

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

WALZ MASONRY

Employer
and

Case 14-RC-126183

**INTERNATIONAL UNION OF BRICKLAYERS
AND ALLIED CRAFTWORKERS, LOCAL 15¹**

Petitioner

**REGIONAL DIRECTOR'S DECISION
AND DIRECTION OF ELECTION**

The Employer, Walz Masonry, is a Nebraska corporation and contractor engaged in masonry construction from its facility located at 17610 Storage Road, Omaha, Nebraska. The Petitioner, International Union of Bricklayers and Allied Craftworkers, Local 15, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent certain employees of the Employer employed at its facility in Omaha, Nebraska.

A hearing was held in this case because the parties disagree on the propriety of conducting the election manually or through use of mail ballots. No other issue or matter was presented at hearing. Inasmuch as the mechanics of the election, including whether the election should be conducted manually or by mail ballots, are determined administratively and are not litigable in a pre-election hearing, the matter of whether the election ordered herein will be conducted manually or by mail ballots is not addressed in this Decision and Direction of Election

¹ The name of the Petitioner appears as amended at the hearing in Board Exhibit 2.

and will be addressed separately by administrative determination. See, CHM, Part 2, Representation Proceedings, Sections 11228, 11301.4, and 11301.5²

CONCLUSIONS AND FINDINGS

Based on the stipulations of the parties at hearing and the entire record, 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.³
3. The parties stipulated, and I find, that the Employer is primarily engaged in the construction industry and that the Board's construction industry voter eligibility formula (*Steiny/Daniel*) is appropriate to apply in this case.⁴
4. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
5. The Petitioner claims to represent certain employees of the Employer and the Employer declines to recognize the Petitioner as the collective bargaining representative of those employees.

² Because no litigable matters were presented at the hearing, the parties waived the filing of briefs.

³ At hearing the parties stipulated that the Employer is a Nebraska corporation and contractor engaged in masonry construction work from its facility located at 17610 Storage Road, Omaha, Nebraska and that during the past year, a representative period, the Employer in the course and conduct of its business operations sold and shipped goods and services valued in excess of \$50,000 directly to customers located outside the State of Nebraska and had gross annual revenue in excess of \$500,000.

⁴ See *Daniel Construction Co.*, 133 NLRB 264 (1961), modified at 167 NLRB 1078 (1967), reaffirmed and further modified in *Steiny & Co.*, 308 NLRB 1323 (1992).

6. 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
7. The parties stipulated, and I find, that 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 bricklayers and employees performing bricklaying/masonry mechanic work for the Employer from its facility located at 17610 Storage Road, Omaha, Nebraska 68136, but EXCLUDING all office clerical employees, professional employees, confidential employees, managerial employees, guards and supervisors as defined by the Act.

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 in the unit will vote on whether or not they wish to be represented for the purposes of collective bargaining by International Union of Bricklayers and Allied Craftworkers, Local 15. The details and manner of the election will be specified in the Notice of Election that the Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those employees in the unit who were employed during the payroll period immediately prior to the date of this Decision (payroll cutoff date), including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote shall be all employees in the unit who have been employed for a total of 30 working days or more within the 12-month period preceding the

⁵ The parties stipulated at hearing that there is no collective-bargaining agreement covering any of the employees in the unit sought in the petition, and there is no contract bar to an election.

payroll cutoff date described above or who have had some employment within the previous 12 months and who were employed 45 working days or more within the 24 months immediately preceding the payroll cutoff date, provided that no employee who has been terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed shall be eligible to vote under any eligibility criteria. 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 strike 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: (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.

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 7 days of the date of this Decision, the Employer must submit to the Subregional Office an election eligibility list for the unit,

containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The 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 Subregional Office, 8600 Farley Street, Suite 100, Overland Park, Kansas 66212 on or before **July 23, 2014**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file the 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 to the Subregional Office by electronic filing through the Agency's website, www.nlr.gov,⁶ by mail, or by facsimile transmission at (913) 967-3010. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the lists are submitted by facsimile or electronic mail, in which case no copies need be submitted. If you have any questions, please contact the Subregional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 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)

⁶ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

requires an employer to notify the Board at least 5 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 notices.

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 **July 30, 2014**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov⁷, but may not be filed by facsimile.

SIGNED at Overland Park, Kansas, on July 16, 2104.

Dated: July 16, 2014

Daniel L. Hubbel
Regional Director, Region 14

By: /s/ Naomi L. Stuart
Naomi L. Stuart, Officer-in-Charge
National Labor Relations Board
Subregion Seventeen
8600 Farley Street – Suite 100
Overland Park, KS 66212-4677

⁷ To file the request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu, and follow the detailed instructions. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.