

the Employers did not have an obligation to recognize and bargain with Local 7.

FACTS

A. Background Facts for 2004 to February 2009

Before July 2004, HERE Local 7 was the exclusive bargaining representative for the food, beverage, and cleaning employees working in several bargaining units at various facilities that are currently operated by Martin's Catering, Maryland Turf Club, and ARAMARK Corp. (collectively referred to as "the Employers") near Baltimore, Maryland. In 2004, its officers were Executive Secretary-Treasurer Roxie Herbekian and Local President Leon Allen.

In July 2004, the UNITE and HERE International Unions merged to form one consolidated international union known as UNITE HERE. Article 5, Section 3(a) of the UNITE HERE International Union constitution states that

[a] local shall organize workers, negotiate and enter into collective bargaining agreements with employers in its jurisdiction, enforce such agreements and represent workers in the adjustment and settlement of justified grievances against employers except to the extent that UNITE HERE, or an affiliate of which the local is a part, is charged with any such responsibilities.

Article 6, Section 1 states, in relevant part, "Joint boards shall organize, coordinate and supervise the activities of their affiliated local unions." Section 2(a) of the same article states "[t]he Presidents [of UNITE HERE] shall have the authority to direct a local union to affiliate with a joint board."

According to Herbekian, after the UNITE HERE merger, John Wilhelm, the former President of HERE International and new Co-President of UNITE HERE, informed her that Local 7 would have to affiliate with the Mid-Atlantic Regional Joint Board ("JB"), which had been part of the prior UNITE organizational structure. Local 7 and the JB, which were both now UNITE HERE affiliates, entered an affiliation agreement that became effective on September 1, 2004.³ Section 1 of that agreement states that the "Joint Board's Constitution shall be superior to Local 7's Bylaws, and, in the event of a conflict, the Joint Board's

³ UNITE HERE was also a party to the affiliation agreement.

Constitution shall prevail." Section 4 states that the affiliation was

(a) . . . intended to maintain continuity of representation. . . . The current collective bargaining representative shall remain, for at least the terms of all extant contracts, the collective bargaining representative for each such bargaining unit.

(b) It shall remain the responsibility and the prerogative of Local 7's officers and stewards to administer the collective bargaining agreement(s) as before, with the assistance of Joint Board representatives where appropriate.

Section 10 states that "all of Local 7's assets, including all monies, funds or property, tangible or intangible, will become the Joint Board's assets. . . . The Joint Board will assume and be responsible for all of Local 7's liabilities." The affiliation agreement also states that all HERE Local 7 employees would thereafter be JB employees under the supervision of the JB's Regional Director, Harold Bock. The affiliation agreement also specified that Local 7 Executive Secretary-Treasurer Herbekian would become the JB's Associate Director, i.e., subordinate only to Bock, and that Local 7 President Allen would become one of the JB's Assistant Directors.⁴ In her new position, Herbekian was also named the JB's Organizing Director and was no longer involved in contract negotiations or with administering contracts. Although Local 7 previously had an office on Eutaw Street in Baltimore, that office was closed in 2005 and Local 7's records, furniture, and equipment were moved into the JB's offices at 7-9 Mulberry Street in Baltimore. In short, Local 7 did not have any assets, liabilities, or employees after the affiliation.

As noted above, under the affiliation agreement the JB's constitution superseded any language in Local 7's Bylaws. Article 6, Section 3 of the JB's constitution states, in relevant part, "[n]o affiliated local union shall have the power to execute collective bargaining agreements with employers within its jurisdiction. . . ." Article 10, Section A.3. states, "[t]he Regional Director [of the Joint Board] shall approve and sign all collective bargaining agreements as negotiated with employers in the

⁴ In 2006, Allen moved away from the Baltimore area and no longer served as an assistant director for the JB. He returned to the area in February 2009 and began working for Local 7.

Mid-Atlantic Region." Article 12, Section 6 states, in relevant part:

(a) Every worker who accepts membership in an affiliated local union shall be deemed thereby to have authorized the Joint Board to act as his or her sole collective bargaining agent for the purpose of executing collective bargaining agreements. . . .

(b) Every worker who accepts membership in an affiliated local shall be deemed thereby to have exclusively authorized the Mid-Atlantic Region to act as his or her agent and bind him or her in the presentation, adjustment and settlement of all grievances, complaints or disputes of any kind . . . arising out of the employer-employee relationship. . . .

Article 13, Section 1 of the JB's constitution states, in relevant part, that "[a]ll initiation fees, if any, of new members of locals under the jurisdiction of the Joint Board, as well as the dues of such members, shall be paid to the Joint Board."

At the time of the 2004 affiliation, existing Local 7 members were not required to sign new dues checkoff cards to designate the JB as their bargaining representative. Over time, the name of the labor organization changed on the dual purpose card that new hires were asked to sign. New cards at first named "Local 7 of UNITE HERE" and then "Mid-Atlantic Regional Joint Board, UNITE HERE, Local 7" as the employee's bargaining representative.⁵

As will be set out in detail below, from mid-2004 to early 2007, the JB's own agents replaced the former HERE Local 7 officials in representing the unit employees at each facility by taking over contract negotiations, contract administration, and grievance processing. Although the timing of this personnel shift varied from one facility to another, it was complete at all of the facilities involved in this case by sometime in 2007. Above the shop steward level, the JB representatives handled all interactions with the Employers regarding grievance processing or other unit employee concerns. They also conducted numerous individual shop and annual meetings

⁵ The JB also provided a blank dues checkoff card that named only "UNITE HERE Mid-Atlantic Regional Joint Board." Unlike the other sample cards provided by the JB, this card was not signed or dated.

from late 2005 to early 2009, which were held either on location or at the JB's offices.⁶ From late 2005 to March 2008, Local 7 did not hold any membership meetings and, from at least 2006 to mid-2008, it did not have any officers.⁷ The LMRDA annual financial reports submitted on behalf of Local 7 for fiscal years 2005 through 2008 showed no assets, liabilities, or receipts, but an average annual membership of about 875. These reports were signed by the JB's controller and assistant controller.⁸ The Employers remitted all dues payments to the JB.⁹

Around March 2008, Local 7 held a membership meeting to elect local officers. Because Local 7 did not have any officers, JB Business Agent Rejil Solis presided over the meeting. Although the election was for all positions on Local 7's Executive Board, only a recording secretary and sergeant-at-arms were elected.¹⁰ Herbekian states that pursuant to Local 7's Bylaws, those two elected officials then appointed her vice-president, who serves as president absent an elected president. Herbekian states that in January 2009, she was appointed president of Local 7. Krista Strothman, who was an Organizing Coordinator for

⁶ The JB provided several notices announcing meetings from this period that listed one of its representatives as the contact person.

⁷ The JB asserts that Local 7 did not have any officers from the time of the affiliation in 2004 to March 2009. On the other hand, Herbekian states that she remained the Executive Secretary-Treasurer of Local 7 until 2006. There is no evidence of her taking any action in that capacity for the period of 2004 to March 2009. It is undisputed that Local 7 did not have any officers from 2006 to 2008.

⁸ These were short-form LM-4 reports, rather than the more comprehensive LM-2 reports, because Local 7 was reporting less than \$10,000 in total annual receipts.

⁹ One exception is the ARAMARK/Towson University location. ARAMARK states that even after the affiliation, it continued to remit dues to "HERE Local 7," although the monies were sent to the JB's address.

¹⁰ According to Local 7's Bylaws, its Executive Board was to be composed of a president, vice-president, recording secretary, financial secretary, and sergeant-at-arms. Delegates to represent the local at Joint Board meetings were also elected positions.

UNITE HERE International from 2001 to 2009, states that she was appointed vice-president of Local 7 in January 2009.¹¹

B. Specific Facts for Each Facility for 2004 to February 2009

Each employer here has operations at more than one location. **Martin's Catering** currently has four facilities, known as East (64 unit employees), West (158 unit employees), Valley Mansion (65 unit employees), and Crosswinds (124 unit employees). **Maryland Turf Club** has operations at both the Laurel Park and Pimlico horseracing tracks (about 75 unit employees combined). **ARAMARK**, which has contracts throughout the country, is the contract provider for certain services at the Baltimore Convention Center (about 200 unit employees), Johns Hopkins University (about 100 unit employees), Orioles Park/Camden Yards (about 700 unit employees), the Peabody Institute (about 15 unit employees), and Towson University (about 80 unit employees).¹² Thus, these cases involve several bargaining units spread out over 11 different locations. Before the 2004 merger, HERE Local 7 was a party to seven different collective-bargaining agreements covering the unit employees at nine facilities.¹³

1. Martin's Catering - Four Locations

Until late 2004, Local 7 officials Herbekian and Allen, along with Alyson Harkins, another HERE Local 7 agent, had negotiated and administered the contracts for the unit employees at Martin's East and West locations.¹⁴ By letter dated December 13, 2004, on JB letterhead, Herbekian informed Martin's human resources director that the UNITE HERE "merger maintains continuity of representation rights, we expect that you will honor in

¹¹ It is not clear who appointed Strothman to that position.

¹² ARAMARK did not obtain the service contracts for the Johns Hopkins and Peabody locations until July 1, 2006. Nevertheless, HERE Local 7 and the predecessor employers at these locations were parties to collective-bargaining agreements before July 2004 that recognized Local 7 as the unit employees' exclusive bargaining representative.

¹³ The employees at Martin's Valley Mansion and Crosswinds locations became represented by the JB/Local 7 after the 2004 merger.

¹⁴ As noted above, the Valley Mansion and Crosswinds locations were not then represented by Local 7.

full our existing Collective Bargaining Agreement. . . . In addition, Local 7 is now affiliated with the Joint Board, please make dues remittance checks payable to the UNITE HERE Mid-Atlantic Regional Joint Board."

Subsequently, in early 2005, when negotiations were underway for an agreement to succeed the parties' 2002-2004 contract, JB Regional Director Bock replaced Allen as the lead negotiator for the Union, although Allen remained present during negotiations. The parties agreed to a contract with a term of 2005 to 2007 and the recognition clause was changed to name "UNITE HERE Local 7" as the employees' bargaining representative. Bock signed this agreement, along with two other individuals, on behalf of the Union.¹⁵

By letter dated November 10, 2005, Bock informed Martin's human resources director that Rebecca Hess, a JB business agent since before the merger, would replace Harkins as the Union representative for all of the Martin's locations. Martin's asserts that from November 2005 to November 2007, it dealt exclusively with Hess, except for limited exchanges with Bock.¹⁶ During this period Hess persuaded Martin's to enter into contracts with the Union covering its newly opened Valley Mansion facility and its Crosswinds facility.¹⁷

In 2007, JB Business Agent Hess served as the Union's lead negotiator for successor contract negotiations. The negotiations covered all four of Martin's facilities, although the parties entered into one contract covering the East, West, and Valley Mansion facilities and a separate contract for Crosswinds. Both contracts have a term of October 2007 to September 2010 and recognition clauses that name "Mid-Atlantic Regional Joint Board, UNITE HERE, Local 7" as the employees' bargaining representative. Bock alone

¹⁵ Herbekian asserts that the two other individuals who signed for the Union were shop stewards at Martin's.

¹⁶ Bock's letter and Martin's assertion contradict Herbekian's position that Allen and Harkins, originally from Local 7, remained the Union representatives for the Martin's facilities until 2007.

¹⁷ HERE Local 25, which also became affiliated with the JB after the 2004 merger, was the historical representative of the unit employees at the Crosswinds facility. Hess, along with Bock, persuaded Martin's to include Crosswinds with the other facilities that had historically been represented by Local 7.

signed those agreements for the Union. Around November 2007, JB Business Agent Solis replaced Hess as the Union representative servicing all of the Martin's locations and he continued in that capacity through March 2009.

Regarding the shop stewards at Martin's, historically the business agent servicing a facility appoints the shop stewards for that facility.¹⁸ At Martin's East, Barbara Tootill states that she has been the only shop steward there for the past 20 years. Herbekian states that she appointed Tootill, but the JB asserts that Hess did so. The JB also lists nine other individuals as stewards or alternates for that facility. At Martin's West, Brian Brooks states that he has been the shop steward there for the past three years. Herbekian states that Brooks has been the shop steward since at least 2000 and was appointed by former Local 7 President Allen. The JB asserts Hess appointed Brooks and lists 14 other individuals as stewards or alternates for that facility. At Martin's Valley Mansion, Maryann Pabis states that she has been the shop steward since early 2009. It is undisputed that JB Business Agent Solis appointed her; the JB also lists one other individual as a steward or alternate for that facility. Finally, at Martin's Crosswinds, James Brown serves as the shop steward. Herbekian states that he was appointed by John Boardman, the president of UNITE HERE Local 25, but the JB asserts that Hess did so and lists two other individuals as stewards or alternates at that facility.

2. Maryland Turf Club - Two Locations

Until mid-2004, Herbekian negotiated and administered the contract for the unit employees working for Maryland Turf Club ("MTC") at both the Laurel Park and Pimlico horseracing tracks. Subsequently, JB officials assumed the representational duties for the unit employees. Although it is not clear when it was negotiated, the contract that was effective from December 2003 to December 2006 was signed by Bock on behalf of "Mid-Atlantic Regional Joint Board, UNITE HERE, Local 7." Communications between MTC and the Union regarding representational issues, including grievance processing, show that JB Business Agent Hess has served as the Union representative for the MTC unit since August 2005. In December 2006, Hess signed the agreement

¹⁸ Herbekian states that the business agent recruits and the Local president officially appoints the stewards. However, she identifies several stewards as having been appointed by herself, when she served as Local 7's Executive Secretary-Treasurer, or by JB Business Agent Solis.

extending the contract to February 2007, which named "Mid-Atlantic Regional Joint Board, UNITE HERE" as the Union. She then served as the lead negotiator in successor contract negotiations. The parties agreed to a contract with a term of December 2006 to March 2010 and the recognition clause named only "Mid-Atlantic Regional Joint Board, affiliated with UNITE HERE International Union." Bock and Hess signed for the Union. Around November 2007, JB Business Agent Solis replaced Hess as the Union representative for the MTC unit.

Linda Stuchinski and Shirley Hott have served as the MTC shop stewards since before the 2004 merger. Local 7 and the JB both claim that one of their representatives appointed Stuchinski and Hott as the stewards.

3. ARAMARK Corp. - Five Locations

a. Baltimore Convention Center

From before the UNITE HERE merger until about 2006, Local 7 Representative Allen or another Local 7 agent served as the Union representative for this facility.¹⁹ At that time, Allen was replaced by Hess, who was subsequently replaced by Solis.²⁰ Hess, along with two shop stewards, negotiated the most recent collective-bargaining agreement, which had a term of September 2006 to September 2009. The recognition clause in that contract names "Mid-Atlantic Regional Joint Board, UNITE HERE" as the employees' bargaining representative. Bock, along with two shop stewards, signed that contract on behalf of the Union.

Sharon Bell, LaTessa Cox, and Dawn Driver have served as shop stewards at this location since before the 2004 merger.²¹ Herbekian states that HERE Local 7 provided Bell

¹⁹ Contrary to other evidence, the JB asserts that its business agent, Hess, became the Union representative for this facility in mid-2005. ARAMARK asserts that HERE Local 7 official David Snyder served as the Union representative from 2004 to 2005 and that Local 7 Representative Allen served as the representative in 2005. Hess then took over, and was replaced by Solis in 2007.

²⁰ Herbekian states that even when other Union representatives were servicing this location, employees occasionally contacted her when they had problems.

²¹ Local 7, the JB, and ARAMARK each names as additional stewards one or two additional individuals who were not identified by the other two parties. All those named are alleged to have served since before the merger.

and Cox with shop steward training before the merger. Local 7 and the JB both claim that their representatives appointed these stewards.

b. Johns Hopkins University

From before the merger until 2006, Local 7 agents Allen and Harkins served as the Union representatives for this facility. In late 2006, Harkins participated in only the first few negotiation sessions for the current contract. Bock then handled negotiations and the parties agreed to a contract with a term of January 2007 to January 2010. The recognition clause in that agreement names "UNITE HERE Mid-Atlantic Regional Joint Board" as the employees' bargaining representative. Bock and three shop stewards signed the contract for the Union. In early 2007, Harkins was replaced by Hess, who was then replaced by Solis.²²

Gladys Burrell, Marie Wilson, Marvel Brandon, and Vernetta Morton have served as stewards at this location at least since 2007.²³ Burrell states that she has been a steward here for about 27 years and that HERE Local 7 provided her with shop steward training before the merger. Herbekian states that HERE Local 7 provided shop steward training to all four individuals before the merger. Local 7 and the JB both claim that their representatives appointed these stewards.²⁴

c. Orioles Park/Camden Yards

From before the merger until 2005 or 2006, a Local 7 agent served as the Union representative for this facility.

²² Allen had moved away from the Baltimore area in 2006. Contrary to other evidence, Shop Steward Gladys Burrell states that Harkins was replaced by Hess in late 2006, when Hess arrived at the facility and introduced herself as the new representative from "Mid-Atlantic UNITE HERE Local 7." Burrell, who now also serves as financial secretary for Local 7, states that she continued to contact Herbekian with work related problems even after Hess took over.

²³ Herbekian states that each of these individuals has been a steward at the facility since before the 2004 merger.

²⁴ Local 7 and the JB also provided the names of two or three other individuals they appointed as stewards. Unlike the individuals named above, there was no consensus between the two unions as to these additional names.

The Local 7 agent was replaced by Hess, who was then replaced by Solis.²⁵ Bock negotiated the two most recent agreements, the first dated March 2007 and the second September 2008, that extend the terms of the 2003-2007 contract, with some modifications, to 2010. The 2007 agreement names "Mid-Atlantic Regional Joint Board, UNITE HERE" as the bargaining representative while the 2008 agreement only references "UNITE HERE," although it is on JB letterhead. Bock alone signed both of these agreements for the Union.

Linda Scott and Daniel Hahn have been shop stewards at this facility since before the 2004 merger.²⁶ Herbekian states that HERE Local 7 provided Scott and Hahn with shop steward training before the merger. Local 7, the JB, and ARAMARK also provided the names of other individuals they allege served or are currently serving as stewards at the facility. With limited exceptions, there is no consensus as to these other individuals. Regardless, Local 7 and the JB both claim that they appointed all of the stewards at the facility.

d. Peabody Institute

Allen served as the Union representative for this facility until 2006, when he was replaced by Harkins. In 2007, she was replaced by Hess, who was then replaced by Solis in 2008.²⁷ A JB representative (it is not clear which one) bargained on behalf of the Union for the current contract, which runs from July 2007 to November 2010.²⁸ The

²⁵ Local 7 asserts Allen was the representative; ARAMARK asserts it was Alyson Harkins. ARAMARK and the JB assert that Hess became the Union representative in mid-2005. Local 7 dates the change in 2006.

²⁶ This information comes from Herbekian. ARAMARK states that Hahn has been a steward only since 2008.

²⁷ Contrary to other evidence, the JB asserts that Hess became the Union representative for this facility in mid-2005. Peabody Shop Steward Marlene Jackson states that Hess replaced Allen as the Union representative in 2004 and that Solis replaced Hess about two years later. Jackson states that Hess said that she was with "UNITE HERE Joint Board something Local 7" when she first met her.

²⁸ The JB provided a letter dated April 27, 2007 from Bock to the manager at Peabody asking that he contact Hess to arrange negotiations. Shop Steward Jackson recalls contacting Solis twice to ask about the progress of negotiations. ARAMARK states that Bock, Hess, Theresa

recognition clause of that contract names "Mid-Atlantic Regional Joint Board, UNITE HERE, Local 7" as the employees' bargaining representative. Bock and Jackson signed the contract for the Union.

Jackson has been the shop steward at Peabody since before the 2004 merger.²⁹ She states that HERE Local 7 provided shop steward training before the merger and that the JB provided it after the merger. Both Local 7 and the JB assert that they appointed Jackson as steward.

e. Towson University

From before the merger until 2006, Allen served as the Union representative for the Towson location. He was replaced by Hess, who was then replaced by Solis.³⁰ Solis, along with Shop Steward Wade Robinson, negotiated the current contract, which has a term of September 2007 to August 2011. The recognition clause in that contract names "Hotel and Restaurant Employees Union, Local 7" as the employees' bargaining representative. Bock alone signed this contract for the Union.

Robinson has been a shop steward at Towson since 2007.³¹ It is undisputed that the JB appointed him.

C. Events Beginning in February 2009

In February 2009, Bruce Raynor, Co-President of UNITE HERE International and former President of UNITE International, began efforts to disaffiliate the former UNITE entity from the merged international. Subsequently,

Engelman, who is a JB assistant director, and Jackson have been involved in contract negotiations.

²⁹ The JB asserts that another individual also serves as a shop steward at Peabody.

³⁰ Contrary to other evidence, the JB asserts that Hess became the Union representative for this facility in mid-2005. ARAMARK also provides a slightly different timeline. It states that Allen and Local 7 official Snyder served as the Union representatives in 2004 and that Allen alone continued into 2005. Hess then took over, but was replaced by Solis in 2007.

³¹ Local 7 and ARAMARK each list three other employees as stewards at Towson. Stephanie Tracy is the only name on both lists, and she allegedly has been a steward since early 2009.

around February 16, Bock told Herbekian that the JB was going to leave UNITE HERE. Herbekian responded that Local 7 would remain with UNITE HERE.³² About one week later, Bock told Herbekian that he would not allow Local 7 to disaffiliate from the JB. Around that time, notices were posted at some facilities announcing a Local 7 membership meeting to be held at the JB's offices on Mulberry Street in Baltimore.³³

On February 26, the General Executive Board for UNITE HERE International gave all affiliated local unions the right to disaffiliate from any Joint Board.

On March 3, Local 7 held a membership meeting. Herbekian explained the split at the International level, the current organizational structure of the Union, and that the JB had scheduled a vote for March 7 on whether to disaffiliate from UNITE HERE. JB officials Bock and Solis were present and stated that Local 7's officers did not have the authority to hold the meeting and that it was illegal. The members present passed a motion stating that if the JB disaffiliated from UNITE HERE International, Local 7 would disaffiliate from the JB.³⁴

On March 7, the JB held a meeting attended by delegates from all of its affiliated locals to vote on whether to disaffiliate from UNITE HERE International. The vote was 62 to 8 in favor of disaffiliation, with the entire delegation from Local 7 and a delegate from another local union voting against.

By letters dated March 12, Bock informed each of the Employers that the JB had disaffiliated from UNITE HERE, but that the JB remained their employees' exclusive bargaining representative. Bock also stated that the same JB officials and shop stewards would continue representing the unit employees. Finally, Bock stated that the Employers should continue remitting dues to the JB and making contributions to the same benefit funds.

³² Around this time, Herbekian began to remove Local 7 contract records, organizing information, employee lists, boycott information, and signs from the JB's offices. She subsequently had only limited access to those offices.

³³ It is unclear who posted those notices.

³⁴ The members also elected the remaining officers for Local 7's Executive Board at this meeting.

By letters dated from mid- to late-March, Herbekian informed the Employers that Local 7 was their employees' bargaining representative, that the JB was no longer affiliated with UNITE HERE, and that the Employers should not deal with any representatives from the JB.³⁵ Around the same time, John Wilhelm, on behalf of UNITE HERE International, also sent letters to the managers for some of these facilities stating that some Joint Boards had disaffiliated from UNITE HERE, that it was a violation of the UNITE HERE constitution, and that the Employers had an obligation to continue recognizing and bargaining with UNITE HERE locals.

The Employers then responded to the competing recognition demands from Local 7 and the JB. **Martin's Catering** continued to recognize the JB as the exclusive bargaining representative for its employees and, as a result, denied access to Local 7 agents but not to JB agents.³⁶ However, since March 2009, it has been placing deducted dues in escrow. **MTC** has tried not to take sides in the dispute, going so far as to contact Region 5 for guidance on how to handle the competing recognition claims. It remains willing to grant both organizations access to its facilities, so long as they follow the terms of the current contract by providing some notice of the visit. Since April 2009, it has placed deducted dues in escrow. **ARAMARK Corp.**, on behalf of each of its relevant facilities, sent letters to both unions stating that it would only deal with on-site shop stewards, would not grant access to any other union officials, would continue to adhere to the collective-bargaining agreements, and would place collected dues in escrow.

³⁵ These letters were on UNITE HERE Local 7 letterhead. It was the first official communication on Local 7 letterhead since 2004.

³⁶ In March 2009, Martin's attempted to negotiate with JB Business Agent Solis a freeze of the upcoming contractual wage and 401(k) contribution increases. After meeting with some unit employees, Solis informed Martin's that the JB agreed to the temporary freeze. When employees who supported Local 7 learned of this change, they filed a grievance through Martin's West Shop Steward Brooks. Herbekian, on behalf of Local 7, also sent a letter to Martin's stating that the JB was not authorized by the unit employees or Local 7 to agree to the changes and that Martin's should adhere to the terms of the contract. Martin's then agreed to not implement the freeze, but allegedly informed the employees that Bock was responsible for the change in its position.

Around March, Local 7 began to take a more proactive role as the unit employees' bargaining representative. Allen, who was now serving as a Local 7 representative, visited the Laurel Park, Peabody, and Johns Hopkins locations to either meet with employees or distribute Local 7 flyers.³⁷ His visit to MTC's Laurel Park location created some disruption because neither the unit employees nor management knew who he was. Local 7 Vice-President Strothman also attempted to distribute Local 7 literature at Martin's locations. Herbekian sent a letter to Martin's protesting the JB's agreement to freezes for the upcoming contractual wage and 401(k) contribution increases. Herbekian states that either she or Allen have assisted shop stewards at Camden Yards and Peabody from behind the scenes in processing grievances and that she has collected issues from the Camden Yards employees that they want addressed in the next contract.³⁸ She states that Local 7 also began processing grievances at Johns Hopkins, but then ARAMARK denied access to its agents.

On April 7, Local 7 held a follow-up membership meeting in the basement of a local church, rather than at the JB's offices on Mulberry Street. About 150 members attended and they voted 108 to 41 to disaffiliate from the JB.³⁹

On April 14, Herbekian, on behalf of Local 7, filed the Section 8(a)(1), (2), and (5) charges in the current case. The 8(a)(5) charges allege that the Employers have failed and refused to recognize and bargain with Local 7 as their employees' exclusive bargaining representative.

ACTION

We conclude that the Region should dismiss, absent withdrawal, the Section 8(a)(5) aspect of the charges. First, we conclude that during the merger period of 2004 to 2009, the JB displaced Local 7 as the unit employees' exclusive bargaining representative. Although it was

³⁷ Because Martin's and ARAMARK will deny access to officials from both organizations, he can no longer visit those facilities.

³⁸ Because of ARAMARK's access restrictions, only the shop stewards interacted with management.

³⁹ As mentioned above, Local 7 had reported an average of about 875 members over the past four years. The units covered by these charges contain around 1580 employees.

improper for Local 7, as the original exclusive bargaining representative, to delegate its responsibilities to the JB, no party challenged the JB's status within the Section 10(b) period. [FOIA Exemptions 5 and 7(A)]

.] Thus, the JB remains the bargaining representative in these units and the Employers did not have an obligation to recognize and bargain with Local 7.

A. The JB Became the Unit Employees' Section 9(a) Representative During the 2004-2009 Merger Period

It is well settled that unions may designate agents to represent employees on their behalf,⁴⁰ including for the purpose of conducting contract negotiations.⁴¹ It is equally clear that one labor organization may act as the agent of another.⁴² However, while an exclusive bargaining representative may delegate some of its representational duties to an agent, it may not delegate its Section 9(a) responsibilities.⁴³ Thus, the Board has held that while an international union or subsidiary district can delegate functions such as contract negotiation or grievance processing to a local union, the statutory duty of fair representation cannot itself be delegated.⁴⁴ This is

⁴⁰ See, e.g., Rath Packing Co., 275 NLRB 255, 256 (1985) (citing Spriggs Distributing Co., 219 NLRB 1046, 1049 (1975), and Independent Stave Co., 148 NLRB 431, 436 (1964), enfd. 352 F.2d 553 (8th Cir. 1965), cert. denied 384 U.S. 962 (1966)).

⁴¹ See Goad Company, 333 NLRB 677, 679 (2001) (quoting General Electric Co. v. NLRB, 412 F.2d 512, 516 (2d Cir. 1969)).

⁴² See, e.g., Mine Workers Local 17, 315 NLRB 1052, 1064 (1994) (where international union was signatory to contract but directed that districts and locals share in grievance processing, local acted as international's agent even though both were separate legal entities), enfd. 85 F.3d 616 (4th Cir. 1996) (unpublished table decision); Kodiak Island Hospital, 244 NLRB 929, 930 (1979).

⁴³ See Goad Co., 333 NLRB at 677 n.1, 680; Sherwood Ford, Inc., 188 NLRB 131, 134 (1971).

⁴⁴ See Mine Workers Local 17, 315 NLRB at 1063-64 (quoting United Mine Workers (Garland Coal Co.), 258 NLRB 56, 59 (1981), enfd. 727 F.2d 954 (10th Cir. 1984)); Reading Anthracite Co., 326 NLRB 1370, 1371 (1998).

because only employees have the statutory power to confer 9(a) status on a chosen representative,⁴⁵ and employers are only required to recognize and bargain with their employees' 9(a) representative.⁴⁶

In determining whether a union has improperly delegated its Section 9(a) status to another union, the Board considers both the content of any agreements between the two unions and the conduct of the original union in carrying out its Section 9(a) responsibilities. In Goad Co., Plumbers Local 420, based in Philadelphia, was the Section 9(a) representative for a bargaining unit located in Missouri.⁴⁷ Local 420 wanted to have its sister local based in St. Louis, Local 562, represent the unit. The Board affirmed the ALJ's conclusion that the employer lawfully refused to bargain with Local 562 because Local 420 "did not simply enlist the aid of an agent, but transferred its representational responsibilities to Local 562."⁴⁸ In finding an improper transfer of 9(a) status, the ALJ relied on the terms of the service agreement between the locals, including that it delegated all representational functions to Local 562, stated a Local 562 appointee would perform those functions, required the unit's dues and fees to be paid to Local 562 in exchange for its services, and required Local 562 to indemnify Local 420 for any breach of the duty of fair representation.⁴⁹ The ALJ also noted that when the employer contacted Local 420's business agent about upcoming negotiations, he stated that Local 562's business agent was "the guy we're going to . . . I'm not partaking in it."⁵⁰

⁴⁵ See, e.g., Standard Oil Co., 92 NLRB 227, 236 (1950), remanded on other grounds 196 F.2d 892 (6th Cir. 1952).

⁴⁶ See, e.g., Medo Photo Supply Corp. v. NLRB, 321 U.S. 678, 683-684 (1944).

⁴⁷ 333 NLRB at 677.

⁴⁸ Id. at 677, n.1.

⁴⁹ Id. at 679, 680.

⁵⁰ Id. at 680. The ALJ also noted that the two locals entered the service agreement after prior failed attempts by Local 420 to substitute Local 562 as the unit employees' 9(a) representative. Id.

Goad relied heavily on Sherwood Ford,⁵¹ where the Board affirmed the ALJ's decision that the employer had lawfully refused to bargain with a union's purported agent. In Sherwood, the unit employees sought to have Teamsters Local 604 serve as their bargaining agent rather than their 9(a) representative, Automobile Salesmen's Local 1, so as to improve their outcome in negotiations.⁵² In holding that the employer was not obligated to bargain with Local 604, the ALJ held that the two unions had attempted an unlawful substitution of representatives, not a permissible delegation of duties.⁵³ The ALJ relied on the terms of a resolution the employees had passed that designated Local 604 as their and Local 1's collective-bargaining representative, stated Local 604 would receive dues according to its own dues schedule in exchange for its services, and required Local 1's officers "to follow and carry out all instructions received from . . . Local 604."⁵⁴ The ALJ also noted that the unit employees had signed cards for Local 604 and had begun paying Local 604's higher dues, which Local 1 collected and remitted to Local 604.⁵⁵

On the other hand, in Nevada Security Innovations, Ltd.,⁵⁶ a servicing agreement between a certified national union and its affiliated local did not excuse the employer's duty to bargain because there was no delegation of bargaining rights to the local union. The Board noted that, while some representational duties had been delegated to the local, the agreement stated that the national would be "in charge of negotiations."⁵⁷ It also relied on a declaration from the national union's secretary-treasurer, stating that the national remained the "certified bargaining representative for the unit employees and has never delegated authority elsewhere," to evidence the

⁵¹ 188 NLRB at 131.

⁵² Id. at 132.

⁵³ Id. at 134.

⁵⁴ Id. at 132, 134.

⁵⁵ Id. at 132 n.3, 134. As in Goad, the ALJ in Sherwood also relied on evidence of prior unsuccessful attempts by Local 1 to substitute Local 604 as the employees' 9(a) representative. Id. at 131-132, 134.

⁵⁶ 341 NLRB 953, 953 n.1, 956 (2004).

⁵⁷ Id. The agreement also stated that the local was to keep the national informed of its activities. Id. at 954.

national's "consistent willingness" to serve as the unit employees' 9(a) representative.⁵⁸

In the instant case, as in Goad and Sherwood, the evidence shows that during the merger period of mid-2004 to early 2009, Local 7 did not merely delegate some of its duties to the JB, rather it substituted the JB as the exclusive bargaining representative for the various unit employees. In reaching this conclusion, we rely both on the terms of the relevant documents and the facts showing that during the merger period the JB was the only functioning entity while Local 7 was a mere shell.

Initially, the terms of the parties' affiliation agreement indicate that the JB was being substituted as the new 9(a) representative. The provision that the JB would take over all of the Local 7's assets and employees, made it impossible for Local 7 independently to carry out any representational responsibilities. The provision stating that the JB assumed all of Local 7's liabilities further indicates that Local 7 was completely "bowing out" rather than delegating some duties to an agent.⁵⁹

Moreover, Section 1 of the affiliation agreement made the terms of the JB's constitution superior to any language in Local 7's Bylaws, and the JB's constitution establishes that the JB is to serve as the 9(a) representative for any unit employees. For example, Article 6, Section 3 of the JB's constitution states that local unions do not have the authority to execute contracts. Article 10, Section A.3. states that only the JB's Regional Director could approve and sign collective-bargaining agreements.⁶⁰ Article 12, Sections 6(a) and (b), clearly state that local union members "have authorized the Joint Board to act as his or her sole collective bargaining agent for the purpose of executing collective bargaining agreements" and to "bind him or her in the presentation, adjustment and settlement

⁵⁸ Id. at 953 n.1, 955.

⁵⁹ Cf. Goad Co., 333 NLRB at 679, 680 (indemnification clause in servicing agreement that required alleged principal local to be held harmless for any breach of duty of fair representation caused by alleged agent local showed alleged principal local was "bowing out").

⁶⁰ See Sherwood Ford, Inc., 188 NLRB at 134 (improper delegation of 9(a) responsibilities, rather than proper designation of bargaining agent, where employee resolution required principal union "to follow and carry out all instructions received from" agent union).

of all grievances, complaints or disputes of any kind . . . arising out of the employer-employee relationship."⁶¹ Finally, Article 13, Section 1 states that all initiation fees and dues of new members must be paid to the JB.⁶² Together, these provisions indicate that Local 7 and the JB were agreeing that the latter would serve as the employees' exclusive bargaining representative.⁶³

This is not to say that these documents alone established the JB as the 9(a) representative. Indeed, the affiliation agreement provided that Local 7 retained the "responsibility and prerogative" to administer the collective bargaining agreements (Section 4(b)). Nevertheless, the substantive reality is that Local 7 did not exercise that authority. By early 2007, the JB had taken over all representational functions for the bargaining units involved here. It is undisputed that Local 7 did not have any officers for the period of 2006 to 2008 and did not hold any membership meetings from late 2005 to 2008.⁶⁴ Nor has Local 7 had any employees since the

⁶¹ Id. See also Goad Co., 333 NLRB at 679 (union intended substitution of 9(a) representative where servicing agreement provided no representative role for original local and stated new local would carry out all representational duties through its own appointee).

⁶² See Goad Co., 333 NLRB at 680 (improper transfer of 9(a) status evidenced by fact unit employees' dues and initiation fees to be paid to new local in exchange for its services); Sherwood Ford, Inc., 188 NLRB at 134 (same).

⁶³ Cf. Nevada Security Innovations, Ltd., 341 NLRB at 953 n.1, 956 (employer violated Section 8(a)(5) by refusing to bargain with certified national union because it did not transfer bargaining rights to local where, among other things, servicing agreement stated national union would be in charge of negotiations).

⁶⁴ Indeed, it is unclear if Local 7 sent any delegates to Joint Board meetings during the merger period. As the JB's Associate Director, Herbekian would have been present at Joint Board meetings, but there is no evidence that she attended in the dual capacity as a Local 7 delegate. While the JB asserts that Local 7 had three or four delegates who attended Joint Board meetings, it also states that Local 7 did not have any officers until March 2008. These assertions are inconsistent because Local 7's Bylaws state that Joint Board delegates are Local 7 officers. Herbekian does not refer to any Local 7 delegates. Thus, the evidence, as opposed to the party assertions, shows that Local 7 did not have any officers from 2006 to 2008 and

affiliation in 2004. Herbekian became the JB's Associate Director and Organizing Director, with no role in negotiations or contract administration. Although some shop stewards occasionally contacted her for assistance, she was not the official Union representative for any facility. Since late 2004, the Employers have remitted all dues to the JB.⁶⁵ Consistent with the preceding facts, Local 7's LM-4 forms for 2005 to 2008, which were filed by the JB's controller, show that Local 7 remained nothing more than a shell of an organization with no employees, assets, or liabilities.⁶⁶

In contrast, by early 2007 business agents from the JB were servicing all of the bargaining units. More specifically, in fall 2005, Hess, a JB business agent, replaced Local 7 agents Allen and Harkins as the Union representative servicing the Martin's Catering and MTC bargaining units. Hess is responsible for extending the JB's representation to Martin's Valley Mansion and Crosswinds facilities, neither of which had any prior history with Local 7. In 2006, Hess replaced Allen as the servicing agent at ARAMARK's Baltimore Convention Center, Camden Yards, and Towson locations. Finally, in early 2007, she replaced Harkins as the servicing agent at

that it sent delegates only to the JB meeting in March 2009, where they voted that the JB remain affiliated with UNITE HERE International.

⁶⁵ Sherwood Ford, Inc., 188 NLRB at 132 n.3, 134 (original union intended substitution of 9(a) representative where unit employees signed cards for new union and had been paying its higher dues rate, which original union collected and remitted to new union).

⁶⁶ Thus, Hoyle Lowdermilk, Inc., et al., 1985 WL 54707, Cases 27-CA-9131, 9132 (Advice Memorandum dated August 16, 1985), which UNITE HERE International has relied on in related cases to assert that its locals have remained the 9(a) representative, is inapposite. In that case, a group of employers lawfully refused to sign a contract with an international union where the local union was the certified representative. The local never entered any agreement in which it relinquished its 9(a) status and it remained a viable entity whose representatives took a substantive role throughout bargaining. Indeed, while the international sought execution of its own contract, it acknowledged that the employers could bargain a separate contract with the local that would supersede its own.

ARAMARK's Johns Hopkins and Peabody locations.⁶⁷ Solis, another JB business agent, subsequently replaced Hess at each of these locations. Above the shop steward level, the JB agents handled all interactions with the Employers regarding grievance processing or other unit employee concerns. From late 2005 to early 2009, it was the JB that held numerous individual shop or annual meetings for the unit employees. In short, since 2007, Local 7 agents have had no role in contract enforcement or had any official interaction with the bargaining units. Indeed, when Allen went to MTC's Laurel Park location in March 2009 to distribute Local 7 literature, the unit employees did not know who he was.

The JB's agents have also presided over all contract negotiations for the bargaining units since at least 2007. For the Martin's Catering units, Bock replaced Allen as the Union's lead negotiator in 2005 and then Hess served as the lead negotiator in 2007, which resulted in the parties' current contract. For the MTC unit, Bock signed the 2003 to 2006 agreement, Hess signed the two-month extension of that agreement, and then she served as the Union's lead negotiator in 2007, which resulted in the parties' current contract. Finally, for the five ARAMARK units, either Bock, Hess, or Solis negotiated the current contract for each location, and the beginning dates for those agreements varies between late 2006 and late 2007. Consistent with the terms of the Article 10, Section A.3. of the JB's constitution, Bock signed all of the current collective-bargaining agreements, although shop stewards at three ARAMARK locations also signed the contracts for those locations.⁶⁸ These facts make clear that by 2007, the transfer of bargaining rights from Local 7 to the JB had been complete and that only JB officials have been involved in contract negotiations since then.⁶⁹

⁶⁷ It is worth noting that, with regard to the ARAMARK locations, these dates are those most favorable to Local 7. There is other evidence in the investigative file showing that JB agents became the official representatives for most of those bargaining units at an earlier date.

⁶⁸ Those locations are the Baltimore Convention Center, Johns Hopkins, and Peabody.

⁶⁹ Cf. Goad Co., 333 NLRB at 680 (original local intended substitution of 9(a) representative where its business agent responded to employer that he was not "partaking" in negotiations and that new local's business agent was bargaining representative).

Based on these facts, we conclude that, by 2007, Local 7 had delegated its Section 9(a) responsibilities to the JB. Had the Employers timely challenged that transfer of representative status, under the principles set forth in Goad and Sherword Ford, they would not have been obligated to deal with the JB as their employees' exclusive bargaining representative.⁷⁰ However, the Employers did not challenge that transfer and their voluntary recognition of the JB as their employees' Section 9(a) representative occurred well outside the current Section 10(b) period. Even if an employer grants Section 9(a) recognition to a non-majority union, the Board will not entertain a challenge to that recognition made more than six months later.⁷¹ Thus, by virtue of Local 7's transfer of representational responsibilities and duties to the JB, and the Employers' acquiescence in that transfer, we conclude that the JB became the bargaining representative of these Employers' employees during the 2004 to 2009 merger period.⁷²

⁷⁰ Thus, Newell Porcelain Co., 307 NLRB 877 (1992), which UNITE HERE International has relied on in related cases to assert that its locals have remained the 9(a) representative, is inapposite. In Newell, the employer timely challenged the efforts of an international union to displace a newly affiliated, independent union as the exclusive bargaining representative. Id. at 878.

⁷¹ See Machinists Local Lodge 1424 v. NLRB (Bryan Mfg. Co.), 362 U.S. 411, 416-417, 419 (1960) (finding employer's 8(b)(1)(A) allegation time-barred under Section 10(b) because entire basis for allegation was union's lack of majority status when original contract was signed outside 10(b) period); Raymond F. Kravis Center for the Performing Arts, 351 NLRB 143, 144 & nn.8, 9 (2007), enfd. 550 F.3d 1183 (D.C. Cir. 2008).

⁷² This conclusion is not inconsistent with the Board Order denying review to the Regional Director's decision to dismiss the RM petition in American Etc. d/b/a Royal Laundry, Case 20-RM-2868. In denying review, the Board needed only to conclude that no question concerning representation existed. There a joint board and its affiliated local union both disaffiliated from UNITE HERE International. Because their relationship and working arrangement were unchanged pre- and post-disaffiliation, the Board did not have to consider whether one or the other or both entities were the Section 9(a) representative. Neither UNITE HERE nor Workers United challenged the Regional Director's conclusion based on the circumstances of that case that the local remained the 9(a) representative throughout the merger period.

B. There are No Indicia to Support a Finding that Local 7 Remained the Section 9(a) Representative During the Merger Period

Local 7 points to several facts that, in its view, prove it has at all times remained the Section 9(a) representative of the bargaining units at issue here. First, despite the terms of the affiliation agreement and the JB's constitution discussed above, Local 7 asserts that other provisions show that it remained the 9(a) representative. It relies on Article 5, Section 3(a) of the UNITE HERE International constitution to argue that local unions are responsible for negotiating, entering into, and enforcing collective-bargaining agreements. However, that article states that local unions are to fulfill those obligations "except to the extent that UNITE HERE, or an affiliate of which the local is a part, is charged with any such responsibilities." Under the affiliation agreement and the JB's constitution, the JB, and not Local 7, is charged with the relevant responsibilities.

Local 7 then relies on Sections 4(a) and (b) of the affiliation agreement to support its position. Section 4(a) states that the affiliation was "intended to maintain continuity of representation . . . [and that] the current collective bargaining representative shall remain." Section 4(b) states that "[i]t shall remain the responsibility . . . of Local 7's officers and stewards to administer the collective bargaining agreement(s)" with the assistance of JB agents.⁷³ In quoting these sections, Local 7 omits the language in Section 4(a) limiting the provision to "at least the terms of all extant contracts." All of the contracts in place when the affiliation agreement was executed have long since expired and have been replaced. The affiliation agreement does not provide definitive guidance on which labor organization was to serve as the employees' exclusive representative after those contracts expired. Moreover, as detailed above, regardless of any authority granted to Local 7 in the affiliation agreement, it failed to actually exercise that authority.

Second, Local 7 claims that it originally appointed some of the current shop stewards. However, it is also clear that the JB also appointed some of the current

⁷³ Herbekian's letter of December 13, 2004, to Martin's Catering makes similar representations.

stewards. As to the rest, the evidence is not clear. The JB asserts that there are many more stewards than those listed by Local 7 and that it appointed all of them, even those that Local 7 asserts that it originally appointed. Thus, the evidence supports the conclusion that either both organizations have appointed some of the current stewards or that the JB appointed all of them. In any event, neither conclusion undercuts our conclusion that, by 2007, the JB became the 9(a) representative. More important, regardless of who appointed the stewards, they officially have been dealing only with JB business agents at least since 2007.⁷⁴

Third, Local 7 points to Herbekian's statement that in March 2008, Local 7 held a membership meeting during which two Local 7 officers were elected, a recording secretary and sergeant-at-arms. Regardless, that does not undercut our conclusion that, by 2007, the JB had become the exclusive bargaining representative. While Local 7 may have been trying to reestablish itself as a more viable entity in March 2008, it is clear that it did nothing for the next year to contest the JB over representation rights. This situation is similar to that in Sisters of Mercy Health Corp.,⁷⁵ where a local union disclaimed interest in representing a bargaining unit and then, after two months, demanded recognition on behalf of that unit. The Board held that after disclaiming interest, the local "could not thereafter resurrect its bargaining status."⁷⁶ Thus, Local 7 could not simply resurrect its Section 9(a) status here after having transferred it to the JB by early 2007.⁷⁷

Fourth, in the circumstances of these cases, references to Local 7 in four recognition clauses in the

⁷⁴ Although there is some evidence that stewards occasionally contacted the Local 7 representative who was previously assigned to their location, by 2007 only JB business agents served as the official representatives servicing each bargaining unit in these cases.

⁷⁵ 277 NLRB 1353, 1353 (1985).

⁷⁶ Id. at 1354 & n.6.

⁷⁷ For the same reason, Herbekian's observation that Local 7 officials have been taking a more active role in representing the unit employees since March 2009 does not establish Local 7's representative status. If the JB has been serving as the 9(a) representative since 2007, Local 7's conduct two years later does not affect the JB's status.

eight current collective-bargaining agreements do not establish Local 7's representative status.⁷⁸ The two contracts for Martin's Catering⁷⁹ and the Peabody contract refer to the Union as "Mid-Atlantic Regional Joint Board, UNITE HERE, Local 7." The Towson contract states that the Union is "Hotel Employees & Restaurant Employees Union, Local 7, AFL-CIO."⁸⁰ This wording does not change the fact that the JB negotiated, executed, and at least until early 2009, exclusively enforced these agreements. Local 7 does not even have any prior history at Martin's Valley Mansion or Crosswinds facilities.

Finally, we note that Local 7's name appeared on the dual purpose cards that the members signed during the merger period. At the time of the 2004 affiliation, existing members were not required to sign new cards for the JB and the old cards only named HERE Local 7. Subsequently, new hires signed updated dual purpose cards, but the cards continued to refer to Local 7 in some manner, such as "Local 7 of UNITE HERE" or "Mid-Atlantic Regional Joint Board, UNITE HERE, Local 7."⁸¹ We, nevertheless, find no significance in these designations on the cards. It is undisputed that all dues during the merger period were remitted to the JB.⁸² Moreover, the text of the cards does not change the fact that at least since 2007 the JB has held itself out to both the unit employees and the Employers as the exclusive bargaining representative.

⁷⁸ UNITE HERE International has raised this factor in related cases to assert that its local unions retained their 9(a) status during the merger period.

⁷⁹ Although they are identical, one contract covers Martin's East, West, and Valley Mansion facilities, and another covers its Crosswinds facility.

⁸⁰ The recognition clauses in the four remaining contracts contain no reference to Local 7.

⁸¹ The JB supplied a copy of a dues checkoff card that only referred to "UNITE HERE Mid-Atlantic Regional Joint Board." Because it was not signed or dated, it is unclear if such a card was ever used and we do not rely on it.

⁸² ARAMARK states that the dues for the Towson unit were sent to "HERE Local 7," at the JB's offices on Mulberry Street. Despite this technical deviation, it is undisputed that all dues were remitted to the JB during the merger period.

[Pages 27 and 28 and a portion of page 29 (including footnotes 83 through 91) have been deleted pursuant to *FOIA Exemptions 5 and 7(A)*]

Region should therefore dismiss the Section 8(a)(5) refusal
to bargain allegation, absent withdrawal. .] The

B.J.K.