

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

**UNITED STATES INFRASTRUCTURE
CORPORATION**

Employer

and

Case 13-RC-090072

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 21**

Petitioner

DECISION AND DIRECTION OF ELECTION

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

I. ISSUES & PARTIES' POSITIONS

The instant petition raises the issue of whether the scope of the petitioned-for multi-district unit is an appropriate unit for collective bargaining. The Petitioner seeks all full-time and regular part-time utility locators² employed by the Employer in its Chicago, West Chicago, Northern Illinois, and Joliet Districts excluding employees working in the Central Illinois District and all other employees, confidentials, guards and supervisors as defined by the Act. The

¹ Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings, made at the hearing, are free from prejudicial error and are hereby affirmed.
2. The parties stipulated and I find that United States Infrastructure Corporation (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. The parties stipulated and I find that International Brotherhood of Electrical Workers, Local 21 (the Petitioner) is a labor organization within the meaning of the Act.
4. The Petitioner claims to represent certain employees of the Employer.
5. 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.

² Also known as technicians or locate technicians.

Employer takes the position that the appropriate unit must include the utility locators employed in the Central Illinois District. The Employer argues that the utility locators in its Central Illinois District share an overwhelming community of interest with the utility locators in its other four districts within the State of Illinois. The Petitioner argues that the Employer has not met its burden of showing that the unit sought by the Petitioner was wholly inappropriate and the minimum appropriate unit must include utility locators of the Central Illinois District. The parties agree that any unit found appropriate should include full-time and regular part-time utility locators and exclude all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

II. DECISION

For the reasons discussed in detail below, I find the petitioned-for unit to be inappropriate. Accordingly, **IT IS HEREBY ORDERED** that an election be conducted under the direction of the Regional Director for Region 13 in the following appropriate bargaining units:

1. All full-time and regular part-time utility locators employed by the Employer in its Chicago District; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.
2. All full-time and regular part-time utility locators employed by the Employer in its Joliet Districts; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.
3. All full-time and regular part-time utility locators employed by the Employer in its Northern Illinois District; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.
4. All full-time and regular part-time utility locators employed by the Employer in its West Chicago District; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

III. STATEMENT OF FACTS

The Employer provides underground locating services for utility companies in 30 states of the United States and Canada. It employs over 4,300 utility locators companywide, with approximately 285 in the petitioned-for unit. Senior Vice President and Chief Operating Officer Mark Burel is responsible for about two-thirds of the Employer's operating territory. Reporting to Burel is Regional Director of Operations Shane Doyle, who oversees a region comprised of the States of Illinois and Michigan, which are subdivided into five districts and two districts, respectively. Doyle's office is in Lombard, Illinois. District boundaries are based on several factors, including revenue and customers. The five districts in Illinois are Central Illinois, Chicago, Joliet, Northern

Illinois, and West Chicago. A District Manager is in charge of each district and the six to eight territories it contains. Field Supervisors manage crews of eight to fourteen utility locators in each territory. Utility Locators in Illinois perform work locating electric, gas, telephone, and television lines.

Prior to the September 2008 merger of SM&P Utility Resources and Central Locating Services that created the Employer, the Employer did not have any customers in what is now its Central Illinois District. In September 2011, the Employer acquired Consolidated Utility Services and increased its holdings in what is now its Central Illinois District. Since 2008, the boundaries of the Central Illinois District have changed at least three times.

A. Similarity of Skills

The record reveals that all of the Employer's utility locators receive the same 15-day training and are responsible for locating buried cable and conduit for utility companies. Employees may also receive additional training to receive specialized certifications for specific utility companies. In Illinois, electric utility ComEd requires NRCG certification, which the Employer provides, while Nicor Gas requires utility locators to be certified by its own procedures. Nicor Gas lines exist primarily in all of the petitioned-for districts, but their scope may be more limited in the Central Illinois District. However, the record shows that utility locators in the Central Illinois District receive Nicor-specific training and certification, and have performed Nicor-related work in the petitioned-for districts.

B. Conditions of Employment

The Employer provides all utility locators with the same equipment regardless of their region, district, or territory: transmitter, receiver, paint, paint flags, laptop with wireless internet card, cell phone, camera, gas detector, manhole cage, manhole blower, pump, an extended cab pickup truck, and a credit/fuel card. The State of Illinois mandates that work be performed within 48 hours from when it is requested.

C. Central Control of Labor Relations

Labor relations and personnel policies are nationwide including options for health and welfare benefits and 401(k) plan, along with policies for vacation accrual, holidays, paydays, overtime, paid travel time, and employee relations. The employee handbook also specifies disciplinary procedures and human resource policies. Although the wage structure, including pay for performance bonuses, is the same nationwide, a utility locator's starting wage varies based on cost of living and is \$13 per hour for the Central Illinois District and certain (southern) counties in the Joliet District and \$14 per hour for the remaining districts and counties in Illinois.

D. Local Autonomy

In addressing the degree of centralized control of management and supervision, the record shows that field supervisors, in consultation with their district manager, have the ability to

hire, fire, assign work, and grant vacation time. Each district is assigned an annual budget from corporate that the regional director of operations and the district manager use to determine the number of utility locators necessary for that district. Raises are calculated using companywide metrics and granted by district managers in consultation with field supervisors.

E. Supervision

Some utility locators are autorouted, or automatically assigned work by a computer system (Ticket Pro) based on their geographic location; however, newer employees are assigned to help other locators as they learn the job. Utility locators may also receive assignments from their field supervisor, who they also contact if they need help performing a job. The supervisor often directly assists the locator, but sometimes another locator will help. Field supervisors report to district managers who report to the regional director of operations. The record shows that field supervisors have acted as district managers (when on vacation).

F. Interchange of Employees

The Employer submitted documents showing that 13³ utility locators have worked in Illinois outside of their assigned district. The record shows that these employees often live near the border of two districts and were assigned on their geographic proximity to jobs; however, employees have also volunteered to perform both short- and long-term work in other districts in Illinois and even other states, such as Indiana, Oklahoma, and Texas. Similarly, any work requiring an overnight stay is solicited by field supervisors (or district managers) on a voluntary basis. The record did not show a single instance of such overnight work ever being assigned to a utility locator. There have been minimal instances of permanent interchange involving the districts at issue, at least one of which was due to redistricting.

Utility locators also have occasion to work with employees from other districts if a large project spans two or more districts. Employees work with other utility locators or field supervisors when the projects are large or if safety oversight is needed.

G. Geographical Separation

The boundaries of the Employer's Illinois districts do not mirror the coverage of any of its client utility companies. Other than the Chicago District, which is coextensive with Cook County, the remaining four districts cover multiple counties. The record shows that eight counties in the Central Illinois District share a border with counties in the Joliet District, six counties in the Central Illinois District share a border with counties in the Northern Illinois District, and three counties in the Central Illinois District share a border with the West Chicago District.

³ However, three of these employees had interchange after the filing of the instant petition, with interchange starting less than a week before the instant petition was filed for an additional two utility locators.

H. Bargaining History

The Employer has recently stipulated to a single district bargaining unit of utility locators in Missouri (Case 14-RC-088217) and a bargaining unit of utility locators consisting of three counties in Florida (Case 12-RC-087066), although it is unclear from the record whether this is multiple districts, a single district, or a partial district. The evidence submitted shows the Employer has current collective-bargaining relationships with the Communications Workers of America in Pennsylvania and North Carolina covering employees in each state, but excluding employees working in certain counties. According to the record, these counties were excluded due to the Employer's predecessor, Central Locating Services, having collective-bargaining relationships with the International Brotherhood of Electrical Workers (IBEW) covering said employees. I take administrative notice of the stipulated election agreement in case 11-RD-000732 for the IBEW-represented employees in North Carolina, which is also unclear as to whether it is multiple districts or a single district. The Employer has a current contract with IBEW Local 108 in Florida covering employees performing work in six counties, again, it is unclear if these counties comprise a single district, multiple districts, or part of a district.

IV. ANALYSIS

The only issue is whether the unit sought by the Petitioner constitutes an appropriate unit without the inclusion of utility locators in the Central Illinois District recommended by the Employer. Section 9(b) of the Act only requires that a unit be appropriate in order to insure the "fullest freedom in exercising the rights guaranteed by this Act." A unit for collective bargaining need only be appropriate, it does not have to be the most appropriate unit, the largest appropriate unit, or the ultimate appropriate unit. *Morand Beverage Co.*, 91 NLRB 409, 418 (1950) enf'd. 190 F.2d 576 (7th Cir. 1951); *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnight Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988).

This means there is often more than one way in which employees of a given employer may be grouped into appropriate units for purposes of collective bargaining. *Rothstein Corp.*, 233 NLRB 545, 547 (1977). In defining an appropriate unit for collective bargaining, the Board focuses on whether the employees in the unit share a "community of interest" that is distinct from other employees that arguably could be included in the unit. *Overnite Transportation Co.*, supra at 724; *The Boeing Co.*, 338 NLRB 152, 153 (2001). The Board considers the following community of interest factors: method of wages or compensation, hours of work, employment benefits, whether the employees have common supervision, the degree of similar or dissimilar qualification, training and skills, job functions, interchangeability and contact among employees, work sites, and other working terms and conditions of employment. *Kalamazoo Paper*, 136 NLRB 134, 137 (1962).

In defining an appropriate unit, the Board first examines the petitioned-for unit. See, e.g., *The Boeing Co.*, supra at 153 (2001). If there is a presumption that a petitioned-for unit is appropriate, such as all production and maintenance employees at a single facility, or some evidence that the petitioned-for unit is appropriate, the burden is on the party challenging the unit's appropriateness to show that it is inappropriate. *Allen Health Care Services*, 332 NLRB

1308 (2000). However, where, as here, the union seeks a multifacility unit, the single-facility presumption is inapplicable, *Capital Coors Co.*, 309 NLRB 322 (1992), citing *NLRB v. Carson Cable TV*, 795 F.2d 879, 886–887 (9th Cir. 1986).

As a petitioned-for unit does not have to be the most appropriate unit, it is insufficient for the party challenging that unit to show that a different, larger, or smaller grouping of employees constitutes an appropriate unit. Rather the party challenging the petitioned-for unit must demonstrate that unit is inappropriate because it constitutes an arbitrary grouping of employees that either do not share a community of interest or have no separate identity from other employees. Conversely, where the petitioned-for unit is appropriate under traditional community-of-interest standards and the employer contends it is inappropriate because it excludes certain employees, the employer must show that the excluded employees share an overwhelming community of interest with the employees in the otherwise appropriate unit. *Specialty Health and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 14 (2011). *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163 (2011). In *Macy's West, Inc.*, 327 NLRB 1222 (1999), the Board reiterated the traditional community-of-interest factors that must be analyzed to determine the appropriateness of a petitioned-for multilocation unit as: similarity in employee skills, duties, and working conditions; centralized control of management and supervision; functional integration, including employee interchange; geographic separation of facilities; collective-bargaining history; extent of union organization, and employee choice. See *NLRB v. Carson Cable TV*, supra at 884-885.

Examining these factors, I find that the petitioned-for unit is inappropriate. The record shows that each district has a significant degree of autonomy. Each district has its own budget developed by the district manager in consultation with the head of the region. Field supervisors in each district, in consultation with their district manager, have the ability to hire, fire, assign work, and grant vacation time. District managers determine which employees receive raises. The record reveals only minimal instances of interchange of employees between districts, usually involving employees living near the borders between districts. See *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999) (aggregate data on interchange not as convincing as percentage). Moreover, much of the interchange was voluntary, which diminishes its significance. *Red Lobster*, 300 NLRB 908, 911 (1990). The collective-bargaining history is inconclusive, showing one instance of a single district unit, and several indeterminate units.

The record does show that employees in all four districts share similar skills, duties, and working conditions. The majority of employees' terms and conditions of employment are governed by companywide policy and their work is virtually identical regardless of where it is performed with many employees automatically receiving work assignments from a computerized system (Ticket Pro) based on their geographic location. The pay scale is determined nationwide by a computerized system. However, those factors are not unique to the four districts at issue, and would support any grouping of employees throughout the nation. Thus, they provide little support for a multi-location unit limited to these particular four districts.

Based on this record, a unit comprising all five districts in Illinois, contended for by the Employer, would be appropriate for bargaining, in view of the facts that such a unit would encompass all utility locators in a clearly delimited geographic area, the State of Illinois, and

those utility locators are all responsible to the regional director of operations, Shane Doyle. *Laboratory Corp. of America Holdings*, 341 NLRB 1079 (2004).

However, the evidence of record in this case shows the district, supervised by the district manager, to be the smallest component of the Employer's business that may be said to be relatively autonomous in its operation. The significant degree of autonomy and lack of interchange between the four districts sought by the Petitioner supports a finding that single district units would also be appropriate. Since, on the basis of the petition, it appears that the Petitioner is primarily interested in representing the four northern districts, it would be entitled to, and I direct, elections in four separate appropriate districtwide units: Chicago, Joliet, Northern Illinois, and West Chicago. The elections will be held subject to a sufficient showing of interest by the Petitioner in each unit. If the Petitioner indicates a desire for a statewide election, I would direct an election in that unit, again subject to a proper showing of interest. See, e.g., *American Automobile Association*, 242 NLRB 722, 725 (1979); *State Farm Mutual Automobile Insurance Co.*, 158 NLRB 925, 929-930 (1966).

IV. CONCLUSION

Based on the foregoing and the entire record herein, I find that the Petitioner asked for either too much or too little by seeking to combine into a single unit only four of the five districts in Illinois. The Employer's organizational structure rationally compels the conclusion that if the Petitioner wishes an election in such a combined unit, applying the principles enunciated above, it must as well include the Central Illinois employees. On the other hand, because of the autonomy and independence of the districts, single district units for Chicago, Joliet, Northern Illinois, and West Chicago are also appropriate, and I direct separate elections for each unit.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.⁴ Those eligible to vote are all

⁴ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 13 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 209 South La Salle Street, Suite 900, Chicago, Illinois 60604-1443 on or before **November 13, 2012**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

full-time and regular part-time utility locators employed by the Employer in its Chicago, Joliet, Northern Illinois, and West Chicago Districts; but, excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act. Employees engaged in any 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 which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Brotherhood of Electrical Workers, Local 21.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **November 20, 2012**.

In the Regional Office's initial correspondence, the parties were advised that the Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing

Because this is a mail ballot election, we request that one copy of the list be furnished in the form of mailing labels, if possible, for use by the Regional Office in mailing the voting kit to employees. While you are not required to comply with this request, your cooperation in doing so will assist in promptly sending mail ballots to each employee's correct address and maximize employee participation in the election.

If you have any questions, please contact the Regional Office.

so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 6th day of November, 2012.

/s/ Peter Sung Ohr

Peter Sung Ohr, Regional Director
National Labor Relations Board
Region 13
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