

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 11

Paragon Systems, Inc.  
Employer<sup>1</sup>

and

Case 11-RC-6762

United Security & Police Officers of America (USPOA)  
Petitioner

and

International Union, Security, Police and Fire  
Professionals of America (SPFPA)  
Intervenor<sup>2</sup>

**ACTING REGIONAL DIRECTOR'S DECISION AND  
ORDER**

The Employer, Paragon Systems, Inc., provides armed and unarmed security guard services at various federal facilities throughout the state of South Carolina, under the Employer's contract with the Department of Homeland Security, Federal Protective Service. The Petitioner, United Security and Police Officers of America, seeks to represent a unit of all full-time and regular part-time armed and unarmed security officers employed by the Employer at the federal facilities under the South Carolina Department of State with the Department of Homeland Security,<sup>3</sup> excluding all clerical employees,

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<sup>1</sup> The Employer did not appear at the hearing. The Employer's name appears as set forth in the commerce questionnaire submitted by the Employer.

<sup>2</sup> The word "Police" in the Intervenor's name was misspelled on the Petition.

<sup>3</sup> At the hearing, the Intervenor questioned the accuracy of the Petitioner's bargaining unit description, specifically, the terms "employed by the Employer at the Federal facilities under the South Carolina Department of State with the Department of Homeland Security," and contended that the unit was inappropriate. At the hearing the matter was not resolved. I find that the correct unit description is as set forth in the Employer and Intervenor's contract: "All armed and unarmed security officers employed by [the Employer] performing guard duties . . . assigned to federal facilities throughout the State of South Carolina, under the company's contract with the Department of Homeland Security, Federal Protective

Lieutenants, Captains and supervisors as defined in the Act.<sup>4</sup> The petition indicates that there are approximately 48 employees<sup>5</sup> in the bargaining unit sought by the Petitioner. The Intervenor, International Union, Security, Police and Fire Professionals of America (SPFPA), has intervened in this proceeding.

A hearing officer conducted a hearing in this matter, attended by the Petitioner and the Intervenor. The Employer was not present at the hearing. The Petitioner was the only party filing a post-hearing brief. The Intervenor filed a post-hearing Motion to Strike the Petitioner's post-hearing brief and to sanction the Petitioner and the Petitioner's representative for misconduct.<sup>6</sup> I have carefully considered these documents.

As evidenced at the hearing and in the submissions of the parties, there is only one issue for determination. The Intervenor contends that the Employer and Intervenor's contract operates as a bar to an election, whereas the Petitioner argues to the contrary. I have considered the evidence and the arguments presented by the parties on the issue. As discussed below, I have concluded that there is a contract bar to an election, and,

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Service, . . . excluding office clericals, managerial personnel, confidential personnel, supervisors (Lieutenants and Captains) as defined by the Act, and all other personnel.”

<sup>4</sup> The petition sought to exclude the classification of Sergeants from the petitioned-for bargaining unit. At the hearing, the Intervenor argued that the petitioned-for unit was inappropriate, as it excluded Sergeants, a classification previously included in the unit. The Petitioner argued to the contrary. In a post-hearing brief filed by the Petitioner, the Petitioner agreed to include Sergeants in the petitioned-for bargaining unit. Accordingly, Sergeants are properly included in the unit.

<sup>5</sup> At the hearing, the Intervenor stated that it did not know the number of bargaining unit employees.

<sup>6</sup> The Intervenor moved to strike the Petitioner's brief on procedural and substantive grounds. Thus, the Intervenor contended that the brief was not properly filed and that it relied largely on non-record evidence. First, contrary to the Intervenor's assertion, the Petitioner's brief was e-filed, and served on the parties by email, a proper form of service. Second, and further, as shown below, to the extent that the Petitioner's brief relies on evidence that is not in the record, I have not considered it, and in that regard, I grant the Intervenor's motion, in part. The Intervenor also urges that the Petitioner and Petitioner's representative be sanctioned on the ground that Petitioner's brief relies on evidence not in the record, and that Petitioner's conduct in that regard constitutes “aggravated misconduct.” I note that Section 102.177 of the Board's Rules and Regulations governs the procedures for processing misconduct allegations with respect to a party representative appearing before the Agency. Section 102.177 provides that the matter may be brought to the attention of the assigned General Counsel, Division of Operations-Management, or his/her designee. Accordingly, I decline to rule on that portion of the Intervenor's motion.

accordingly, I shall issue an order dismissing the petition. To provide a context for my discussion of this issue, I will provide a brief history of the bargaining between the Employer and the Intervenor, and set forth legal the standards for contract bar, followed by my analysis and conclusions regarding this issue.

### **I. Bargaining History**

On September 29, 2008, the Employer and the Intervenor entered into a collective bargaining agreement, effective by its terms from September 11, 2008, through July 1, 2011. The Intervenor asserts that it entered into a new collective bargaining agreement with the Employer on July 1, 2011, effective by its terms from July 1, 2011, through August 31, 2014. The Petitioner filed the petition in this case on July 5, 2011.

### **II. Legal Standard, Analysis, and Conclusion Regarding Contract Bar**

In the present case, the Intervenor asserts that there is a contract in effect that precludes a representation election. The Petitioner argues otherwise on two grounds: first, that the contract was not signed prior to the filing of its petition, and second, that the contract is insufficient by its terms to constitute a bar.

Under the Board's contract-bar doctrine, the existence of a collective-bargaining agreement can preclude an election involving employees covered under that contract. *Direct Press Modern Litho*, 328 NLRB 860, 860 (1999). The objective of the Board's contract-bar rules is to achieve a balance between the conflicting goals of industrial stability and the free choice of employees. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958). To constitute a bar, the contract must be signed by all the parties prior to the filing of the rival petition. *Id.* at 1162. In addition, a contract must contain substantial terms and conditions of employment deemed sufficient by the Board to

stabilize the parties' bargaining relationship. *Id.* at 1163. As the Board has explained, "real stability in industrial relations can only be achieved where the contract undertakes to chart with adequate precision the course of the bargaining relationship, and the parties can look to the actual terms and conditions of their contract for guidance in their day-to-day problems." *Id.* The Board does not require that "the failure of a contract to contain or delineate every possible provision which could appear in a collective-bargaining agreement negates the bar quality of such a contract." *Stur-Dee Health Products*, 248 NLRB 1100, 1100-1101 (1980). However, a contract will not constitute a bar "if it is limited to wages only, or to one or several provisions not deemed substantial." *Appalachian Shale*, 121 NLRB at 1163-1164. It is well established that the burden of proving that a contract is a bar is on the party asserting the contract-bar doctrine. *Road & Rail Services*, 344 NLRB 388, 389 (2005).

Applying the above principles to the present case, I find that the Employer and the Intervenor's contract constitutes a bar to the petition. First, in regard to the Petitioner's assertion that the new contract between the Employer and the Intervenor was not signed before the petition was filed, the Intervenor proffered a copy of the contract at the hearing. The contract was admitted into evidence without objection. The contract is dated and effective on July 1, 2011, and signed by Les Kaciban, President for the Employer, and Rick O'Quinn, Vice President, Region 2, and Willie Jones, Local 444 President, for the Union. Neither side called witnesses regarding the negotiation or execution of the new contract.

Contrary to the Petitioner, I find that Petitioner's subsequent arguments at the hearing regarding the authenticity of the contract are without merit as they are not based

on record evidence. In that regard, the Petitioner could have, but failed to call any witnesses or present any evidence in regard to this issue. Accordingly, I conclude that the contract was signed and effective on July 1, 2011, prior to the Petitioner's filing of the petition on July 5, 2011. See *Spartan Aircraft Company*, 98 NLRB 73, 75 (1952) (contract signed prior to the filing of the petition is a bar to the petition).

Second, there is no merit to the Petitioner's contention that the new contract does not contain substantial terms and conditions of employment sufficient to bar the present petition. Thus, the disputed contract contains detailed provisions with respect to recognition, union security, union rights, management rights, nondiscrimination, hours of work, leaves of absence, holidays, vacation, discharge and discipline, grievance, mediation and arbitration procedure, seniority, continuity of operations, and scope of agreement. The only matters left open by the parties are wages and health and welfare benefit contributions. With respect to wages, the contract provides for the current wage rate of \$17.30 through October 31, 2011, with the wage rates beginning on November 1, 2011, November 1, 2012, and November 1, 2013, to be determined. Similarly, in regard to health and welfare benefit contributions, the contract provides for the current benefit contribution of \$4.26 per hour, through October 31, 2011, with the health and welfare contributions beginning on November 1, 2011, November 1, 2012, and November 2013, to be determined. With respect to both of those provisions, the contract further provides that the parties agree to open negotiations for those topics "in the out years at least 60 days in advance of the Company's opinion year with the Government between August and September."

In similar cases in which parties have negotiated most, but not all, of a contract's terms, the Board has repeatedly looked to see whether the parties have "identifiable agreements, either by contract terms or practice, to resolve in the future outstanding [] issues." *Stur-Dee Health Products*, 248 NLRB 1100, 1100-1101 (1980). In that case, the Board found that although the parties had failed to reach agreement on the economic terms of their contract, the parties had an agreed-upon process to submit those issues to interest arbitration, and, therefore, the contract acted as a bar to the petition. *Id.* at 1101.

In so concluding, the Board relied on two earlier cases, *Spartan Aircraft Company*, 87 NLRB 73 (1952), and *Levi Strauss & Co.*, 218 NLRB 625 (1975). *Id.* The Board observed that in both of those cases, a contract bar was based on contracts containing "substantial terms and conditions of employment as well as a definite and readily ascertainable method for determining economic terms." *Id.*

Thus, in *Spartan*, the parties' contract was "a detailed bargaining agreement of 34 articles covering such subjects as hours of work, union security, overtime shift differentials, holidays, vacations, sick leave, seniority, grievance procedure, and cost-of-living adjustments." 87 NLRB at 74. However, the parties left wage provisions for future negotiations. *Id.* at 75. In that regard, the Board noted that the contract's wage provision provided that "[t]he [c]ompany and the [u]nion will endeavor to agree upon the proper classification and hourly rate ranges as soon as possible, and shall incorporate a merit plan of progress." *Id.* at 74. On that basis, the Board concluded that the parties had a sufficiently complete collective bargaining agreement to constitute a bar. *Id.* at 75.

Likewise, in *Levi Strauss*, the parties' contract failed to specify wage rates for the employer's production support employees. 218 NLRB at 625. However, during negotiations the parties orally agreed to continue the merit review program, which had existed in the past, and to provide those employees a wage increase generally in relation to the employer's production operators. *Id.* In those circumstances, the Board concluded that the contract embodied substantial terms and conditions of employment and constituted a bar to a petition. *Id.* See also *Local 3, International Brotherhood of Electrical Workers (Gessin Electrical Contractors, Inc.)*, 224 NLRB 1484, 1488, (1976), *enfd. mem.* 566 F.2d 574 (4<sup>th</sup> Cir. 1977). There, the parties' extension agreement at issue failed to set out specific wage rates. *Id.* at 1488. However, the Board concluded that the parties' extension agreement was sufficient to act as a bar as it contained an agreement to be bound by the wage rates set forth in a soon-to-be negotiated master agreement. *Id.* at 1485-1486, 1488.

Similarly, here the Employer and Intervenor's failure to set forth specific wage rates and health and welfare contributions does not preclude a finding of contract bar. As shown, the contract at issue is a detailed document covering such articles as holidays, vacation, discipline and hours of work, although wages and health and welfare contributions, beginning on November 1, 2011, are left open. With respect to those two subjects, I conclude that the Employer and Intervenor's contractual agreement to resolve those two matters is a "definite and readily ascertainable method for determining economic terms" as contemplated by the above-cited cases. Accordingly, I find that the Employer and Intervenor's contract contains substantial terms and conditions of employment sufficient to stabilize the bargaining relationship and constitute a bar.

In that regard, the Petitioner's reliance on *Madelaine Chocolate Novelties*, 333 NLRB 1312 (2001), is misplaced. There, the employer and the intervenor entered into a contract, effective by its terms from April 1, 1997, through March 31, 2001. *Id.* at 1312. Although the parties entered into a new contract on March 29, 2000, effective by its terms from April 1, 2000, through March 31, 2004, the first year of the new contract simply adopted the identical terms and conditions of employment of the last year of the parties' prior contract. *Id.* Additionally, the contract provided for a reopening of negotiations in July 2000 on all terms for the subsequent contract years. *Id.* The Board concluded that an agreement to adopt the fourth year of the prior agreement as the first year of the successor agreement did not operate as a bar because the successor agreement did not establish terms for later years. *Id.* In short, the Board concluded that the parties' agreement, in its entirety, did not contain substantial terms and conditions of employment, and was "nothing more than an agreement to begin negotiations in the near future." *Id.*

*Madelaine* is distinguishable from the present case because it dealt with a situation in which there was a contract in excess of three years.<sup>7</sup> *Id.* In *Madelaine*, the parties merely adopted the terms and conditions of the fourth year of their contract, which they were already obligated to do, as the first year of their new contract, with all terms of the remaining years of the contract left open. *Id.* Those unique factual circumstances are simply not present in this case. Thus, here there were only two matters left open, and unlike the parties in *Madelaine*, the parties in the present case were not already obligated to the terms to which they agreed.

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<sup>7</sup> Generally a party may file a rival petition after the third year of a contract.

In conclusion, I find that the Intervenor established that the Employer and Intervenor's contract constitutes a bar and precludes the Petitioner's petition. Accordingly, I am dismissing the petition.

### **III. CONCLUSIONS AND FINDINGS**

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
5. The Intervenor is a labor organization with the meaning of Section 2(5) of the Act.
6. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

### **IV. ORDER**

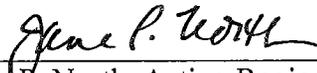
IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.

### **V. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **August 16, 2011**. The request may be filed electronically through E-Gov on the Board's web site, [www.nlr.gov](http://www.nlr.gov),<sup>8</sup> but may not be filed by facsimile.

**Dated:** August 2, 2011



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<sup>8</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).