

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

HBC MANAGEMENT SERVICES, INC.

Employer

and

Case 5-RC-84347

UNITED SECURITY & POLICE OFFICERS
OF AMERICA (USPOA)

Petitioner

and

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF
AMERICA (SPFPA)

Intervenor

DECISION AND ORDER

The Employer, HBC Management Services, Inc., a Hawaii firm operating in Washington, D.C., provides armed and unarmed security force services to various government clients. As part of its business, the Employer employs about 55 security officers at the Washington Navy Yard Naval Sea Systems Command (NAVSEA) and Military Sealift Command (MSC) in the District of Columbia, the only location involved in this proceeding. Petitioner, United Security & Police Officers of America (USPOA), filed a petition to represent the officers.

This case presents two issues:

1. Is there a valid collective-bargaining agreement covering the unit of petitioned-for employees which bars the processing of this election petition?
2. Does the Employer's status as a successor bar the processing of the election petition?

The Employer, Petitioner, and Intervenor all appeared at a hearing before an officer of the Board. None of the parties filed post-hearing briefs. I have carefully considered the evidence and arguments presented by the parties at the hearing. I find, for the reasons set forth below, that: (i) there is a valid collective-bargaining agreement covering the unit of petitioned-for employees which bars the processing of this petition; and (ii) because there is a valid collective-bargaining agreement which bars the processing of this petition, I need not consider whether there is a successor bar.

I. STATEMENT OF FACTS

At some point prior to April 2012, the Employer won a contract to provide security services at the Washington Navy Yard NAVSEA/MSC facility, replacing the predecessor contractor, Frontier Systems Integrators, LLC.¹ Frontier Systems and the Intervenor had been parties to a collective-bargaining agreement which covered, among other things, hours of work, seniority, holidays, pay and benefits, union security and check-off, discipline procedures, and grievances and arbitration. According to the Preamble, the agreement is effective from October 1, 2009 through September 30, 2012, although the Duration of Agreement clause on the document's signature page states the agreement is effective from December 1, 2009 through November 30, 2012.² The agreement terminated when Frontier Systems lost its contract to provide security services at the Washington Navy Yard NAVSEA/MSC facility.³

After being awarded the service contract to provide security services at the Washington Navy Yard NAVSEA/MSC facility, the Employer hired a majority of Frontier Systems' security officer employees. The Employer took over operations at the facility on April 1, 2012. Representatives of the Employer and the Intervenor met and corresponded by email throughout

¹ The parties agreed, and I find, that the Employer is an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

² Mr. Assan Faye signed the collective-bargaining agreement on behalf of SPFPA, the Intervenor in this case. Mr. Faye left SPFPA and is now a representative of the Petitioner in this case, USPOA.

³ The parties agreed, and I find, that the Intervenor and the Petitioner are labor organizations within the meaning of Section 2(5) of the Act.

April 2012 before signing an Agreement to Assume the Collective Bargaining Agreement on May 3, 2012 (“the May 3 Agreement”). In the May 3 Agreement, the Employer explicitly agrees to assume the collective-bargaining agreement between Frontier Systems and the Intervenor, and recites the term of the agreement as being from October 1, 2009, through November 30, 2012.⁴

On July 3, 2012, Petitioner filed a petition to represent the guards employed at the Washington Navy Yard NAVSEA/MSC facility.⁵

II. POSITIONS OF THE PARTIES

The Petitioner contends that there is neither a contract bar nor a successor bar, and that its petition is timely filed.

The Intervenor first argues that the petition should be dismissed because there is a successor bar in place. Citing the Board’s August 2011 decision in *UGL-UNICCO Service Co.*, 357 NLRB No. 76 (2011), the Intervenor asserts that when a successor employer takes over operations, there is a minimum of a six-month successor bar preventing petitions from rival unions. Here, the Intervenor suggests that the successor bar would run for at least six months following April 1, 2012, the date the Employer assumed operations at the facility. Alternatively, the Intervenor argues that the May 3 Agreement between the Employer and the Intervenor is a collective-bargaining agreement that establishes a contract bar to the Petitioner’s petition.

The Employer takes no position on this matter, although it admits that it assumed (with modifications) the predecessor’s collective-bargaining agreement on May 3, 2012. The Employer’s representative testified that he understood that the May 3 Agreement was effective

⁴ The May 3 Agreement set forth several amendments or supplements to the original collective-bargaining agreement agreed upon by the parties during the April 2012 meetings

⁵ The parties stipulated, and I find, that the appropriate unit is as follows:

Included: All full-time and regular part-time armed and unarmed security guards including sergeants employed by the Employer at its Washington Navy Yard Naval Sea Systems Command (NAVSEA) and Military Sealift Command (MSC) in the District of Columbia.

Excluded: All lieutenants, project managers, assistant project managers, site managers, non security employees, office clerical employees, confidential employees, managerial employees, and supervisors as defined by the Act.

from May 3, 2012 until the November 30, 2012 expiration date of the predecessor collective-bargaining agreement.

III. ANALYSIS AND CONCLUSIONS

Under the Board's contract bar doctrine, a collective-bargaining agreement may bar a rival petition for the length of the agreement, up to a limit of three years. *General Cable Corp.*, 139 NLRB 1123, 1125 (1962). Any rival petition must be filed during the window period, 60 to 90 days prior to the end of the contract.⁶ *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962); *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1001-02 (1958). Thus a contract will bar, or block, any rival petition filed outside this 60 to 90 day window. The party asserting the contract bar doctrine bears the burden of proving that a contract bars a petition. *Roosevelt Memorial Park*, 187 NLRB 517 (1970).

In order to bar rival petitions, a contract must contain substantial terms and conditions of employment, including an effective date and expiration date. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1163 (1958). The contract must also be in writing, signed by the parties prior to the filing of the petition, cover the employees sought in the petition, and cover an appropriate bargaining unit. *Id.* at pp. 1162-64. Additionally, in the case of a successor who assumes a predecessor contract, the assumption must be by express written agreement in order to bar a petition. *Great Atlantic and Pacific Tea Company*, 197 NLRB 922 (1972). See, e.g., *Trans-American Video, Inc.*, 198 NLRB 1247 (1972); *M.V. Dominator*, 162 NLRB 1514, 1516 (1967).

In cases where a successor employer assumes the predecessor's operations and recognizes the incumbent union—but the contract bar doctrine is inapplicable—a “successor bar” will apply, guaranteeing the incumbent union a reasonable period of bargaining during which no challenges to its status may be raised. *UGL-UNICCO Service Co.*, 357 NLRB No. 76, slip. op. at 8 (2011). For example, a contract bar is not established where the successor employer has not

⁶ In health care cases, the petition must be filed not more than 120 days or less than 90 days before the expiration. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975).

adopted the predecessor's collective-bargaining agreement, or where "the agreement between the existing union and the successor does not serve as a bar under existing rules."⁷ *Id.*

The parties do not dispute, and I find, that the Employer is a successor to Frontier Systems Integrators, Inc. The Employer provides substantially the same security services at the Washington Navy Yard NAVSEA/MSC facility, and hired a majority of Frontier Systems' workforce.

I further find that with the signing of the May 3 Agreement, titled "Agreement to Assume the Collective Bargaining Agreement," the Employer has assumed the predecessor's collective-bargaining agreement. In the May 3 Agreement, the Employer explicitly assumes all provisions of the predecessor's collective-bargaining agreement, which covers unit employees' terms and conditions of employment, including wages, hours, health and welfare benefits, pension contributions, and days off. The May 3 Agreement clearly states that the collective-bargaining agreement is effective through November 30, 2012.

This agreement was executed by the Employer and Intervenor on May 3, 2012, before the Petitioner's July 3, 2012 petition. I therefore find that the contract between the Employer and the Intervenor is effective from May 3, 2012 through November 30, 2012. To be timely, a representation petition must be filed between September 2, 2012 and October 1, 2012, or, if the Employer and the Intervenor do not reach a new agreement before expiration, a petition can be filed after the collective-bargaining agreement expires on November 30, 2012.

Because I have found that the petition is barred by the Employer's assumption of the predecessor's collective-bargaining agreement, I find that the successor bar doctrine does not apply to this matter. *UGL-UNICCO Service Co.*, 357 NLRB No. 76, slip. op. at 8 (2011).

IV. ORDER

The petition is dismissed.

⁷ An agreement will not establish a contract bar if it is for less than 90 days or if it is an interim agreement intended to be superseded by a permanent agreement. *UGL-UNICCO Service Co.*, 357 NLRB at fn. 27.

V. RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **August 7, 2012** at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁸ A copy of the request for review must be served on each of the

⁸ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

July 24, 2012

other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

/s/ Wayne R. Gold

Dated: July 24, 2012

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
103 S. Gay Street, 8th Floor
Baltimore, MD 21202