

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

LOCAL LODGE 701, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

Petitioner,

and

Case No. 13-RC-263043

ANTIOCH TIRE D/B/A TREDROC TIRE SERVICES, LLC.

Employer.

THE PETITIONER’S STATEMENT IN OPPOSITION

In accordance with rules and regulations of the NLRB, §102.69(c)(2) and §102.67(f), (29 C.F.R. Part 102.69(c)(2) and 102.67(f)) Local Lodge 701, International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioning Union in the above-captioned case, submits its Statement in Opposition of the Employer’s Request for Review of the Decision On Objections and Certification of Representative issued by Region 13.

The Employer contends that the election certification should be overturned because there are compelling reasons for reconsideration of the Board’s decision in *Guardsmark, LLC*, 363 NLRB No. 103 (2016). The Employer has already mentioned this exact issue in their earlier Request for Review of the Regional Director’s Direction of Election. In that request, the Employer similarly asked the Board to overturn its decision in *Guardsmark*. The Board denied this request, finding that it raised “no substantial issues warranting review.” 29 CFR § 102.67(g) states that a “denial of a request for review shall constitute an affirmance of the Regional Director’s action...” Therefore, the Board has already affirmed the Regional Director’s decision to adhere to Board

precedent and to continue with the election. In the present request, the Employer has provided only speculation about how the *Guardsmark* decision may have affected the election results. The Employer has provided no additional facts or information which would differentiate the present request from the previous request in any way. Given this, there is no reason, and certainly no compelling reason, for the Board to overturn the Regional Director's decision, as well as the Board's affirmance thereof, on this basis.

In furtherance of their argument, the Employer is pointing to a single ballot not received back by the Region to be counted. In this regard, the Employer is trying to establish that NLRB case law dating back to the 1970's should now somehow be overlooked in *this* case because **one** employee failed to return their mail ballot within the lengthy period of time provided for in the direction of election, if at all¹.

In the Region's Decision On Objections and Certification of Election, Regional Director Ohr was justified in his analysis of this case and in applying the *J. Ray McDermott & Co. v NLRB*, 571 F.2d 850 (5th Cir. 1978), cert. denied 539 U.S. 893 (1978) decision, as it too dealt with ballots not received in a mail ballot election. In *J. Ray McDermott & Co.*, three employees testified "that each had separately mailed a timely ballot", and similar to this instant case, "These three ballots could have affected the outcome of the election."

In fact, a more precise case could not have been applied by Regional Director Ohr, in *J. Ray McDermott & Co.*, the Court affirmed that the Regional Director was justified in determining that "even though three uncounted ballots were timely cast and could have affected the outcome

¹ As noted in the Region's Decision On Objections and Certification of Representative dated September 30, 2020, pg. 2 footnote 1: "As of the date of this decision the disputed ballot has not been received."

of the election, neither the Board, the Union, nor the Employer was responsible for the loss of the ballots.”

Based on the foregoing, the Union urges The Board to deny the Employer’s Request for Review, and to uphold the Decision On Objections and Certification of Representative issued by Region 13.

Filed this 21st day of October, 2020 at Oakbrook Terrace, Illinois by:

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO



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ANTIOCH TIRE D/B/A TREDROC TIRE SERVICES, LLC.

Case No.: 13-RC-263043

CERTIFICATE OF SERVICE

Service on the Employer

I hereby certify that on October 21, 2020 a copy of the Union's Statement in Opposition of the Employer's Request for Review of the Regional Director's Decision on Objections and Certification of Representation in case #13-RC-263043 was served on the Employer, via email to their legal representative named below.

Employer Representative:

VIA EMAIL: Mark.Keenan@btlaw.com

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