

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION FIVE

COLLINS REINFORCING, INCORPORATED

Employer<sup>1</sup>

and

Case 05-RC-099380

INTERNATIONAL ASSOCIATION  
OF BRIDGE, STRUCTURAL,  
ORNAMENTAL AND REINFORCING  
IRON WORKERS, LOCAL 201

Petitioner

**DECISION AND DIRECTION OF ELECTION**

On March 18, 2013, the Region conducted a representation hearing in this case. During that hearing, the parties reached stipulations covering all the issues that could have been litigated. The only dispute in this representation case involves the date, time, and manner of conducting the election. Collins Reinforcing, Incorporated, herein called the Employer, contends that the election should be conducted by mail ballot, primarily because the eligible employees are scattered and work at various locations along the east coast. The International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 201, herein called the Petitioner, asserts that the election should be a traditional in-person election at a site other than where eligible employees work. The petition states that the approximate number of eligible voters is 35. There is no history of collective bargaining.

Whether to conduct an election by mail is a discretionary matter the Board has entrusted to Regional Directors. The Board has consistently held that a Regional Director has broad

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

discretion in arranging all the details of an election, including whether to conduct an election, in whole or in part, by mail. *San Diego Gas and Elec.*, 325 NLRB 1143 (1998); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *Southwestern Michigan Broadcasting Company*, 94 NLRB 30, 31, (1951); *North American Aviation, Inc.*, 81 NLRB 1046 (1949). The Board's Casehandling Manual (Part Two) Representation Procedures at Section 11301.2 describes circumstances considered in exercising this discretion. Accordingly, I shall exercise my discretion regarding the details of the election and in exercising that discretion I shall carefully consider the parties' positions, the record evidence, and any post-hearing briefs.<sup>2</sup>

The Board held in *Steiny & Company, Inc.*, 308 NLRB 1323 (1992), that the *Daniel* formula is applicable in all construction industry elections, unless the parties stipulate to the contrary. See also *Signet Testing Laboratories*, 330 NLRB 1 (1999). Here, the parties stipulated that the *Daniel/Steiny* formula should be applied. Accordingly, I find that the *Daniel* formula, as set forth below, is the appropriate eligibility formula to be applied in this case.

The *Daniel* formula to determine eligibility of employees in the construction industry provides that, in addition to those eligible to vote under the traditional standards, laid-off unit employees are eligible to vote in an election if they were employed by the Employer for 30 working days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment by the Employer in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. Of those eligible under this formula, any employees who quit voluntarily or had been terminated for cause prior to the completion of the last job for which they were employed are excluded and disqualified as eligible voters. *Daniel Construction Co.*, 133 NLRB 264, 267

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<sup>2</sup> An election arrangements letter will issue anon.

(1961), modified 167 NLRB 1078 (1967), reaffirmed and further modified in *Steiny & Company, Inc.*, 308 NLRB 1323 (1992), overruling *S.K. Whitty & Co.*, 304 NLRB 776 (1991).

### **CONCLUSIONS AND FINDINGS**

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 201, a labor organization as defined in Section 2(5) of the Act, claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The parties stipulated that the Employer, Collins Reinforcing, Incorporated, a North Carolina corporation with an office and place of business in Nebo, North Carolina, is engaged in the business of providing iron reinforcing services to various customers located throughout the eastern half of the United States, including DC Water in Washington, DC. During the past 12 months, a representative period, the Employer, in conducting its business operations described herein, purchased and received at its Washington, DC job site, products,

goods, and materials valued in excess of \$50,000 directly from points located outside the District of Columbia.

6. I find 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 reinforcing ironworker employees employed by the Employer at its worksites in the greater Washington, DC Metropolitan area, but excluding all professional employees, clerical employees, administrative employees, confidential employees, managerial employees, guards, and supervisors as defined in the National Labor Relations Act, as amended.

#### **I. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 201. The date, time, and manner of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

##### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. 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. 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; (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.

Also eligible to vote are all employees in the unit if they were employed by the Employer for 30 working days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment by the Employer in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. Of those eligible under this formula, any employees who quit voluntarily or had been terminated for cause prior to the completion of the last job for which they were employed are excluded and disqualified as eligible voters.

#### **B. Employer to Submit List of Eligible Voters**

To ensure 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, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB

359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election. To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, Bank of America Center -Tower II, 100 South Charles Street, Suite 600, Baltimore, Maryland 21201, on or before **March 28, 2013**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will 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. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

## RIGHT TO REQUEST REVIEW

***Right to Request Review:*** Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

***Procedures for Filing a Request for Review:*** Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on April 4, 2013 at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is 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 the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.<sup>3</sup> 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.

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<sup>3</sup> A request for extension of time, which may 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.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, select **File Case 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 off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

Dated: March 21, 2013

/s/ Albert W. Palewicz

Albert W. Palewicz, Acting Regional Director  
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