

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RAIMORE CONSTRUCTION, LLC
Employer

and

Case 19-RC-300998

IRON WORKERS DISTRICT COUNCIL OF
THE PACIFIC NORTHWEST &
AFFILIATED IRON WORKER LOCAL #14,
#29 AND #86 OF THE INTERNATIONAL
ASSOCIATION OF BRIDGE, STRUCTURAL,
ORNAMENTAL AND REINFORCING IRON
WORKERS

Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

¹ The Board has exercised its discretion to read the record in this case. See Board's Rules and Regulations, Sec. 102.67(e).

In denying review, we agree with the Regional Director that the Employer did not meet its burden to establish that a cessation of operations, with respect to the work of the petitioned-for unit, was both definite and imminent. Board law provides that an election petition may be dismissed when cessation of the employer's operations is "imminent," and the party asserting a cessation of operations bears the burden of proving that the cessation is both imminent and definite. *Retro Environmental, Inc./Green Jobworks, Inc.*, 364 NLRB 922, 925 (2016) (collecting cases). "The Board will not dismiss an election petition based on conjecture or uncertainty concerning an employer's future operations, an employer's contention that it intends to cease operations or reduce its workload sometime in the future, or evidence of cessation that is conditional or tentative." *Id.* Rather, the Board has required "concrete evidence, such as announcements of business closure to the public and the employees, termination of employees, or other evidence that the employer has definitively determined the sale, cessation, or fundamental change in the nature of its operations." *Id.*

As support for its assertion that a cessation of operations was imminent, the Employer presented one internal email sent in preparation for a meeting with the Petitioner to discuss the Petitioner's interest in "com[ing] up with a plan to turn things around," that was more than six months old, and used equivocal language about future plans for steel operations. In addition, at the hearing, the Employer offered testimony establishing that it did not bid on two steel projects in 2021 and early 2022. As to the 2021 project, the Employer's failure to bid occurred close to a year prior to its purported cessation of operations in November 2021 and the testimony presented does not indicate that the failure to bid on the 2021 project was related to an imminent cessation

of operations. As to the 2022 project, the Employer offered testimony at the hearing that its decision not to bid on the project was related to its cessation of steel operations, but the associated documentary evidence does not mention this as a reason for the Employer's refusal to bid on the project. Further, the hearing was held in late August 2022 and the Employer's president testified that he hoped to no longer need iron workers for steel projects by the end of November 2022. Thus, it is undisputed that employees in the petitioned-for unit were employed at the time of the hearing. In addition, the unit work was scheduled to continue for at least several months after the hearing. Finally, the record establishes that the Employer controlled certain heavy civil construction work that included work within the scope of the petitioned-for unit, but had decided to subcontract that work as it arises as part of future projects rather than self-perform it. In these circumstances, we agree with the Regional Director that the Employer has failed to meet the Board's high standard for proving that a cessation of operations was both imminent and definite.

Unlike his colleagues, Member Kaplan would grant review, reverse the Regional Director's decision, vacate the Petitioner's certification, and dismiss the petition. In his view, the Employer established that the cessation of its steel work was definite and imminent, and that, accordingly, it would no longer perform work that requires iron workers. As a result, Member Kaplan would find that no useful purpose would be served by conducting an election in the petitioned-for unit.

The undisputed evidence shows that in the final quarter of 2021, the Employer's executive team decided to close the steel operations side of its business after the completion of the work on three steel division projects, including Powell Garage, RiverPlace, and 11 West. The record establishes that all three steel projects were between 90–98% complete as of the hearing dates on August 30–31, 2022 and that each would be completed before November 2022. Specifically, the Powell Garage project was 98% complete, with only three remaining tasks left to finish; the scheduled completion date and temporary certificate of occupancy (TCO) dates were September 30 and October 7, 2022, respectively. The RiverPlace project was at least 95% complete with an October 19, 2022 scheduled completion date and an October 26, 2022 TCO date. Finally, the 11 West project was 90–95% complete and estimated to be finished in October 2022. Indeed, the Employer's president testified that the Employer was “in the process of closing out” all three projects. Therefore, Member Kaplan observes that his colleagues incorrectly assert that “unit work was scheduled to continue for at least several months after the hearing.” Further, Member Kaplan notes that the Board has found that where an employer will close its operations within three to four months of the representation hearing that there is no useful purpose to directing an election. See *Davey McKee Corp.*, 308 NLRB 839, 840 (1992) (finding that no useful purpose would be served by holding an election where the employer's two construction projects would be completed with approximately one month after the hearing, the employer had no ongoing projects within the geographic area, and the employer had not bid on future projects); *M.B. Kahn Construction Co.*, 210 NLRB 1050, 1050 (1974) (dismissing petition where work would be completed within 5-6 months of hearing).

Moreover, the Employer has taken numerous steps to wind down its steel division work, such as no longer accepting small steel projects, declining to bid on projects of the type that its steel division performed, and declining invitations to bid on such work that would constitute a steel division project. Contrary to his colleagues, Member Kaplan would not require the

LAUREN McFERRAN,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
DAVID M. PROUTY,	MEMBER

Dated, Washington, D.C., January 25, 2024.

Employer to provide documentary or testimonial evidence specifically showing that the decision not to bid on steel projects was due to the Employer’s cessation of steel operations. Additionally, the undisputed evidence shows that in the future the Employer will subcontract the small amount of steel division work under its control and that its only remaining steel work will be for its heavy civil construction work, a distinct type of work that the petitioned-for unit has not previously performed. Member Kaplan therefore disagrees with his colleagues that this evidence showing that the Employer will subcontract its remaining steel division work supports a finding that a cessation of operations was not imminent.

Finally, Member Kaplan disagrees with his colleagues that an internal email stating that “[a]s it stands now, I am still committed to shutting this [steel] division down, but I’m open to hearing from the father,” was outdated “and used equivocal language about future plans for steel operations.” Although the Employer signaled its openness to divine intervention and to hear what the Petitioner’s representative had to say, it remained committed to closing its steel division. Accordingly, Member Kaplan believes that the Regional Director erred by finding that the Employer failed to meet its burden to establish that the cessation of its steel division was both definite and imminent.