UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SUPERIOR LAUNDRY SERVICES LLC
Employer

and Case 29-RC-12093

LAUNDRY, DISTRIBUTION & FOOD SERVICE
JOINT BOARD, WORKERS UNITED, AFFILIATED
WITH THE SERVICE EMPLOYEES INTERNATIONAL
UNION
Petitioner

and

LOCAL 348-S, UNITED FOOD & COMMERCIAL
WORKERS, CTW, CLC
Intervenor

DECISION ON REVIEW AND ORDER

The Intervenor's Request for Review of the Regional Director's Decision and Direction of Election is granted as it raises substantial issues regarding the Regional Director's finding that a contract was not a bar to the petition because its union-security provision failed to provide the requisite 30-day grace period for nonmember incumbent employees to join the Intervenor as required under Section 8(a)(3) of the Act. We have carefully considered the issue, including the Petitioner's Opposition, and reverse the Regional Director.

It is well-settled that a contract which includes a union-security clause that is unlawful on its face or that has been found to be unlawful in an unfair labor practice proceeding does not bar an election. *Paragon Products* 134 NLRB 662 (1961). The union-security clause itself, on its face and without resort to extrinsic evidence, must show that it is unlawful in order for the contract in which it is included not to operate as a bar. *Jet-Pak Corp*., 231 NLRB 552, 552-553 (1977). A union-security clause may be found unlawful when, for example, it does not provide on its face for the statutory 30-day grace period based on the contract's effective date. *Paragon Products*, 134 NLRB at 666.

The union-security clause here provides nonmember incumbent employees with a 91-day grace period from the effective date of the agreement to consider their union membership obligations. Consistent with *Jet-Pak*, supra, we consider the union-security clause itself, without resort to extrinsic evidence. On that basis, we conclude that the clause is lawful on its face.

Nonetheless, even assuming we were permitted under our precedent to consider extrinsic evidence that the contract was signed after the effective date for the purpose of assessing the lawfulness of the union-security clause,[1] as the Regional Director did, we would still find the union-security clause lawful on its face, because the contract was not made effective retroactively. In *Four Seasons Solar Products Corp.*, 332 NLRB 67 (2000), the Board found that a contract was not retroactively effective where the contract explicitly stated it was "made and entered into" and effective on August 12, 1995, although the contract showed on its face that it was signed two months later. The union-security clause was geared to the effective date of the contract. The Board found that it was not apparent on the face of the contract that the union-security clause was unlawful in any aspect.[2] Id. at 69. Similarly, here, the contract's preamble states that the agreement was "made and entered into" on January 1, 2010, and the union-security clause was geared to the contract's effective date. See also *Federal-Mogul Corp*., 176 NLRB 619 (1969).

Accordingly, we reverse the Regional Director and remand the case for further consideration consistent with this Decision.

MARK GASTON PEARCE,	CHAIRMAN
CRAIG BECKER,	MEMBER
BRIAN E. HAYES,	MEMBER

Dated, Washington, D.C., November 9, 2011.

[1] Where, as here, a contract is undated, extrinsic evidence *may* be used for a different purpose: to establish that the contract was, in fact, signed before a petition was filed. *Appalachian Shale Products*, 121 NLRB 1160, 1162 (1958); *Cooper Tanks & Welding Corp.*, 328 NLRB 759 (1999).

[2] Compare *Standard Molding Corp*., 137 NLRB 1515 (1962), where it appeared from the face of the contract that it was effective retroactively.