

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

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

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**AM/NS CALVERT, LLC’S MOTION FOR EMERGENCY STAY**

COMES AM/NS Calvert, LLC (“Stipulating Employer”), and, pursuant to 29 C.F.R. §102.67(j), and requests the National Labor Relations Board grant an emergency stay of Region 15’s “Order Directing Mail-Ballot Election” obligating, without hearing, the Stipulating Employer and the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy Allied Industrial & Service Workers International Union (“Stipulating Union”) to subject the Stipulating Employer’s 1,047 voting employees to a card-check-style mail-in election, in total disregard of the Stipulated Election Agreement (“Stipulation”) approved March 10, 2020. In support hereof, Stipulating Employer relies on Attachment A (“Order Directing Mail-Ballot Election”) and Attachment B (“Response to Notice to Show Cause”) to its contemporaneously-filed Request for Review, as well as an additional Attachment C (“Union’s Response to Notice to Show Cause”) and shows as follows:

**Introduction**

Stipulating Employer is entitled to the relief sought:

- (1) The Regional Director entered her Order without conducting a hearing, and found numerous “facts” on matters not briefed by the parties and without allowing the parties to contest

these “facts” at a hearing.

(2) The Regional Director is violating the clear right to an employee vote in a manual (i.e., in-person) election as the parties previously stipulated and the Region accepted.

(a) The Stipulation, the evidence, and the circumstances create a clear right.

(b) Nothing about the logistics renders performance of the parties’ Stipulation impossible.

(c) By contrast, conducting a card check-style mail-in ballot election for 1,047 voters—90% of whom have worked throughout the pandemic period and the other 10% of whom have easy plant access—makes no sense.

(3) Denying the stay and proceeding with the unlawful election by card check-style mail-in ballot would continue a pattern of coercion that could not be undone and could pose health risks that in-person election does not.

(4) Granting the stay would not harm any party.

(a) The card-check-style mail-in election ordered by the Regional Director has not yet been scheduled.

(b) The parties could be heard.

(c) The minor delay necessary for hearing, is of small given that the Stipulating Union, with the Regional Director’s blessing, previously delayed the election eight months since the Petition was filed and the election has already been further delayed due to the COVID-19 pandemic.

### **Facts**

1. In July 2019, the Stipulating Employer was told by the Stipulating Union and by a group of its employees that they both had obtained signatures from a majority of employees. *See*

Attachment B, p. 2.

- a. The Stipulating Union demanded card-check recognition.
- b. The group of employees opposed such recognition and represented to the Stipulating Employer that a majority of employees opposed recognition of the Stipulating Union.
- c. This indicates that some employees signed BOTH the Stipulating Union's card-check authorization card AND the employee group's separate petition opposing such card-check recognition.

2. Also in July 2019, one of the Stipulating Employer's employees filed ULP charges alleging that the Stipulating Employer had committed § 8(a)(1) and (a)(2) violations by entering an illegal "neutrality" agreement with the Stipulating Union that not only provided for card-check recognition procedures but also required the Stipulating Employer to silence and to punish its anti-union employees while the Stipulating Union sought to coerce the employees into signing authorization cards. *See* Attachment B, Ex. 4.

3. Thereafter, in August 2019, the Stipulating Employer filed its RM Petition in the present proceeding, requesting that competing claims by the Stipulating Union and the group of employees be resolved by an NLRB-supervised secret-ballot election to determine whether or not the employees desired representation by the Stipulating Union. *See* Attachment B, Ex. 5.

4. Processing of the RM Petition was delayed for eight months because of "blocking" ULP charges the Stipulating Union filed in response to the RM Petition. *See* Attachment B, p. 2. But, in February 2020, the Stipulating Union informed the Region that it (the Union) was willing to proceed with the election, meaning that the Region could lift the "block" created by the Stipulating Union's ULP charges.

5. Thereafter, on March 9, 2020, the Stipulating Employer and Stipulating Union

entered the Stipulation, which the Regional Director approved on March 10, 2020. *See* Attachment B, Exs. 6 & 7. Under the Stipulation, the election was to be conducted manually (i.e., in-person) on March 24 and March 25, 2020.

6. On March 17, 2020, the Region notified the parties that the election was being postponed indefinitely due to the COVID-19 pandemic. *See* Attachment B, Ex. 8.

7. Although the NLRB's Region's offices in New Orleans has been impacted by COVID-19 pandemic, the Stipulating Employer has continued its essential manufacturing activities in Alabama without interruption, with 90% of its employees still working on-site, with appropriate protections and without incidents of infection. *See* Attachment B, p. 2.

8. On April 23, 2020, the Regional Director entered a "Notice to Show Cause," stating that the Regional Director believed that the "only feasible means for a timely, safe, and effective election is by mail" and ordering the parties to "show cause" as to (1) why a hearing would be necessary on why the Regional Director should not order a mail-ballot election and (2) why the Regional Director should not order a mail-ballot election. *See* Attachment B, Ex. 9.

9. The Stipulating Union responded to the Regional Director's Notice by admitting that it (the Union) had agreed to a "manual election" via its Stipulation but nevertheless requesting a mail-in ballot. *See* Attachment C.

10. The Stipulating Employer responded to the Regional Director's Notice by showing why a hearing was necessary and explaining that a manual (i.e., in-person) election, as provided for in the Stipulation, remained possible and was, in fact, preferable to and safer than a card-check-like mail-in ballot. *See* Attachment B, pp. 1-14.

11. On June 9 and June 10, 2020, the Regional Director entered her Order Directing Mail-Ballot Election. This Order denied a hearing and directed a mail-ballot election. *See*

Attachment A. Having denied a hearing, the Regional Director found many “facts” based on outdated, incorrect, and irrelevant information regarding the pandemic, and did not permit the parties to challenge and correct these “facts” at a hearing.

12. AM/NS is contemporaneously seeking review of the Regional Director’s Order.

### **Argument**

1. Unlike cases in which stays were denied, the parties’ Stipulation, the evidence, the circumstances, and the logistics create a clear right to stay here.

a. There is a need for a hearing here. *See BASF Corp.*, Case No. 07-RC-259428 (May 4, 2020)(granting a temporary stay when the Regional Directors ordered a Skype hearing in a representation case).

(1) A hearing would allow the Stipulating Employer to respond to the Regional Directors’ three-months-old “evidence” regarding the state of COVID-19 pandemic.

(2) A hearing would allow the Stipulating Employer to put in evidence on a why card-check-style mail-in ballot is particularly unsuited for the impacted employees.

(3) A hearing is necessary to take into account employee voices evidencing the history of the Stipulating Union’s pre-Stipulation efforts to force the employees to accept the Union as bargaining representation without a vote.

b. The parties’ Stipulation alone compels a stay when, as here, the Region fails to prove its execution is impossible. *T & L Leasing*, 318 NLRB 324, 326 (1995).

(1) The parties here stipulated to an onsite, in-person election by Stipulation the Region accepted on March 10, 2020.

(2) The Region has not found that performance of the Stipulation is impossible; changes in location, time, and logistics do not create impossibility.

- c. Circumstances including plant size, workforce experience working during pandemic conditions without contracting COVID-19, and other factors warrant a stay.
  - d. Potential coercion, government supervision, and safety issues presented by card-check-style mail-in ballots make them a bad choice.
2. Denying the stay produces harm that cannot be fixed.
- a. Denying the stay continues a pattern of coercion that tells employee they never get a secret ballot.
  - b. A card-check-style mail-in ballot has security and location issues that in person ballots do not.
3. Granting a stay harms no one.
- a. It undoes the Region's ruling without hearing.
  - b. The election has not yet been scheduled.
  - c. The minor delay is nothing compared to the long delay the Board allowed the Stipulating Union.

### **Conclusion**

WHEREFORE, premises considered, Stipulating Employer respectfully requests that the NLRB order that the election be reset in accordance with the parties' Stipulation for the months of July or August, 2020, and direct the parties to resolve logistical concerns within the scope of the existing Stipulation.

/s/ John J. Coleman, III  
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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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/s/ John J. Coleman, III  
OF COUNSEL

# Attachment C

**BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

In the Matter of	)	
	)	
AM/NS CALVERT, LLC	)	
	)	
Petitioner,	)	Case No. 15-RM-246203
	)	
and	)	
	)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER,	)	
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL	)	
AND SERVICE WORKERS INTERNATIONAL UNION	)	
AFL-CIO, CLC	)	
	)	
Union,	)	
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**UNION'S RESPONSE TO REGIONAL DIRECTOR'S NOTICE TO SHOW CAUSE**

Respectfully submitted on this 28th day of  
April, 2020

Brad Manzillo  
Organizing Counsel  
United Steelworkers  
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## BACKGROUND

On August 8, 2019, AM/NS Calvert, LLC (“Employer”) filed the RM petition in the above captioned case to determine if a majority of its production and maintenance employees at its Calvert, AL facility wish to be represented by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC, (“USW” or “the Union”). On March 10, 2020, Kathleen McKinney, the Regional Director for Region 15 of the National Labor Relations Board (“RD”) approved a stipulated election agreement between the parties which included provisions for approximately 155 individuals in disputed job classes to vote subject to challenge. The agreement was for a manual election with the bargaining unit consisting of approximately 1000 individuals including the 155 voting subject to challenge. There was also an agreement that, given the size and nature of the Calvert, AL operations, there would be 3 polling areas and multiple polling times and days with release schedules involving Board agents and observers for both parties.

Given the subsequent developments with the Coronavirus pandemic, the election was postponed by the Board. The Board allowed Regional Director’s to begin conducting elections in a safe and effective manner beginning on April 6, 2020. Given the current public health crisis, the RD determined that the only way to have a safe and effective election in this case was to have a mail ballot election. On April 23, 2020, the RD issued a Notice to Show Cause which requested the parties to provide any evidence why a hearing would be needed and why the RD should not direct a mail ballot. The Union must note that on this Notice, there is a reference to Local Union No. 735 at the end of its name, which should be removed. It was not part of the election stipulation and no local union is a party to this matter.

While the Union did sign the stipulated election agreement, it agrees that the subsequent expansion of the virus into pandemic proportions requires that there be a mail ballot election in this case. The Union further agrees that there is no basis for having a Hearing since the mail ballot is the only issue and election arrangements are not litigable matters for pre-election hearings, and since it is clear that this decision is at the discretion of the RD.

### **BASIS FOR SUPPORT OF THE RD'S DIRECTION OF A MAIL BALLOT ELECTION**

There is no dispute that the Board has delegated to the Regional Directors discretion in determining whether an election should be conducted by manual balloting or mail ballot. See San Diego Gas and Elec., 325 NLRB 1143 (1998); *Nouveau Elevator Industries, Inc.*, 326 NLRB 470 (1998). In *National Van Lines*, where an employer challenged a Regional Director's direction of a mail ballot election, the Board stated:

[Circumstances] surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions. Because of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections shall be conducted. Only where it is affirmatively shown that a Regional Director has clearly abused the discretion afforded him to conduct representative elections will the Board nullify an election and prescribe other election standards. 120 NLRB 1343, 1346 (1958)

This has developed into a clear case where the RD should exercise their discretion to direct a mail ballot election for several reasons. First and most importantly, we are in the midst of a public health crisis of a level not seen in this country in 100 years. On its website, the Center for Disease Control has advised that for public safety including the safety of their employees and their families, businesses that remain open should:

### **Actively encourage sick employees to stay home:**

- Employees who have symptoms (i.e., fever, cough, or shortness of breath) should notify their supervisor and stay home.
- Sick employees should follow CDC-recommended steps. Employees should not return to work until the criteria to discontinue home isolation are met, in consultation with healthcare providers and state and local health departments.
- Employees who are well but who have a sick family member at home with COVID-19 should notify their supervisor and follow CDC recommended precautions.

### **Identify where and how workers might be exposed to COVID-19 at work:**

- See OSHA COVID-19external icon webpage for more information on how to protect workers from potential exposures and guidance for employerspdf iconexternal icon, including steps to take for jobs according to exposure risk.
- Be aware that some employees may be at higher risk for serious illness, such as older adults and those with chronic medical conditions. Consider minimizing face-to-face contact between these employees or assign work tasks that allow them to maintain a distance of six feet from other workers, customers and visitors, or to telework if possible.

### **Separate sick employees:**

- Employees who appear to have symptoms (i.e., fever, cough, or shortness of breath) upon arrival at work or who become sick during the day should immediately be separated from other employees, customers, and visitors and sent home.
- If an employee is confirmed to have COVID-19 infection, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA). The employer should instruct fellow employees about how to proceed based on the CDC Public Health Recommendations for Community-Related Exposure.

In short, if any employee shows any sign of respiratory illness the Employer should strongly encourage if not require them to stay home until they are well clear of their illness. Particular attention is to be paid to older employees or employees with underlying health conditions. While

the Employer has asked for a short extension of time to respond to the Notice to see what if any modifications the Governor of Alabama may make after April 30 to the current restrictions on public gatherings, the Union sees no need to wait. Regardless of any modification the Governor may or may not make at a later date, the concerns both he and the CDC have laid out will continue for the foreseeable future.

As this virus surges throughout the country, there is no way to anticipate who might show such signs or have members of their household show such signs, and if CDC guidelines are being followed, not be allowed on their worksite. There is no way to anticipate how many employees at a particular work site may show such symptoms or when they may show them. Employees could either be prevented from voting or could feel obligated to show up and vote even if they or a household member were showing signs of infection. The only way to ensure all employees will get an opportunity to safely vote is for a mail ballot to occur. This is especially true with 1000 potential voters.

Furthermore, in this environment, it is simply irresponsible to conduct a manual election of the nature required in this case at any time in the foreseeable future. A manual election not only requires that employees leave their work areas and gather in or near the polling places, but there must also be agents from all parties present for the pre-election conference, the closing and opening of each poll session and the vote count. This means that Union and Board officials and any outside employer representative would be required to travel from another community to the polling site to inspect it and for the opening and closing of polls and the count and then have to travel back to their community.

The Board must have adequate personnel to set up for the election, conduct the pre-

election conferences and the count, and of course to run the election itself. Given the number of personnel that would be required in this election for 3 polling sites, with agents needed to release voters and to handle the large number of challenge ballots, this would be challenging in any setting. With the current public health crisis, and the fact that the vast majority if not all of the Board personnel would have to travel from the Region 15 offices in New Orleans, one of the cities most hard hit by the virus, this would be virtually impossible as well as an irresponsible and unnecessary risk.

The Union also has the right to have representatives of its choosing including attorneys present despite the fact that there may be travel restrictions. For an election this size, that would involve a considerable number of representatives from around the country. Again, this would be unnecessarily and irresponsibly interacting multiple regions and communities in order to have a fairly conducted manual election for a bargaining unit and location of this nature.

And what would happen if issues arose during the election itself? Would representatives and Board agents have their temperatures checked before being allowed in the polling areas? What if someone had a temperature when they arrived or at some point during the day when they were supposed to be at a polling area or for the count? What if, upon inspection, it was determined that one of the locations had to be moved or adjusted for any reason?

During a manual election, there need to be observers for both parties and Board agents who conduct the election. Under normal circumstances, the observers are located right near the Board agent who handles the voter list so they are sure they are talking about and checking off the correct person. It is unclear how this could safely be achieved. The large number of challenged ballots is another large issue. How would any challenged ballots be handled? Who

would put the ballots in an envelope and sign them? How would the ballots be exchanged and filled out? Would pens need to be exchanged? Would ballots be handed to employees? Would the Boards agent change gloves after every voter? Sanitize their hands after every vote? How about the voting booths and ballot boxes? Would the parties be allowed to inspect them? Would they be sanitized after every person voted? Where would everything be located? How would the count occur while keeping social distance and meeting other CDC guidelines?

Remember, this is a group of 1000 employees spread over a very large steel mill with two polling times two consecutive days at three polling locations. Individuals would be assigned to a voting location, but if they could not make that location for whatever reason would have their ballots challenged and checked before the count to make sure they didn't vote twice. The parties all recognized that these complexities would mean that voters would be required to present identification before voting. How would this be done while maintaining responsible social distancing. This whole thing would be a logistical nightmare.

In contrast, a mail ballot could be prepared by several Board agents in New Orleans following CDC guidelines and then sent out in the mail and returned. The parties could even be connected via video for a count. There would be no cumbersome challenge ballot process as the challenged ballots would simply be returned and kept separate until they are resolved. This process is so much simpler and safer for everyone involved during this public health crisis, that it is difficult to see why the Employer would not also be supporting it.

Even amidst this pandemic, the Board's central function is to protect the rights of employees under the Act. In this environment, in this particular case, a mail ballot election is the only way to allow employees to exercise their rights to a representation election in a timely and

safe manner. The Union therefore reiterates its support for the Regional Director to issue a direction for a mail ballot election.

Respectfully submitted,



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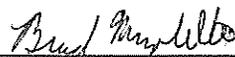
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**CERTIFICATE OF SERVICE**

I certify that on the 28<sup>th</sup> day of April, 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 by email on the following parties of record:

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