

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

\_\_\_\_\_  
GKN AEROSPACE MONITOR, INC.,  
Employer,  
and  
INTERNATIONAL ASSOCIATION  
OF MACHINISTS & AEROSPACE  
WORKERS, DISTRICT LODGE 15,  
LOCAL LODGE 264 (IAMAW),  
Union.  
\_\_\_\_\_

Case No. 29-RC-094031

**EMPLOYER’S EXCEPTIONS TO THE REPORT ON OBJECTIONS**

Pursuant to Rule 102.69 of the Board’s Rules and Regulations, GKN Aerospace Monitor, Inc. (“GKN”), Employer in the above-captioned case, files the following Exceptions to the Report on Objections issued by the Regional Director of Region 29 on March 27, 2013 (the “Report”).

1. GKN excepts to the Regional Director’s decision to issue this Report without conducting a hearing. As demonstrated below and in GKN’s brief in support of these exceptions filed contemporaneously herewith, since the Region did not permit GKN to present live testimony at a hearing, the factual record concerning GKN’s Objections to the Election is not adequately developed.

2. GKN excepts to the Regional Director’s finding that the leads are not supervisors under Section 2(11) of the National Labor Relations Act (“NLRA”). (Report, p. 12.) As explained in GKN’s supporting brief, such a finding disregards, without any reasoned

explanation, GKN's evidence that leads assign work, effectively recommend promotions and raises, reward employees, and have responsibility to direct.

3. GKN excepts to the Regional Director's finding that there is no evidence the leads were acting as agents of the International Association of Machinists & Aerospace Workers, District Lodge 15, Local Lodge 264 ("Union"). (Report, p. 12.) As explained in GKN's supporting brief, GKN has presented at least *prima facie* evidence that the leads were acting at the direction and/or encouragement of the Union while committing their objectionable conduct. Unless the Regional Director affords GKN the opportunity to question the leads and Union representatives under oath at a hearing, GKN cannot provide further evidence on the agency relationship as it obviously was not privy to communications between the Union and leads.

4. GKN excepts to the Regional Director's statement that "the parties were afforded full opportunity to submit evidence bearing on the issues." (Report, p. 2.) GKN was denied the opportunity to present evidence in the form of witness testimony at a hearing where witnesses could be examined under oath.

5. GKN excepts to the Regional Director's statement: "While the Employer asserts that this witness would testify it is well known among employees that many leads were campaigning for the Union, s/he testified that that s/he did not observe any leads campaigning for the Union." (Report, p. 7.) This statement glosses over the fact that this witness explained in detail to the Region that he witnessed Lead Pedro Flores using GKN's copier to make voluminous copies of union flyers that were posted around the facility. (Report, p. 7.) Therefore, the Regional Director's assertion that this witness did not see any leads campaigning is an inexcusable misrepresentation of the testimony this witness provided in his affidavit. For

similar reasons, GKN excepts to the Regional Director's conclusion that: "There is no evidence that any leads distributed campaign literature in the facility." (Report, p. 18.)

6. GKN excepts to the Regional Director's characterization of the witness's testimony concerning a statement from Lead Flores that GKN might fire the employee for having accidents. (Report p. 8 and n. 12.) This witness came forward to GKN and reported the conversation very differently. Specifically, the witness told GKN that Flores said GKN would fire him for missing work or being injured *and that he needed the Union to protect his job*. The discrepancy between the conversation as reported to GKN and as represented in the Report is significant and underscores the need for a hearing to adequately develop the factual record.

7. GKN excepts to the Regional Director's characterization of the witness's testimony concerning Lead Flores' asking the witness if he had signed a Union card. (Report, p. 8 and n. 11.) Again, this witness came forward to GKN and reported the conversation very differently. This witness did not report that Lead Flores simply asked him if he signed a Union card; rather, he said Lead Flores *told him to sign a union card when one was presented to him*. The discrepancy between the conversation as reported to GKN and as represented in the Report is significant and underscores the need for a hearing to adequately develop the factual record.

8. GKN excepts to the Regional Director's analysis of the leads' objectionable conduct under a "more rigorous standard" for cases involving conduct by third parties. (Report, p. 12.) As demonstrated in GKN's supporting brief, this standard is inapplicable because the leads in question were acting as Section 2(11) supervisors and/or agents of the Union.

9. GKN excepts to the Regional Director's finding that GKN's offer of proof concerning Lead Flores' soliciting signatures on Union cards and misconduct by Lead Nelson Herrera was conclusory and that "further investigation by the Region is not warranted." (Report,

p. 13.) As shown in Exception 7 above, GKN presented factual (not conclusory) evidence that Lead Flores was encouraging employees to sign Union cards. In regard to the conduct of Lead Herrera, GKN is unable to offer further evidence because the witness who reported this misconduct to GKN is afraid to testify out of fear of retribution from pro-Union employees.

10. GKN excepts to the Regional Director's characterization of the threat leads made to a pro-Company employee (telling him to take off his Vote No shirt "or else") as "ambiguous." (Report, p. 17.) Such a statement is clearly a threat of physical violence, especially considering the employee being threatened was encircled by Union supporters at the time the statement was made.

11. GKN excepts to the Regional Director's finding that the threat in Exception 10 did not "contribute to an atmosphere of fear and reprisal." (Report, p. 17.) This threat was levied while a known pro-Company employee was surrounded by Union supporters on the shop floor, during the workday, and in full view of voting unit employees. It was obviously calculated to intimidate pro-Company employees into not expressing their support for the Company.

12. GKN excepts to the Regional Director's finding that the Union campaign material quoting President Obama and an altered sample ballot distributed to employees shortly before the election was not likely to give the impression that the Board and/or federal government supported the Union. (Report, pp. 19-28.)

WHEREFORE, for the reasons explained above and more completely in GKN's supporting brief, GKN respectfully requests that the Board set aside the election and direct a re-run election in Case No. 29-RC-094031 based upon the objectionable conduct of the Union and/or the leads acting as agents of the Union. In the alternative, GKN asks that the Board direct

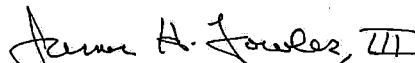
the Regional Director to schedule a hearing on GKN's objections so that GKN has an adequate opportunity to develop the factual record in support of its Objections.

Dated this 17th day of April 2013.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

By:



---

James H. Fowles, III  
Counsel for GKN Aerospace Monitor, Inc.

1320 Main Street – Suite 600  
Columbia, SC 29201  
803.252.1300 (telephone)  
803.254.6517 (facsimile)

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

\_\_\_\_\_  
GKN AEROSPACE MONITOR, INC.,  
Employer,  
and  
INTERNATIONAL ASSOCIATION  
OF MACHINISTS & AEROSPACE  
WORKERS, DISTRICT LODGE 15,  
LOCAL LODGE 264 (IAMAW),  
Union.  
\_\_\_\_\_

Case No. 29-RC-094031

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served via electronic filing these Exceptions on:

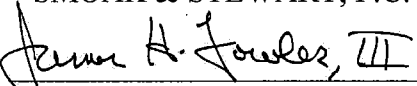
James G. Paulsen, Regional Director  
National Labor Relations Board – Region 29  
Two Metro Tech Center, Suite 5100  
Brooklyn, NY 11201

This is to certify that I have this day served via certified mail these Exceptions on:

James M. Conigliaro, General Counsel  
International Association of Machinists and Aerospace Workers, AFL-CIO – District Lodge 15  
652 4th Avenue  
Brooklyn, NY 11232

Edward J. Cuss  
International Association of Machinists and Aerospace Workers, AFL-CIO  
Executive Plaza III, 135 Merchant St., Suite 265  
Cincinnati, OH 45249

Dated this 17th day of April 2013.

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
  
\_\_\_\_\_  
James H. Fowles, III  
Counsel for GKN Aerospace Monitor, Inc.