

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

**UTILITY LINES CONSTRUCTION SERVICES,  
LLC**

**Employer**

**and**

**Case 07-RC-359035**

**LOCAL 223, UTILITY WORKERS  
UNION OF AMERICA, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act (Act), a hearing on this petition was conducted before a hearing officer of the National Labor Relations Board (Board). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.<sup>1</sup>

The Employer is engaged in electric and gas utility construction and maintenance services.<sup>2</sup> On January 27, 2025, the Petitioner filed the instant petition, seeking to represent approximately three employees employed at the Employer's facilities located in Warren and Wayland, Michigan.

---

<sup>1</sup> Upon the entire record in this proceeding, the undersigned finds:

- 1) The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
- 2) The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein. The stipulated commerce facts are as follows: The Employer, Utility Lines Construction Services, LLC, a Pennsylvania limited liability company with a principal facility and place of business located at 12500 East 10 Mile Road, Warren, Michigan, is engaged in electric and gas utility construction and maintenance services. During the calendar year ending December 31, 2024, a representative period, the Employer provided services valued in excess of \$50,000 directly to points located outside the State of Michigan.
- 3) The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) the Act.
- 4) The Petitioner claims to represent certain employees of the Employer in the voting group described in the petition filed herein, and the Employer declines to recognize the Petitioner as the collective-bargaining representative of those employees.
- 5) The parties stipulated, and I find, that there is no collective-bargaining agreement covering any of the employees in the petitioned-for unit and there is no contract or other bar to this proceeding.
- 6) 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.

<sup>2</sup> The parties stipulated that the Employer is engaged in the building and construction industry.

The appropriateness of the bargaining unit is not in dispute. The only issue in this case is the method of election: whether the election should be conducted in-person or by mail ballot, and the date, time, and place of election. A hearing was held in this matter on February 4, 2025. The Employer maintains that holding a manual election at each of its Warren and Wayland facilities is appropriate under *San Diego Gas & Electric*, 325 NLRB 1143 (1998) because there are no unique circumstances warranting a mail ballot election. It argues that none of the standard criteria for ordering a mail-ballot election as set forth in *San Diego Gas* applies in this case. Specifically, the Employer argues that the petitioned-for employees are not scattered, either geographically or as to their work schedules, and the conservation of Board resources is not enough, standing alone, to justify a mail-ballot election. Thus, the Employer concludes, a manual ballot election is the best way to ensure voter turnout and maximal employee choice. Petitioner does not take a position on whether an election should be conducted by manual or mail ballot.

## **I. THE BOARD’S STANDARD**

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Electric*, 325 NLRB at 1144 (citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946)). This discretion includes the ability to direct a mail ballot election where appropriate. *Id.* at 1144-1145. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines*, *supra* at 1346.

Section 11301.2 of the Board’s CHM provides, in part:

The Board’s longstanding policy is that representation elections should, as a general rule, be conducted manually. The Board has also recognized, however, that there are instances where circumstances tend to make it difficult for eligible employees to vote in a manual election or where a manual election, though possible, is impractical or not easily done. In these instances, the regional director may reasonably conclude that conducting the election by mail ballot or a combination of mail and manual ballots would enhance the opportunity for all to vote.

This CHM Section sets forth several types of conditions favoring mail ballot elections, including situations where eligible voters are “scattered,” geographically or as to their work schedules, or where there is a strike, lockout, or picketing in progress. Finally, this Section states that “[u]nder extraordinary circumstances, other relevant factors may also be considered by the regional director.” (citing *San Diego Gas and Electric*, *supra*).

Thus, while there is a clear preference for conducting manual elections in ordinary circumstances, the CHM indicates, and the Board has held, that the Regional Director may use discretion to order a mail ballot election where conducting an election manually is not feasible and that under extraordinary circumstances, the Regional Director should tailor the method of conducting an election to enhance the opportunity of unit employees to vote. See *San Diego Gas and Electric*, 325 NLRB at 1144-1145.

## II. DECISION

No issues were raised about a question concerning representation.

After consideration of the applicable facts, the parties' positions, and governing Board law, I have determined that a mail-ballot election is appropriate in this matter. There are approximately two employees in the proposed unit.<sup>3</sup> These voters are scattered over a wide geographic area due to the distances between their work locations.<sup>4</sup> Further, the record is absent of any evidence that the employees regularly visit a common facility at a common time. In *San Diego Gas and Electric*, the Board describes geographic scattering where employees "...work in different geographic areas..." The Board goes on to state, "The 'scattered' criteria are intended to apply in any situation where all employees cannot be present at the same place at the same time." *Id.* at 1145 n.7.<sup>5</sup>

Accordingly, I am exercising my discretion to determine that a mail-ballot election is appropriate in this case.

**IT IS HEREBY ORDERED** that an election be conducted under the direction of the Regional Director for Region 7 in the following appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**Included:** All full-time and regular-part time Inventory Clerks employed by the Employer at its facilities currently located at 12500 East 10 Mile Road, Warren, Michigan and 801 South Main Street, Wayland, Michigan.

**Excluded:** All managerial employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

---

<sup>3</sup> Although Petitioner's petition notes there are approximately three employees in the petitioned-for unit, the Employer's employee list attached to its Statement of Position (Board Exhibit 3) lists two petitioned-for employees, one employed at the Employer's Warren facility and one employed at the Employer's Wayland facility.

<sup>4</sup> According to [12500 East 10 Mile Road, Warren, MI to 801 South Main Street, Wayland, MI - Google Maps](#), which I take administrative notice of, the distance from the Employer's Warren facility to its Wayland facility is 169 miles. Further the Employer acknowledges that such distance between the two facilities requires a drive of "a few hours."

<sup>5</sup> Given that the geographic scattering factor is present, I have also given consideration to efficient use of Board resources, which weighs in favor of a mail ballot election.

### III. CONCLUSION

Based on the foregoing and the entire record herein, I find that it is appropriate to conduct an election in the unit set forth above.

#### **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 the purposes of collective bargaining by Local 223, Utility Workers Union of America, AFL-CIO.

##### **A. Election Details**

I have determined that a mail ballot election will be held.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At **4:15 p.m. on February 28, 2025**, ballots will be mailed to voters by an agent of the National Labor Relations Board. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **March 6, 2025**, should communicate immediately with the National Labor Relations Board by either calling the Region 7 Office at **(313) 226-3200** or our national toll-free line at **1-844-726-NLRB (1-844-726-6572)**.

**Voters must return their mail ballots so that they will be received in the Detroit Regional Office by 4:45 p.m. on March 14, 2025.** All ballots will be commingled and counted by an agent of the National Labor Relations Board **at 9:30 a.m. on March 17, 2025**, at the Region 7 office located at Patrick V. McNamara Federal Building, 477 Michigan Avenue, Room 05-200, Detroit, Michigan. In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots.

##### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending **February 15, 2025**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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. 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.

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.<sup>6</sup>

### C. Voter List

As required by Section 102.67(l) 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 **February 25, 2025**. The list must be accompanied by a certificate of service showing service on all parties. **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](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

The list must be filed electronically with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on E-File Documents, enter NLRB Case Number, and follow the detailed instructions. The list must also be served electronically on the other parties named in this decision.

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.

---

<sup>6</sup> The parties stipulated that notwithstanding the Employer's engagement in the construction industry, the Board's standard eligibility formula shall apply, rather than the Board's *Daniel/Steiny* construction industry eligibility formula (*Daniel Construction Co.*, 133 NLRB 264 (1967); *Steiny & Co., Inc.*, 308 NLRB 1323 (1992)).

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<sup>7</sup>**

Notices of Election will soon be electronically transmitted to the parties, if feasible, or by overnight mail if not feasible. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. The Employer must also distribute the Notice of Election electronically to any employees in the unit with whom it customarily communicates electronically. In this case, the notices must be posted and distributed **before 12:01 a.m. on February 25, 2025**. Pursuant to Section 102.67(k), the Employer's failure to timely post or distribute the election notices is grounds for setting aside the election if proper and timely objections are filed. However, a party is estopped from objecting to the nonposting or nondistribution of notices if it is responsible for the nonposting or nondistribution. If the Employer does not receive copies of the notice by February 24, 2025, it should notify the Regional Office immediately.

**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.nlrb.gov](http://www.nlrb.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

---

<sup>7</sup> The parties stipulated that the Notices of Election and ballots will be in English only.

Utility Lines Construction Services, LLC  
Case 07-RC-358035

granting a request for review will stay the election in this matter unless specifically ordered by the Board.

DATED at Detroit, Michigan this 21<sup>st</sup> day of February 2025

A handwritten signature in black ink that reads "Elizabeth Kerwin". The signature is written in a cursive style with a large, sweeping initial "E" and a long, horizontal flourish at the end.

---

Elizabeth Kerwin, Regional Director  
National Labor Relations Board, Region 7  
Patrick V. McNamara Federal Building  
477 Michigan Avenue, Room 05-200  
Detroit, MI 48226