UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

REPUBLIC SERVICES ENVIRONMENTAL LLC d/b/a REPUBLIC SERVICES RECYCLING OF MISSOURI

Employer

and

RANDY LEE MACE, an Individual **Case 14-RD-091866**

Petitioner

and

MISCELLANEOUS DRIVERS, HELPERS, HEALTHCARE AND PUBLIC EMPLOYEES LOCAL UNION NO. 610

Union

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer is a Delaware corporation engaged in the municipal recycling business. The Union represents a unit of all full-time and regular part-time operators, sorters, tractor-trailer drivers and small scale operators employed at the Employer's 6025 Byassee Drive, Hazelwood, Missouri and 4076 Bayless Avenue, St. Louis, Missouri facilities, excluding all remote trailer attendants, scale house clerks, office, clerical and professional employees, temporary employees, guards and supervisors as defined in the Act, here referred to as the Unit. The parties agreed that this Unit is appropriate for the purpose of collective bargaining. On October 23, 2012, the Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act

seeking to decertify the Union. A hearing officer of the Board held a hearing and the parties have waived the filing of briefs.

As evidenced at the hearing, the sole issue was whether the petition is untimely due to a successor bar. The Union contends that a reasonable period of time for collective bargaining has not elapsed following the successor Employer's voluntary recognition of the Union, and therefore the petition should be dismissed under the successor bar. Contrary to the Union, the Petitioner contends that a reasonable time to reach an agreement has passed and the petition is appropriate. The Employer did not appear at the hearing and did not take a position on this issue. Based on my review of the record, and for the reasons set forth below, I conclude that a reasonable time for bargaining between the parties has not elapsed and the petition was untimely filed and is subject to the successor bar. Accordingly, I dismiss the petition.

I. VOLUNTARY RECOGNITION AND NEGOTIATIONS

On about December 21, 2010, the Employer purchased the business of QRS, Inc. d/b/a QRS Recycling (QRS). Previously, QRS had recognized the Union as the exclusive collective-bargaining representative of the Unit and QRS and the Union were parties to a collective-bargaining agreement. Following the Employer's purchase of QRS, the Union requested voluntary recognition as the exclusive collective-bargaining representative of the Unit. After the Employer refused the Union's initial request for voluntary recognition, the Union filed a representation petition and an unfair labor practice charge with the Region in Case 14-CA-30378. On December 22, 2011, the Region issued a complaint in

Case 14-CA-30378 alleging that the Employer was the successor to QRS and unlawfully refused the Union's request for recognition. On February 23, 2012,[1] in settlement of Case 14-CA-30378, the Employer voluntarily recognized the Union as the exclusive collective-bargaining representative of the Unit and the Union withdrew its representation petition and unfair labor practice charge.

Upon commencing operations at it's newly acquired St. Louis facilities, the Employer lawfully established initial terms and conditions of employment for the Unit. The Employer and the Union then began the process of negotiating an initial collective-bargaining agreement. From April 20 to October 24, the parties scheduled a total of 14 bargaining sessions. Due to the Employer's cancellation of 8 sessions, however, the parties have held only 6 bargaining sessions during this time period. The Union's witness and bargaining spokesman testified that the Employer's chief negotiator, who is based out of state, cancelled these sessions because more urgent matters arose at the Employer's other facilities. He also testified that on 2 occasions the parties have ended bargaining sessions early in order to accommodate the travel schedule of the Employer's chief negotiator.

The Union and the Employer met for negotiations on April 20, June 19, August 15, October 3, October 10, and October 24. These bargaining sessions generally lasted about 7 hours each. As set forth below, the parties' bargaining sessions as of the date of the hearing yielded tentative agreements on all non-economic issues. As of the date of the hearing, the parties had also discussed economic issues.

[1] All dates herein are in 2012 unless otherwise indicated.

At the initial meeting on April 20, the parties exchanged proposals. After the Employer canceled negotiation sessions scheduled for April 27, May 21, May 22, and June 18, the parties met again on June 19. At the June 19 meeting, the parties reached tentative agreements on the following provisions: scope of the agreement, union security, management rights, leaves of absence, examination and identification fees, funeral leave, jury service, non-discrimination, union access, bulletin board, safety, uniforms, miscellaneous, voting time, and savings clause. The parties also reached tentative agreements on part of the following provisions: recognition, union stewards, grievance and arbitration, discipline and discharge, and seniority.

The Employer thereafter canceled bargaining sessions scheduled for July 25 and July 26. The parties met for the third time on August 15 and reached a tentative agreement on the check-off of dues and initiation fees provision. The parties also reached tentative agreements on the remainder of the recognition and the grievance and arbitration provisions, and on parts of the union steward and seniority provisions. The Employer then canceled the August 16 and September 5 scheduled negotiation sessions.

Prior to the parties' fourth meeting on October 3, the Employer provided the Union with a seniority list containing employee wages. At this session, the parties reached tentative agreements on the hours of work and overtime provision, the remainder of the union steward provision, and part of the seniority provision. Prior to the fifth negotiation session held on October 10, the Employer provided the Union with the information it had requested regarding employees'

prior wage increases, as well as the Employer's policies on 401(k), paid time off, holidays, and absenteeism. At the October 10 session, the parties reached tentative agreements on the subcontracting and the unauthorized activity provisions, as well as the remainder of the seniority provision. The parties also reached a tentative agreement on an absenteeism and tardiness policy. Further, the parties discussed economic issues including the Unit employees' last wage increase, the Employer's 401(k) plan, and the Employer's vacation time and comp time policies.

On October 24, the parties met for the sixth time and reached tentative agreements on a health and welfare plan, a 401(k) plan, and a work boot policy. The parties also discussed wages, vacation, holidays, and personal time, although the parties' discussion of wages was slowed by incorrect information previously provided by the Employer regarding employees' last wage increase. At the conclusion of the October 24 session, the following economic issues remained: wages, vacation pay, holiday pay and eligibility, and paid personal-time.

It is the unrebutted testimony of the Union bargaining spokesman that the parties have reached tentative agreements on 95 percent of the contract and will likely resolve the remaining issues and reach an overall agreement within the next 2 bargaining sessions. The Union bargaining spokesman further stated that the parties are not at impasse and the membership would have already ratified a contact but for the Employer's cancellation of 8 bargaining sessions. Correspondence from the Employer's attorney confirms that agreement in

principal has been reached as to non-economic issues and that wages are the major unresolved issue.

II. SUCCESSOR BAR

For the reasons that follow, I find that the petition filed on October 23 is untimely and subject to the successor bar as a "reasonable time for bargaining" has not elapsed. Under the Board's successor bar doctrine:

> The "successor bar" will apply in those situations where the successor has abided by its legal obligation to recognize an incumbent union, but where the "contract bar" doctrine is inapplicable . . . . In such cases, the union is entitled to a reasonable period of bargaining, during which no question concerning representation that challenges its majority status may be raised through a petition for an election filed by employees, by the employer, or by a rival union . . . .

UGL-UNICCO Service Co., 357 NLRB No. 76, slip op. at 11 (2011).

In a situation where the successor employer recognizes the union, but unilaterally establishes initial terms and conditions of employment before bargaining over an initial collective-bargaining agreement, the "reasonable period of bargaining" will be a minimum of 6 months and a maximum of 1 year, measured from the date of the first bargaining meeting between the parties. Id., slip op. at 13. In determining whether a "reasonable time for bargaining" has elapsed, the Board evaluates the following factors: (1) whether the parties are bargaining for a first-time collective-bargaining agreement; (2) the complexity of the parties' bargaining sessions and the issues being negotiated; (3) the number of bargaining sessions and the amount of time elapsed since bargaining commenced; (4) the amount of progress made in negotiations and how

close the parties are to reaching an agreement; and (5) whether the parties are at impasse. Id., slip op. at 12. The party invoking the successor bar has the burden of proving that a reasonable period of time for bargaining has *not* elapsed. Id., slip op. at 13.

Factors tending to establish that a reasonable period of time has lapsed and no successor bar exists are: negotiations for a renewal, rather than initial, contract; the absence of unusually complex issues or bargaining process; the passage of a long period of time after the 6-month insulated period and a relatively large number of bargaining sessions; the parties' failure to come close to reaching an agreement; and the existence of impasse. *Lee Lumber and Building Material Corp*, 334 NLRB 399, 405 (2001). Factors tending to establish that a reasonable period of time has *not* lapsed, and therefore the petition should be dismissed under the successor bar, are: negotiations for an initial contract; the existence of complex bargaining issues or a complex bargaining process; relatively little passage of time beyond the 6-month insulation period and relatively few bargaining sessions; strong likelihood that a contract can be reached in the near future; and the absence of impasse. Id.

Applying these factors in this case, I find the first factor indicates that a reasonable period for bargaining had not elapsed when Petitioner filed the decertification petition. It is uncontested that the parties are bargaining for a first-time contract, not a renewal contract. *Lee Lumber*,

supra at 403-404; see also *Town & Country Plumbing & Heating*, 352 NLRB 1212, 1215-16 (2008).

The second factor, the complexity of the parties' bargaining sessions and the issues being negotiated, supports a conclusion that a reasonable period for bargaining had expired. A review of the parties' 6 bargaining sessions does not reveal that the parties bargained over unusually complex issues or developed unusually complex bargaining structures so as to invite more employee input. *Lee Lumber*, supra at 403; *Town & Country Plumbing & Heating*, supra at 1216.

The third factor, the number of bargaining sessions and the amount of time elapsed, weighs in favor of concluding that the parties had not bargained for a reasonable period. It is undisputed that the parties began bargaining for an initial agreement on April 20, and that the instant decertification petition was filed on October 23, just 3 days after expiration of the aforementioned 6-month insulated period for an incumbent union to bargain with a successor employer. Further, in the 6-month period of bargaining prior to the filing of the petition, the parties held just 5 bargaining sessions because the Employer cancelled 8 sessions. In addition, the parties have had to cut short 2 bargaining sessions in order to accommodate the travel schedule of the Employer's chief negotiator. These Employer-imposed cancellations and availability restrictions have limited the parties to a marginal amount of actual bargaining time to reach an initial contract. The Union's negotiator testified that it normally takes 9

to 12 bargaining sessions to complete a first contract. Thus, this evidence strongly suggests that a reasonable period of bargaining had not elapsed when the Petitioner filed the instant petition. See *Town & Country Plumbing & Heating*, supra at 1216; accord *Badlands Golf Course*, 355 NLRB 251, 252 (2010) (finding factor of time elapsed and bargaining sessions held favored extension of insulated bargaining period where parties met just 6 to 8 times during 6-month period).

The fourth factor, the amount of progress and how close the parties are to agreement, also weighs in favor of finding that a reasonable time for bargaining had not elapsed. The evidence demonstrates that throughout the parties' 6 sessions, they have made steady progress and are very close to reaching an overall agreement. The fact that the parties are near to concluding an agreement supports a finding that a reasonable time for bargaining has not elapsed and that the petition should be dismissed. *Lee Lumber*, 334 NLRB at 406.

The final, fifth factor, the absence of impasse, also weighs in favor of finding a reasonable period of time for bargaining had not lapsed. It is uncontested that the parties were not at impasse at the time the petition was filed. Indeed, the absence of impasse is demonstrated by the fact that the parties have scheduled 2 additional bargaining sessions in November after the hearing to further discuss wages and other economic issues.

Thus, factors one, three, four, and five indicate a reasonable time for bargaining has not elapsed and that a successor bar exists, and these factors clearly outweigh the countervailing factor, factor two, that the parties did not experience any bargaining complexities. I find, therefore, that the Union has met its burden of demonstrating that the parties had not yet bargained for a reasonable period of time and that the instant decertification petition was untimely filed.

III. CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, 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 here.

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

4. 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 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 **December 4, 2012**. The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov[2], but may not be filed by facsimile.

Dated November 20, 2012, at St. Louis, Missouri.

Daniel L. Hubbel

Daniel L. Hubbel, Acting Regional Director
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[2] To file the request for review electronically, go to www.nlrb.gov and select the E-Gov tab. Then click on the E-Filing link on the menu, and follow the detailed instructions. 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 Agency's website, www.nlrb.gov.