

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 08**

KRATON CORPORATION

Employer

and

**UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED &
INDUSTRIAL SERVICE WORKERS INTERNATIONAL
UNION, AFL-CIO, CLC**

Case 08-RC-375771

Petitioner/Union

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

On November 26, 2025¹, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied & Industrial Service Workers International Union, AFL-CIO, CLC (“Petitioner” or “Union”) filed a petition seeking to represent a unit of all full-time and regular part-time quality assurance employees employed by Kraton Corporation (“Employer”) at its Belpre, Ohio facility. On December 5, the Employer timely filed a Statement of Position contending that the petition is barred by Section 9(c)(3) of the Act. Whether or not there is an election bar is the sole issue in this matter.

On December 29, the Employer and the Petitioner entered into a stipulated record in lieu of a hearing. The stipulated record includes the Employer’s argument in support of an election bar set forth in its Motion to Dismiss (Ex. 6) and the Petitioner’s argument in opposition to an election bar set forth in its Reply to Employer’s Motion to Dismiss (Ex. 7).

Based on the record, the parties’ positions, the text of Section 9(c)(3), and relevant Board cases, I find that there is no election bar.

II. FACTS

The Employer is a chemical manufacturer engaged in the production of polymers with a manufacturing site in Belpre, Ohio.

On August 21, Petitioner filed a petition in Case 08-RC-371946, seeking to represent all full-time and regular part-time production and maintenance employees at the Belpre facility. The

¹ All dates herein refer to 2025 unless otherwise stated.

Petitioner sought to include individuals in the quality assurance classification in the unit, but the Employer opposed their inclusion. The parties agreed that individuals in the quality assurance classification could vote in the election, but their ballots would be challenged. Thus, on September 25 and 26, pursuant to a Stipulated Election Agreement (Ex. 3), an election was held in the following unit:

All full-time and regular part-time production and maintenance employees employed by the Employer at its Belpre, Ohio facility, but excluding all other employees including office clerical employees, contract employees, technical employees, managers, guards and supervisors as defined in the Act.

Regarding the quality assurance classification, the Stipulated Election Agreement provided:

Others permitted to vote: The parties have agreed that the individuals in the quality classification may vote in the election, but their ballots will be challenged since their inclusion or exclusion from the bargaining unit has not been resolved. No decision has been made regarding whether the individuals in this classification are included in, or excluded from, the bargaining unit. The inclusion or exclusion of the individuals from the unit will be resolved, if necessary, following the election.

The Tally of Ballots showed that of the 205 eligible voters, 167 cast ballots for the Petitioner and 16 cast ballots against representation. There were 17 challenged ballots, a number insufficient to affect the results of the election. Ex. 4.

On November 25, the Regional Director issued a Certification of Representative in Case 08-RC-371946 certifying Petitioner as the representative of the production and maintenance unit set forth above. Ex. 5. However, regarding the quality classification, the Certification of Representative states:

the quality classification is neither included in nor excluded from the bargaining unit covered by this certification, inasmuch as the parties did not agree on the inclusion or exclusion of the individuals in this classification but agreed to vote them subject to challenge and resolution of their inclusion or exclusion was unnecessary because, in the circumstances of this case, their ballots were not determinative of the election results.

The parties agree there are 16 quality assurance employees in the unit that the Petitioner seeks to represent through the instant petition. All 16 of these employees cast challenged ballots in the September election. The Employer argues that Section 9(c)(3) of the Act bars the instant petition as a result.

III. DISCUSSION

Section 9(c)(3) provides that “[n]o election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.” This provision was added by the Taft-Hartley Act in 1947 to address the Board’s policy of permitting a second election within a one-year period if the initial election resulted in a majority vote against representation. *See Brooks v. NLRB*, 348 U.S. 96, 99-101 & fn. 8 (1954); *Kolcast Industries, Inc.*, 117 NLRB 418, 419 (1957). This statutory election bar is in effect from the date balloting ends. *Kolcast*, 117 NLRB at 419. Since its enactment, the Board has held that Section 9(c)(3) does not bar an election in a larger unit, such as a plantwide unit, where there was a previous election in a smaller unit, such as a craft, because the subsequent election is not being conducted in the same bargaining unit or a subdivision of that unit. *See Thiokol Chemical Corp., Redstone Division*, 123 NLRB 888, 890 (1959) and cases cited therein.

The Board has also held that Section 9(c)(3) does not bar an election among employees who are excluded from the unit in the prior election. *S.S. Joachim & Anne Residence*, 314 NLRB 1191, 1192 (1994); *Philadelphia Co.*, 84 NLRB 115, 116 (1949). The Employer argues that this precedent does not apply because the quality employees were not excluded from the unit in the prior election. However, as the Employer acknowledges, the quality employees were also *not included* in the unit.

The Employer contends that the petition should be dismissed pursuant to Section 9(c)(3) because the petitioned-for employees voted in the September election and were a subdivision of the unit proposed by Petitioner in Case 08-RC-371946. The fact that these employees voted subject to challenge in the prior election is not dispositive. Section 9(c)(3) does not provide that an employee may not vote in more than one election within twelve months. The Board clearly allows this when it permits subsequent elections in larger units. Moreover, because the quality employees cast challenged ballots which were never opened and counted, it cannot even be unequivocally stated that they “voted” in the prior election.

Second, and most significantly, I cannot conclude that the quality employees are a subdivision of the unit in which the prior election was held. The Stipulated Election Agreement and the Certification in Case 08-RC-371946 specifically left their inclusion in the unit unresolved. In fact, to hold that the quality employees are a subdivision of the unit in which the election was held would be inconsistent with the Employer’s position in that case, and contrary to the explicit language of the Stipulated Election Agreement and the Certification. By agreeing to allow the quality employees to cast challenged ballots, the parties agreed to hold the question of their inclusion in abeyance.

I also note that the instant situation is not one where the prior election resulted in a vote against union representation, which was the animating concern behind the enactment of the election bar in Section 9(c)(3). If the quality employees were a subdivision of the unit in which the prior election was held, they would have been included in the Certification.

As matters stand, the Stipulated Election Agreement and the Certification in Case 08-RC-371946 do not include the quality employees in the unit. A group of employees cannot constitute

a subdivision of a unit that does not include them. Therefore, it cannot be said that the quality employees constitute a “subdivision” of the unit in which the prior election was held.

In conclusion, the fact that the petitioned-for employees cast challenged ballots in the prior election is insufficient to bar the petition. Rather, the application of Section 9(c)(3) requires that the second election is in the same unit or a subdivision of the unit. As that condition is not met here, I find that the petition is not barred and that an election is warranted.²

IV. CONCLUSION

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find 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.³
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.
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. 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:

All full-time and regular part-time employees classified in the Lead Technician and Senior Technical Associate Laboratory classifications in the Quality-Plant department employed by the Employer at its Belpre, Ohio facility, but excluding all office clerical employees, contract employees, managers, guards and supervisors as defined in the Act, and all other employees.

² It is well settled that if parties cannot resolve the status of the nondeterminative challenged voters following a certification, a party may file a unit clarification petition. However, there is no requirement that a party do so. Here, in recognition of the Employer’s position, the Union sought a standalone unit. To not process the petition under these circumstances would be inconsistent with the purposes and policies of the Act.

³ The parties stipulated to the following commerce facts:

The Employer, Kraton Corporation, a Delaware corporation, is a chemical manufacturer engaged in the production of polymers with a manufacturing site located at 2419 State Route 618, Belpre, Ohio 45714, the sole facility involved herein. During the preceding twelve (12) months, a representative period, the Employer, in conducting its operations described above, purchased and received at its Belpre, Ohio facility goods and supplies valued in excess of \$50,000 directly from points located outside the State of Ohio.

V. 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 United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied & Industrial Service Workers International Union, AFL-CIO, CLC.

A. Election Details

The election will be held on **Thursday, January 15, 2026 and Friday, January 16, 2026** from 2:15 p.m. to 2:45 p.m. and 4:00 p.m. to 5:00 p.m. in the Orientation Trailer at the Employer's facility at 2419 State Route 618, Belpre, Ohio 45714.⁴

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Saturday, January 3, 2026**, 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 (that employees use at work), 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.

⁴ The Petitioner waived its right to have the voter list for the full 10 days prior to the election.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Friday, January 9, 2026**. 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

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision 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. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

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: January 7, 2026

/s/ Nora F. McGinley

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