compliance Hearings are without merit and most are frivolous.

There is no basis to issue a Supplemental Order; the remedies ordered are proper and clear; therefore they are to be immediately adhered to as outlined herein and in the award. Disputes concerning the remedies are to be handled pursuant to the dispute mechanism found in the Neutrality Agreement Article Two, Section E 7.

The request for a Compliance Hearing is not ripe, there has been no effort to comply and no dispute brought before the joint committee as required by the BLA. For the Employer to re-write the joint committee out of the BLA is also improper.

The Employer's request for Interim Order suspending the Organizing Campaign is rejected as being without merit. The parties are ordered to immediately proceed with implementing the ordered remedies and to as soon as possible and to initiate the ordered Organizing Campaign. No further delay is permissible under these facts and circumstances.

The Employer is admonished for the delay resulting from frivolous complaints and requests for negotiations of the applicable provisions of the BLA.

CONCLUSION

It is this Arbitrator's considered opinion that the requests made by the Employer without merit. It is clear that the Employer made no attempt to resolve these issues, as required by the BLA, before bringing the complaints to the Arbitrator. In aggregate, and individually, the

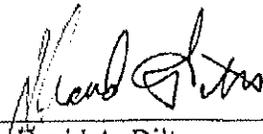
Employer's positions on the issue of Clarification and Compliance Hearings are without merit and most are frivolous.

The record also shows that there is no basis to issue a Supplemental Order; the remedies ordered are proper and clear; therefore they are to be immediately adhered to as outlined herein and in the Award. Disputes concerning the remedies are to be handled pursuant to the dispute mechanism found in the Neutrality Agreement Article Two, Section E 7.

The request for a Compliance Hearing is not ripe, there has been no effort to comply and no dispute brought before the joint committee as required by the BLA. For the Employer to re-write the joint committee out of the BLA is also improper.

The Employer's request for Interim Order suspending the Organizing Campaign is rejected as being without merit. The parties are ordered to immediately proceed with implementing the ordered remedies and to, as soon as practicable, initiate the ordered Organizing Campaign. No further delay is permissible under these facts and circumstances.

At Fort Wayne, Indiana
April 19, 2019:



David A. Dilts
Arbitrator

EXHIBIT 4

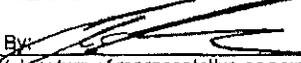
UNITED STATES OF AMERICA
 NATIONAL LABOR RELATIONS BOARD
AMENDED CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
15-CA-244523	July 30, 2019

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer AM/NS Calvert		b. Tel. No. (251)289-3000
		c. Cell No.
d. Address (street, city, state ZIP code) 1 Steel Drive, Calvert, AL 36615	e. Employer Representative Joel Stadtlander	f. Fax No.
		g. e-Mail joel.stadtlander@arcelormittal.com
		h. Dispute Location (City and State) Calvert, AL
i. Type of Establishment (factory, nursing home, hotel) Steel Mill	j. Principal Product or Service Steel	k. Number of workers at dispute location 1600
1. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)		
SEE ATTACHMENT		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Austin Seamands		
4a. Address (street and number, city, state, and ZIP code) 4056 Wesley Lane North, Mobile, AL 36609	4b. Tel. No. (251)463-5504	
	4c. Cell No. (251)463-5504	
	4d. Fax No.	
	4e. e-Mail austinseamands@yahoo.com	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)		
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	Tel. No. (251)463-5504	
By:  (Signature of representative or person making charge)	Austin Seamands Print Name and Title	Office, if any, Cell No. (251)463-5504
Address: 4056 Wesley Lane North, Mobile, AL 36609	Date: 7-29-19	Fax No.
		e-Mail austinseamands@yahoo.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ATTACHEMENT: Amended Charge: 15-CA-244523:

- (1) Since on or about April 4, 2019, the Employer has given assistance and support to the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union by permitting the union to utilize the Employer's facilities for organizing purposes while denying employees similar access to the Employer's facilities.**
- (2) For the past six months and continuing, the Employer has violated the Act by maintaining a neutrality agreement with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union which unlawfully restricts employees in the exercise of their Section 7 rights.**
- (3) Within the last six months, the Employer has violated the Act by entering into a collective bargaining agreement with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union at a time when this union did not represent the employees of the bargaining unit.**

NATIONAL LABOR RELATIONS BOARD
**CHARGE AGAINST LABOR ORGANIZATION
 OR ITS AGENTS**

Case	Date Filed
------	------------

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC	b. Union Representative to contact Patrick Gallagher	
	d. Tel. No. 614-888-6052	e. Cell No.
	f. Fax No. 614-888-9870	
	g. e-mail pgallagher@ussw.org	

h. The above-named labor organization has engaged in and is engaging in unfair labor practices within the meaning of section 8(b) and (list subsections) (b)(1)(A) and (b)(2) of the National Labor Relations Act; and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)
 Causing or attempting to cause an employer to discriminate in terms of employment and threaten to discipline employees to encourage membership in a labor organization. Restraining or coercing employees in exercise of their rights to refrain from joining or assisting a labor union. Entering into an agreement with the employer that recognizes the union as exclusive bargaining agent when it has not been chosen by a majority of employees.

3. Name of Employer AM/NS Calvert	4a. Tel. No. 251-289-3000	b. Cell No.	c. Fax No.
	4. e-mail joel.stadlander@arcelormittal.com		

5. Location of plant involved (street, city, state and ZIP code) 1 Steel Drive, Calvert, AL 36513	6. Employer representative to contact Joel Stadlander
--	--

7. Type of establishment (factory, mine, wholesaler, etc.) Steel Mill	8. Merchandise principal product or service Steel	9. Number of workers employed 1600
--	--	---------------------------------------

10. Full name of party filing charge
Austin Seamands

11. Address of party filing charge (street, city, state and ZIP code) 4056 Wesley Ln North Mobile, AL 36609	11a. Tel. No. 251-463-5504	b. Cell No.	c. Fax No.
	11d. e-mail austinseamands@yahoo.com		

<p>12. DECLARATION</p> <p>I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.</p>		Tel. No. 251-463-5504
<p>Austin Seamands</p> <p>(Type name and title or office, if any)</p>		Cell No.
<p>(Signature of representative of person making charge)</p>		Fax No.
<p>Address: 4065 Wesley Ln North, Mobile AL 36609</p>		e-mail
<p>Date: 7/3/19</p>		

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Retention of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 101 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to accept its processes.

420 North 20th Street
Suite 3400
Birmingham, AL 35203

Office (205) 251-3000
Fax (205) 458-5100

August 23, 2019

BURR.COM

CONFIDENTIAL

Rebecca A. Dormon, Assistant Regional Director
Matthew J. Dougherty, Field Attorney
NLRB Region 15
600 S. Maestri Place
7th Floor
New Orleans, LA 70130

Re: 15-CA-244523 Position on 10(j) Relief

Dear Ms. Dormon and Mr. Dougherty,

This letter is submitted in response to your letter of August 8, 2019 and in support of the General Counsel seeking enhanced remedies and section 10(j) relief in this case. As submitted below, this case is worthy of such relief.

As you know, the disputed conduct stems from two separate and distinct organizing drives at AM/NS Calvert LLC ("AM/NS") by the United Steelworkers Union (the "USW") conducted between January 2, 2019 and July 29, 2019. The second of these organizing drives resulted from Arbitrator Dilts's binding April 4, 2019 Arbitration Award.

AM/NS concedes that it committed the unfair labor practices alleged in the underlying Charge. However, AM/NS had **no** choice but to comply with Arbitrator Dilts's Award, which thwarted the Section 7 rights of its employees. In relevant part, the Award states, "*Access to employees by groups other than the Union shall not be permitted by the Employer on company time or property if the purpose of that group is to present a case contrary to that presented by the Union.*" (AWARD, Conclusion and Award ¶ 3). Further, the Award required, "*The parties are to meet and confer concerning the appropriate bargaining unit immediately upon receipt of this award.*" (AWARD, Conclusion and Award ¶ 4). Additionally, Arbitrator Dilts ordered that the USW organizers and representatives be allowed regular and continuous access to buildings and areas other than the social buildings, including "*all non-working areas of the mill, including the ST1 break room.*" (AWARD, Conclusion and Award ¶ 2).

Following receipt of his Award, AM/NS asked Arbitrator Dilts to clarify the Conclusion and Award ¶¶ 2, 3 and 4, among other things. (APPLICATION FOR CLARIFICATION, ¶¶ 2, 3 and 4). AM/NS specifically sought “*immediate clarification of this provision to ensure that it cannot be read to violate employees’ Section 7 rights.*” (*Id.*).

Arbitrator Dilts provided a “Response to Application for Compliance Hearing and Clarification” on April 19, 2019. In relevant part, he ordered: “*The Employer has a contractual obligation to refrain from involving itself ‘in a matter which involves the unionization of its employees.’ To provide access to employees or groups who oppose unionization is a clear breach of neutrality which finds no support whatsoever in the BLA. For the employer to assert that the anti-union groups and employees have a federally protected right to present a contrary case to the unionization of its workforce is not an issue in this matter. What is an issue is the Employer’s failure to abide by its neutrality obligation by assisting those who wish to make the case contrary to unionization.*” (RESPONSE TO APPLICATION FOR COMPLIANCE HEARING AND CLARIFICATION, p. 4) (*sic.*).

Accordingly, the ongoing obligation imposed by Arbitrator Dilts required AM/NS to knowingly, intentionally impose on employees Section 7 rights by **not** allowing employees who “*wished to present a case contrary to the union*” on-site, and to enter into a pre-recognition agreement with the Union. Arbitrator Dilts’ Award is still in full force and effect, therefore providing a proper basis to seek section 10(j) relief in this case.

The Eleventh Circuit has explained that, “[i]n an effort to further the principles underlying § 10(j), courts have fashioned a bipartite test for determining the propriety of temporary relief: (1) whether the Board, through its Regional Director, has reasonable cause to believe that unfair practices have occurred, and 2) whether injunctive relief is equitably necessary, or, in the words of the statute, ‘just and proper.’” *NLRB v. Hartman and Tyner, Inc.*, 714 F.3d 1244, 1250 (11th Cir. 2013). “[I]njunctive relief should issue when harms are ongoing, yet incomplete and likely further to harm the union or its supporters in the workforce.” *McKinney ex rel. N.L.R.B. v. Creative Vision Res., L.L.C.*, 783 F.3d 293, 299 (5th Cir. 2015). The principle of *Creative Vision* should equally apply when the “harms” apply to employees who are exercising their Section 7 rights to oppose a particular union.

These cases, combined with ongoing requirement imposed by Arbitrator Dilts compelling AM/NS to thwart employees Section 7 rights, combined with the USW’s August 14, 2019 notice that it seeks to demand arbitration once again, provide an ample basis to seek section 10(j) authorization from the General Counsel. Without interim relief, AM/NS is compelled to continue to unwillingly break the law. Any final order of the Board years from now will be meaningless as the employer will have effectively and with the attendant malice prevented its employees from exercising their section 7 rights to organize, or to refrain from organizing. Further, now that a second arbitration is imminent, it is likely that this arbitration process will move quickly and the company could be faced with an arbitration order that, in effect, compels it to recognize a minority union under a card-check that ignores the intent of so-called “dual signers” and despite the commission of the serious unfair labor practices alleged by the Charging Party. Indeed, because AM/NS Calvert is bound by Article II, Section E of ArcellorMittal USA’s Basic Labor Agreement with the

August 23, 2019

Page 3

Steelworkers, any bargaining between AM/NS and the USW after card-check recognition would be subject to "interest arbitration" in the event that AM/NS and the USW are not able to agree on terms for a collective bargaining agreement. The time periods set forth for bargaining following a check-card ordered by an arbitrator mean that AM/NS and the USW are likely to have a collective bargaining agreement in place in less than six months. In other words, if arbitration proceeds and there is no section 10(j) relief, AM/NS will have no choice but to enter a collective bargaining agreement with a minority union while the Charging Party's present charges are being processed.

Accordingly, 10(j) relief would be proper, here. If you need any additional information or have any questions, please do not hesitate to contact me.

Very truly yours,



Marcel L. Debruge

EXHIBIT 5

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RM PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 15-RM-246203	Date Filed August 8, 2019

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB Office in the Region in which the employer concerned is located. The petition must be accompanied by a certificate of service showing service on all parties named in the petition of the following: (1) the petition; (2) Statement of Position form; and (3) Description of Procedures in Certification and Decertification Cases (Form NLRB 4812). The petition must also be accompanied by evidence supporting the statement that a labor organization has made a demand for recognition on the employer or that the employer has good faith uncertainty about majority support for an existing representative. However, if the evidence reveals the names and/or number of employees who no longer wish to be represented, the evidence shall not be served on any party.

1. PURPOSE OF THIS PETITION: RM-CERTIFICATION OF REPRESENTATIVE - One or more individuals or labor organizations have presented a claim to the Employer/Petitioner to be recognized as the representative of employees of the Employer/Petitioner or the Employer/Petitioner has a good faith uncertainty about majority support for an existing representative. If a charge under Section 8(b)(7) of the Act has been filed involving the Employer/Petitioner named in this petition, this statement shall not be deemed made. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer/Petitioner: **AM/NS Calvert, LLC** 2b. Address(es) of Establishment(s) Involved (Street and number, city, state, ZIP code): **1 Steel Dr., Calvert, AL 36613**

3a. Employer/Petitioner Representative - Name and Title: **Joel Stadlander, Human Resources Manager** 3b. Address (if same as 2b - state same): **Same**

3c. Tel. No.: **251-289-3128** 3d. Cell No.: **251-854-8060** 3e. Fax No.: **N/A** 3f. E-Mail Address: **joel.stadlander@arcelormittal.com**

4a. Type of Establishment (Factory, mine, wholesaler, etc.): **Steel Mill** 4b. Principal product or service: **Steel finishing line**

5a. Description of Unit Involved
Included: **All full-time and regular part-time production and maintenance employees employed by the Company at its Calvert Alabama facility;**
Excluded: **excluding office clerks and technical employees, temporary employees, guards, probational and co-temporal employees, and supervisors as defined by the National Labor Relations Act.**
5b. City and State where unit is located: **Calvert, AL**
6. No. of Employees in Unit: **865**

Unless a charge alleging a violation of Section 8(b)(7) is pending, check EITHER Item 7a or 7b, whichever is applicable.

7a. A labor organization made a demand for recognition on the Employer/Petitioner on (Date) **July 28, 2019**

7b. The Employer/Petitioner has a good faith uncertainty about majority support for an existing representative.

8a. Recognized or Certified Bargaining Agent - Name: **The United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union** 8b. Affiliation, if any:

9a. Address: **25111 Miles Road - Suite H Warrensville Hts., OH 44128** 8d. Tel. No.: **216-292-5663** 8e. Cell No.: **216-267-1664**
8f. Fax No.: **216-292-5720** 8g. E-Mail Address: **pgallagher@usw.org**

9. Date of Recognition or Certification: **N/A** 10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year): **N/A**

11. Is there now a strike or picketing at the Employer's establishment(s) involved? **No** If so, approximately how many employees are participating? _____
(Name of labor organization) _____ has picketed the Employer since (Month, Day, Year) _____

12. Organizations or individuals other than those named in Item 8, which have a contract with the Employer/Petitioner or represent employees of the Employer/Petitioner or demanded recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in Item 5 above. (If none, so state)

12a. Name and affiliation if any: **N/A** 12b. Address: 12c. Tel. No.: 12d. Cell No.:
12e. Fax No.: 12f. E-Mail Address:

13. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election. 13a. Election Type: Manual Mail Mixed Manual/Mail

13b. Election Date(s): **21-29 days from today's date** 13c. Election Time(s): **TBD** 13d. Election Location(s): **TBD**

14. Representative of the Employer/Petitioner who will accept service of all papers for purposes of the representation proceeding.

14a. Name and Title: **Myriam Aerts, Chief Administration Officer** 14b. Address (street and number, city, state, and ZIP code): **1 Steel Dr., Calvert, AL 36613**

14c. Tel. No.: **251-289-3301** 14d. Cell No.: **251-767-9856** 14e. Fax No.: **N/A** 14f. E-Mail Address: **myriam.aerts@arcelormittal.com**

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print): **Ronald W. Flowers** Signature: **Ronald W. Flowers** Title: **Attorney at Law** Date: **8/7/2019**

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Disclosure of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary, however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15



<p>AM/NS Calvert, LLC Employer/Petitioner and UNITED STEEL, PAPER & FORESTRY, RUBBER, MANUFACTURING, ENERGY ALLIED INDUSTRIAL & SERVICE WORKERS INTERNATIONAL UNION AFL-CIO-CLC Union</p>	<p>Case 15-RM-246203</p>
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NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on August 16, 2019; at 11:00 AM on August 19, 2019, and on consecutive days thereafter until concluded, at the Mobile Government Plaza, North Tower, 3rd Floor Law Library, 205 Government St., Mobile, AL 36644, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, United Steel, Paper & Forestry, Rubber, Manufacturing, Energy Allied Industrial & Service Workers International Union AFL-CIO-CLC and AM/NS Calvert, LLC must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than noon Central time on August 15, 2019. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Central on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: August 19, 2019

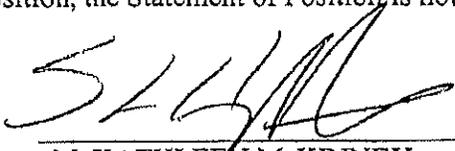

 M. KATHLEEN MCKINNEY
 Regional Director
 National Labor Relations Board
 Region 15
 600 South Maestri Place - 7th Floor
 New Orleans, LA 70130-3413

EXHIBIT 6

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

AM/NS Calvert, LLC

Case 15-RM-246203

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).

AM/NS Calvert LLC, a limited liability company incorporated in the State of Delaware with an office and place of business in Calvert, Alabama, is engaged in the business of providing steel components. Within the past 12 months, a representative period, the Employer purchased and received goods and materials at its Calvert facility valued in excess of \$50,000 directly from points located outside the state of Alabama.

3. **LABOR ORGANIZATION.** UNITED STEEL, PAPER & FORESTRY, RUBBER, MANUFACTURING, ENERGY ALLIED INDUSTRIAL & SERVICE WORKERS INTERNATIONAL UNION 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: March 24, 2020 HOURS: 6:00 AM - 9:30 AM
PLACE: Hot Strip Mill – Social Building Conference Room 2
1 Steel Drive
Calvert, AL

DATE: March 24, 2020 HOURS: 5:00 PM - 9:30 PM
PLACE: Hot Strip Mill – Social Building Conference Room 2
1 Steel Drive
Calvert, AL

Initials: RWF ASM

DATE: March 24, 2020 HOURS: 5:00 AM - 9:30 AM
PLACE: Cold Roll Mill – Social Building Conference Room 1
1 Steel Drive
Calvert, AL

DATE: March 24, 2020 HOURS: 5:00 PM - 9:30 PM
PLACE: Cold Roll Mill – Social Building Conference Room 1
1 Steel Drive
Calvert, AL

DATE: March 24, 2020 HOURS: 5:00 AM - 9:30 AM
PLACE: Hot Dip Galvanized Line – Social Building Conference Room 2
1 Steel Drive
Calvert, AL

DATE: March 24, 2020 HOURS: 5:00 PM - 9:30 PM
PLACE: Hot Dip Galvanized Line – Social Building Conference Room 2
1 Steel Drive
Calvert, AL

DATE: March 25, 2020 HOURS: 5:00 AM - 9:30 AM
PLACE: Hot Strip Mill – Social Building Conference Room 2
1 Steel Drive
Calvert, AL

DATE: March 25, 2020 HOURS: 5:00 PM - 9:30 PM
PLACE: Hot Strip Mill – Social Building Conference Room 2
1 Steel Drive
Calvert, AL

DATE: March 25, 2020 HOURS: 5:00 AM - 9:30 AM
PLACE: Hot Dip Galvanized Line – Social Building Conference Room 2
1 Steel Drive
Calvert, AL

DATE: March 25, 2020 HOURS: 5:00 PM - 9:30 PM
PLACE: Hot Dip Galvanized Line – Social Building Conference Room 2
1 Steel Drive
Calvert, AL

DATE: March 25, 2020 HOURS: 5:00 AM - 9:30 AM
PLACE: Cold Roll Mill – Social Building Conference Room 1
1 Steel Drive
Calvert, AL

DATE: March 25, 2020 HOURS: 5:00 PM - 9:30 PM
PLACE: Cold Roll Mill – Social Building Conference Room 1
1 Steel Drive
Calvert, AL

Initials: *RWF ASJ*

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:

All hourly full-time and regular part-time production and maintenance employees employed by the Employer at its Calvert, Alabama facility; excluding all office clerical and technical employees, Test Lab Operators and Test Lab Specialists, temporary employees, guards, professional and confidential employees and supervisors as defined in the Act.

Those eligible to vote in the election are employees in the above unit who were employed during the payroll period ending February 29, 2020, 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.

Others permitted to vote: The parties have agreed that the Planners and Specialists listed in Exhibit A may vote in the election, but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the individuals in these classifications or groups are included in, or excluded from, the bargaining unit. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

Initials: RWF BGM

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 the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective-bargaining by UNITED STEEL, PAPER & FORESTRY, RUBBER, MANUFACTURING, ENERGY ALLIED INDUSTRIAL & SERVICE WORKERS INTERNATIONAL UNION on behalf of its Local Union No 735?" 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 must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day of the election. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. **NOTICE OF ELECTION ONSITE REPRESENTATIVE.** The following individual will serve as the Employer's designated Notice of Election onsite representative: Joel Stadlander, Human Resources Manager, 1 Steel Drive, Calvert, Alabama 36513, joel.stadlander@arcelormittal.com.

10. **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.

11. **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.

12. **TALLY OF BALLOTS.** Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

Initials: RWF SAJ m

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

AM/NS Calvert, LLC
(Petitioner)

UNITED STEEL, PAPER & FORESTRY,
RUBBER, MANUFACTURING, ENERGY
ALLIED INDUSTRIAL & SERVICE
WORKERS INTERNATIONAL UNION
(Union)

By Ronald W. Horn 3-9-20
(Name) (Date)

By Brend M. [unclear] 3-9-20
(Name) (Date)

Recommended: JORDAN A. Raby, Field Examiner (Date)

Date approved: _____

Regional Director, Region 15
National Labor Relations Board

AM/NS Calvert, LLC
 15-RM-246203
 Exhibit A

First Name	Last Name	Position	Department
Bobby	D. Adams	Planner II Electrical Maint CRI Operations - Finishing	CRM
Anthony	W. Allison	Planner II Proactive Execution Operations	Central Maintenance
James	A. Chertion	Planner III Maintenance HSM Operations - Primary	HSM
Charles	P. Chase	Planner III Proactive Execution Operations	Central Maintenance
Evel	W. Cochran	Planner III Mechanical Maint I Operations - Primary	HSM
Natosha	W. Davidson	Planner III Maintenance HSM Operations - Primary	HSM
Roger	H. Dodson	Planner II Mechanical Maint C Operations - Finishing	CRM
Dobre	A. Ezell	Planner III Maintenance HSM Operations - Primary	HSM
Bryan	T. Few	Planner II Scheduler Maintenance Operations - Finishing	HDGL
William	Herring	Planner III Maintenance CRM Operations - Finishing	CRM
Jamie	R. Holland	Planner III Proactive Execution Operations	Central Maintenance
Richard	K. Jenkins	Planner III Maintenance Servit Operations - Finishing	HDGL
Bobby	P. Jordan	Planner III Maintenance HSM Operations - Primary	HSM
Robert	A. Key	Planner III Maintenance HSM Operations - Primary	HSM
Loren	K. Kinzley	Planner II Proactive Execution Operations	Central Maintenance
Louis	K. Kordak	Sr. Planner Mechanical Maint Operations - Primary	HSM
Travis	M. Lashley	Planner III Maintenance HSM Operations - Primary	HSM
Richard	D. Letody	Planner I Scheduler Operations - Finishing	CRM
Jason	N. Lovin	Planner III Proactive Execution Operations	Central Maintenance
Johnny	E. Mascingilli	Planner II Proactive Execution Operations	Central Maintenance
Brett	R. Miller	Planner II Scheduler Maintenance Operations - Finishing	CRM
Robert	E. Redden	Planner II Maintenance Servit Operations - Finishing	HDGL
Richard	A. Richardson	Sr. Planner Maintenance Serv Operations - Finishing	HDGL
Michael	Richburg	Planner II Maintenance Servit Operations - Finishing	HDGL
Larry	E. Robinson	Sr. Planner Mechanical Maint Operations - Primary	HSM
Edward	Lao Rogers	Planner II Maintenance Servit Operations - Finishing	HDGL
Andrew	W. Sailer	Sr. Planner Maintenance HSM Operations - Primary	HSM
Shannon	T. Smith	Planner III Mechanical Maint I Operations - Primary	HSM
Kevin	Todd Stacey	Sr. Planner Maintenance HSM Operations - Primary	HSM
Jason	L. Troupe	Planner III Mechanical Maint C Operations - Finishing	CRM
Michael	D. Wallis	Sr. Planner Electrical Maint HI Operations - Primary	HSM
Wesley	B. Williams	Planner III Mechanical Maint C Operations - Finishing	CRM
Kenneth	A. Wilson	Planner III Mechanical Maint I Operations - Primary	HSM
Angel	H. Patrick	Planner I Hot Strip Mill Operations - Primary	HSM
Barbara	M. Taylor	Planner III Scheduler HSM Operations - Primary	HSM
James	B. Thieker	Sr. Planner Scheduler HSM Operations - Primary	HSM
Joshua	L. Abell	Sr. Specialist Central Engineer Operations - Technology	Manufacturing Technology
Amy	C. Beard	Specialist II Doc Control Proj Operations - Technology	Manufacturing Technology
Sarah	F. Hannah	Specialist I Project Controls Operations - Technology	Manufacturing Technology
Benedikt	Isenhardt	Sr. Specialist Process Techno Technology	Technology
Roman	C. Owensby	Specialist II Automaton Operations - Finishing	HDGL
Jessica	L. Scarborough	Specialist II Drawing Mgmt En Operations - Technology	Manufacturing Technology
Mark	J. Teckla	Sr. Specialist Process Techno Technology	Technology
Terry	D. Stanfield	Specialist III Process Automat Operations	Process Automation
Andrew	B. Buxton	Specialist III Slab Yard Operations - Primary	Int Logistics
Frank	J. Dolbear	Specialist III Equipment ST1 a Operations - Primary	Int Logistics
Joshua	L. Goodell	Specialist III Trailer PIV Operations - Primary	Int Logistics
Gregory	M. Kunkel	Specialist III Equipment ST3 a Operations - Primary	Int Logistics
Phouvanh	S. Lane	Specialist III Scrap and Involer Operations - Primary	Int Logistics
Jay	H. Langley	Specialist III Doc Control Proj Operations - Primary	Int Logistics
Rodger	S. Scruggs	Specialist II Equipment ST3 ar Operations - Primary	Int Logistics
Heather	R. Sulano	Specialist III Internal Transpor Operations - Primary	Int Logistics
David	W. Whigham	Specialist III Packaging and M Operations - Primary	Int Logistics
Jason	G. Addison	Specialist III Field Execution Operations	Central Maintenance
Christopher	S. Anderson	Specialist II Electrical Maint HI Operations - Finishing	HDGL
Jeremy	A. Baggell	Specialist II Material Handling Operations	Central Maintenance
Murvin	E. Bardin	Specialist III Maintenance Ser Operations - Finishing	HDGL
Zachariah	J. Batson	Sr. Specialist Electrical Maint I Operations - Finishing	HDGL
Brett	B. Beichor	Specialist III Electrical Maint H Operations - Primary	HSM
Anthony	Dante Blevins	Specialist I Electrical Maint CF Operations - Finishing	CRM
Howard	E. Doserge	Specialist II Field Execution Operations	Central Maintenance
Luke	A. Brennum	Specialist III Mechanical Maint Operations - Finishing	HDGL
Douglas	R. Byrd	Specialist III Mechanical Maint Operations - Primary	HSM
John	W. Carden	Specialist II Mechanical Maint Operations - Primary	HSM
Ronald	M. Carroll	Specialist III Electrical Maint H Operations - Finishing	HDGL
Jessica	W. Chastang	Specialist II Maintenance Ser Operations - Finishing	HDGL
Terrence	L. Chencoff	Specialist III Level 1 Automate Operations - Primary	HSM
Daniel	L. Collier	Sr. Specialist Electrical Maint I Operations - Primary	HSM
Edward	J. Connolly	Sr. Specialist Mechanical Maint Operations - Primary	HSM
Patrick	O. Cooley	Sr. Specialist Mechanical Maint Operations - Primary	HSM
Edwin	T. Denmark	Specialist II Mechanical Maint Operations - Finishing	HDGL
Stuart	L. Driskell	Sr. Specialist Reliability Operations	Central Maintenance

AM/NS Calvert, LLC
 15-RM-246203
 Exhibit A

Dallis	E	Eaves	Sr. Specialist Level 1 Automal Operations - Primary	HSM
Richard	P	Elmore	Specialist II Mechanical Maint Operations - Finishing	HDGL
Samuel	P	Falta	Specialist III Field Execution Operations	Central Maintenance
Darrell	S	Folds	Specialist III Central Reliability Operations - Technology	Manufacturing Technology
Jerry	Lee	Ford	Sr. Specialist Electrical Maint Operations - Primary	HSM
Samuel	D.	Green	Specialist II Field Execution Operations	Central Maintenance
Herbert	F.	Haering	Sr. Specialist Mechanical Maint Operations - Finishing	CRM
Charles	T	Halverson	Specialist II Mechanical Maint Operations - Finishing	HDGL
John	D	Hanson	Specialist III Maint CRM Operations - Finishing	CRM
Wayne	C	Huff	Specialist II Mechanical Maint Operations - Finishing	HDGL
John	B	Hurn	Specialist II Mechanical Maint Operations - Finishing	HDGL
Timothy	S	Jones	Specialist III Mechanical Maint Operations - Finishing	CRM
William	A.	Kalsh	Specialist III Facilities and Util Operations	Central Maintenance
Roy	R.	King	Specialist II Electrical Maint CI Operations - Finishing	CRM
Johnny		Knight	Specialist III Mechanical Maint Operations - Primary	HSM
Roger		Kudron	Specialist II Material Handling Operations	Central Maintenance
Wilbur	E.	Lavender	Specialist II Mechanical Maint Operations - Finishing	HDGL
David	L.	Lindsey	Specialist III Central Reliability Operations - Technology	Manufacturing Technology
Brandyn	M	Logan	Planner II Scheduler Maintene Operations - Finishing	CRM
David	E.	Lova	Specialist II Electrical Maint HI Operations - Finishing	HDGL
Malvin	Joseph	Mallot	Specialist II Mechanical Maint Operations - Finishing	HDGL
Jeffrey	M.	Malks	Specialist III Mechanical Maint Operations - Primary	HSM
Brandon	S.	McCray	Specialist II Electrical Maint HI Operations - Finishing	HDGL
Joseph		McIntosh	Lead Specialist Electrical Maint Operations - Primary	HSM
Glenn	R.	McKenzie	Specialist II Field Execution Operations	Central Maintenance
Jasper	L.	Molden	Sr. Specialist Power and Distr Operations	Central Maintenance
Steven	V.	Newton	Specialist III Electrical Maint HI Operations - Finishing	HDGL
Stan	D.	Parnoll	Specialist III HVAC Operations	Central Maintenance
Floyd	T	Patterson	Sr. Specialist Reliability Maint Operations - Finishing	CRM
Daryl		Poston	Specialist II Mechanical Maint Operations - Finishing	HDGL
Varlast	K.	Randle	Specialist II Maintenance Serv Operations - Finishing	HDGL
Richard		Riggins	Specialist III Maintenance Serv Operations - Finishing	HDGL
Jimmy	R.	Rulland	Specialist II Electrical Maint CI Operations - Finishing	CRM
Derek	R.	Ryser	Specialist II Field Execution Operations	Central Maintenance
Gordon	W	Sanders	Specialist III Electrical Maint HI Operations - Primary	HSM
Fred	J.	Schitzmann	Specialist II Field Execution Operations	Central Maintenance
Shawn	C.	Smith	Specialist III Field Execution Operations	Central Maintenance
Bill	S.	Stuckey	Specialist II Mechanical Maint Operations - Finishing	HDGL
LeNae	P.	Voss	Specialist II Maintenance Serv Operations - Finishing	HDGL
William	K.	Waltaco	Specialist III Electrical Maint HI Operations - Primary	HSM
David	P.	Walp	Specialist II Electrical Maint HI Operations - Finishing	HDGL
Riley	W.	Wiggins	Sr. Specialist Mechanical Maint Operations - Finishing	CRM
Rodney	L.	Willard	Specialist II Electrical Maint HI Operations - Primary	HSM
Henry	E.	Williams	Lead Specialist Electrical Maint Operations - Primary	HSM
Donald	V.	Dixon	Specialist II HDGL Production Operations - Finishing	HDGL
Ryon	P.	Drlak	Specialist III Pickling Line Test Operations - Finishing	CRM
Randal	J.	Fiya	Sr. Specialist Field Execution Operations	Central Maintenance
Thomas		Primpong-Manso	Sr. Specialist Continuous Pick Operations - Finishing	CRM
John	C.	Gilbert	Sr. Specialist HDGL 4 Operations - Finishing	HDGL
John	J	Giles	Specialist III Hot Strip Mill Operations - Primary	HSM
Derek	E.	James	Specialist III HDGL Production Operations - Finishing	HDGL
William	H.	Kelly	Specialist III Furnaces HSM Operations - Primary	HSM
Tammy	L.	Lafferty	Specialist III HDGL Labs & CI Operations - Finishing	HDGL
Ronald	G	Lollar	Specialist II Support Systems Operations - Finishing	CRM
Marvin	Carro	Parson	Specialist III Down Cooler HSM Operations - Primary	HSM
Alberl	H	Pierce	Sr. Specialist Pickling Line Test Operations - Finishing	CRM
Christopher		Sanders	Sr. Specialist Roll Shop CRM Operations - Finishing	CRM
Ronald	D	Walker	Sr. Specialist Roll Shop Operations - Primary	HSM
Dregrit	L.	Williams	Specialist III Rolling Mill HSM Operations - Primary	HSM
Nicholas	H.	Woodruff	Specialist II Rolling Mill HSM Operations - Primary	HSM
Osnilo	S.	Ancojaz	Specialist III Quality Control Quality	Integrated Quality
Hesther	A.	Caylor	Specialist III Business Mgmt S Quality	Integrated Quality
Ryen		Frazier	Specialist III Quality Control Quality	Integrated Quality
Ashley	N	Gallust	Specialist II Quality Control Quality	Integrated Quality
Ashley	N	Ochaght	Specialist III Business Mgmt S Quality	Integrated Quality
Michael	D.	Orimas	Specialist III Product Quality Quality	Integrated Quality
Kyle	B.	Hamon	Specialist III Quality Control Quality	Integrated Quality
Yvonne	W.	Hines	Specialist III Quality Control Quality	Integrated Quality
Elizabeth	A.	Isbell	Specialist III Inspection System Quality	Integrated Quality
Jon		Launphory	Specialist III Quality Control Quality	Integrated Quality
Dennis	A	Lott	Specialist III Quality Control Quality	Integrated Quality
Bredley	G.	Meslers	Specialist II Quality Control Quality	Integrated Quality
Key	R.	Pool	Specialist III Business Mgmt S Quality	Integrated Quality

Initials *RWF Bpm*
 Page 7

AM/NS Calvert, LLC
15-RM-246203
Exhibit A

Kelth
Thomas
Bianca
James
Matthew
Andre
Edson
Erin

B. Peckey
Fred Redunz
Richardson
T. Strickland
R. Seldon
Walls
D. Williams
Young

Sr. Specialist Quality Control Quality
Specialist III Business Mgmt S Quality
Specialist III Quality Control Quality
Specialist III Quality Control Quality
Specialist II Quality Control Quality
Specialist III Business Mgmt S Quality
Specialist I Quality Control Quality
Specialist II Quality Control Quality

Integrated Quality
Integrated Quality
Integrated Quality
Integrated Quality
Integrated Quality
Integrated Quality
Integrated Quality
Integrated Quality

Initials

[Handwritten initials]

EXHIBIT 7



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 15
600 South Maestri Place – 7th Floor
New Orleans, LA 70130-3413

Agency Website: www.nlrb.gov
Telephone: (504)589-6362
Fax: (504)589-4069

March 11, 2020

Via Email and Regular Mail

mdebruge@burr.com
Marcel L. Debruge, Esq.
Burr & Forman LLP
420 North 20th Street, Suite 3400
Birmingham, AL 35203—3284

rflowers@burr.com
Ronald W. Flowers, Attorney
Burr & Forman LLP
420 North 20th Street, Suite 3400
Birmingham, AL 35203--5201

bmanzolillo@usw.org
Brad Manzolillo, Organizing Counsel
Five Gateway Center
Pittsburgh, PA 15222

Re: AM/NS Calvert, LLC
Case 15-RM-246203

Gentlemen:

Enclosed are the Notice of Election and a copy of the election agreement that I have approved in this case. This letter will provide you with information about the voter list, posting and distribution of the election notices, and the agreed-upon election arrangements.

Voter List

The employer must provide the regional director and parties an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters, **accompanied by a certificate of service** on all parties.

To be timely filed and served, the list must be *received* by the regional director and the parties by Thursday, March 12, 2020. **The region will no longer serve the voter list.** The employer's failure to file or serve the list within the specified time or in the proper format is grounds for setting aside the election whenever proper and timely objections are filed. However, the employer may not object to the failure to file or serve the list in the specified time or in the proper format if it is responsible for the failure.

The list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the employer must electronically file the list with the regional director and electronically serve the list on the other parties. Electronic filing of the list with the NLRB through the Agency website is preferred but not required. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the **NLRB case number**, and follow the detailed instructions. The list also may be submitted to our office by email or fax to (504)589-4069. The burden of establishing the timely filing and receipt of the list is on the sending party.

Posting and Distribution of Election Notices

The Employer must post copies of the attached Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted at least 3 full working days prior to 12:01 am on the day of the election and must also distribute the Notice of Election electronically to any employees in the unit with whom it customarily communicates electronically. The Notice of Election must be posted so all pages are simultaneously visible. In this case, the notices must be posted and distributed **before 12:01 a.m. on Friday, March 20, 2020**. The employer's failure to timely post or distribute the election notices is grounds for setting aside the election if proper and timely objections are filed. However, a party is stopped from objecting to the nonposting or nondistribution of notices if it is responsible for the nonposting or nondistribution.

To make it administratively possible to have election notices and ballots in a language other than English, please notify the Board agent immediately if that is necessary for this election. Also, as noted in paragraph 10 of the stipulated election agreement, if special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board agent as soon as possible.

Election Arrangements

The arrangements for the election in this matter are as follows:

Date of Election: Tuesday, March 24, 2020

Time: 5:00 AM - 9:30 AM

Place: Hot Strip Mill – Social Building Conference Room 2
1 Steel Drive, Calvert, AL

Date of Election: Tuesday, March 24, 2020

Time: 5:00 PM - 9:30 PM

Place: Hot Strip Mill – Social Building Conference Room 2
1 Steel Drive, Calvert, AL

Date of Election: Tuesday, March 24, 2020

Time: 5:00 AM - 9:30 AM

Place: Hot Dip Galvanized Line – Social Building Conference Room 2
1 Steel Drive, Calvert, AL

Date of Election: Tuesday, March 24, 2020

Time: 5:00 PM - 9:30 PM

Place: Hot Dip Galvanized Line – Social Building Conference Room 2
1 Steel Drive, Calvert, AL

Date of Election: Tuesday, March 24, 2020

Time: 5:00 AM - 9:30 AM

Place: Cold Roll Mill – Social Building Conference Room 1
1 Steel Drive, Calvert, AL

Date of Election: Tuesday, March 24, 2020

Time: 5:00 PM - 9:30 PM

Place: Cold Roll Mill – Social Building Conference Room 1
1 Steel Drive, Calvert, AL

Date of Election: Wednesday, March 25, 2020

Time: 5:00 AM - 9:30 AM

Place: Cold Roll Mill – Social Building Conference Room 1
1 Steel Drive, Calvert, AL

Date of Election: Wednesday, March 25, 2020

Time: 5:00 PM - 9:30 PM

Place: Cold Roll Mill – Social Building Conference Room 1
1 Steel Drive, Calvert, AL

Date of Election: Wednesday, March 25, 2020

Time: 5:00 AM - 9:30 AM

Place: Hot Dip Galvanized Line – Social Building Conference Room 2
1 Steel Drive, Calvert, AL

Date of Election: Wednesday, March 25, 2020

Time: 5:00 PM - 9:30 PM

Place: Hot Dip Galvanized Line – Social Building Conference Room 2
1 Steel Drive, Calvert, AL

Date of Election: Wednesday, March 25, 2020

Time: 5:00 AM - 9:30 AM

Place: Hot Strip Mill – Social Building Conference Room 2
1 Steel Drive, Calvert, AL

Date of Election: Wednesday, March 25, 2020

Time: 5:00 PM - 9:30 PM

Place: Hot Strip Mill – Social Building Conference Room 2
1 Steel Drive, Calvert, AL

Election Observers: Each party may have twelve observers for each polling session. The observers may be present at the polling place during the balloting and to assist the Board agent in counting the ballots after the polls have been closed. **Please complete the enclosed Designation of Observer form and return it to this office as soon as possible.**

March 11, 2020

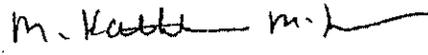
Preelection Conference: A preelection conference for all parties will be held on Monday, March 23, 2020 at 3:00 PM at AIDT Building Conference Room. The parties are requested to have their election observers present at this conference so that the observers may receive instruction from the Board Agent about their duties.

Election Equipment: The Board agent conducting the election will furnish the ballot box, ballots, and voting booths. The Employer is requested to provide, at the polling place, a table and a sufficient number of chairs for use by the Board agent and observers during the election.

Enclosed is a Description of Election and Post-Election Procedures in Representation Cases, Form NLRB-5547, which describes the election and the method for handling challenges as well as post-election proceedings to deal with determinative challenges and any objections that are filed.

If you have any questions, please feel free to contact Field Examiner JORDAN A. RABY at telephone number (504)321-9492 or by email at jordan.raby@nlrb.gov. The cooperation of all parties is sincerely appreciated.

Very truly yours,



M. KATHLEEN MCKINNEY
Regional Director

MKM/hpj

Enclosures

1. Approved Election Agreement
2. Notice of Election
3. Designation of Observer Form
4. Description of Procedures in Election and Post-Election Representation Case Procedures (Form 5547)

cc: myriam.aerts@arcelormittal.com

Myriam Aerts
Chief Administrator Officer
AM/NS Calvert, LLC
1 Steel Dr.
Calvert, AL 36513

joel.stadtlander@arcelormittal.com

Joel Stadtlander, HR Director
AM/NS Calvert, LLC
1 Steel Drive
Calvert, AL 36513

pgallagher@usw.org

Patrick Gallagher
International Representative
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial
& Service Workers International Union
Local Union 1-1824
25111 Miles Rd Ste H
Warrensville Heights, OH 44128-5419

EXHIBIT 8

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15

AM/NS CALVERT, LLC

Employer/Petitioner

and

Case 15-RM-246203

UNITED STEEL, PAPER & FORESTRY,
RUBBER, MANUFACTURING, ENERGY ALLIED
INDUSTRIAL & SERVICE WORKERS
INTERNATIONAL UNION ON BEHALF OF ITS
LOCAL UNION NO 735

Union

ORDER CANCELLING ELECTION

Given the current situation, the Regional Director is postponing the election scheduled for Monday, March 23, 2020 through Wednesday, March 25, 2020. We will be in contact in the near future to determine how to proceed.¹

Dated: March 17, 2020

/s/

M. KATHLEEN McKINNEY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 15
600 South Maestri Place – 7th Floor
New Orleans, LA 70130-3413

¹ An election may be scheduled at a later date.

EXHIBIT 9

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15

UNITED STEEL, PAPER & FORESTRY,
RUBBER, MANUFACTURING, ENERGY ALLIED
INDUSTRIAL & SERVICE WORKERS
INTERNATIONAL UNION ON BEHALF OF ITS
LOCAL UNION NO 735

Union

and
AM/NS CALVERT, LLC

Petitioner

Case 15-RM-246203

NOTICE TO SHOW CAUSE

On August 8, 2019, Petitioner filed the instant Petition in this matter. On March 10, 2020, I approved the attached Stipulated Election Agreement that provided for a manual election to be conducted at the Employer's facility on March 24 and 25, 2020 (Stipulated Election Agreement Attached). On March 17, 2020, the parties were notified that due to the COVID-19 pandemic the election was postponed indefinitely. Thereafter, on March 19, 2020, the National Labor Relations Board (Board) announced that due to the extraordinary circumstances related to the COVID-19 pandemic, all representation elections would be suspended until April 3, 2020.

On April 1, 2020, the Board announced that it would resume conducting elections beginning April 6, 2020 (Announcement attached). The Announcement notes that "conducting representation elections is core to the NLRB's mission" and further states that "appropriate measures are available to permit elections to resume in a safe and effective manner, which will be determined by the Regional Director."

Based on the Board's announcement to resume elections in a safe and effective manner, I have reviewed the circumstances of this matter and I have concluded that the only feasible means

for a timely, safe, and effective election is by mail.¹ The Employer's operation is located in Alabama, and pursuant to the State Health Officer of Alabama, the State of Alabama is under a Stay at Home Order in response to the COVID-19 pandemic (Announcement attached). Likewise, the Regional staff of Region 15 of the National Labor Relations Board all report to the New Orleans, Louisiana office and are following mandatory work at home orders for an indefinite period to ensure the employees' safety and reduce potential exposure to COVID-19 from in-person public contact. While the NLRB staff is working at home, the Region is fully capable of conducting its business and handling mail. To date, it is unknown when the COVID-19 situation will be sufficiently contained in order to allow for a manual election. The Board's Representation Case Rules provide that an election is to be held at the earliest practicable date. Accordingly, given the continued extraordinary circumstances related to the COVID-19 pandemic, the unknown duration until it is sufficiently contained, and the capability of the Region to perform a mail-ballot election, which ensures the health and safety of NLRB staff, unit employees, and the parties, it would be unreasonable to delay the election further awaiting a manual election.

NOTICE IS HEREBY GIVEN that cause be shown, in writing, filed² with the Region in New Orleans, Louisiana, **on or before 4:30 p.m. April 30, 2020** as to 1) why a hearing would be necessary to determine why I should not order a mail-ballot election and 2) why I should not order a mail-ballot election pursuant to the parties stipulated election agreement and the continued extraordinary situation related to COVID-19 pandemic. Any written statement

¹ In the event the parties notify the Regional Director that they are amenable to mail ballot, the Region will arrange a conference call to work out the details of a mail-ballot election.

² You must file your show cause response electronically or provide a written statement explaining why electronic submission is not possible or feasible (Written instructions for the NLRB's E-Filing system and the Terms and Conditions of the NLRB's E-Filing policy are available at www.nlr.gov. See [User Guide](#). A video demonstration which provides [step-by-step instructions](#) and [frequently asked questions](#) are also available at www.nlr.gov.) If you require additional assistance with E-Filing, please contact E-File@NLRB.gov

to show cause, must include the following: 1) when could a manual election be safely held; 2) a proposal for how a manual election could be conducted to ensure the safety and health of all participating, including addressing any travel that will be required of Agency personnel; whether there would be masks and gloves available for all participants; and steps to ensure that current social distancing guidelines are met; and 3) whether the party's position on any of the terms of the stipulated election agreement has changed, and if so, which terms.

Copies of the show cause response should be served on all parties.

Dated: April 23, 2020

/s/

M. KATHLEEN McKINNEY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 15
F. Edward Hebert Building
600 S. Maestri Place, 7th Floor
New Orleans, Louisiana 70130

Attachment

EXHIBIT 10

HDGL Social Building Between Social Building and Locker Rooms



CRM Option #1 Social Building Gravel Lot- East Side



HSM Option #1 parking Lot



EXHIBIT 11

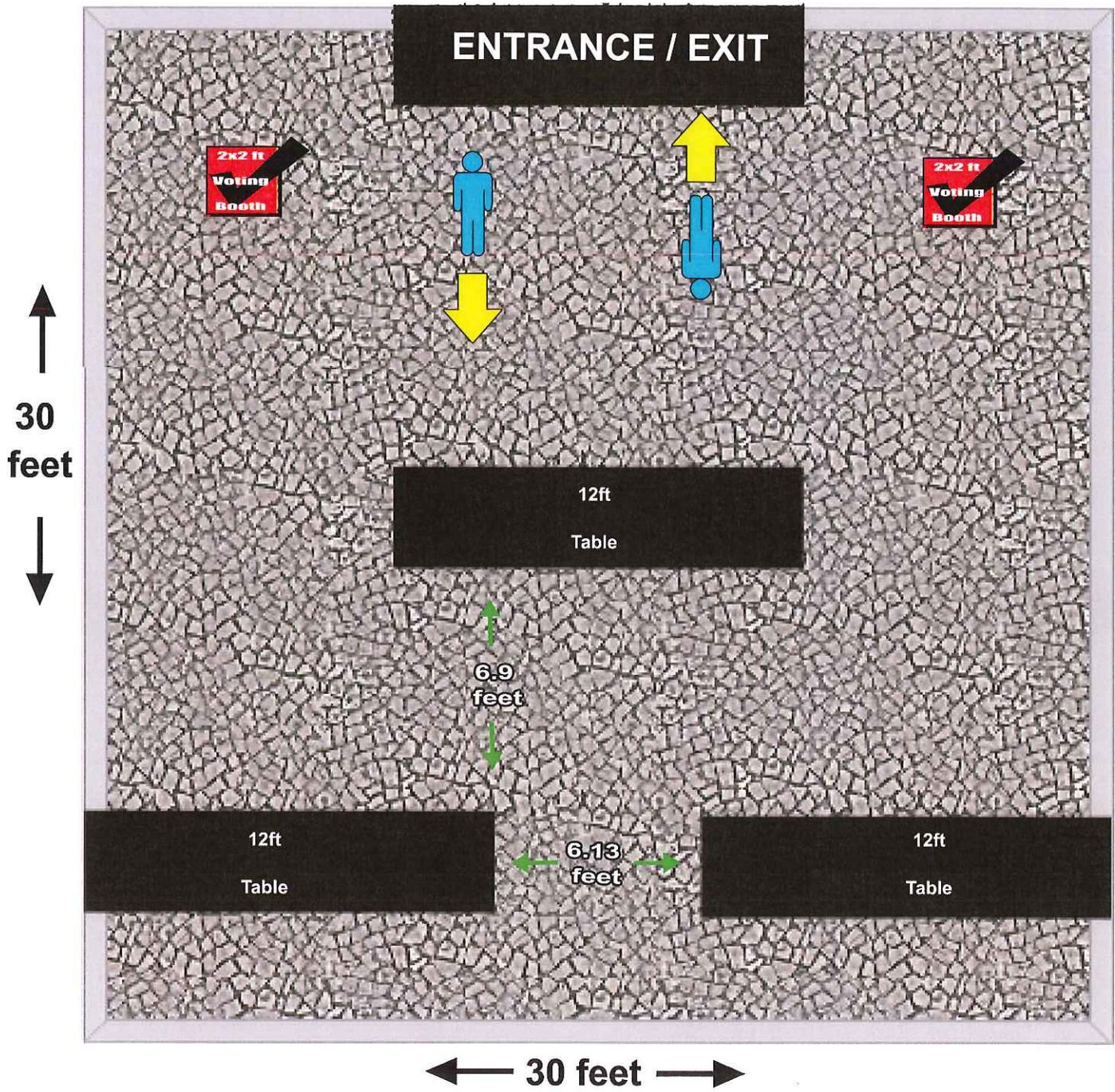


EXHIBIT 12







