

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

THE ATLANTIC GROUP, INC
Employer

and

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 220,**
Petitioner

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Case No. 16-RC-256920

Petitioner's Opposition to Employer's Request for Review

The Petitioner, IBEW Local Union 220, hereby requests that the Board deny the Employer's request for review in the above-captioned matter. The Regional Director's March 18 Decision and Direction of Election correctly found that the "outage employees," are temporary employees. The Employer laments that the outage employees, who have since come and gone from the unit, were not permitted to obliterate the choice of the "core" employees to select Union representation. The Employer further bemoans that the Regional Director came to the common-sense conclusion that a mail ballot was the safest way to ascertain employees' choice to be represented.

I TEMPORARY EMPLOYEES

The Regional Director correctly concluded that employees temporarily hired for maintenance and radiation protection duties during the shutdown of one of the nuclear reactors at Comanche Peak are, indeed, temporary. They were hired for a particular project, for a finite time period, and had no reasonable expectation to remain employed beyond the roughly 3-week shutdown of the reactor. *MJM Studios of New York, Inc.*, 336 NLRB 1255, 1257 (2001) (where

“prospect of termination is sufficiently finite on the eligibility date to dispel reasonable contemplation of continued employment beyond the term for which the employee is hired” employees are temporary). The Employer’s attorney pointed out in his closing argument that the Atlantic Group’s contract with Luminant is based on a “concrete amount of work [sic] they have to be done in a particular period of time,” and further that “there’s a definite, predictable amount of work that must be done and there’s a predictable number of employees that must be hired to take care of the necessary work.” (TR. P. 196). Indeed, by the time the polls closed on May 18, 2020 in this election virtually ALL of the outage employees were gone. (TR. pp. 152-53)(Luminant employee Cathy Kelly testifying that all but a few of the outage hands are gone when plant goes into Mode 4 on May 11).

The Employer argues that an “expanding unit” analysis is appropriate in this case. The expanding unit analysis is reserved for those situations where an employer has concrete plans to ramp up employees because the business is growing. *Douglas Motors Corp.*, 128 NLRB 307, 308 (1960). This is not an expanding unit. As fast as the employee complement ramped up, it ramped down even faster. Actually, had the petition been timed for filing in April rather than in February it is likely the Employer would have argued that the unit was *contracting* rather than expanding. *M. B. Kahn Construction Co.*, 210 NLRB 1050 (1974) What the Company is asking the Board to do here is to disenfranchise the core employees, who work year round at the plant, and have been doing so for a series of contractors over a number of years, by diluting their vote with the vote of hundreds of employees who drop in for 3 weeks and then move on to the next job.

The Regional Director rightly concluded that the outage employees are temporaries and correctly excluded them from voting eligibility. The Petitioner adopts the Regional Director’s conclusions and asks the Board to do the same by denying Review.

II MAIL BALLOT

The Regional Director in this case, after thorough analysis of local conditions brought on by the COVID-19 pandemic, came to the reasonable conclusion that a mail ballot was the best way to proceed in this case. Regional Directors around the country are doing likewise. While the Petitioner did not oppose the conduct of a manual election in this case, the Regional Director's explanation of the factors he considered in determining that a mail ballot was the only safe way to proceed convinces us that his call was the right one.

In *San Diego Gas & Electric*, 325 NLRB 1143 (1998) the Board recognized that manual ballots are the preferred method of conducting elections. However, the Board recognized that "extraordinary circumstances" might prompt a Regional Director to exercise his discretion to order a mail ballot, even when the specific factors enumerated in the Board's decision are not present. The Regional Director in this case was presented with the most extraordinary circumstance imaginable—a global pandemic that has killed over a half million people and shut down broad sections of the economy. The Board thus far has denied review in each of the cases where losing employers have sought a second bite at the apple by decrying a Regional Director's sensible exercise of discretion to order a mail ballot in the face of Coronavirus. *Atlas Pacific Engineering Co.*, 27-RC-258742 (May 8, 2020); *TDS Metrocom, LLC*, 18-RC-260318. The Board should do the same in this case and deny the Employer Request for Review.

III CONCLUSION

Petitioner IBEW Local 220 requests that the Board deny this Request for Review, as it raises no substantial issue warranting review. Employees have endured delays caused by the Board suspending elections during the pandemic. They have been harangued by "Labor Consultants"

during the extended delay between petition-filing and the date that the ballots were counted. Yet, despite it all, they have chosen Union representation. Let's respect their choice.

Respectfully submitted,



Michael A. Murphy
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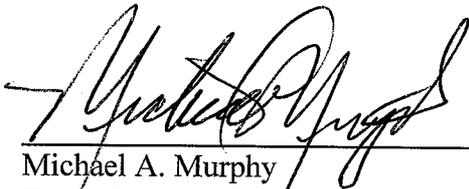
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CERTIFICATE OF SERVICE

I, Michael A. Murphy, hereby certify that, on June 29, 2020, a copy of the attached Petitioner's Opposition to Employer's Request for Review was E-filed with the Regional Director and sent by electronic mail to the counsel of record at the email addresses below:

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A handwritten signature in black ink, appearing to read "Michael A. Murphy", is written over a horizontal line.

Michael A. Murphy
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