



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

HAND-DELIVERED

Date: May 20, 2016

To: The National Labor Relations Board

Re: Durham School Services, L.P., Case 15-CA-106217

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

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2016 MAY 20 AM 10:25
NLRB
ORDER SECTION

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

DURHAM SCHOOL SERVICES, L.P.

and

Case 15-CA-106217

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS LOCAL
UNION NO. 991**

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 20, 2016

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

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

DURHAM SCHOOL SERVICES, L.P.

and

Case 15-CA-106217

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS LOCAL UNION NO. 991**

**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 20, 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:

Robert DOWNIN, GENERAL MANAGER
DURHAM SCHOOL SERVICES, L.P.
6544 Firehouse Rd
Milton, FL 32570-3411

CHARLES P. ROBERTS III, Esq.
CONSTANGY, BROOKS & SMITH, &
PROPHETE, LLP
100 N. CHERRY STREET
SUITE 300
WINSTON-SALEM, NC 27101

Dan Tracy, Counsel, Labor Relations
National Express Transit Corporation
4300 Weaver Pkwy
Warrenville, IL 60555-3919

May 20, 2016

Date

Crystal Roberts
Designated Agent of NLRB

Name

/s/ Crystal Roberts

Signature