

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-125749
28-CA-126145

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

DECISION AND ORDER

Statement of the Cases

On September 9, 2014, One Call Locators, LTD d/b/a ELM Locating & Utility Services (the Respondent), International Brotherhood of Electrical Workers, Local 387, AFL-CIO (the Union), and the 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. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act 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 National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

One Call Locators, LTD d/b/a ELM Locating & Utility Services (the Respondent) is a limited liability company with an office and place of business in Phoenix, Arizona

(the Respondent's facility), and has been engaged in providing utility locating services to construction companies.

In conducting its operations during the 12-month period ending April 2, 2014, the Respondent purchased and received at its facility goods valued in excess of \$50,000 directly from points 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 Act.

2. The labor organization involved

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

3. The appropriate unit

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time locate technicians and splice technicians who work out of Respondent's Phoenix, Arizona facility, but excluding all other employees, gas shut off and gas starter technicians, maintenance employees, office clericals, guards, managers and supervisors as defined in the Act.

Since about February 20, 2014, a majority of the employees in the unit designated and selected the Union as their representative for the purposes of collective bargaining with the Respondent.

At all times since about February 20, 2014, based upon Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About April 8, 2014, the Union, in writing, requested that the Respondent recognize it as the exclusive collective-bargaining representative of the unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

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, 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) Threatening its employees with unspecified reprisals if they selected the Union as their bargaining representative.

(b) By soliciting employee complaints and grievances, promising employees increased benefits and improved terms and conditions of employment if they refrained from union organizing activities.

(c) Promising employees increased benefits and improved terms and conditions of employment if they refrain from union organizing activities.

(d) Threatening employees with unspecified reprisals because of their activities in support of the Union.

(e) Unilaterally granting employees wage increases because employees engaged in activities in support of the Union, and in order to discourage membership in the Union or in any other labor organization.

(f) Unilaterally reinstating paid holidays to employees because they engaged in activities in support of the Union, and in order to discourage membership in the Union or in any other labor organization.

(g) Unilaterally ordering and announcing delivery of new equipment for employees because they engaged in activities in support of the Union, and in order to discourage membership in the Union or in any other labor organization.

(h) Suspending employees because they engaged in concerted activities involving their terms and conditions of employment or engaged in activities in support of the Union, and in order to discourage membership in the Union or in any other labor organization.

(i) Discharging employees because they engaged in concerted activities involving their terms and conditions of employment or in activities in support of the Union, and in order to discourage membership in the Union or in any other labor organization.

(j) Failing and refusing to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the unit.

(k) Changing the terms and conditions of employment of its unit employees without first notifying the Union and giving it an opportunity to bargain.

(l) 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) Within 14 days from the date of the Board's Order, offer, in writing, Daniel Polley (Polley) and Garrett Forrest (Forrest) full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed.

(b) Within 14 days from the date of the Board's Order, remove from the Respondent's files any reference to the discharge and discipline of Polley, and the discharge of Forrest, 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 payment to them of the amounts set forth opposite their respective names:

<u>Name</u>	<u>Backpay</u>	<u>Interest</u>	<u>Total</u>
D. Polley	\$15,000	\$130	\$15,130
G. Forrest	\$15,462	\$163	\$15,625

(d) Make whole the above-named employees for any additional loss of pay caused by the Respondent's failure, if any, to reinstate them in accordance with the provisions of this Order, within 14 days from the date of this Order, by payment to them of the respective amounts that they would have earned if properly reinstated, from the 15th day after the date of the Board's Order to the date of a proper offer of reinstatement, less their net earnings during such period, said amounts to be computed on a quarterly basis.

(e) Upon request, bargain collectively with the Union as the exclusive representative of the following employees with respect to rates of pay, wages, hours of employment and other conditions of employment, and, if an understanding is reached, reduce it to writing and sign it:

All full-time and regular part-time locate technicians and splice technicians who work out of Respondent's Phoenix, Arizona facility, but excluding all other employees, gas shut off and gas starter technicians, maintenance

employees, office clericals, guards, managers and supervisors as defined in the Act.

(f) Before implementing any changes in wages, hours, or other terms and conditions of employment, notify and, upon request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of unit employees.

(g) Within 14 days of service by the Region, post at its facilities in the Phoenix metropolitan area, 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 1, 2014.

(h) In addition to physical posting of paper Notices, the Respondent shall distribute Notices electronically, by email, posting on an intranet or an internet site (including by the Respondent's LaunchPoint system), or other electronic means, if the Respondent customarily communicates with its employees by such means. The electronic posting shall remain posted for 60 consecutive days from the date it was originally posted. The Respondent will email the Region's Compliance Officer at Miguel.Rodriguez@nlr.gov with a link to the electronic posting location on the same day as the posting. In the event that passwords or other log-on information is required to access the electronic posting, the Respondent agrees to provide such access information to the Region's Compliance Officer. If the Notice is distributed via e-mail, the Respondent will forward a copy of the email distributed to the Regional Compliance Officer.

(i) The Notice(s) will be read aloud by a responsible agent of the Respondent, by or in the presence of Jim Bourazak (Bourazak), and in the presence of an agent of the Board, or at the Respondent's option by an agent of the Board in the presence of Bourazak, to all employees employed by the Respondent at its facility, including at multiple meetings and in other languages, if necessary as determined by the Regional Director, to ensure that it is read aloud to all employees, within 14 days from the commencement of the standard posting period.

(j) 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.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certificate 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., November 13, 2014

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Nancy Schiffer, 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 us 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.

YOU HAVE THE RIGHT to join with your fellow employees in concerted activities. These activities include discussing with each other, and complaining to us, about your workloads, benefits, safety equipment, and other terms and conditions of employment. **YOU HAVE THE RIGHT** to support and engage in activities on behalf of the **International Brotherhood of Electrical Workers, Local 387, AFL-CIO** (the Union). **WE WILL NOT** do anything to interfere with these rights.

WE WILL NOT threaten you if you select the Union as your bargaining representative.

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 threaten you if you engage in Union and concerted activities.

WE WILL NOT unilaterally grant wage increases because employees engaged in activities in support of the Union, and in order to discourage membership in the Union or in any other labor organization.

WE WILL NOT unilaterally reinstate paid holidays or other benefits to employees because they engaged in activities in support of the Union, and in order to discourage membership in the Union or in any other labor organization.

WE WILL NOT unilaterally order and announce delivery of new equipment for employees because they engaged in activities in support of the Union, and in order to discourage membership in the Union or any other labor organization.

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

WE WILL NOT fail and refuse to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of employees.

WE WILL NOT change the terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

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, on request of the Union, bargain with the Union as the exclusive representative of unit employees concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. The unit is:

All full-time and regular part-time locate technicians and splice technicians who work out of Respondent's Phoenix, Arizona facility, excluding all other employees, gas shut off and gas starter technicians, maintenance employees, office clericals, guards, managers and supervisors as defined in the Act.

WE WILL offer reinstatement to Garrett Forrest (Forrest) and Daniel Polley (Polley) to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they previously enjoyed, and make them whole for any loss of earnings and other benefits suffered, with interest.

WE WILL remove from our files any reference to our discharges of Forrest or Polley, as well as the discipline issued Forrest and Polley, and **WE WILL** notify them in writing that this has been done and that our conduct will not be used against them in any way.

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

The Board's decision can be found at www.nlrb.gov/case/28-CA-125749 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

