

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

**FCA US LLC**, Respondent Employer,  
and  
**SHERI ANOLICK**, Charging Party (Case No. 07-CA-213717)  
and  
**BEVERLY SWANIGAN**, Charging Party (Case No. 07-CA-213746)  
and  
**BRIAN KELLER**, Charging Party (Case No. 07-CA-213748)

**-AND-**

**INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA (UAW), AFL-CIO**, Respondent  
Union,  
and  
**SHERI ANOLICK**, Charging Party (Case No. 07-CB-213726)  
and  
**BEVERLY SWANIGAN**, Charging Party (Case No. 07-CB-213747)  
and  
**BRIAN KELLER**, Charging Party (Case No. 07-CB-213749)

**MOTION TO RECONSIDER**

The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO (“UAW”) hereby moves pursuant to Section 102.48(c) of the Rules and Regulations of the National Labor Relations Board (the “Board”) for reconsideration of the Board’s August 26, 2020 order on UAW’s Motion to Dismiss.

UAW’s Motion to Dismiss argued that this case should be dismissed pursuant to the National Labor Relations Act Section 10(b) because the Charging Parties knew or should have known the basis for their claims on July 26, 2017, but the charges were not served on UAW until January 29, 2018 – six months and three days later. The Board found that even assuming that the

Charging Parties knew or should have known the basis for their claims on July 26, 2017, the charges were timely because (1) the 10(b) period did not begin to run until the next day, July 27, 2017, (2) although the 10(b) period would normally have expired on January 27, 2018, that day was a Saturday, and “Section 102.2 of the Board’s Rules and Regulations provides that if the last day of a time period ‘is a Saturday, Sunday, or a legal holiday,’ then ‘the period runs until the next Agency business day.’” Aug. 26, 2020 Order at 2. In this case, the next business day was Monday, January 29, 2018. Hence, the Board concluded that UAW was timely served on January 29, 2018. *Id.*

UAW moves for reconsideration of the Board’s decision because Section 102.2 of the Board’s Rules and Regulations does not excuse the Charging Parties’ failure to timely serve UAW. By its plain terms, Section 102.2(a) only explains how to “comput[e] any period of time prescribed or allowed by these Rules.” The requirement that charges be both filed and served within six months is found nowhere in the Board’s rules; rather, it comes directly from the National Labor Relations Act. Specifically, NLRA Section 10(b) provides that “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made.” Because the limitations periods come from the statute itself, it is not “a[] period of time prescribed or allowed by these Rules,” and the computation rule of Section 102.2 simply does not apply (or even purport to apply) here. Indeed, our research discloses no cases in which the rule of Section 102.2 was applied to extend the time for filing or serving a charge.

The title of Section 102.2 reinforces the conclusion that the section does not apply to computation of the deadline in dispute here. Section 102.2 is entitled “Time requirements for

filings with the Agency.” The UAW’s argument is not about filing with the Agency, but rather that the *service* required by NLRA Section 10(b) was late. In short, Section 102.2 of the Board’s rules deals with time periods (1) created by Board rules (2) for filing with the Agency, but the issue here is timeliness (1) under a statutory limitations period (2) for service of a charge. As such, Section 102.2 does not apply.

Moreover, the Board does not have the authority to extend the explicit statutory six-month limitations period. As the Supreme Court stated in *Machinists Local Lodge 1424 v. NLRB (Bryan Manufacturing)*, 362 U.S. 411, 429 (1960): “As expositor of the national interest, Congress, in the judgment that a six-month limitations period did ‘not seem unreasonable,’ H. R. Rep. No. 245, 80th Cong., 1st Sess., p. 40, barred the Board from dealing with past conduct after that period had run, even at the expense of the vindication of statutory rights. ‘It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute. That policy cannot be defeated by the Board’s policy.’” (citations omitted).

This precise computation of the limitations period in this case is not merely a theoretical issue; the evidence at trial demonstrated that the Charging Parties had actual or constructive notice of their claims on July 26 or July 27, 2017.<sup>1</sup> Thus, when the 10(b) period is calculated properly, it is plain that the charges had to be served on UAW by January 28, 2018. Since they were not served until the following day, the charges are time-barred and the Second Amended Complaint must be dismissed.

Respectfully submitted,

/s/ Abigail V. Carter  
Abigail Carter  
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<sup>1</sup> The parties are briefing this and other issues before the Administrative Law Judge, and expect his opinion to make findings on this issue.

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Dated: September 23, 2020

**NATIONAL LABOR RELATIONS BOARD**  
**REGION SEVEN**

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**STATEMENT OF SERVICE**

On September 23, 2020, I served copies of UAW's Motion to Reconsider via email on the following:

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