



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

HAND-DELIVERED

Date: May 9, 2016

To: The National Labor Relations Board

Re: E. I. DuPont de Nemours & Co., Inc., 03-CA-096616

Attached please find a Notice of Ratification regarding the above-cited cases 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

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NLRB
ORDER SECTION

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

E. I. DUPONT DE NEMOURS & CO., INC.

and

Case 03-CA-096616

UNITED STEELWORKERS LOCAL 6992

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: May 9, 2016

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

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

E. I. DUPONT DE NEMOURS & CO., INC.

and

Case 03-CA-096616

UNITED STEELWORKERS LOCAL 6992

**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 May 9, 2016 I served the above-entitled document(s) by regular mail, as noted below, upon the following persons, addressed to them at the following addresses:

Kris D. Meade, Esquire
Crowell & Moring, LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2505

ANTHONY CASINELLI, AREA SUPERVISOR
E.I. du Pont de Nemours and Company
3115 River Rd.
Buffalo, NY 14207-1059

UNITED STEELWORKERS LOCAL 6992
PO Box 111
Buffalo, NY 14207-0111

Glenn D. Grant, Esquire
Crowell & Moring, LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2505

Catherine Creighton, ESQ.
Creighton, Johnsen & Giroux
560 Ellicott St., Bldg. 295
Buffalo, NY 14203

Region 03, Albany, New York
NLRB
11A CLINTON AVE, STE 342
ALBANY, NY 12207-2366

May 9, 2016

Date

Christina Ford
Designated Agent of NLRB

Name

/s/ Christina Ford

Signature

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ORDER SECTION