

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

METRO SURFACES, LLC

Employer

and

**BRICKLAYERS & ALLIED
CRAFTWORKERS MOUNTAIN WEST
ADMINISTRATIVE DISTRICT COUNCIL, LOCAL
UNION NO. 1 UTAH**

Case 27-RC-389972

Petitioner

DECISION AND DIRECTION OF ELECTION

Metro Surfaces, LLC (“Employer”), is a Utah limited liability company, engaged in installing tiles and related products in commercial and residential buildings. On July 7, 2026,¹ Bricklayers & Allied Craftworkers Mountain West Administrative District Council, Local Union No. 1 Utah (“Union”), filed a petition for an election seeking to represent layers, marble setters, stone masons, terrazzo workers & finishers employed by the Employer at its Salt Lake City, Utah facility as the exclusive bargaining representative under Section 9(a) of the National Labor Relations Act (“Act”).

A videoconference hearing was held on July 14, before a hearing officer of the National Labor Relations Board (“Board”). At the hearing, the parties submitted a joint exhibit and entered into joint stipulations. Accordingly, the only unresolved issue is whether the election should be conducted manually or by mail ballot. Although election arrangements, including the voting method, are not litigable matters at a pre-election hearing, the positions of the parties were solicited for consideration.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Having considered the entire record in this proceeding, relevant Board law, and the positions of the parties, I find that because certain eligible voters and certain jobsites are scattered outside of the Employer’s Salt Lake City facility, a mail-ballot election is warranted.

¹ All dates are in 2026.

BACKGROUND

The Employer is engaged in the construction industry in the installation of tiles and related products in commercial and residential buildings. The Employer has a principal office and facility located at 156 W. Gregson Avenue, Salt Lake City, Utah. The employees are assigned to a dozen or so projects throughout Northern Utah, mostly within a fifty-mile radius of the Salt Lake City area. About half of the job sites are 45 to 60 minutes away from the principal office, but at least one job site is over two hours away. Employees are typically assigned to job sites until the project is completed but are sometimes reallocated.

The parties stipulated that, given that the Employer employs employees in the construction industry, the formula set forth in *Daniel Construction Co.*, 133 NLRB 264 (1961), and *Steiny & Co.*, 308 NLRB 1323 (1992) is the appropriate eligibility formula to utilize in this matter. There are approximately 86 eligible voters in the bargaining unit. As of the date the hearing was conducted, there were at least 10 active employees and at least 17 former employees who do not regularly visit the Employer's facility. Some of the active employees work ten-hour shifts from Monday through Thursday, and others work eight-hour shifts from Monday through Friday, with varying start and end times.

POSITION OF THE PARTIES

The Employer posits that a manual election is appropriate, based on the Board's longstanding policy favoring manual balloting. The Employer asserts that the eligible voters are accustomed to travel to or from the Employer's facility, as required by their job duties. As such, requiring employees to travel to its facility for a manual election would not be out of the norm for employees. The Employer further posits that the Employer's proposed manual election times and locations would provide employees with sufficient flexibility to cast a ballot in a manual election. The Employer proposed that a manual election take place at its facility in Utah with two two-hour polling sessions, one in the morning and one in the afternoon.

The Union argues that a mail ballot election is appropriate considering that the Employer's jobsites are scattered. It further claims a significant number of employees, some of whom are laid off, do not regularly visit the Employer's facility. As such, they are not engaged in a regular commuting schedule to or from the Employer's facility as required for their job duties. The Union argues that these circumstances warrant a mail ballot election to allow the greatest number of employees to vote.

ANALYSIS

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 Elec.*, 325 NLRB 1143, 1144 (1998) (citing *Halliburton Services*, 265 NLRB 1154 (1982)). These arrangements include the mechanics of an election, such as the date and method of voting. *San Diego Gas & Electric*, supra at 1144; *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998).

The Board has a long-standing preference for in-person (manual) elections. “Manual elections permit in-person supervision of the election, promote employee participation, and serve as a tangible expression of the statutory right of employees to select representatives of their own choosing for the purpose of collective bargaining, or to refrain from doing so.” *Aspirus Keweenaw*, 370 NLRB No. 45, slip op. at 1 (Nov. 9, 2020). 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. *Id.*, slip op. at 2 (internal citations omitted). The Board has addressed a few of these situations, including where voters are “scattered” over a wide geographic area, “scattered” in time due to employee schedules, where there is a strike, or where there are other extraordinary circumstances. *San Diego Gas*, supra at 1145. In these situations, a Regional Director may reasonably conclude that a mail ballot election will enfranchise the most employees.

In *San Diego Gas & Electric*, the Board stated that mail-ballot elections may be appropriate in cases where, *inter alia*, eligible voters are “scattered” in the sense that their work schedules vary significantly, so that they are not present at a common location at common times. *Id.* Additionally, a Regional Director might reasonably conclude that the opportunity to participate in the election would be maximized by utilizing mail or mixed manual-mail ballots where “a significant number of eligible voters are not scheduled to be at the election site at the times proposed for manual balloting—for such reasons as that they work part-time or on an on-call basis.” *Id.* In such cases, the Regional Director should also consider the positions of the parties, the ability of the unit employees to read and understand a mail ballot, the availability of addresses for employees, and finally, the most efficient use of Board resources. *San Diego Gas*, supra at 1145.

Under *San Diego Gas & Electric*, supra at 1145, a determinative factor in deciding whether a mail ballot election is more appropriate than a manual election is whether the eligible employees will be at a common location at the same time. The record establishes that a sizable number of potentially eligible employees, at least 17, are not currently working for the Employer, with approximately 69 employees actively employed. Of those 69, several employees are working at jobsites that are scattered from the Employer’s facility. Although traveling throughout Northern Utah may be normal for employees when working for the Employer, here, a significant number of voters are not reporting to the Employer’s facility on a regular basis. There is no evidence to suggest that employees would be accustomed to traveling long distances during a time when they are not actively working for the Employer.

Further, the active employees do not share a consistent daily schedule. Some work eight-hour shifts Monday through Friday, others work ten-hour shifts Monday through Thursday, and their start and end times vary. As a result, even among the employees who are actively working, there is no assurance that they would be simultaneously present at the Employer's facility for a manual election.

In sum, given that employees who are potentially eligible to vote in this election are scattered and given that certain jobsites are located a large distance from the Employer's facility with employees who do not share common reporting times, I am directing a mail ballot election. *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998).

CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. 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.²
3. The Union is a labor organization within the meaning of Section 2(5) of the Act.
4. 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.
5. 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:

Included: All tile layers, tile marble setters, stone masons, terrazzo workers, and finishers employed by the Employer out of its Salt Lake City, Utah facility.

Excluded: All warehouse employees, delivery drivers, office clerical employees, confidential employees, managerial employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

² The Employer, Metro Surfaces, LLC, a Utah corporation with its principal offices and a facility located at 156 W. Gregson Avenue, Salt Lake City, UT 84115, the sole facility involved, is engaged in installing tiles and related products in commercial and residential buildings. In the past 12 months, a representative period of time, the Employer purchased and received goods valued in excess of \$50,000, which goods were shipped directly to the Employer's Salt Lake City, Utah, facility from points located outside the State of Utah.

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 **Bricklayers & Allied Craftworkers Mountain West Administrative District Council, Local Union No. 1 Utah**.

A. Election Details

The election will be conducted by U.S. Mail.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At **3:00 p.m. on Monday, August 31, 2026**, ballots will be mailed to voters from the National Labor Relations Board, Region 27, at 1961 Stout Street, Suite 13-103 Denver, CO 80294. 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 **Tuesday, September 8, 2026**, should communicate immediately with the National Labor Relations Board by either calling the Region 27 Office at (303) 844-3551 or our national toll-free line at 1-844-762-6572.

All ballots will be commingled and counted at **2:00 p.m. on Monday, September 21, 2026** via videoconference. In order to be valid and counted, the returned ballots must be received by Region 27 prior to the counting of ballots. The parties will be permitted to participate in the ballot count. A meeting invitation for the videoconference will be sent to the parties' representatives before the count. No party may make a video or audio recording or save any image of the ballot count.

B. The Ballot

The question on the ballot for the individuals in classifications identified as included in the bargaining unit will be "Do you wish to be represented for purposes of collective bargaining by Bricklayers & Allied Craftworkers Mountain West Administrative District Council, Local Union No. 1 Utah?" The choices on the ballot will be "Yes" or "No"

C. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Saturday, August 8, 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.

Also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.

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.

D. 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 (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.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, August 18, 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 the ballots are mailed to employees 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. In this case, the Notice must be posted and distributed no later than **12:01 a.m. on Wednesday, August 26, 2026**. 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, in Denver, Colorado, on this 14th day of August 2026.



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