

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

EVERYDAY MECHANICAL CORP. Employer and PLUMBERS LOCAL UNION NO. 1, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA Petitioner	Case 29-RC-335432
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ORDER DISMISSING PETITION

On February 5, 2024, Plumbers Local Union No.1, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Petitioner/Union) demanded that Everyday Mechanical Corporation (Employer) recognize it has the exclusive collective bargaining representative of its employees in the following appropriate bargaining unit (Unit):

Included: All full-time and regular part-time plumbers and their helpers employed by the Employer out of its location at 73-10 88th Street, 2nd Floor, Glendale, New York.

Excluded: All other employees including office clerical employees, guards, managerial employees, and supervisors as defined by the Act.

On about February 5, 2024, the Employer refused to grant the Petitioner's request for recognition.

On February 8, 2024, the Union filed a petition in this matter, seeking to represent the employees in the Unit and on February 9, 2024, Region 29 served a copy of the petition on the parties.

On March 1, 2024, the Union filed a charge in Case No. 29-CA-336927, which it subsequently amended on June 11, 2024, August 9, 2024, and again on December 20, 2024. On March 19, 2024, the Union filed a charge in 29-CA-338325, which it subsequently amended on March 22, 2024.

On March 15, 2024, an election was conducted pursuant to a Stipulated Election Agreement entered into between the Employer and the Petitioner and approved by the undersigned. The Tally of Ballots made available to the parties pursuant to the Board's Rules and Regulations, showed the following results:

Approximate number of eligible voters -- 8
Number of void ballots-- 0
Number of ballots cast for the Petitioner--4
Number of votes cast against participating labor organization-- 3
Number of valid votes counted-- 7
Number of challenged ballots --1
Number of valid votes counted plus challenged ballots-- 8
Challenges are sufficient in number to affect the results of the election.

On March 21, 2024, the Union filed timely objections to conduct affecting the result of the election substantially mirroring the allegations in the unfair labor practice charges referenced above.

On June 11, 2024, the Union filed a charge in Case No. 29-CA-344122.

On July 9, 2024, the Union filed a charge in Case No. 29-CA-345919.

On May 19, 2025, finding merit to the unfair labor practice charges, the Region issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing in the unfair labor practice charges in Case Nos. Cases 29-CA-336927, 29-CA-338325, 29-CA-338465, 29-CA-344122 and 29-CA-345919. The Complaint alleges, inter alia, that the Employer violated Section 8(a)(1) and (3) of the Act during the critical period by, on multiple dates, telling employees it would be futile for them to select the Union as their collective bargaining representative; creating the impression among its employees that their union activities were under surveillance and engaging in surveillance of employees' union activities; threatening employees with job loss and/or lack of work and loss of benefits if they select the Union as their bargaining representative; cutting the hours and/or laying off employees Brendy Romulus and Josh Charles because they engaged in Union activities; and threatening to cut employees' hours. The Complaint further seeks, as a remedy for the above unfair labor practices, an order requiring that the Employer recognize and bargain in good faith with the Petitioner as the exclusive bargaining agent of its employees.

In *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023), the Board held that even a single violation of the Act by an employer that interferes with employee free choice and undermines the reliability of an election will result in a remedial bargaining order. See *Cemex, supra*, slip op. at 26 n.142 and at 35 n.188. The underlying rationale is that "if the employer commits unfair labor practices that invalidate the election, then the election necessarily fails to reflect the uncoerced choice of a majority of employees. In that situation, the Board will, instead, rely on the prior designation of a representative by the majority of employees by nonelection means, as expressly permitted by Section 9(a), and will issue an order requiring the employer to recognize and bargain with the union, from the date that the union demanded recognition from the employer." *Cemex, supra*, slip op. at 26. Germane to this analysis, "under long-established Board law, an election will be set aside based on an employer's critical-period violation of Sec. 8(a)(1) unless the "violations . . . are so minimal or isolated that it is virtually impossible to conclude that the misconduct could have affected the election results.'" *Id.* at 277 (quoting *Longs Drug Stores California*, 347 NLRB 500, 502 (2006), and *Clark Equipment Co.*, 278 NLRB 498, 505 (1986)). In determining whether unlawful misconduct could affect the results of an election, the Board considers all relevant factors, including the number of

violations, their severity, the extent of dissemination, the size of the unit, the closeness of the election (if one has been held), the proximity of the conduct to the election date, and the number of unit employees affected. See, e.g., *Bon Appetit*, above, 334 NLRB at 1044 (citing cases); *Cemex*, slip op. at 26, n.142. Thus, based on the foregoing, if a demand for recognition is made, an election petition is filed by the union, and the employer commits unfair labor practices between the demand for recognition and the election that frustrate a free, fair, and timely election, the election petition will be dismissed and the employer will be subject to a remedial bargaining order “based on employees’ prior, proper designation of a representative for the purpose of collective bargaining pursuant to Section 9(a) of the Act.” *Cemex*, 372 NLRB No. 130, slip op. at 28-29.

Here, the Region’s issuance of an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing over severe and pervasive violations of Section 8(a)(1) and (3) of the Act repeatedly committed by high-ranking officials of the Employer and disseminated to virtually the entire bargaining unit during the period between the demand for recognition and the election, interfered with employee free choice and undermined the reliability of the election. Thus, pursuant to *Cemex*, the Region is seeking a remedial bargaining order in the unfair labor practice cases and the Employer’s unlawful conduct likewise warrants setting aside the election. The Section 8(a)(5) refusal-to-bargain allegation, if proven, would result in an affirmative bargaining order and/or extension of the certification year. This would, in turn, require the dismissal of the petitions in this matter. See *Rieth-Riley Construction Co., Inc.*, 371 NLRB No. 109 (2022). See also *Starbucks Corp.*, 372 NLRB No. 156, slip op. at 1 n.2 (2023), citing *Big Three Industries, Inc.*, 201 NLRB 197, 197 (1973).

The remedial bargaining order is also sought pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), because, as alleged in the Complaint, the investigation disclosed that prior to the Employer’s serious and substantial unfair labor practices, a majority of the Unit designated the Petitioner as their exclusive collective-bargaining representative. The serious and substantial unfair labor practice conduct of the Employer is such that there is only a slight possibility of traditional remedies erasing their effects and conducting a fair rerun election, such that, on balance, the employees’ sentiments regarding representation, having been expressed through authorization cards, would be protected better by issuance of a bargaining order.

Therefore, a merit-determination dismissal of the petition in this matter is appropriate under the circumstances.¹

¹ The Board’s decision in *Cemex* contemplates that dismissal of a petition based on unfair labor practices committed during a critical period is appropriate. The Board subsequently clarified that a dismissal of a petition pursuant to *Cemex* “is not subject to reinstatement and may only occur after the Board has found merit to the relevant unfair labor practice allegations and determined that an affirmative bargaining order is warranted. However, the Board’s longstanding practice of merit-determination dismissals permits a Regional Director ‘to *dismiss* a representation petition, subject to reinstatement, when the Regional Director (on behalf of the General Counsel) has found merit in an unfair labor practice charge involving misconduct that would irrevocably taint the petition and any related election.’ See *Rieth-Riley Construction Co.*, 371 NLRB No. 109, slip op. at 1 (2022) (emphasis in original) . . . The petition remains subject to reinstatement pending the results of the unfair labor practice case, and the Employer will have the opportunity to litigate the relevant unfair labor practice allegations, as well as the propriety of a bargaining order, in that proceeding.” *Maxwell Plumb Mechanical Corp.*, Case 29-RC-315834 (unpublished order dated September 25, 2024).

Accordingly, **IT IS ORDERED** that the Petition in Case No. 29-RC-335432 is hereby dismissed, subject to reinstatement, if appropriate, after the final disposition of the above-referenced allegations in case Nos. 29-CA-336927, 29-CA-338325, 29-CA-338465, 29-CA-344122 and 29-CA-345919.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.71(b) 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.nlr.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 (**5:00 p.m. Eastern Time**) on **August 1, 2025**, 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 August 1, 2025**.

Filing a request for review electronically may be accomplished 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. 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 offline 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 Director and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in Section 102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to Section 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: July 18, 2025



TERESA POOR
REGIONAL DIRECTOR
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EVERYDAY MECHANICAL CORP. Employer and PLUMBERS LOCAL UNION NO. 1, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA Petitioner	Case 29-RC-335432
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AFFIDAVIT OF SERVICE OF: Order Dismissing Petition, dated July 17, 2025.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on July 18, 2025, I served the above documents by **electronic mail and regular mail** upon the following persons, addressed to them at the following addresses:

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July 18, 2025

Date

Samiyah Hassan, Designated Agent of NLRB

Name

/s/ Samiyah Hassan