

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

**AMERICAN FUEL CELL AND COATED)
FABRICS COMPANY, LLC (“AMFUEL”),)
)
Employer,)
)
and)
)
CYNTHIA REEVES,)
)
Petitioner,)
)
and)
)
UNITED STEELWORKERS LOCAL 607L,)
AFL-CIO-CLC,)
)
Union.)**

CASE NO. 15-RD-257239

EMPLOYER’S REQUEST FOR REVIEW OF ORDER DISMISSING PETITION

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**ATTORNEYS FOR EMPLOYER
AMERICAN FUEL CELL AND
COATED FABRICS COMPANY, LLC
 (“AMFUEL”)**

September 24, 2020

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CASE NO. 15-RD-257239

EMPLOYER’S REQUEST FOR REVIEW OF ORDER DISMISSING PETITION

American Fuel Cell and Coated Fabrics Company, LLC d/b/a “Amfuel” (the “Employer” or “Amfuel”), pursuant to sections 102.67(b) and 102.71(c) of the National Labor Relations Board's Rules and Regulations, requests review of Region 15’s Decision to Dismiss Case 15-RD-257229. The Petition in this case was filed by bargaining unit employee Cynthia Reeves (“Petitioner” or “ Ms. Reeves”) on March 2, 2020. By the Petition, Ms. Reeves sought an election to determine whether a majority of bargaining unit employees desired continued representation by Local 607L of the United Steelworkers Union, AFL-CIO-CLC (the “Union”). The Decision to Dismiss Ms. Reeves’ Petition is unsupported by law or fact and the Petition should be reinstated.

I.
FACTUAL BACKGROUND

Amfuel is a manufacturer located in Magnolia, Arkansas. The Company makes customized fuel cells primarily for use in aircraft. USW Local 607L, and predecessor unions, have represented hourly paid production and maintenance employees represented at this manufacturing plant in Magnolia for many years. During most of that time, until November 2018, the Employer was under different ownership.

On March 2, 2020, Ms. Reeves filed a petition to decertify Local 607L as exclusive representative of employees in the bargaining unit. (Exhibit A (15-RD-257239)). Three (3) days later, on Thursday, March 5, 2020, Local 607L filed two (2) unfair labor practice charges alleging that Amfuel had coerced and encouraged employees to sign the decertification petition. (15-CA-157357 and 15-CA-257533) Without notice to the Employer—or to Petitioner to the best of Employer’s knowledge—Region 15 treated the ULP charges as blocking charges. Region 15 did not process the RD Petition from that point forward.¹

There is no election bar to the Petition, nor is there a contract bar. The collective bargaining agreement (“CBA”) between Local 607L and Amfuel expired on April 30, 2020. The Union and Amfuel have been in negotiations for a successor contract and the negotiations are continuing. To date, however, no agreement has been reached and no collective bargaining agreement is in effect.

II.
THE DECISION TO DISMISS

On September 10, 2020, Regional Director Kathleen McKinney wrote to Ms. Reeves to tell her that her Petition was being dismissed. (Exhibit B). The only information provided by the

¹ An Order To Reschedule Hearing was entered by the Regional Director on March 5, 2020, but no election hearing or election was scheduled. There are no matters of record on file, at least as indicated in the docket page in NLRB.gov, since that March 5 Order to Reschedule Hearing.

Regional Director to Ms. Reeves is that the Region had investigated the Union’s unfair labor practice charges (15-CA-157357 and 15-CA-257533) and concluded that Ms. Reeves and her colleagues were not independently motivated to file the Petition. Only the most general of information was provided by Regional Director McKinney—no names, no dates, no events, no details.

Petitioner and Amfuel can only speculate about the evidence Region 15 is relying upon to dismiss the Petition. Neither of the putative blocking charges have been litigated. Yet more at odds with due process, no evidence has been shared with the Petitioner or Employer, no discovery has been allowed, no hearing has been conducted, and no findings of fact and conclusions of law have been made. The Petition was dismissed with no opportunity to confront the evidence and witnesses Region 15 presumably is relying on.

III. GROUNDS FOR REVIEW

The Regional Director made a fundamentally erroneous decision that the alleged unfair labor practices foreclose Petitioner and her co-workers from raising a question about continued representation by Local 607L. That decision diminishes the section 7 rights of employees, basic notions of fairness, and basic notions of due process. Regional Director McKinney specifically erred by: (1) failing to conduct an evidentiary hearing on the Petitioner’s and signatories’ interests and their desire to express themselves about continuing representation; (2) neglecting or declining to make specific factual findings supported by evidence about causation between the alleged unfair labor practices and filing of the Petition; and (3) denying rights to employees based upon conclusions that have not been reviewed by the Board on even an administrative law judge. Additionally as a ground for review, the Employer urges that the “more than ministerial aid” standard applied by the Regional Director be reconsidered. The standard is unduly vague, it

interferes with employee exercise of section 7 rights rather than protecting such rights, and it cedes plenary authority to unions and regional directors to block certification elections with no meaningful accountability or record..²

IV. ARGUMENT AND AUTHORITIES

There is no contract bar or election bar to the RD Petition filed by Ms. Reeves. Rather than acting on objective and demonstrable bars to conduct of an election, the Regional Director has summarily determined that the Employee's (and her peers') section 7 rights take a back seat to allegations by the Union. An election has already been delayed more than six (6) months and Region 15 is determined to delay it months or years longer—if not to sink it altogether. Region 15's dismissal is contrary to the NLRA, Constitutional due process, and to basic fairness. Respect for section 7 rights requires that the Decision To Dismiss be overturned and that Region 15 be directed to schedule and conduct a decertification election forthwith.

A. A Decertification Petition May Not Be Dismissed Based On Unproven Allegations.

The right to file a decertification petition complements employees' section 7 rights. Without opportunity to decertify, employees are effectively trapped into a relationship Congress firmly and specifically has protected them from. The Board made clear in *Saint Gobain Abrasives, Inc.*, 324 NLRB No. 39 (2004) that dismissal of an RD petition “deprives employees” of their section 7 rights even when dismissal rests on a regional director's conclusion that the petition is tainted by employer unfair labor practices. *Id.* at *1. Before a statutory right may be denied, due process must be followed.

As the Supreme Court stated in *Matthews v. Eldridge*, 424 U.S. 319 (1976):

² Of note on this point is the Board's recent rule substantially limiting the use of “blocking charges” to deny employees a right to vote. *See* 29 C.F.R. §103.20. Allowing unproven allegations to cause prolonged or permanent delay in employees' expression of interest in engaging or ending union representation is contrary to the purpose of the NLRA,

The fundamental requirement of due process is the opportunity to be heard at a “meaningful time and in a meaningful manner.”

Id. at 333. A “meaningful time and meaningful manner” means more than a single government official deciding without a hearing, without opportunity for cross-examination, and without disclosure of evidence that she believes information from undisclosed witnesses. An unadjudicated unfair labor practice charge is an insufficient basis for a regional director to interfere with employees’ right to refrain from union activity and their rights of association or non-association. *See BPH & Co., Inc. v. NLRB*, 333 F.3d 213, 222 (D.C. Cir. 2003) (determination that employer “caused [its] employees to become disaffected with the union” could not be based on unadjudicated ULP charges).

As in *Saint Gobain*, the Board held in 2007 that an RD petition may not be dismissed “absent a finding of a violation of the Act or an admission by the employer” that it violated the Act. *Truserv Corp.*, 349 NLRB 227, 228 (2007). To hold otherwise would “give determinative weight to allegations of unlawful conduct and be in derogation of employees’ rights under section 7 of the Act.” *Id.* Here, that is precisely what the Regional Director in New Orleans has done. The section 7, First Amendment (associational), and due process rights of Petitioner and her co-workers may not be so readily discarded.

B. Proof Of Causation Is Essential To Dismissal Of A Decertification Petition Based On Alleged Unfair Labor Practices.

Inherent and essential to the Decision to Dismiss is that the Regional Director concluded that but for the alleged unfair labor practices Ms. Reeves would not have filed a decertification petition. Causation is an ultimate fact. If unfair labor practices were committed pre-petition yet the petition would still have been filed, there is no reason or legal basis to deprive the Petitioner of her rights under section 7. *See Lee Lumber & Bldg. Materials Corp.*, 322 NLRB 175, 177

(1996); *Saint Gobain*, 342 NLRB 434 (2004) (requiring findings after hearing both that ULP was committed and that commission of the ULP caused petition to be filed).

The Board stressed in *Saint Gobain* the importance that exercise of section 7 rights may not be blocked by inferences based on unproven allegations. As said the Board:

[I]t is not appropriate to speculate, without facts established at a hearing, that there was a causal relationship between the conduct and the disaffection. To so speculate is to deny employees their fundamental Section 7 rights. Surely, a hearing and findings are prerequisites to such a denial.

342 NLRB at 434. *See also TruServ*, 349 NLRB at 231-232 (due process denied when petition is dismissed without a hearing and instead based on allegations of that a ULP was committed).

Ms. Reeves as the Petitioner represents the interests of bargaining unit employees who may want to discontinue union representation. She and *at least* 30% of her co-workers who signed a petition expressing their desire for a decertification election are best situated to testify about their motivations and their decision-making. They are best situated to testify about who has or has not influenced their actions—whether that be the Employer, the Union or NLRB Region 15.

Amfuel also has interests in the matter. Those interests go beyond a duty to recognize Local 607L as exclusive representative of Amfuel employees. Any person or entity accused by an agency of government of having violated the law and the rights of other persons must be allowed to be heard and to confront his/her/its accusers. Region 15 has deprived Amfuel of these rights and in doing so is requiring Amfuel to recognize and bargain with a labor organization Amfuel employees *might* no longer desire to have as their agent.³

³ An opportunity to address the charges against it in context of the section 8(a)(1) proceedings does not undo the damage. Dismissing an RD petition means at best prolonged delay and possibly permanent termination of proceedings on the petition. The consequences of this for employee and employer are manifest. Concerns very similar to this were in significant measure supportive of the Election Protection Rule that took effect on July 1, 2020.

C. The “More Than Ministerial Aid” Standard Should Be Reconsidered By The Board.⁴

In her Decision To Dismiss the Regional Director states that “the Employer provided ‘more than ministerial aid’ to employees seeking to decertify the Union.” That statement is unaccompanied by any information about who provided more than ministerial aid, to whom it was provided, when it was provided, how it was provided, or what more than ministerial aid was provided. The Petitioner, the Employer, and the Board are left in the dark. Only the Regional Director and the Union know what evidence was considered, what evidence was rejected, and what evidence was never sought.

The Regional Director’s Decision to Dismiss illustrates the long known problem with “more than ministerial aid” standard. The concept is simultaneously too vague and too strict. In the context of applying section 8(a)(1) to decertification efforts, the standard allows regional directors to deprive employees of section 7 rights with no transparency and under veil of a standard that has no yardstick for objectivity.⁵

There are genuine, real life problems created by the ministerial aid standard for applying section 8(a)(1) to decertification petitions. Decertification is a legal process about which few union represented workers are knowledgeable. Most employees cannot be expected to know how to pursue decertification, or for many to even know it is an option.

⁴ Recently, in GC Memo 20-13, General Counsel Robb expressed the view that the unlawful interference standard should be the same in representation cases and decertification cases. To that end, the General Counsel prefers that the ministerial aid standard be applied in representation cases and that the totality of circumstances standard be abandoned. Parity in the interference standard applicable in representation cases and decertification cases is sensible. Rather than adopting the ministerial aid standard, however, parties to any type of NLRB conducted elections would be better served by rulemaking or case decision to define in detail what conduct is and is not permissible. Under the ministerial aid standard, too much is left uncertain and the consequence often is that employees get no help at all or their election is blocked by the good faith acts of employers responding to their employees.

⁵ Criticism of the “more than ministerial aid standard is nothing new—it has been a concern for many years. *See generally, Defining “Ministerial Aid”: Union Decertification Under The National Labor Relations Act*, 66 University of Chicago Law Review 999 (1999) (advocating rulemaking or adjudicatory reformation of standard for assessing employer assistance in decertification).

An employee or group of employees dissatisfied with union representation have few directions to turn. They could hire a labor lawyer of course, but that is a daunting and expensive proposition to many if not most hourly paid employees. Unlike in a representation case, the union certainly will not help. If they think of going to the NLRB, which may or may not happen, they will get at best general information and be left to their own devices.

The most logical and common source of assistance employees will look to is their employer. That is when the ministerial aid standard becomes problematic. Most employers will want to help employees in that context by providing some direction, but doing so comes with considerable risk. Knowing that providing any help will likely draw an unfair labor practice charge and subject the employer to expensive administrative proceedings and the Board's broad remedial powers, many employers will simply do nothing. Getting legal advice will not help: employers will readily learn that "more than ministerial aid" is an uncertain concept that most often dictates no action in order to steer clear of section 8(a)(1) exposure.

Given employer reticence or refusal, employees can draw one conclusion—their employer does not favor their desire to explore decertification. This turns section 7 upside down. Rather than protecting employee rights, the ministerial aid standard interferes with employee free choice. There must be limits on employer conduct in connection with decertification, of course. There also must be meaningful guidance in the law, however, as well as reasonable opportunity for employees to explore their options. The ministerial aid standard provides neither.

V. **CONCLUSION**

With no opportunity to be heard, the Regional Director has told the Petitioner and signatory employees that they did not act on their own accord. The Regional Director has substituted her opinion in place of an opportunity for Amfuel employees to express their opinions and she has

done so without a hearing, without specific findings, and without review by an administrative law judge. Section 7 rights should not be so vulnerable. This Request for Review should be granted, the Decision to Dismiss should be overturned, and the election should be ordered on the Petition for Decertification.

Respectfully submitted,

JACKSON WALKER LLP

By: /s/ John V. Jansonius

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**ATTORNEYS FOR EMPLOYER
AMERICAN FUEL CELL AND COATED
FABRICS COMPANY, LLC (“AMFUEL”)**

CERTIFICATE OF SERVICE

This is to certify that on this 24th day of September, 2020, a true and correct copy of the foregoing document was served via e-mail and/or first class U.S. mail to:

M. Kathleen McKinney
Regional Director
National Labor Relations Board
Region 15
500 South Maestri Place, 7th Floor
New Orleans, LA 70130-3413
Kathleen.McKinney@nlrb.gov

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/s/ John V. Jansonius
John V. Jansonius

EXHIBIT A

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RD PETITION

DO NOT WRITE IN THIS SPACE

Case No.
15-RD-257239

Date Filed
3/2/2020

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 both a showing of interest (see 7 below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. 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 Amfuel		2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code) 601 Firestone Dr., Magnolia, Arkansas 71753	
3a. Representative - Name and Title Michael Accordino, President		3b. Address (if same as 2b - state same) Same	
3c. Tel. No.	3d. Fax No.	3e. Cell No.	3f. E-Mail Address michael.accordino@amfuel.com

4a. Type of Establishment (Factory, mine, wholesaler, etc.) Manufacturing facility	4b. Principal product or service Rubber fuel bladders
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5a. Description of Unit Involved Included: All production, maintenance and truck driver employees at the Company in Magnolia, Arkansas Excluded: Office, clerical employees, professional and technical employees, watchmen guards, and supervisory	5b. City and State where unit is located: Magnolia, Arkansas
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6 No. of Employees in Unit 273	7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--------------------------------	--

8a. Name of Recognized or Certified Bargaining Agent United Steelworkers Local 607L AFL-CIO-CLC	8b. Affiliation, if any The United Steelworkers
--	--

8c. Address Attention: Michael Martin 1300 Rollingbrook Drive, Suite 504 Baytown, TX 77521	8d. Tel. No. (501) 467-5226	8e. Cell No. (501) 467-5226
	8f. Fax No. (501) 778-3256	8g. E-Mail Address mmartin@usw.org

9. Date of Recognition or Certification May 1, 2017	10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) April 30, 2020
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11a. Is there now a strike or picketing at the Employer's establishment(s) involved? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	11b. If so, approximately how many employees are participating?
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11c. The Employer has been picketed by or on behalf of (Insert Name) NA (Insert Address)	a labor organization, of since (Month, Day, Year)
---	---

12. Organizations or individuals other those named in items 8 and 11c, which have claimed 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) None

12a. Name	12b. Address	12c. Tel. No.	12d. Fax No.
		12e. Cell 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. Hold an election	13a. Election Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Mixed Manual/Mail
--	---

13b. Election Date(s) May 1, 2020	13c. Election Time(s) 10AM	13d. Election Location(s) Magnolia, Arkansas
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14. Full Name of Petitioner Cynthia Reeves			
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14a. Address (Street and number, city, state, ZIP code) 601 Firestone Dr., Magnolia, Arkansas 71753		14b. Tel. No.	14c. Fax No.
		14d. Cell No.	14e. E-Mail Address cynthia.reeves@amfuel.com

14f. Affiliation, if any Amfuel employee
--

15. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

15a. Name Cynthia Reeves		15b. Title Manufacturing Lead	
15c. Address (Street and number, city, state, ZIP code) 601 Firestone Dr., Magnolia, Arkansas 71753		15d. Tel. No.	15e. Fax No.
		15f. Cell No. 870-947-0327	15g. E-Mail Address cynthia.reeves@amfuel.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) Cynthia Reeves	Signature <i>Cynthia Reeves</i>	Title Manufacturing Lead	Date Filed 02/28/20
--------------------------------	------------------------------------	-----------------------------	------------------------

WILLFUL FALSE STATEMENTS ON THIS PETITION 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 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 may cause the NLRB to decline to invoke its processes.



National Labor Relations Board



NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Cynthia Reeves has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 15-RD-257239 seeking an election to determine if the employees of Amfuel in the unit set forth below wish to be represented by United Steelworkers Local 607L AFL-CIO-CLC for the purposes of collective bargaining:

Included: All production, maintenance and truck driver employees at the Company in Magnolia, Arkansas. **Excluded:** Office, clerical employees, professional and technical employees, watchmen guards, and supervisory

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlr.gov or contact the NLRB at (504)589-6362.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



National Labor Relations Board





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



Amfuel <p style="text-align: center;">Employer</p> and Cynthia Reeves <p style="text-align: center;">Petitioner</p> and United Steelworkers Local 607L AFL-CIO-CLC Union	Case 15-RD-257239
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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 9:00 AM on **Tuesday, March 10, 2020** and on consecutive days thereafter until concluded, at the Columbia County Circuit Clerk Office, Law Library, 1 Court Square, Suite 3, Magnolia, AR 71753, 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, Amfuel and United Steelworkers Local 607L AFL-CIO-CLC 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 Monday, March 9, 2020. 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: March 2, 2020



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
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlr.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews both the petition and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 8 days (excluding intervening federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position. Included with the Notice of Representation Hearing are a copy of the petition, this form, a Statement of Position form, a Notice of Petition for Election, and a letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: The regional director may postpone the hearing for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request should be filed with the regional director. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. As part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department).

Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon on the business day before the opening of the hearing. The regional director may postpone the due date for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. The Statement of Position form may be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion."

A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 2 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically if the employer customarily communicates with its employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; and eligibility formulas. At the hearing, the Statement of Position will be received into evidence and, prior to the introduction of further evidence, all other parties will respond on the record to each issue raised in the Statement. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses 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 this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made in the hearing room will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be filed only upon special permission of the regional director and within the

time and addressing the subjects permitted by the regional director. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. If allowed, briefs should be double-spaced on 8½ by 11 inch paper. Briefs must be filed in accordance with the provisions of Section 102.111(b) of the Board's Rules. E-Filing of briefs through the Board's website, www.nlr.gov, is encouraged, but not required. Facsimile transmission of briefs is NOT permitted.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 14 days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefore.

Voter List - The employer must provide to the regional director and the parties named in the election agreement or direction of election a 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 cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge.

The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction.

To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List - Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election - Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal - If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

**REVIEW THE FOLLOWING IMPORTANT INFORMATION
BEFORE FILLING OUT A STATEMENT OF POSITION FORM**

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You may E-File your Statement of Position at www.nlr.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

Note: Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to complete items 3, 5, 6, and 8a-8e of the form.

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE	
Case No. 15-RD-257239	Date Filed March 2, 2020

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.
Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b.)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015 . A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D)			
State your position with respect to the details of any election that may be conducted in this matter. 8a. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative		9b. Signature of authorized representative	9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION 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. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER

15-RD-257239

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

 CORPORATION LLC LLP PARTNERSHIP SOLE PROPRIETORSHIP OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7. A. PRINCIPAL LOCATION:

B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): CALENDAR YR 12 MONTHS or FISCAL YR (FY dates)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$		
H. Gross Revenues from all sales or performance of services (Check the largest amount): <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

 YES NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE

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 representation and/or unfair labor practice proceedings 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 refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

EXHIBIT B



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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

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

September 10, 2020

Via Email

cynthia.reeves@amfuel.com
Cynthia Reeves
601 Firestone Dr.
Magnolia, AR 71753

Re: American Fuel Cell and Coated Fabrics
Company d/b/a Amfuel
Case 15-RD-257239

Dear Ms. Reeves:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act (the Act), has been carefully investigated and considered.

Decision to Dismiss: As a result of the investigation of the unfair labor practice charges in Cases 15-CA-257537 and 15-CA-257553, I find that further proceedings on the petition are unwarranted.

As you are aware, you filed the decertification petition in this matter on March 2, 2020, along with a document purportedly bearing the signatures of employees who no longer desire to be represented by United Steelworkers, Local 607L, AFL-CIO-CLC (the Union), the current bargaining representative of certain Amfuel (the Employer) employees. However, our investigation of the above-referenced cases revealed that the Employer violated Section 8(a)(1) of the Act by unlawfully assisting the decertification effort in February 2020 *before* you filed the petition in this case.

It is well settled that an employer violates Section 8(a)(1) of the Act by "actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of an employee petition seeking to decertify the bargaining representative." *Wire Products Mfg. Co.*, 326 NLRB 625, 640 (1998). In determining whether an employer's assistance is unlawful, the appropriate inquiry is "whether the Respondent's conduct constitutes more than ministerial aid." *Times Herald*, 253 NLRB 524 (1980). In making that inquiry, the Board considers the circumstances to determine whether "the preparation, circulation, and signing of the petition constituted the free and uncoerced act of the employees concerned." *Eastern States Optical Co.*, 275 NLRB 371, 372 (1985) (citing *KONO-TV-Mission Telecasting*, 163 NLRB 1005, 1006 (1967)); see also *Hall Industries*, 293 NLRB 785, 791 (1989).

Our investigation of the charges in Cases 15-CA-257537 and 15-CA-257553 revealed that the Employer provided “more than ministerial aid” to employees seeking to decertify the Union. For example, in Case 15-CA-257537, one of the Employer’s managers engaged in coercive conduct on multiple occasions by directing employees to persuade other employees to sign the decertification petition. Also, the same manager actively encouraged employees to sign the petition by promising to increase their pay if they signed the document. Similarly, our investigation in Case 15-CA-257553 disclosed that on at least five occasions, several high-ranking Employer officials directly solicited employees to sign the decertification petition. The Employer’s coercive conduct in these cases establishes that the showing of interest used to file the petition in this case was tainted and not the byproduct of employees’ free choice.

Accordingly, I am dismissing the petition in this matter. The petition is subject to reinstatement, if appropriate, after final disposition of the charges in Cases 15-CA-257537 and 15-CA-257553.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board’s Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **September 24, 2020**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency’s website is **accomplished by no later than 11:59 p.m. Eastern Time on September 24, 2020**.

Consistent with the Agency’s E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board’s Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board’s Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency’s website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency’s website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such

request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

/s/ M. Kathleen McKinney

by par

M. KATHLEEN McKINNEY
Regional Director

MKM/par

cc: Office of the Executive Secretary (by e-mail)

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