

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

MAGNUM MANAGEMENT CORPORATION

Employer

and

Case 07-RC-360432

**LOCAL 324, INTERNATIONAL UNION OF
OPERATING ENGINEERS (IUOE), AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer is engaged in the business of operating an amusement and water park. On February 14, 2025, Petitioner filed a petition seeking to represent a bargaining unit of employees employed by the Employer at its Muskegon, Michigan facility.

The appropriateness of the bargaining unit is not in dispute. The only issue in this case is the Employer's argument that I do not have the authority to process representation petitions when the Board lacks its statutorily mandated quorum of three members. In lieu of a hearing, the parties entered into a Stipulation in Lieu of Hearing regarding the instant petition. The parties have also submitted written statements to me regarding the Employer's argument.

The National Labor Relations Board ("Board") has delegated its authority to me under Section 3(b) of the National Labor Relations Act ("Act"). The Employer's argument is moot because the Board has a quorum.¹ Having considered the entire record in this matter,² I direct an election.

I. FACTS

Section 3(a) of the Act establishes the Board, composed of five members appointed by the President by and with the advice and consent of the Senate. Ordinarily a vacancy in a Board seat "shall not impair the right of the remaining members to exercise all of the powers of the Board." Section 3(b). This provision, however, is subject to the caveat that "three members of the Board shall, at all times, constitute a quorum." *Id.* The Supreme Court in *New Process Steel, LP v. NLRB*, 560 US 674 (2010), determined that the statutory language requires the Board to have at least three members in order to act.

¹ In addition, the Supreme Court, various Circuit Courts of Appeal, and the Board have already rejected the Employer's argument regarding the purported impact the lack of a quorum has on previously delegated authority.

² The parties stipulated that their Stipulation in Lieu of Hearing, its exhibits, and each party's written statement will constitute the entire record in this matter.

On January 27, 2025, President Trump removed Board Member Gwynne Wilcox from her position, thus reducing the number of Senate-confirmed Board Members from three to two. Under *New Process Steel*, the Board therefore no longer had a quorum.³ On March 6, 2025, the United States District Court for the District of Columbia held that Member Wilcox's removal violated Section 3(a) of the Act and declared her removal "null and void." *Wilcox V. Trump*, Case 1:25-cv-00334-BAH (March 6, 2025) (dck #34).⁴

II. ANALYSIS

The Employer's argument that Regional Directors lose the authority to process representation cases when the Board loses a quorum is mooted by the Court's March 6, 2025 Order which restored the Board's quorum.⁵ Accordingly, I am directing an election in this matter.

³ Sections 9(b) and (c) of the Act reserve to the Board the statutory authority to make bargaining unit determinations and resolve questions concerning representation. In 1959, Congress passed, and the President signed, the Landrum-Griffin amendments to the Act which, among other things, added Section 3(b) permitting the Board to delegate its authority over representation cases to Regional Directors. The Board subsequently delegated this authority in 1961. See 26 Fed. Reg. 3889 (1961), which was upheld by the Supreme Court in *Magnesium Casting Co., v. NLRB*, 402 US 925 (1971). The delegated authority of Regional Directors to process representation cases has never been withdrawn. Later, in 2017, following the Court's decision in *New Process Steel*, the Board adopted regulations which, in part, clarify that "representation cases may continue to be processed, and the appropriate certification should be issued by the Regional Director notwithstanding the pendency of a request for review," during any time when the Board lacks a quorum. 29 CFR 102.182. This regulation did not modify the underlying 60-year-old delegation of authority.

⁴ On March 7, 2025, the Department of Justice appealed the district court's order to the United States Court of Appeals for the D.C. Circuit and, thereafter, filed a request for an immediate stay. See *Emergency Motion for Stay Pending Appeal, Wilcox v. Trump*, No. 25-5057 (D.C. Cir. filed Mar. 10, 2025). That request is pending as of the issuance of this decision.

⁵ Even assuming that the Employer's argument is not moot, such argument is not new. Indeed, in the wake of *New Process Steel* numerous parties claimed that Regional Directors lack the ability to exercise their delegated authority when the Board loses a quorum. This argument has been explicitly rejected by the Board. See *Brentwood Assisted Living Community*, 355 NLRB No. 149 (2010) enfd. 675 F.3d 999 (6th Cir. 2012) (explaining the Regional Director "properly processed the underlying representation proceeding by virtue of the authority delegated to him" notwithstanding the fact that the Board lacked a quorum). The Board's conclusion that the ability of the Regional Directors, and the General Counsel, to exercise delegated authority does not cease when the Board lacks a quorum has been routinely upheld by the Circuit Courts of Appeal. *UC Health v. NLRB*, 803 F.3d 669 (DC Cir. 2015); *NLRB v. Bluefield Hospital Co., LLC*, 821 F.3d 534 (4th Cir. 2016); *Overstreet v. El Paso Disposal LP*, 625 F.3d 844, 853 (5th Cir. 2010); *Osthus v. Whitesell Corp.*, 639 F.3d 841, 844 (8th Cir. 2011); *Frankl v. HTH Corp.*, 650 F.3d 1334, 1354 (9th Cir. 2011). The Supreme Court's decision in *New Process Steel* compels a similar result. As the Court explained, "our conclusion that the delegee group ceases to exist once there are no longer three Board members to constitute the group does not cast doubt on the prior delegations of authority to nongroup members, such as the regional directors or the general counsel. The latter implicates a separate question that our decision does not address." *New Process Steel* at 402 US 925 at fn. 4. Further, to the extent the Employer cites *Loper Bright Enterprises v. Raimondo*, 603 US 369 (2024) as standing for the proposition that Courts' prior analysis is now suspect, *Loper Bright* is inapplicable here because it involves only a standard of review to be applied by the courts. I am bound by existing precedent.

III. CONCLUSION

Based upon the entire record in this matter and for the reasons stated above, I find and conclude as follows:

1. 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.⁶
2. 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. The Employer declines to recognize the Petitioner.
3. 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.
4. There is no collective bargaining history between these parties in the stipulated bargaining unit identified herein and there is no contract bar in existence that would bar an election in this case.
5. The parties stipulated, and I find, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time ride mechanics, water park maintenance employees, electricians/lighting employees, landscapers, laborers, and foremen employed by the Employer at its Amusement Park located at 4750 Whitehall Road, Muskegon, Michigan; but excluding seasonal employees and guards and supervisors as defined in the Act.

The parties stipulated there are approximately 31 employees in the unit.

Given this clear precedent, I reject the Employer's claim that Regional Directors lose the authority to process representation cases when the Board lacks a quorum. Instead, as the Board and the Courts have routinely explained, the authority delegated to them in 1961 by a Board acting with a quorum survives any subsequent loss of a quorum. Further, the Employer's criticism of the Board's 2017 regulations and Section 102.182 is misplaced. The provision at Section 102.182, making clear that Regional Directors will continue to process representation cases notwithstanding the lack of a Board quorum, merely reiterates longstanding practice upheld by the Courts and is not an "impermissible end-run around plain statutory language (and binding precedent)" as argued by the Employer.

⁶ The parties stipulated and I find that the Employer, an Ohio corporation with a place of business located at 4750 Whitehall Road, Muskegon, Michigan, is engaged in the business of operating an amusement and water park. During the calendar year ending December 31, 2024, the Employer derived gross revenues in excess of \$500,000 and purchased and received [at its Michigan facility] goods valued in excess of \$5,000 directly from points located outside the State of Michigan. The parties additionally stipulated that the Employer is engaged in commerce within the meaning of Section 2(6), and (7) of the Act. It will effectuate the purposes of the Act to assert jurisdiction herein.

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 Local 324, International Union of Operating Engineers (IUOE), AFL-CIO.

A. Election Details

The election will be held on Wednesday, March 26, 2025, from 11:00 a.m. to 12:30 p.m. at the Employer's Michigan's Adventure Training Center located at 5010 Whitehall Road, Muskegon, Michigan.

Immediately upon conclusion of the election, all ballots cast will be comingled and counted and a tally of ballots prepared and immediately made available to the parties.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **March 9, 2025**, 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(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 **March 14, 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.

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

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 March 21, 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 March 14, 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, 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: March 12, 2025



ELIZABETH KERWIN
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