

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

**NATIONAL HOT ROD ASSOCIATION (NHRA)
Respondent**

And

Case No. 29-CA-254760

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES AFL-CIO
Charging Party**

**COUNSEL FOR THE GENERAL COUNSEL'S
REPLY TO RESPONDENT'S RESPONSE TO
NOTICE TO SHOW CAUSE**

Pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board (the Board) and the Board's April 20, 2020 Order to Show Cause, Counsel for the General Counsel respectfully submits this Reply to the National Hot Rod Association's Response to the Notice to Show Cause (Response). In its Response, Respondent primarily argues that the Board should reconsider mail ballot election standards and that the facts underlying this case are the appropriate vehicle for that reconsideration.¹ Respondent's Response is without merit and should be rejected.

Respondent argues that the Motion for Summary Judgment should be denied on three grounds: 1) that the Board in *Western Wall Systems* (Case No. 28-RC-247464) has recently signaled its willingness to revisit mail ballot election standards due to what Respondent perceives as "fundamenta[l] flaw[s]" in the mail ballot election process, and the facts underlying Case No.

¹ In its Response at page 3, Respondent incorporates by reference the same arguments that it raised in the litigation of Case No. 22-RC-186622. These arguments were rejected by the Board when it granted General Counsel's Motion for Summary Judgment in related Case No. 29-CA-254128. *Natl. Hot Rod Assn. (NHRA)*, 369 NLRB No. 60 (Apr. 17, 2020).

22-RC-186622 present circumstances ripe for the Board’s reconsideration. *Western Wall Systems, LLC*, 2020 WL 1931401 (Apr. 16, 2020); 2) that the COVID-19 pandemic will exacerbate the inherent problems in mail ballot elections as Regions turn to mail ballots to avoid transmission of the virus; and 3) that the Board should review Case No. 22-RC-186622 as “the Board knows” that the outcome of the election “would have been different” had there been no issues with the mail balloting.

Respondent’s arguments are based in presupposition and hyperbole. Respondent fails to establish any special circumstances that would warrant the Board to reexamine the representation case. Moreover, Respondent fails to present any facts as to why the Motion for Summary Judgment should be denied. Therefore, Counsel for General Counsel’s Motion for Summary Judgment should be granted.

1. Respondent Misrepresents the Board’s View of Mail Ballot Elections, and the Mail Ballot Issues in Western Wall Systems are Distinguishable from Facts Underlying Case No. 22-RC-186622

In its Response, Respondent relies heavily on a footnote in *Western Wall Systems*, where the Board stated, “. . . . this is yet another case that reveals the many potential problems inherent in mail ballot elections.” Distorting this footnote, Respondent argues that “the Board recognizes that the current mail ballot system is “*fundamentally flawed*,” thereby grossly exaggerating and clearly misrepresenting the Board’s view on mail ballot elections. In that regard, the Board’s view that there are *potential problems* inherent to mail ballot elections is a far cry from the Board claiming that mail ballot elections are “fundamentally flawed.” Rather, what the Board noted was that it was “open to addressing the criteria for mail balloting.” Addressing the criteria for mail balloting more reasonably suggests the Board’s willingness to resolve any “problems” or

challenges associated with mail balloting—and not, as Respondent suggests, the elimination of mail balloting. Furthermore, the particular problems referred to by the Board in the *Western Wall Systems* mail ballot election are completely distinguishable from to the facts underlying Case No. 22-RC-186622. Specifically, the mail ballot portion of the election in *Western Wall Systems* involved a total of seven (7) voters, including some of whom were Spanish speakers, five of the voters shared two out-of-state mailing addresses one in California and one in Washington, the two remaining voters had separate mailing addresses in Arizona and all ballots were to be returned to the Las Vegas Resident Office; three (3) ballots were ultimately voided because the returned mail ballot envelopes were not signed by the voters. In the instant case, unlike *Western Wall Systems*, 43% of mail ballot voters’ ballots were not voided. Rather, the evidence here shows that 70% of mail ballot voters (69 of 99) cast ballots that were counted. Further, the instant case presented no possible issues related to language as the mail ballot election was conducted in English, nor were there any issues with regard to the majority of voters sharing the same mailing address. Therefore, the aforementioned mail ballot election problems alluded to by the Board in *Western Wall Systems* neither support Respondent’s misrepresentation that mail ballot elections are “fundamentally flawed,” nor offer any basis for review of the instant case. Accordingly, Respondent has failed to raise any issue that is properly litigable, and thus, Counsel for the General Counsel’s Motion for Summary Judgment should be granted.

2. *The COVID-19 Pandemic Has No Bearing on the Mail Ballot Election in Case No. 22-RC-186622, Which Was Conducted in 2016*

Respondent further posits that the 2020 COVID-19 pandemic—in which mail ballots have been ordered to maintain social distancing—creates an exigent circumstance and an opportunity to overturn the stipulated mail ballot election in this case from 2016. Respondent seemingly argues

that any new mail ballot election standards be applied retroactively to the mail ballot election that was conducted in this case—over three years before COVID-19. Respondent’s argument is completely without merit as the COVID-19 pandemic has absolutely no bearing on the mail ballot election in Case No. 22-RC-186622. The mail ballot election in this case took place from November 15, 2016 to December 2, 2016. There is no nexus between the mail ballot election that took place over three years ago at the end of 2016 and any circumstances that exist now which may affect mail ballot elections during the COVID-19 pandemic. Contrary to Respondent’s contention, the COVID-19 pandemic does not establish any special circumstance warranting Board review of the representation issues previously raised and litigated by Respondent. Indeed, the Board subsequently rejected these same representation issues in related Case No. 29-CA-254128. *Natl. Hot Rod Assn. (NHRA)*, 369 NLRB No. 60 (Apr. 17, 2020). Respondent has failed to present any basis for any further review of the representation case. The Board should grant Counsel for the General Counsel’s Motion for Summary Judgment.

3. An Election Outcome That Would Favor Respondent is Not A Basis Upon Which the Board is Required to Reexamine Previously Litigated Representation Issues

Respondent baldly argues that the “Board knows” that the outcome of this election “would have been different,” (presumably meaning Respondent’s desired outcome) as a basis for rejecting the election results here. Respondent’s conclusion is extreme and unsupported. Respondent assumes that it either knows the intention of the voters who did not return ballots or that the outcome of the election would favor Respondent if the election were re-run. Neither of these unsupported assumptions establish any basis for the Board to review the representation case.

Therefore, Respondent's arguments must be rejected, and the Counsel for the General Counsel's Motion for Summary Judgment should be granted.

CONCLUSION

For the above reasons, Counsel for the General Counsel respectfully requests that the Board grant its Motion for Summary Judgment and issue an Order requiring Respondent to bargain in good faith with the Union, on request, and for a period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), and grant all other relief as may be just and proper to remedy the unfair labor practices alleged.

Dated: May 8, 2020

/s/ Evamaria Cox _____

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**CERTIFICATE OF SERVICE: General Counsel's Reply to Respondent's Response to
Notice to Show Cause**

I certify that on May 8, 2020, I served the above-entitled document(s) by **electronic mail and electronic filing**, as noted below, upon the following persons:

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