



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

RECEIVED

2016 MAY 25 PM 12:19

NLRB
ORDER SECTION

HAND-DELIVERED

Date: May 25, 2016

To: The National Labor Relations Board

Re: E.I. Du Pont de Nemours and Company, Case 05-CA-101359

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**

E.I. DU PONT DE NEMOURS AND COMPANY

and

Case 5-CA-101359

**AMPTHILL RAYON WORKERS, INC., LOCAL
992, INTERNATIONAL BROTHERHOOD OF
DUPONT WORKERS**

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 25, 2016

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

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 05**

E.I. DU PONT DE NEMOURS AND COMPANY

and

Case 5-CA-101359

**AMPTHILL RAYON WORKERS, INC., LOCAL
992, INTERNATIONAL BROTHERHOOD OF
DUPONT WORKERS**

**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 25, 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:

E. I. Du Pont de Nemours & Co.
P.O. Box 27001
Richmond, VA 23261-7001

Ampthill Rayon Workers, Inc., Local 992,
International Brotherhood of DuPont Workers
5772 Hopkins Rd
North Chesterfield, VA 23234-6614

Christopher M. Michalik, Esq.
McGuire Woods, LLP
One James Center
901 East Cary Street
Richmond, VA 23219-4030

Kenneth Henley, Esq.
One Bala Ave
Suite 500
Bala Cynwyd, PA 19004-3212

Summer Speight, Esq.
One James Center
901 East Cary Street, Ste. 300
Richmond, VA 23219

May 25, 2016

Date

Lily Nguyen

Designated Agent of NLRB

Name

/s/ Lily Nguyen

Signature