

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

NEW MEXICO GAS COMPANY

Employer

and

Case 28-RC-239902

UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING
AND PIPE FITTING INDUSTRY OF THE
UNITED STATES AND CANADA, AFL-CIO,
LOCAL 412

Petitioner

**PETITIONER UNITED ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE
UNITED STATES AND CANADA, AFL-CIO, LOCAL 412'S
REQUEST FOR REVIEW**

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I. INTRODUCTION

On June 10, 2019, Regional Director Cornele A. Overstreet issued a Decision and Order Dismissing Petition in this matter. Pursuant to NLRB Rules and Regulation 102.67(c), Petitioner United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 412, AFL-CIO, herein referred to as “Petitioner,” hereby respectfully requests review of the Regional Director’s decision.

II. STATEMENT OF FACTS

A. Procedural History

On April 18, 2019, Petitioner filed the petition in the instant matter seeking to be certified as the exclusive bargaining representative of a bargaining unit of employees employed by New Mexico Gas Company, herein referred to as the “Employer.” The petitioned for unit is set forth as:

INCLUDED: All full-time and regular part-time utility workers, trainees A, B, C, service technicians, general technicians, master technicians, coordinators, operations representatives, line spotting technicians, measurement technicians, construction crewmen, senior construction crewmen, foreman construction crewmen, construction inspector, corrosion techs, design techs, customer service dispatchers, and meter readers employed by the Employer in its North Central Region.¹

EXCLUDED: All other employees, office clericals, guards and supervisors within the meaning of the Act.

The North Central Region is comprised of the Employer’s facilities in Santa Fe, Espanola and Taos, New Mexico. At the hearing, the Employer took the position that the only appropriate unit is a system-wide unit that would be comprised of the Employer’s six distinct Regions.

¹ At the hearing, the parties stipulated that the customer service coordinators, senior customer service representatives, customer service representatives, designers, and service dispatchers are not appropriately included in the unit.

On April 29 and 30, 2019, a hearing was conducted by Hearing Officer Belinda Johnson in Albuquerque, New Mexico. The Employer called four witnesses: Denise Wilcox, Tom Bullard, Nicole Strauser and Richard Estes.² The Petitioner called one witness: Donovan Maestras.

B. The Regional Director's Decision

On June 10, 2019, the Regional Director issued his Decision and Order Dismissing the Petition. In dismissing the petition, the Regional Director found that the Board has long held that a systemwide unit is optimal in the public utility industry. *Alyeska Pipeline Service Co.*, 348 NLRB 808, 809 (2006). The Regional Director noted that Board's presumption is rebuttable one, and then found that the exception does not apply in this matter. In finding that the presumption applies, the Regional Director found, with little to no reference to the record evidence, that the Employer maintains centralized labor relations, that the employees' skill and job functions do not vary, that there are "constant" temporary transfers and "significant" contact amongst employees statewide.

C. The Employer's Operation

The Employer is a natural gas utility. (T. 15, lines 17-18). It provides natural gas service to over 524,000 customers in 22 of 33 counties of New Mexico. Headquartered in Albuquerque, the Company employs just under 700 employees, around 290 of whom work in field operations positions. (T. 16, lines 7-10; 12). The Employer came into existence on January 30, 2009, when Continental Energy acquired the gas company from Public Service Company of New Mexico,

² In questioning Estes, Employer's counsel ended the first day of the hearing stating that he was going to "wrap up with [two job titles] and finish with this." (T. 259, lines 15-16). Estes then provided nearly fifty pages of testimony on the second day of the hearing on wide ranges of topics, including matters to which he could not provide exemplary testimony that day before. Estes then admitted that he conferred with counsel during the recess. (T. 54, lines 10-23). Petitioner moved to strike Estes testimony. While the Hearing Officer indicated that the Regional Director would reserve his ruling, no ruling has been made to date.

herein referred to as “PNM.” (T. 17, lines 12-13; Employer Exhibit 1). When the Employer took over the operation, all of the PNM employees retained their employment. (T. 19, lines 8-9). On September 1, 2014, TECO Energy acquired the Employer, and in July 2016, TECO was acquired by Emera, in Halifax, Nova Scotia. (T. 19, lines 13-18). There were no employment changes for the employees through this corporate acquisitions. (T. 20, lines 17-19).

1. Geographic Regions

a. Metro Region

The Employer’s operations are divided into six (6) regions. The Metro Region is housed in Albuquerque, and includes a business center and a service center, in addition to a payment center. (T. 21, lines 10-13). The Metro Region service center houses field operations employees, including construction and maintenance, service, dispatch, cathodic protection, measurement and line spotting. (T. 22, lines 12-15). Anthony Lujan is a manager of operations in the Metro Region. (T. 199, line 25 to T. 200, line 3). Alan Giesler, Michael Baca and Ramon Baca all work as supervisors. (T. 200, lines 4-6). Gary Vigil is the second operations manager in Metro and oversees four supervisors. (T. 200, lines 11-14).

b. Northwest Region

The Northwest Region consists of Chama, Farmington, Gallup and Grants. (T. 23, lines 3-4). There is a manager, three supervisors, field operations employees, and customer service employees working in the Northwest Region. (T. 23, lines 12-15; 18-22). James Fitzpatrick is the operations manager for the Northwest Region and oversees Irma Bustamonte, Levi Moore and Roman Castillo as supervisors. (T. 203, lines 2-22).

c. North Central Region

The North Central Region consists of Taos, Espanola and Santa Fe. (T. 24, lines 10, 12-13). The North Central Region has a manger and two supervisors. (T. 24, lines 16-18). Mike Montoya is the operations manager for the North Central Region. (T. 113, lines 1 and 3). Joseph Valdez, Jeff Moya, Aaron Salazar and Mel Cordova are supervisors for the North Central Region. (T. 113, lines 4-19). Valdez, Moya, Salazar and Cordova only supervisor employees in the North Central Region. (T. 113, lines 20-22).

d. Eastern Region

The Eastern Region is comprised of Clayton, Tucumcari, Clovis and Portales. (T. 24, line 25 to T. 25, line 1). The Eastern Region employs a manager, supervisors and field operations and customer service employees. (T. 25, line 7-9). Danny Decker is the operations manager for the Eastern Region. (T. 206, lines 3-6). Decker manages three supervisors in the Eastern Region. (T. 206, lines 11-14).

e. Southeast Region

The Southeast Region consists of Carlsbad, Roswell, Artesia and Lovington. (T. 25, lines 18-19). A manager, supervisors, field operations employees and customer service employees work out of the Southeast Region. (T. 25, line 24 to T. 26, line 1). The Southern Region employs a manager, supervisors, field operations employees and customer service employees. (T. 26, lines 8-9). Kelly Sanders in the manager for the Southeast Region. (T. 204, lines 3-5). James MacCornack, Joseph Brady and Miguel Perez supervise the employees in the Southeast Region. (T. 204, line 17 to T. 205, line 9).

f. Southern Region

The Southern Region is comprised of Alamogordo, Anthony, Truth or Consequences, and Silver City. (t. 26, lines 3-4). Tim Turri is the operations manager for the Southern Region, and manages supervisors Brandon Bridges, Danny Fisher, Gabe Ortiz, and Mario Estrada. (T. 207, line 2 to T. 208, line 7).

2. Centralized Corporate Policies and Labor Relations

In addition to its Metro Region, the Employer maintains a business center in Albuquerque, New Mexico. (T. 15, lines 11-12). The executives work out of the business center. (T. 21, line 15). In addition, engineering, human resources, information technology, legal, regulatory, external affairs, finance, customer service, billing and remittance, a call center, gas control and gas supply are all housed in the business center. (T. 21, lines 21-25).

Like many corporations, the Employer maintains many corporate-wide policies, including many TECO policies and Emera policies. The Employer maintains one employee handbook. (T. 35, line 24; Employer Exhibit 4). The handbook is being modified by TECO with input from TECO management as well as the Employer's management. (T. 48, lines 14-17; 19-25). Similarly, the Employer has a representative on an advisory board with Emera to create unified policies. (T. 50, lines 8-12).

The Employer maintains a drug and alcohol policy for all of its employees. (T. 52, lines 14-15; Employer Exhibit 5). The Employer's employees are subject to the TECO overtime compensation policy, (T. 57, lines 21-22; Employer Exhibit 6), the TECO severance policy, (T. 58, line 17; Employer Exhibit 7), a Family Medical Leave Act policy, (T. 59, lines 18-19; Employer Exhibit 8), the TECO safety policy, (T. 61, lines 8-9; Employer Exhibit 9), an Equal Employment Opportunity, nondiscrimination and affirmative action policy, (T. 62, lines 10-11;

Employer Exhibit 10), a nepotism policy, (T. 65, line 19; Employer Exhibit 11), a discipline policy, (T. 67, lines 1-2; 11-13; Employer Exhibits 12(a) and 12(b)), a TECO policy on information security, (T. 83, line 10; Employer Exhibit 13), a policy on workplace violence, (T. 84, line 13; Employer Exhibit 14), an automotive policy, (T. 85, line 12; Employer Exhibit 15), the TECO adoption assistance policy, (T. 86, line 15; Employer Exhibit 16), the TECO Americans with Disabilities Act Amendment Act, (T. 87, lines 9-10; Employer Exhibit 17), a policy on critical energy infrastructure information disclosure, (T. 88, lines 9-10; Employer Exhibit 18), the TECO smoke-free work environment policy, (T. 89, line 25; Employer Exhibit 19), the TECO policy on problem resolution, (T. 90, line 23; Employer Exhibit 20), the TECO policy on military leave of absence, (T. 91, line 24; Employer Exhibit 21), the TECO policy on substance abuse, (T. 93, line 1; Employer Exhibit 22), the TECO policy on harassment, (T. 93, line 22; Employer Exhibit 23), the TECO policy on tuition assistance, (T. 95, line 3; Employer Exhibit 24), the Emera code of conduct, (T. 95, line 22 to T. 96, line 2; Employer Exhibit 25), and the Emera policy on leadership competencies. (T. 97, lines 5-10; Employer Exhibit 26).

The Employer provides medical benefits, 401(k), short-term disability, long-term disability, and life insurance through TECO, which are available to TECO employees nationwide. (T. 99, lines 13-21). The Employer also adheres to the TECO paid time off program. (T. 100, lines 7-16).

While the Employer maintains corporate policies, employees have little to no dealings with the business center or the executive employees. Regional managers at each of the regions, including the North Central Region, maintain autonomy. In terms of hiring, supervisors have the ability to identify vacancies, and determine whether he or she wants to fill it, and the manager

can then approve or deny the vacancy. (T. 37, lines 5-21; T. 321, lines 2-6; 14-19). In filling the position, a recruiter meets with the supervisor. (T. 38, lines 17-20).

In levying discipline, the Employer's representatives at the executive level meet to determine consistent penalties. (T. 72, line 21 to T. 73, line 1). However, in issuing the discipline and addressing the employee, only the supervisor within the Region is involved. (T. 73, line 24). Former employee Donovan Maestras testified that he was subject to discipline on two occasions, and each time, the discipline was issued by his supervisor. (T. 401, lines 1-6). Maestras had no interaction with the centralized human resources department. (T. 401, lines 12-18).

Supervisors have absolute autonomy in scheduling employees. The use of paid time off is approved or rejected by supervisors within the Region. (T. 114, line 25 to T. 115, line 3; T. 320, line 12-21; T. 320, lines 19-21).

3. Similarity of Employee Skill, Function and Working Conditions

The petitioned-for employees work in field operations which includes construction, maintenance and operation of the gas system. (T. 16, lines 19-20). While the Employer employs field operations employees statewide, employees' working conditions vary from region to region. In terms of compensation, employees may be hired between 80% and 90% of the midpoint, with Regional discretion. (T. 45, line 8-13). Only if the range goes above 90% does it need approval. (T. 45, lines 13-14).

Skills and responsibilities are regionally based. For example, service techs may do line spotting within the region if their location does not have line spotters. (T. 334, lines 9-13). As Maestras testified, the work of a service tech would be different in Taos and Espanola. (T. 389, lines 13-15). Service techs perform line spotting in Taos and Espanola, whereas line spotters

perform that work in Santa Fe. (T. 389, line 24 to T. 391, line 7). In some areas, meter readers are not employed because meter reading is automated. (T. 389, lines 9-10).

Hours of work in the North Central Region are unique to other regions. The hours for the North Central Region are 7:00 a.m. to 4:00 p.m. or 7:30 a.m. to 4:30 p.m. with a one hour lunch. (T. 327, lines 16-21). The Southwestern Region, however, works 7:00 a.m. to 3:30 p.m. or 7:30 a.m. to 4:00 p.m., with one-half hour lunch. (T. 329, lines 17-20). The Eastern Region works 8:00 a.m. to 5:00 p.m. with an hour lunch. (T. 327, lines 16-21; T. 328, lines 21-24). Regionally, lunch breaks vary from 30 minutes to an hour. (T. 231, lines 12-15).

4. Degree of Interchange

Employees within a region have nearly no contact with employees from other regions. Service technicians in the North Central Region receive their job assignments through a truck-mounted laptop. (T. 326, lines 9-11). All of the work orders are distributed to the service tech in that manner. (T. 326, lines 11-14). The service technicians in the North Central Region are dispatched from their homes. (T. 326, lines 15-17). When a response is required, employees from the particular region respond. (T. 183, lines 21-24; T. 184, lines 1-7). When employees call out sick, coverage is typically drawn from within the region. (T. 347, lines 2-10).

Employees may work in different regions on a temporary basis. Employees may be pulled from one region to another in an emergency situation, but only if it is large enough. (T. 336, lines 6-8). The Employer maintains a 30-minute maximum response time. (T. 336, lines 9-11). Mastras testified that in seven years he only worked outside the North Central Region two times – once to ride to the Northwest Region with the CNG driver on one day, and once to travel to Boston, Massachusetts on a voluntary basis. (T. 399, lines 4-25; T. 400, lines 10-19). The Employer provided extreme circumstances under which temporary transfers from one region to

another were granted. In a 2011 winter event, the Employer actually utilized non-employees from New Mexico and from Georgia and Michigan. (T. 336, line 19 to T. 337, line 9). Even non-Employer employees were assigned to this work. (T. 337, lines 5-10). Measurement Control Specialists were assigned out of Metro to work in Carlsbad when there was a compliance due and there was a staffing issue created by the loss of employees to gas and oil industry competition in that area. (T. 334, line 19 to T. 335, line 6). Accordingly, employee interchange is extremely rare and occurs in unique circumstances.

Permanent transfers occur similar to a new hiring. In order to change Regions on a permanent basis, a current employee must go through the application and interview process just as an outside candidate would. (T. 42, line 5 to T. 43, line 6; T. 341, lines 13-24). In the hiring process, a supervisor may come from one Region to another because the Employer requires three supervisors on an interview panel. (T. 42, line 14). When Donovan Maestras was hired, he was interviewed by three supervisors from the North Central Region. (T. 386, lines 2-11). He then applied for a line spotting job, and went through the same interview process, including being interviewed by three supervisors from within the North Central Region. (T. 386, lines 20-21).

5. Bargaining History

The Petitioner and the Employer have been parties to two collective bargaining agreements covering only two distinct groups of employees employed in the Metro Region in Albuquerque. When the Employer took over the operation on January 30, 2009, the Petitioner represented approximately 45 service technicians in the Metro Region and ten dispatchers in Metro Region. (T. 102, line 22 to T. 103, line 2). The Employer assumed those collective bargaining agreements. (T. 103, line 10; Employer Exhibit 27; Employer Exhibit 28).

When the Employer took over the operation on January 30, 2009, IBEW Local 611 was in negotiations for a bargaining unit that excluded the units represented by the Petitioner. (Employer Exhibit 31).

III. STANDARD OF REVIEW

Pursuant to Section 102.67 of the Rules and Regulations, “[t]he Board will grant a request for review only where compelling reasons exist therefore.” 29 C.F.R. § 102.67(d). Not any compelling reason will suffice; instead, a party must show one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of (i) the absence of or (ii) a departure from, officially reported Board precedent.

(2) That the regional director’s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

(3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

(4) That there are compelling reasons for reconsideration of an important Board rule or policy.

29 C.F.R. §§ 102.67(d)(1)-(4). The Board has described the requirements of Section 102.67 as “stringent.” *St. Barnabas Hospital.*, 355 NLRB 233, 233 (2010). Here, Petitioner submits that, pursuant to Section 102.67(d)(1) and (2), the Regional Director departed from Board precedent and made clear and substantial errors of fact that prejudiced its rights.

IV. ARGUMENT

Section 9(a) of the Act provides that employees have a right to representation by a labor organization “designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes.” 29 U.S.C. § 159(a). Section 9(b) of the Act provides that:

The Board shall decide in each case whether, in order to assure the employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof.

29 U.S.C. § 159(b). The Board has long held that there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *most* appropriate unit; the Act requires only that the unit be “appropriate,” that is, appropriate to insure to employees in each case “the fullest freedom in exercising the rights guaranteed by this Act.” *Morand Bros. Beverage Co.*, 91 NLRB 409, 417–418 (1950); see also *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Federal Electric Corp.*, 157 NLRB 1130, 1132 (1966); *Parsons Investment Co.*, 152 NLRB 192, 193 fn. 1 (1965); *Capital Bakers, Inc.*, 168 NLRB 904, 905 (1968); *National Cash Register Co.*, 166 NLRB 173, 174 (1967); *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). In *Boeing Co.*, 337 NLRB 152, 153 (2001), the Board described its policy with respect to determining appropriate units:

The Board’s procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See, e.g., *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000); *NLRB v. Lake County Assn. for the Retarded*, 128 F.3d 1181, 1185 fn. 2 (7th Cir. 1997).

In *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), the Board overruled its decision in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011). In doing so, the Board expressly explained that it would “reinstate the traditional community-of interest standard as articulated in, e.g., *United Operations, Inc.*, 338 NLRB 123 (2002).

The Board has long held the view that a systemwide unit is optimal in the public utility industry. See *Colorado Interstate Gas Co.*, 202 NLRB 847 (1973); *Deposit Telephone Co.*, 328 NLRB 1029 (1999). As the Board explained in *Baltimore Gas & Electric Co.*, 206 NLRB 199, 201 (1973):

That judgement has plainly been impelled by the economic reality that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has an immediate and direct interest in the uninterrupted maintenance of the essential services that a the public utility industry alone can adequately provide. The Board has therefore been reluctant to fragmentize a utility's operations.

The Board's preference for a systemwide public utility is expressed as a rebuttable presumption, which does not foreclose the possibility of finding a smaller unit to be appropriate. See *Alyeska*, 348 NLRB at 809. Rather, the Board balances the employees' Section 7 rights against the public's interest in uninterrupted utility service that only a single entity provides. Striking this balance, the Board will only find less than a systemwide unit to be appropriate where compelling evidence shows that collective bargaining would be a "feasible undertaking." In order to demonstrate this, a petitioner must demonstrate that (1) employees in the petitioned-for unit share a substantial community of interest; (2) the boundaries of the requested unit conform to a well-defined administrative segment and could be established without undue disturbance to the company's ability to perform its necessary function, and (3) there is no opposing bargaining history on a broader basis. *Id.*

As a threshold matter, the Employer's system must be examined different than those in *Baltimore Gas* and *PECO* as those systems were integrated completely. Here, there is not a completely integrated system. (T. 124, lines 1-2).

In reviewing the three factors set forth in *Alyeska*, the record reflects that the smaller petitioned for unit of the field operations employees in the North Central Region is appropriate and rebuts the public utility presumption.

A. North Central Region Employees Share a Substantial Community of Interest

1. Central Control over Daily Operations and Labor Relations

In finding that the Employer maintains central control over daily operations and labor relations, the Regional Director relied nearly exclusively on the Employer's unified corporate policies. Contrary to the Regional Director's decision, the Board has routinely found that evidence of centralized labor relations and uniform company-wide policies does not trump local autonomy that exists in a single facility. *See, e.g., D&L Transportation, Inc.*, 324 NLRB 160, 16 fn. 8 (1997) ("But the existence of centralized personnel and labor policies and procedures, or even ultimate responsibility for such matters at a centralized source, does not automatically trump the acknowledged existence of local autonomy. The Board has repeatedly found single facility units appropriate despite uniform and centrally devised policies where these policies are implemented with autonomy by local managers or supervisors."). *See also Cargill, Inc.*, 336 NLRB 1114 (2001); *The Concrete Company*, 336 NLRB 1311, 1315 (2001).

The Regional Director's reliance on the Employer's corporate wide policies is flawed for two reasons. First, as noted above, the existence of consistent corporate-wide policies does not trump local autonomy. Here, as discussed below, the Employer maintains local autonomy within the North Central Region. Second, many of the corporate policies relied upon by the Regional Director and the Employer are not even Employer policies, but are the policies of TECO and Emera, to which the Employer has limited input. As the Employer's witness explained at the hearing, the Employer only has a representative on an advisory board with Emera to create

unified policies. The TECO policies and Emera policies cover the employment conditions of employees from New Mexico, to Florida and to Nova Scotia. Accordingly, this is not indicia of centralized personnel and labor relations.

The Employer's maintains autonomy within its North Central Region, as it does at its other regions. The employees in the North Central Region are supervised by four supervisors expressly assigned to the North Central Region and nowhere else. Those supervisors ultimately report to a manager who is only assigned to the North Central Region. Supervisors have discretion in terms of deciding whether to fill. Supervisors are the only individuals who meet with the employees in levying discipline. Supervisors have absolute autonomy in scheduling employees. In fact, Richard Estes, who is assigned to work in the business center, has so little contact with the regions that he was not sure how the service technicians are dispatched in the North Central Region. (T. 327, lines 9-11). Estes was also not sure about the hours of work for the North Central Region. (T. 328, lines 19-23). Supervisors have absolute discretion in granting or denying leave requests. Accordingly, while the Employer maintains corporate policies that cover all of its employees in North America, the Regional Director failed to acknowledge that the facts demonstrated that the North Central Region maintains its own autonomy.

2. Similarity of Employee Skill, Functions and Working Conditions

The Regional Director committed error by failing to find that the employees in the North Central Region have separate and distinct functions and working conditions. Regional management may decide to hire employees between 80% and 90% of the midpoint. Skills and responsibilities are regionally based. For example, service techs may do line spotting within the region if their location does not have line spotters. In some areas, meter readers are not

employed because meter reading is automated. Hours of work in the North Central Region are unique to other regions. The hours for the North Central Region are 7:00 a.m. to 4:00 p.m. or 7:30 a.m. to 4:30 p.m. with a one hour lunch.

3. Lack of Employee Interchange

While the Regional Director asserted that routinely interchanged between regions, the record evidence provided a very different tale. In fact, employees within a region have nearly no contact with employees from other regions. Work for the North Central Region is assigned within the region. The Employer requires that employees respond within thirty minutes. AS Maestras testified, in seven years, he left the North Central Region on two occasions, and one was for one day, and the other was to go to Boston, Massachusetts. The Employer attempted to argue at the hearing that employees routinely worked across regions. However, the Employer's evidence showed that employees occasionally worked within a region, but in a different office. For example, an employee assigned to work in Santa Fe would work in Taos. The record evidence also showed that in order to move from one region to another, an employee had to be considered in a pool with applicants from outside the company. This is further evidence of how strict the Employer is in allowing employees to work outside their assigned region. Accordingly, the Regional Director erred in finding that there is interchange.

4. Distance between Locations

The Employer's system map demonstrates that the Employer's established regions, including the North Central Region, are clustered in regional and Employer-established locations. (Employer Exhibit 2). The North Central Region is comprised of Santa Fe, Espanola and Taos, all geographically close to one another. The Employer attempted to argue at the hearing that other locations were close by basing its argument on the most remote site within a

region with the most remote location in a neighboring region. The geographical fact remains that the employees working in the North Central Region are hundreds of miles from the employees in the Eastern, Southeastern and Southwestern Regions. Accordingly, the Regional Director erred in discounting the distance between the locations at issue.

5. Bargaining History

The *only* bargaining history that exists with the Employer is less than systemwide bargaining units. While the Regional Director failed to address this issue, the undisputed record evidence shows that the Petitioner was certified to represent approximately 40 service technicians in the Metro Region, and approximately 10 dispatchers in the Metro Region. Even the IBEW represented a less than systemwide bargaining unit, although, the IBEW never reached a collective bargaining agreement. While the Regional Director has supervised three elections involving the Employer and its predecessor, he has never supervised a systemwide election. While the Employer has been party to two collective bargaining agreements, neither of them have pertained to a systemwide bargaining unit. Accordingly, the Regional Director erred by not considering the bargaining history.

B. Boundaries of the Requested Unit Conform to a Well-Defined Administrative Segment and Could be Established without Undue Disturbance to the Company's Ability to Perform its Necessary Functions

The Employer has, itself, created a well-defined administrative unit. The North Central Region is one of the Employer's established six regions. Unlike the Board in *PECO Energy Co.*, 322 NLRB 1074 (1997), where a union sought to organize two lone stations, here, the Petitioner seeks to be certified as the bargaining representative of one of the Employer's distinct and designated regions. The Regional Director for Region 28 made a similar finding in *Arizona Public Service Co.*, 310 NLRB 477 (1993), where the Regional Director found that a single

identifiable bargaining unit at one location was appropriate and overcame the utility presumption. The Employer's system map establishes its regions, including the inclusion of established purple boundary lines. The Employer also provides service to its customers within a region. Accordingly, the Regional Director erred in failing to rely on the Employer's established regions.

C. There is No Opposing Bargaining History on a Broader Basis

As set forth above, the Employer enjoys no bargaining history on a systemwide basis. To the contrary, the three bargaining units that have been certified by the Board have been smaller than a systemwide unit. Accordingly, the Regional Director erred by not considering the bargaining history.

V. CONCLUSION

For the reasons set forth herein, Petitioner United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, Local 412 respectfully requests that the Board grant this request for review and reverse the decision of the Regional Director and direct an election in the petitioned-for unit.

Respectfully submitted,

O'DONOGHUE & O'DONOGHUE, LLP

Dated: June 24, 2019

/s/ Lance Geren

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

NEW MEXICO GAS COMPANY

Employer

and

Case 28-RC-239902

UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING
AND PIPE FITTING INDUSTRY OF THE
UNITED STATES AND CANADA, AFL-CIO,
LOCAL 412

Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing request for review was served on the individuals listed below by electronic mail and through the Board's electronic filing service on the date set forth below.

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