UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NEVADA GOLD MINES, LLC
Employer/Petitioner

and Case 32-RM-255914

INTERNATIONAL UNION OPERATING
ENGINEERS, LOCAL 3

ORDER

The Employer/Petitioner's Request for Review of the Acting Regional Director's administrative dismissal of the RM petition is denied as it raises no substantial issues warranting review.[1]

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[1] In denying review, we note that the Acting Regional Director's dismissal letter inadvertently stated that the parties had the right to request review pursuant to Sec. 102.67 of the Board's Rules and Regulations, and thus the Employer cited that section in seeking review. Requests for review of administrative dismissals are governed by Sec. 102.71, however, and we consider the Employer's request for review as having been filed pursuant to that section.

The Employer is a joint venture between Newmont Goldcorp Corporation (Newmont), whose employees had been represented by International Union Operating Engineers, Local 3 (the Union), and Barrick Gold Corporation (Barrick), whose employees had been unrepresented. The Employer contends that the Union had made repeated demands to represent a combined unit of both the former Newmont employees that it had represented and the former Barrick employees that it had not represented. In denying review, we note that Sec. 102.61(b)(8) of the Board's Rules and Regulations requires that an employer filing an RM petition include "[e]vidence supporting the statement that a labor organization has made a demand for recognition," and that "[s]uch evidence shall be filed together with the petition." Further, it is an employer's burden to establish that a union has made a present demand for recognition as the majority representative in the unit covered by the employer's RM petition. *Brylane, L.P.*, 338 NLRB 538, 542 (2002). Here, the Employer, contrary to Sec. 102.61(b)(8)'s requirements, did not include any evidence in conjunction with its RM petition. Additionally, even after the Region gave the Employer, which is represented by counsel, the opportunity to cure this deficiency, the Employer only supplemented its petition with unsworn, bare, and/or conclusory assertions concerning four dates on which the Union purportedly requested that the Employer recognize it as the majority representative of the combined unit. These bare and conclusory assertions do not satisfy the Employer's evidentiary burden. Moreover, these assertions were made at a time when the Employer and the Union were either negotiating or had in effect a memorandum of understanding providing that the Union would not claim any right to represent the former Barrick employees whom it had not previously represented.

We further note that the Employer's argument concerning the Union's purported "implicit" demand for recognition as the majority representative of the petitioned-for unit does not comply with Sec. 102.71(a)(3) of the Board's Rules and Regulations because there is no

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| JOHN F. RING, | CHAIRMAN |
| MARVIN E. KAPLAN, | MEMBER |
| WILLIAM J. EMANUEL, | MEMBER |

Dated, Washington, D.C., July 23, 2020.

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indication that the Employer presented evidence to the Regional Director that raises serious doubts as to her factual findings and, in any event, the Employer did not attach such evidence to its request for review. Even in the absence of this procedural deficiency, however, we would still conclude that the Employer has not established that the Union implicitly made a present demand for recognition as the majority representative of the employees in the unit for which the Employer seeks an RM election, either by allegedly seeking signed authorization cards or filing unfair labor practice charges that only pertained to the former Newmont employees whom the Union had represented prior to the Employer's formation.