

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24**

FIRST TRANSIT OF PUERTO RICO, INC.

Employer¹

and

TRABAJADORES UNIDOS DE LA AUTORIDAD
METROPOLITANA DE AUTOBUSES Y RAMAS
ANEXAS (TUAMA)

Case 24-RC-070627

Petitioner

and

UNION DE TRONQUISTAS DE PUERTO RICO,
LOCAL 901, IBT

Intervenor²

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein the Act, a hearing was held on December 22, 2011, before a hearing officer of the National Labor Relations Board, herein the Board, to determine whether a question concerning representation exists. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.³

¹ The name of the Employer appears as stipulated to by the parties at the hearing.

² The Union intervened at the hearing on the basis of its status as the currently recognized bargaining representative of the employees in the unit involved herein.

³ The Employer filed a Brief which has been duly considered.

II. Issues and Determination

The only issue in this proceeding is whether the processing of the instant Petition is barred by a collective bargaining agreement, herein CBA, between the Employer and Union de Tronquistas de Puerto Rico Local 901, IBT, herein the Intervenor. The Employer and the Intervenor are parties to a CBA which was executed on April 31, 2009, but made effective by its own terms from June 1, 2008, for a period of 5 years, until May 31, 2013.

Having examined the entire record in this proceeding, and for the reasons set forth below, I have concluded that the CBA between the Employer and the Intervenor does not serve as a bar to the processing of the instant petition.

III. The Unit⁴

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of section 9 (b) of the Act.

Included: All drivers employed by the Employer at its facility in San Juan, Puerto Rico.

Excluded: All other employees, office clerk employees, dispatchers, guards and supervisors as defined in the Act.

Upon the entire record in this proceeding the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

b. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. In addition, it is noted that jurisdiction over the Employer has been previously asserted in Case 24-RC-7602.

c. The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

d. A question affecting commerce exist 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.

⁴ During the hearing the parties stipulated that the Unit, as petitioned for, is appropriate for purposes of collective bargaining.

IV. Facts

The Employer and the Intervenor have a bargaining history of several years, during which period two collective bargaining agreements have been negotiated covering the petitioned for unit. The current CBA was executed on April 31, 2009, with an effective date of June 1, 2008, until May 31, 2013.

On December 13, 2011, Trabajadores Unidos de la Autoridad Metropolitana de Autobuses y Ramas Anexas (TUAMA), herein the Petitioner, filed a Petition to represent the contractual unit.

At the hearing, the Employer and the Intervenor requested the dismissal of the Petition on the grounds that it was untimely filed and argued that the execution date, rather than the effective date of the CBA between the Employer and the Intervenor, is controlling for purposes of calculating whether the instant petition was timely filed.⁵ Subsequently, in its Brief, the Employer further contended that the Petition was untimely because it was filed outside the 60 and 90 day period preceding the third anniversary of the CBA between the Employer and the Intervenor, and therefore, time barred under the contract bar doctrine.

V. Decision

When a petition is filed for a representation election among a group of employees who are alleged to be covered by a collective bargaining agreement, the Board must decide whether the asserted contract exists in fact and whether it conforms to certain

⁵ In support of its position, the Employer submitted into evidence a copy of the following articles of the CBA executed by the Employer and the Intervenor on April 31, 2009: 1) Index and table of contents; 2) recognition clause; 3) duration clause. Pursuant to the duration clause, the contract is effective, by its terms, from June 1, 2008 until May 31, 2013. No further evidence and/or testimony were submitted into evidence during the hearing.

requirements. Hexton Furniture Co., 111 NLRB 3432 (1955). If the Board finds that the contract does exist and that the requirements are met, then the Board examines whether the contract constitutes a bar to the conduct of the election. To serve as a “bar” the terms of the agreement must be clear from its face so that employees and outside unions may look to it to determine the appropriate time to file a representation petition. Cooper Tire & Rubber Co., 181 NLRB 509 (1970); South Mountain Health Care & Rehabilitation Center, 344 NLRB 375 (2005).

In the interest of balancing employees’ right to periodically revisit their choice to be represented and stability in the collective bargaining relationship between employers and employees’ chosen representatives, the Board long ago established the “contract bar doctrine.” Montgomery Ward & Co., 137 NLRB 346 (1962). The contract bar doctrine seeks to afford the contracting parties and employees a reasonable period of stability while also affording employees the opportunity, at reasonable times, to change their bargaining representative or cease being represented altogether.

Under the Board’s contract bar policy, a contract will serve as a bar to a stranger petition for a period of three (3) years. General Cable Corp., 139 NLRB 1123, 1125 (1962). A contract whose duration is longer than three (3) years is treated, for contract bar purposes, as though it was a contract of three (3) years’ duration. Thus, regardless of a contract’s length in excess of three (3) years, a petition may be filed during the 90 - 60 day open period to the third anniversary of the contract, and after the third year anniversary date of the contract if no new agreement is made during the sixty (60) day insulated period prior to the third year anniversary of the contract. Dobbs Intern Services, Inc., 323 NLRB 1159 (1997). The Board has held that the three (3) year

period during which a contract is operative as a bar runs from its effective date. Benjamin Franklin Paint Co., 124 NLRB 54 (1959). In that case, the Board was presented with the same argument raised by the Employer in this case, whether the controlling date for the purpose of determining the contract term and the timelines of a petition is the execution date or the effective date of the contract. In reaching its conclusion that the controlling date is the effective date of the contract, the Board noted that where the parties negotiate a contract for an effective term of two (2) or more years (which at the time of that decision was a period of unreasonable duration) with a retroactive application, the reasonable period for contract bar purposes is thereby established in accordance with the terms of the agreement, as provided by the parties themselves. Benjamin Franklin, supra, at 56.

Here, the contract which the Employer and the Intervenor urged as a bar to the petition, is a five (5) year contract, effective from June 1, 2008, until midnight of May 31, 2013. The present petition was filed on December 13, 2011, more than three (3) years after the third anniversary of the contract, and thus in the absence of a valid new contract extending the duration of the contract, the petition was timely filed.

VI. Conclusion

Accordingly, having concluded that the CBA in effect at the time of the filing of the Petition was not a bar to the processing of the Petition, I shall direct an election in the unit found appropriate herein.⁶

⁶ There are approximately sixty-five (65) employees employed by the Employer in the position of drivers, i.e., in the unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.⁷ Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining

⁷ As provided for in Section 103.20 of the Board's Rules and Regulations, the Employer is required to post copies of the Board's Official Notice of Election in conspicuous places at least 3 full working days (excluding the day of the election, Saturdays, Sundays, and holidays) prior to the date of the election; said notices are to remain posted until the end of the election. Failure to post the election notices as required by the Board's Rules and Regulations shall be grounds for setting aside the election whenever proper and timely objections are filed. An employer shall be conclusively deemed to have received copies of the election notices unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of said notices.

purposes by **Trabajadores Unidos de la Autoridad Metropolitana de Autobuses y Ramas Anexas** or by **Union de Tronquistas de Puerto Rico, Local 901, IBT**.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); North Macon Health Care Facility, 315 NLRB 359 (1994); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters in each of the units found appropriate herein, shall be filed by the Employer with the undersigned who shall make the lists available to all parties to the election. In order to be timely filed, such lists must be received in the Regional Office, La Torre de Plaza Suite 1002, 525 F.D. Roosevelt Ave., San Juan, Puerto Rico 00918-1002, on **January 17, 2012**. The lists may be submitted by facsimile transmission. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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.

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 **January 23, 2012**, at 5:00 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 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, click on File Case Documents, enter 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

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.

was offline or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated January 9, 2012.



/s/

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