

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

ALAMO INTERMEDIATE II HOLDINGS¹, LLC

Employer

and

Case 27-RC-333383

**COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

On May 22, 2024, I issued the Decision and Direction of Election in Case 27-RC-332770 that involved the same parties as the instant case. The primary issue presented in that case was whether the petitioned-for unit, limited to employees employed by the Employer at its Westminster, Colorado facility constitutes an appropriate single-facility unit for bargaining, or whether the bargaining unit must consist of employees employed at all three of the Employer's Denver-area facilities. The Denver-area facilities are known as Westminster, Sloan's Lake, and Littleton. Having found the petitioned-for single facility as the appropriate unit, I directed an election for the employees employed at the Westminster facility. The instant matter presents the same issue of single facility versus multi-facility unit of employees employed at the Employer's Sloan's Lake facility.² The Petitioner originally petitioned for only the front of house employees employed at the Sloan's Lake facility. The Employer posited that if a single-facility unit was found appropriate that it should include back of house employees employed at the Sloan's Lake facility. At the hearing, the Petitioner stipulated that if a single-facility unit is found appropriate, it should include all full-time and regular part-time employees employed at the Sloan's Lake facility. Such a unit includes the back of house employees.³ The parties also disagree about the inclusion of individuals employed in the classifications of Technical Engineer II and Supervisor. The Petitioner contends that employees employed as Technical Engineer II should be included in the bargaining

¹ The facilities operate as "Alamo Drafthouse".

² On January 19, 2024, the Employer filed the petition in Case 27-RM-333937 primarily contending that the only appropriate unit is a multi-facility unit of the three Denver-area facilities. That petition is being held in abeyance pending the outcome of the instant proceedings.

³ There are approximately 98 employees in the Sloan's Lake unit.

unit while the Employer asserts that they should be excluded from any unit.⁴ The parties also disagree about whether certain individuals employed as Supervisors possess supervisory authority within the meaning of Section 2(11) of the Act. The Petitioner asserts that those individuals are statutory supervisors and should be excluded from any bargaining unit, while the Employer posits that they are not statutory supervisors and that they should be included in the unit.⁵ The status of the Technical Engineer II and Supervisors relates to the eligibility or inclusion of a portion of the unit that does not significantly impact the size or character of the unit. Therefore, I exercised my discretion to defer those issues. Employees in the Technical Engineer II and Supervisor classifications will vote subject to the challenge procedure.

In the instant matter, a Hearing Officer of the Board held a brief hearing, during which the parties were invited to present their positions and supporting evidence. The parties stipulated to a number of issues, including that it is appropriate to take administrative notice of the pre-election hearing record in Case 27-RC-332770. The parties did not present any new evidence and instead chose to incorporate the complete evidentiary record in 27-RC-333270 into the instant case. Pursuant to the Board's Rules and Regulations, the parties were not permitted to file post-hearing briefs.⁶

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and hereby affirm them. I further find that the Employer is engaged in commerce within the meaning of the Act; it will effectuate the purposes of the Act to assert jurisdiction; the Petitioner is a labor organization within the meaning of the Act; and a question affecting commerce exists concerning the representation of certain of Alamo's employees.

II. CONCLUSION AND FINDINGS

Based on the record in the instant matter, including the incorporation of the record of the hearing conducted in Case 27-RC-333270, and consistent with Board law, I find that the Employer has not met its burden of demonstrating that the bargaining unit must include employees employed at all three Denver-area facilities. I further conclude that a unit consisting solely of the full-time and regular part-time employees employed at the Sloan's Lake facility, is appropriate. As there was no new evidence presented in the instant matter, my reasons and conclusions for finding a unit of all full-time and regular part-time employees employed at the Sloan's Lake facility to be

⁴ The record in Case 27-RC-332770 reflects that there is one Technical Engineer at each of the three Denver-area facilities.

⁵ The record in Case 27-RC-332770 reflects that there are four Supervisors in total at the Denver-area facilities. At the time of the instant hearing, there were no Supervisors employed at the Sloan's Lake facility.

⁶ At the hearing, the Employer submitted a brief that was entered into the record. That brief, and all other evidence, has been duly considered.

appropriate are fully explicated in the Decision and Direction of Election issued in Case 27-RC-333270. I shall therefore direct a prompt election to be conducted at the Sloan's Lake Alamo Drafthouse.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁷

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time employees, including those employed in the classifications of Guest Attendant, Guest Attendant Shift Lead & Trainer, Line Cook, Bar Crew Member, Bar Crew Shift Lead & Trainer, Specialty Bartender, Dishwasher, Concierge, Concierge Shift Lead & Trainer, Meeting, and Kitchen Shift Lead & Trainer, employed by the Employer at its facility located at 4255 West Colfax Avenue, Denver, Colorado 80204.

Excluded: Office clerical employees, managers, professional employees, guards, and supervisors, as defined in the Act.

Others Permitted to Vote: At this time, no decision has been made regarding whether employees employed in the Technical Engineer II or Supervisor classifications at the Sloan's Lake facility are included in, or excluded from, the bargaining unit, and individuals in those classifications may vote in the election but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

⁷ The Employer, Alamo Intermediate II Holdings, LLC, a Delaware corporation with principal offices in Austin, Texas and a facility located at 4255 West Colfax Avenue, Denver, Colorado 80204 is engaged in the operation of a movie theatre. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$500,000 and purchased and received goods valued in excess of \$5,000, which were shipped directly to the Employer's Denver, Colorado facility from points located outside the State of Colorado.

III. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Communications Workers of America, AFL-CIO**.

A. Election Details

The election will be held on Friday, June 7, 2024, from 2:00 p.m. 4:00 p.m. and from 5:00 p.m. to 7:00 p.m. in the BarFly at the Employer's facility located at 4255 West Colfax Avenue, Denver, Colorado 80204.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Friday, May 17, 2024**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board's designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **May 29, 2024**. The list must be accompanied by a certificate of service showing service on all parties.⁸ **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. In this case, the Notice must be posted and distributed no later than **12:01 a.m. on June 4, 2024**. However, a party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

⁸ The Petitioner waived nine (9) days with the voter eligibility list.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated, in Denver, Colorado, on this 24th day of May 2024.



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