

**United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570
www.nlrb.gov**

HAND-DELIVERED

Date: November 16, 2015

To: The National Labor Relations Board

Re: 13-CA-108215

Attached please find a Notice of Ratification regarding the above-cited case and the Affidavit of Service establishing that all parties were served with the Notice and this letter. I request that the Notice of Ratification be placed in the case record.

Regards,

/s/ Richard F. Griffin, Jr.

General Counsel

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

TOTAL SECURITY MANAGEMENT, INC.

and

Case 13-CA-108215

**INTERNATIONAL UNION, SECURITY, POLICE AND
FIRE PROFESSIONALS OF AMERICA (SPFPA)**

NOTICE OF RATIFICATION

The prosecution of this case commenced under the authority of Acting General Counsel Lafe E. Solomon during the period after his nomination on January 5, 2011, while his nomination was pending with the Senate, and before my confirmation on November 4, 2013.

The United States Court of Appeals for District of Columbia Circuit recently held that Acting General Counsel Solomon's authority under the Federal Vacancies Reform Act (FVRA), 5 U.S.C. §§ 3345 et seq., ceased on January 5, 2011, when the President nominated Mr. Solomon for the position of General Counsel. *SW General, Inc. v. NLRB*, __ F.3d __, 2015 WL 4666487, (D.C. Cir., Aug. 7, 2015). The Court found that complaints issued while Mr. Solomon's nomination was pending were unauthorized and that it was uncertain whether a lawfully-serving General Counsel or Acting General Counsel would have exercised discretion to prosecute the cases. *Id.* at *10.

I was confirmed as General Counsel on November 4, 2013. After appropriate review and consultation with my staff, I have decided that the issuance of the complaint in this case and its continued prosecution are a proper exercise of the General Counsel's broad and unreviewable discretion under Section 3(d) of the Act.

My action does not reflect an agreement with the appellate court ruling in *SW General*. Rather, my decision is a practical response aimed at facilitating the timely resolution of the charges that I have found to be meritorious while the issues raised by *SW General* are being resolved. Congress provided the option of ratification by expressly exempting "the General Counsel of the National Labor Relations Board" from the FVRA provisions that would otherwise preclude the ratification of certain actions of other persons found to have served in violation of the FVRA. *Id.* at *9 (citing 5 U.S.C. § 3348(e)(1)).

For the foregoing reasons, I hereby ratify the issuance and continued prosecution of the complaint.

Date: November 16, 2015

/s/ Richard F. Griffin, Jr.
Richard F. Griffin, Jr.
General Counsel

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6**

TOTAL SECURITY MANAGEMENT, INC.

and

Case 13-CA-108215

**INTERNATIONAL UNION, SECURITY, POLICE AND
FIRE PROFESSIONALS OF AMERICA (SPFPA)**

**AFFIDAVIT OF SERVICE OF: Notice of Ratification of Complaint and Prosecution of
Complaint and Letter to the Board regarding this Ratification.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on November 16, 2015 I served the above-entitled document(s) by regular mail, as noted below, upon the following persons, addressed to them at the following addresses:

Anthony Arcaro, VP
Total Security Management, Inc.
17 W 220 22nd St., Ste. 350
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Eugene A. Boyle
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Bryan R. Bienias, Attorney
Seyfarth Shaw LLP
131 S Dearborn St., Ste. 2400
Chicago, IL 60603-5577

November 16, 2015

Date

Lily Nguyen
Designated Agent of NLRB

Name

/s/ Lily Nguyen

Signature