

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

**ONE CALL LOCATORS, LTD. d/b/a
ELM LOCATING & UTILITY SERVICES**

and

**Cases 28-CA-088321
28-CA-092274**

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 387, AFL-CIO**

and

28-CA-096540

JOHN L. CRIST

DECISION AND ORDER

Statement of the Cases

On May 23, 2013, One Call Locators, Ltd. d/b/a ELM Locating & Utility Services (the Respondent), International Brotherhood of Electrical Workers, Local 387, AFL-CIO (the Union), John L. Crist (the Charging Party), and the Acting General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals.¹ The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

Findings of Fact

1. The Respondent's business

¹ The Formal Settlement Stipulation was approved on May 23, 2013 by administrative law judge Gregory Z. Meyerson.

The Respondent is an Illinois limited partnership with an office and place of business in Phoenix, Arizona (the Respondent's facility), where it is engaged in the business of providing contractor services locating and marking underground utility lines.

In conducting its business operations at the Respondent's facility during the one-year period ending August 29, 2012, the Respondent purchased and received goods valued in excess of \$50,000 directly from outside the State of Arizona.

The Respondent is now, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act.

2. The labor organization involved

International Brotherhood of Electrical Workers, Local 387, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that the Respondent, One Call Locators, Ltd. d/b/a ELM Locating & Utility Services, Phoenix, Arizona, its officers, agents, successors, and assigns shall

1. Cease and desist from

- (a) Interrogating its employees about their Union activities and the Union activities of other employees.
- (b) Threatening its employees with unspecified reprisals if they engage in Union and concerted activities.
- (c) Creating an impression among its employees that their Union and concerted activities are under surveillance by the Respondent.
- (d) Soliciting complaints and grievances from its employees and promising to remedy them if employees refrain from supporting the Union.
- (e) Promising employees increased benefits and improved terms and conditions of employment if they refrain from supporting the Union.
- (f) Maintaining the following rule in its Conduct Guidelines handbook:

Personal Misconduct

* * *

10. Engaging in conduct at any time and place that could reflect negatively on the company or customer or impair the company's or customer's reputation.

- (g) Discriminatorily installing GPS systems in work vehicles in retaliation for employees' concerted and Union activities.
- (h) Issuing discriminatory discipline to its employees because they engage in concerted activities and/or Union activities.
- (i) Discharging its employees in order to discourage membership in, support for, or activities on behalf of, the Union, or any other labor organization.
- (j) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self organization, to form labor organizations, to join or assist the Union or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Notify employees in writing that it has rescinded the personal misconduct rule contained in its Conduct Guidelines handbook.
- (b) Within 14 days of the Board's Order, remove from its files any reference to the discharges of Raul Hernandez, Roy Hammock, Evan DeMain, Adam Griego, and John L. Crist, and the written discipline issued to Crist, and within 3 days thereafter, notify those employees, in writing, that this was done and that the discharges and discipline will not be used against them in any way.
- (c) Make whole the following employees for any loss of pay they may have suffered by reason of the alleged discrimination against them, by payment to them of the amounts set forth opposite their respective names, and compensate each of them for any adverse income tax consequences of receiving their backpay in one lump sum. The Respondent will make appropriate withholdings on backpay. No withholdings should be made from the interest and excess tax portions of the totals. The Respondent will file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. In addition, each of the following employees will receive \$1,000 in front pay:

NAME	BACKPAY	INTEREST	EXCESS TAX	TOTAL
Raul Hernandez	\$20,217.60	\$300.00	\$ 68.00	\$20,585.60
Roy Hammock	\$ 7,681.60	\$158.40	\$ 36.00	\$ 7,876.00
Evan DeMain	\$16,197.60	\$194.40	\$ 45.60	\$16,437.60
Adam Griego	\$ 9,334.40	\$ 73.60	\$131.20	\$ 9,539.20
John L. Crist	\$14,671.20	\$183.20	\$ 41.60	\$14,896.00

Hernandez, Hammock, DeMain, Griego, and Crist have waived reinstatement.

- (d) Within 14 days of service by the Region, post at its facilities in the Phoenix, Arizona metropolitan area (including those in Mesa and Deer Valley, Arizona), copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 29, 2012.
- (e) In addition to physical posting of paper notices, the Respondent shall distribute the notice electronically by posting on the Respondent's intranet site. The electronic posting shall remain posted for 60 consecutive days from the date it was originally posted. The Respondent will e-mail the Region's Compliance Officer at Miguel.Rodriguez@nlrb.gov with a copy of the electronic posting on the same day as the posting.
- (f) This stipulation is subject to the approval of the Board and, immediately upon the approval by the Board, it will be retroactively effective to the date of execution of the stipulation.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., June 19, 2013.

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A
CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF
APPEALS**

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose a representative to bargain with employers on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights. More particularly:

YOU HAVE THE RIGHT to join with your fellow employees in concerted activities. These activities include providing testimony in connection with a co-worker's legal claim, discussing with each other, and complaining to us, about your workloads, lack staffing levels, safety equipment, and other terms and conditions of employment. **YOU HAVE THE RIGHT** to support or engage in activities on behalf of the International Brotherhood of Electrical Workers, Local 387, AFL-CIO (the Union), and you have the right to refrain from engaging in such activities. **WE WILL NOT** do anything to interfere with these rights.

WE WILL NOT maintain the following rule in our Conduct Guidelines handbook:

Personal Misconduct

* * *

10. Engaging in conduct at any time and place that could reflect negatively on the company or customer or impair the company's or customer's reputation.

WE WILL NOT interrogate you about your Union activities and the Union activities of other employees.

WE WILL NOT threaten you with unspecified reprisals if you engage in Union and concerted activities.

WE WILL NOT create an impression that we are spying on your Union and concerted activities.

WE WILL NOT solicit complaints and grievances from you and promise to remedy them in order to restrain your support for the Union.

WE WILL NOT promise you increased benefits and improved terms and conditions of employment if you refrain from supporting the Union.

WE WILL NOT install GPS in work vehicles in retaliation for your Union and concerted activities.

WE WILL NOT fire you or issue you discipline because you engaged in Union or concerted activities, or because of your Union support or membership.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the personal misconduct rule in our Conduct Guidelines handbook, and **WE WILL** advise you, in writing, that this has been done and that such language is no longer in effect.

WE HAVE offered reinstatement to Raul Hernandez (Hernandez), Roy Hammock (Hammock), Evan DeMain (DeMain), Adam Griego (Griego), and John L. Crist (Crist), to their former jobs, and they have declined such reinstatement, and we have made them whole for any loss of earnings and other benefits, with interest.

WE WILL remove from our files any reference to the discharges of Hernandez, Hammock, DeMain, Griego, and Crist, as well as the discipline issued to Crist, and **WE WILL** notify them in writing that their discharges and/or discipline will not be used against them in any way.

(Employer)

Dated: _____ By: _____
(Representative) (Title)