UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

HOMETOWN ELECTRIC LLC

Employer/Petitioner

and **Case 19-RM-339836**

IBEW LOCAL 768

Union

DECISION AND ORDER DISMISSING PETITION

On April 11, 2024, Hometown Electric ("Employer" or "Petitioner") filed the petition in Case 19-RM-339836 seeking an election to test the Union's majority in response to a written demand for 9(a) recognition among a unit of its foreman, journeyman wireman, and apprentice wireman, by the unit's existing 8(f) representative, the International Brotherhood of Electrical Workers Local 768 ("Union"). On April 17, 2024, I issued an Order Indefinitely Postponing the Hearing and Notice to Show Cause requesting that the parties show written cause as to whether a question concerning representation exists, and whether the instant petition should be processed or administratively dismissed. On April 29, 2024, the Employer[1] provided a timely written response.

The Employer and the Union are parties to two Letters of Assent ("Letters of Assent") signed by the Employer's Owner, Andrew Freeman ("Freeman") and Union Business Manager George Bland ("Bland"). The first is the Residential Letter of Assent signed by Bland on June 1, 2020, and Freeman on June 2, 2020. The second is the Inside Letter of Assent signed by Bland and Freeman on February 4, 2021. Both the Residential and Inside Letters of Assent authorize the Montana Chapter of National Electrical Contractors Association ("MT NECA") to represent the Employer as its collective-bargaining representative for all matters contained in the current or any subsequent approved Inside labor agreements between MT NECA and the Union. By signing the Letters of Assent the Employer further agreed to comply with and be bound by all provisions contained in the current and subsequent approved Inside and Residential labor agreements. The Letters of Assent state that they remain in effect until terminated by the Employer giving written notice to MT NECA and the Union at least 150 days prior to the then current anniversary date of the applicable approved labor agreement.

The current Inside agreement between MT NECA and the Union is effective from June 1, 2022, until May 31, 2025. The current Residential agreement between MT NECA and the Union is effective June 1, 2023, through May 31, 2025. Both agreements define terms and conditions of employment for the following classifications: general foreman, foreman, journeyman wireman, apprentice wireman, residential wireman, and residential wireman apprentice. The agreements do not cover terms and conditions of employment for the classification of "helpers".

[1] The Union provided a timely response but did not serve its response on the Employer.

The Letters of Assent further provide:

> The Employer agrees that if a majority of its employees authorize the Local Union to represent them in collective bargaining, the Employer will recognize the Local Union as the NLRA Section 9(a) collective-bargaining agent for all employees performing electrical construction work within the jurisdiction of the Local Union on all present and future jobsites.

On March 28, 2024, the Union presented the Employer with cards from a majority of its employees covered under the Inside agreement described above. On April 11, 2024, the Employer filed the instant RM petition.

The Employer's RM petition described the unit as follows:

Included: General foremen, foremen, journeymen wiremen, apprentices, **and helpers** (emphasis added).

Excluded: Managers; supervisors; clerical and confidential employees; administrative employees; professionals; guards; and all other employees not specifically included.

After carefully reviewing the circumstances of this case and the relevant law, I have concluded that the petition should be dismissed for the reasons outlined below.

DISCUSSION

When a union does not enjoy 9(a) status, an employer can file a petition when a union has presented "a claim to be recognized as the representative defined in 9(a)." §9(c)(1)(B). The Board can direct an election if a question of representation exists. Thus, a finding of a representation question is predicated on a union's claim of representative status. *Westinghouse Electric Corp*., 129 NLRB 846, 847 (1961); *Bowman Transportation, Inc.*, 142 NLRB 1093 (1963). The burden rests with the employer to establish that a demand for recognition has been made. *ADT, LLC*, 365 NLRB No. 77, slip op. at 4 (2017).

The Union Did Not Make a Demand for the Petitioned For Unit

A RM petition will be processed if it seeks an election in the unit for which there has been a demand for recognition. *PMS Steel Construction* 309 NLRB 1302, 1303 (1992). It is settled that where a union does not seek to represent the employees in the unit in which the employer seeks an election, no question concerning representation exists. See *United Hospitals, Inc*., 249 NLRB 562 (1980); *Sonic Knitting Industries*, 228 NLRB 1319 (1977); *Woolwich, Inc*., 185 NLRB 783 (1970); *Bowman Transportation*, 142 NLRB 1093, 1094-1095 (1963) (one of the requirements for processing a petition in a RM proceeding is that a union must have claimed

representative status in the unit covered by the petition); *Westinghouse Electric Corp.*, 129 NLRB 846, 847 (1960) (same).

Here, the Union did not seek to represent helpers and has not engaged in any conduct inconsistent with this position. As such, there has been no demand in the petitioned-for unit. Rather, the Employer attempted to expand the unit in its RM filing by including helpers in its unit description. In the absence of a demand for recognition, the Board will normally dismiss an RM petition on the ground that no question of representation exists. *ADT LLC*, 365 NLRB No 77 (2017), citing *Postal Service*, above. See also *PMS Steel Construction*, 309 NLRB 1302, 1303 fn. 9 (1992); *Postal Service* 256 NLRB 502 (1981); *LTV Aerospace Corporation (Range Systems Division)*, 170 NLRB 200, 202 (1968); *Maclobe Lumber Company of Glen Cove, et al.*, 120 NLRB 320 (1958); *The Housatonic Public Service Company*, 111 NLRB 877 (1955)[2].

The Employer Did Not Have a Good-Faith Reasonable Uncertainty as to the Union's Majority

In petitioning the Board for an election to question the continued majority of an incumbent union, employers must demonstrate a "good-faith reasonable *uncertainty* (rather than *disbelief*) as to unions' continuing majority status." *Levitz Furniture Co.*, 333 NLRB 717 (2001). In the construction industry, the Board presumes the Union enjoys majority status if it has an 8(f) agreement. *Stockton Roofing Co.*, 304 NLRB 699 (1991).

Generally, under CHM Part II Sec. 11042.3, no investigation should be made of the validity of the employer's evidence of objective considerations demonstrating good-faith reasonable uncertainty as to the union's continuing majority status, unless, in the judgment of the Regional Director, unusual circumstances warrant a separate, administrative inquiry. If an investigation is conducted, it should be an administrative matter, in accord with the principles of the CHM Part II Sec. 11021.

When such an administrative inquiry is performed, the principles established in *Levitz* apply. (333 N.L.R.B. 717, 725-27 (2001)). In *Levitz*, the Board established that under Section 9(c)(1)(B) an employer has the burden to show that:

- that the union has made a claim that it is the recognized union; and
- it has reasonable uncertainty about the union's continued majority.

If in the judgment of the Regional Director, the employer's evidence of objective considerations does not establish good-faith reasonable uncertainty, the petition should be administratively dismissed. See CHM Part II Sec. 11100

[2] See also GC 24-01 (Revised) Guidance in Response to Inquiries about the Board's Decision in Cemex Construction Materials Pacific, LLC FN 19, while an employer may file an RM when confronted with a demand for recognition in order to test a union's majority support and/or to challenge the appropriateness of the unit, such RM petition should reference the union's claimed unit in section 5 of the petition form, and then reflect its position regarding the appropriateness of the union's claimed unit and should provide a unit description in what it believes is an appropriate unit when it's in disagreement with the union's claimed unit. Here, the Employer's petition is deficient on its face.

Here, by its petition, the Employer argues that helpers must be included in any appropriate bargaining unit, and it contends the Union does not maintain majority support in that expanded unit. However, as described above, the Employer is already signatory to the Letters of Assent, an 8(f) agreement. The Letters of Assent include 9(a) recognition language in the existing unit, a unit that does not include helpers. The Employer has presented no basis for the contention it can seek to expand the unit beyond the scope of the 8(f) agreement, then use that expansion as a good faith basis to doubt the Union's majority support.

The Employer additionally contends that, even if helpers are not to be included, the Union presented an insufficient showing by including authorization cards dated over a year prior to the demand for recognition. Case law shows that the Board has not followed a strict, time-based rule in evaluating the continued effectiveness of authorization cards. In *Luckenbach Steamship Company, Inc*.,12 NLRB 1333, 1344 (1939) cards were rejected due to the passage of "considerable time" since their signing. In *Surpass Leather Company* 21 NLRB 1258 (1940) the Board established that "[i]n the absence of further proof of desires concerning representation ...only signed cards dated within a reasonable time" will be considered valid. In that case, the Board did not define what constitutes a "reasonable time," although it rejected cards that were dated between one and five years prior to the recognition demand.

In *Blade-Tribune Publishing Co*.,161 NLRB 1512, 1513 (1966) the employer claimed that *Luckenbach* and *Surpass* established a one-year rule for authorization card effectiveness. In its decision, the Board, however, did not acknowledge the existence of such a rule. Instead, it stated that even if there were a one-year rule, cards that were over a year old were valid in the circumstances of the case before it.

However, the language in construction industry cards, as in this case, is different from that in traditional organizing campaign cards. Construction industry cards, like the ones in the instant case, state that the employee designates the union as representative with its "current and future employers" and in "current and future jobsites." They also state that the authorization is non-expiring and remains valid until revoked in writing.

It is apparent, thus, that the cards contemplate the passage of time and are meant to establish a long-term representative relationship. In this construction industry context, such cards may reasonably be considered valid and effective despite the passage of time. In addition, in the instant case, all of the signers were dues-paying union members as of the date of the union's claim of majority. Such continued membership is further indication that the employees continued to support union representation. See *Haas Electric, Inc.*, Case 1-CA-30745, Advice Memorandum dated April 29, 1997, at 4 (construction employee cards found valid despite the passage of time where all of the signers were dues-paying union members when the union claimed majority support).

IT IS ORDERED that the petition is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations

Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review*: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.** A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the E-Filing System User Guide.

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time) on June 10, 2024** unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on June 10, 2024.**

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review

without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated at Seattle, Washington this 23rd day of May 2024.

Ronald K. Hooks

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