

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27**

NIELSON CONSTRUCTION,

Employer,

and

Case 27-RD-092548

EDWARD L. WALLS,

Petitioner,

and

TEAMSTERS, LOCAL No. 222,<sup>1</sup>

Union.

**REGIONAL DIRECTOR'S DECISION AND ORDER**

On November 5, 2012,<sup>2</sup> Edward L. Walls (Petitioner), filed a petition under Section 9(c) of the National Labor Relations Act (Act), as amended, seeking to decertify Teamsters, Local No. 222 (Union) as the bargaining representative of a unit described only as “drivers” employed by Nielson Construction (Employer). On December 12, a hearing officer of the Board conducted a hearing on this petition. At hearing, the parties stipulated to a unit description of:

All full-time and regular part-time employees employed by the Employer who perform combustible waste disposal and fugitive dust control services work at the PacifiCorp Huntington and Hunter Power Plants in Emery County, Utah; EXCLUDING all office clerical employees, managers, guards, and supervisors as defined in the Act.

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<sup>1</sup> The name of the Union appears as corrected in Board Exhibit 2.

<sup>2</sup> All dates are in 2012 unless otherwise specified.

All of these employees were formerly employed by Ashworth Transfer (Ashworth) and were represented by the Union, but are now employed by the Employer. Following the hearing, the parties submitted briefs.

The single issue addressed here is whether processing of the petition is barred by the Employer's status as a successor employer of the represented employees. The Union argues that the petition is barred under the Board's recent holding in *UGL-UNICCO Serv. Co.*, 357 NLRB No. 76 (2011), which reinstated the "successor bar" doctrine. The Employer and Petitioner take the position that the Employer is a construction-industry employer and that, therefore, the holding of *UGL-UNICCO* does not apply. The Employer also contends that while Ashworth was essentially a trucking company, it is primarily a construction company, and that it did not grant recognition to the Union as a Section 9(a) majority representative of the employees in the stipulated appropriate unit. Rather, according to the Employer, it granted recognition to the Union as a minority representative under Section 8(f) of the Act.<sup>3</sup>

Under Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. As I discuss further below, I conclude that the bargaining unit employees are not substantially engaged in construction work, that the Employer is a successor employer and, under current Board law, this petition is barred for a reasonable period of time pursuant to the successor bar doctrine.

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<sup>3</sup> Although the issue need not be decided in this proceeding since I am determining that the bargaining unit is not primarily engaged in the construction industry and that there is a successor bar to the processing of this petition, inasmuch as the record reveals that the Employer granted recognition to the Union under Section 8(f), if the bargaining unit performed primarily construction work, such recognition might arguably pose a bar for a reasonable period of time under the "recognition bar" doctrine. *Casale Industries*, 311 NLRB 951 (1993).

## **INITIAL FINDINGS**

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board. The parties stipulated, and I find, that the Employer is a Utah corporation engaged in construction and engineering services in Utah and other states. The Employer's principal place of business is in Huntington, Utah. During the course and conduct of its business operations, the Employer annually purchases and receives goods and materials valued in excess of \$50,000 from points directly outside the state of Utah.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. 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:

All full-time and regular part-time employees employed by the Employer who perform combustible waste disposal and fugitive dust control services work at the PacifiCorp Huntington and Hunter Power Plants in Emery County, Utah; EXCLUDING all office clerical employees, managers, guards, and supervisors as defined in the Act.

## **FACTS**

The Employer performs a wide variety of construction services, for which it maintains a contractor's license that qualifies it to do both construction and engineering work in Utah. Among the many services that the Employer can provide are road construction, heavy excavation, mine construction and support, heavy hauling, welding,

dam construction, and concrete services. The Employer has a preexisting contract to perform all service and maintenance jobs at PacifiCorp's power plants that are valued under \$50,000. It can bid on any PacifiCorp maintenance and construction projects larger than that amount.

In late August, the Employer won a contract bid to perform "ash and combustible waste disposal and fugitive dust control" services at PacifiCorp's Hunter and Huntington power plants. At that time, this work was already being performed by Ashworth, which employed the bargaining unit of 23 waste disposal and fugitive dust control employees that is the subject of this petition.

Ashworth and the Union had a bargaining relationship for this unit that dates back to the 1950s. They were parties to an agreement covering unit employees, which, by its terms, was effective from January 1, 2012 through March 31, 2017. The Union asserts that the recognition language that appeared in that contract is the same language as in every prior contract that the Union reviewed during its preparations to negotiate the most current version. The recognition language in the most recent contract states that the Union is "the exclusive representative of the employees" covered by the contract and is silent as to whether that recognition is based on a demonstration of majority status.

The Employer had only four days notice at the end of August that it was awarded the waste disposal contract and to make to make preparations. In those four days, the Employer interviewed Ashworth's employees and extended job offers to all of them. Ultimately, it hired 22 or 23 of Ashworth's original employee complement to continue performing waste disposal and dust control services. The Employer contends that it

informed the employees of changes to their wages and terms and conditions of employment prior to hiring them. Among the changes, employees were specifically informed that they would no longer be required to undergo Department of Transportation (DOT) physicals and drug tests or maintain a commercial driver's license (CDL). There are seven employees working at the Huntington site and 15 at the Hunter site.

The record establishes that the waste disposal work that employees performed at PacifiCorp did not change substantially when the Employer took over the contract for those services from Ashworth. The Employer's contract began on September 1, with no break in service to PacifiCorp. The scope of the work is defined in the Employer's contract with PacifiCorp as follows: "Transport and dispose [sic] fly ash, bottom ash, scrubber waste including slurry and synthetic gypsum and pyrite products." This is the same work that employees were performing for Ashworth. As before, employees load fly ash and slurry from the power plants into trucks to transport it to a dump site on the plant's property. Employees then dump the waste, spread it, grade it, and compact it. The fugitive dust control component of the work involves spraying down the waste ash with water. Each employee has a specific job assignment, but there is interchange as needed.

The waste disposal contract also requires the Employer to maintain the waste "cell" that holds the ash and slurry and to maintain the waste piles in accordance with the site plan. Cell maintenance involves removing topsoil and putting in a liner, and has been ongoing for years, as employees clear new space for waste. In that regard, the Petitioner testified that he has been assigned to work on building a new cell since he

began working for Ashworth in about 2009 or 2010.<sup>4</sup> After workers put waste in the cell (currently a 100-foot deep hole in the ground), they replace the topsoil.<sup>5</sup> The Employer is generally providing the same service to PacifiCorp that Ashworth did, and the employees testified that their work is essentially the same as it was with Ashworth.

The only thing that appears to have changed for employees after the Employer took over the contract is that the Employer introduced new and better equipment, including a push dozer, a grader, and a trackhoe. The employees still perform the same functions, but the new equipment has made their work more efficient. For example, employees must maintain the grade on the ash pile, and unit employee Jeffrey Tucker testified that when he worked for Ashworth, he “eyeballed” the grade and used a loader with a blade to maintain it. The employees now use the Employer’s GPS and grader to perform this work.

The Employer appears to have dispatched some of the former Ashworth employees to perform small projects under its maintenance contract with PacifiCorp. Project Manager Devin LeRoy testified that when employees get caught up on their waste disposal work, they might perform work on some of the Employer’s construction projects at PacifiCorp under the service contract. He recalled that unit employees Hal Lemon and Steven Price worked on a couple of water leaks at the Hunter plant. Also, unit employees Jeff Tucker, Tom Shade, and Aaron Isaacson spent two days on a repair project – one day breaking up concrete and one day hauling the broken concrete away. Project Manager LeRoy testified that there have been “several” such

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<sup>4</sup> The Petitioner did not indicate what portion of his work time was spent on cell building or what tasks he was assigned to perform other than the project requires clearing space.

<sup>5</sup> Employee Jeffrey Tucker testified that one pile of non-combustible waste at the Hunter location would take about another 15 years until it reaches its maximum.

construction projects since September 1, but did not say how many waste disposal employees have been dispatched to work on them, how frequently that occurs, the length of such assignments, or what type of work they have done. Employee Tucker, on the other hand, testified that employees spend 99 percent of their time doing ash disposal work.

On about September 5, after the Union had confirmed with its Steward as to the number of former Ashworth employees hired by the Employer, it sent a written request to the Employer to begin bargaining. On about September 26, Petitioner Walls provided the Employer with a typed petition signed by 12 unit employees, stating that they no longer wished to be represented by the Union. September 26 was also the first day that the Employer met with Union representatives. The parties discussed possible recognition and the Employer stated that it believed the bargaining relationship was consistent with Section 8(f) of the Act. The Employer claimed that it could not extend 9(a) recognition because the petition it had received created doubt as to the Union's majority. The parties reached a tentative agreement to recognize the Union at the parties' October 23 meeting. Then, also during the parties' October 23 meeting, the Employer confirmed that they would extend recognition, but not as the majority representative of the employees under Section 9(a) of the Act. At that time, the Union maintained that it represented a majority of the employees. The parties had a third bargaining meeting on November 16. The Employer asserts that it is not obligated to recognize the Union as a Section 9(a) bargaining representative, contending that the Union has never offered to prove it represents a majority of the employees.

## **APPLICABLE LEGAL STANDARDS**

The Supreme Court has approved the Board's determination that a successor employer has an obligation to recognize and bargain with the bargaining representative of its predecessor's employees. *NLRB v. Burns Int'l Security Serv., Inc.*, 406 U.S. 272 (1972); accord *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, (1987) (establishing that successorship is equally applicable in long-established bargaining representatives). In *Burns*, a "successor employer" was defined as an employer that (1) assumes the operations of another employer while maintaining substantial continuity of the predecessor's operations, and (2) hires a majority of its employee complement from the predecessor's employees. *Burns*, at 281.

The Board, in determining "substantial continuity" of operations looks at the totality of the circumstances, examining such factors as: (1) whether the business of both employers is essentially the same; (2) whether the employees of the new business are doing the same jobs in the same working conditions and under the same supervisors; (3) and whether the new business has the same production process, products, and customers. *Fall River*, 482 U.S. at 43. The inquiry places particular emphasis on the employees' perspective, asking if "those...who have been retained will understandably view their job situations as essentially unchanged." *Id.* at 43 (citing *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 184 (1973)). Once successorship is established, an incumbent union continues to enjoy a presumption of continuing majority status, regardless of the change in employers. *Fall River Dyeing*, 482 U.S. at 37-41; *Burns*, 406 U.S. at 279 n.3.

Recently, in *UGL-UNICCO Serv. Co.*, 357 NLRB No. 76 (2011), the Board overruled *MV Transportation*, 337 NLRB 770 (2002), and re-established the “successor bar” doctrine, but modified it as it existed under *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999). Under *UGL-UNICCO*, the “successor bar” applies when an employer fulfills its obligation of recognizing the incumbent representative of its employees, but the contract bar does not apply, either because the employer does not adopt the predecessor’s collective bargaining agreement, or because an existing agreement between the successor and the representative does not serve as a bar. 357 NLRB No. 76, slip op. at 11. In such situations, the incumbent is entitled to a “reasonable period of bargaining,” during which challenges to the majority status of the incumbent union are barred. *Id.* When the successor sets its own initial terms and conditions of employment, the “reasonable period” will be a minimum of six months and a maximum of one year. *Id.*, slip op. at 9-10. After six months, the Board will apply the multi-factor analysis from *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001), to determine whether a reasonable period has elapsed. *UGL-UNICCO*, slip op. at 13. The burden of proving whether a reasonable period has elapsed will belong to the party invoking the successor bar. *Id.*

## **LEGAL ANALYSIS**

### **I. THE BARGAINING UNIT EMPLOYEES ARE NOT ENGAGED IN CONSTRUCTION WORK**

The Employer asserts that it is a construction-industry employer, and that, accordingly, the successor bar has no application to this case. For the reasons explained below, I find that notwithstanding the Employer’s other construction projects and contracts, the bargaining-unit employees in question here are not, and never were,

engaged in construction work. Therefore, the parties' bargaining relationship cannot lawfully be governed by Section 8(f). Accordingly, I do not need to reach the issue of whether the successor bar would apply in the context of an 8(f) bargaining relationship. In this case, the Union is a 9(a) bargaining representative, entitled to the benefit of all associated protections and presumptions.

The Board defines "construction industry" work broadly and inclusively. As recently as 2007, the Board has held that the statutory definition encompasses "the provision of labor whereby materials and constituent parts may be combined on the building site to form, make or build a structure." *The Cajun Co., Inc.*, 349 NLRB 1031, 1038 (2007) (quoting *Painters Local 1247*, 156 NLRB 951, 959 (1966)). This includes all "new work, additions, alterations, reconstructions, installations, and repairs." *FHE Services, Inc.*, 338 NLRB 1095, 1098 (2003) (citing *Carpenters (Rowley-Shlimgen)*, 318 NLRB 714, 715-16 (1995)). The Board has also borrowed from the U.S. Department of Commerce's definition, as published in Volume 3 of the Construction Review, in broadly defining construction as:

"[T]he erection, maintenance and repair (including replacement of integral parts), of immobile structures and utilities, together with service facilities which become integral parts of structures and are essential to their use for any general purpose. It includes structural additions and alterations. Structures include buildings ...and all similar work which are built into or affixed to the land...Construction covers those types of immobile equipment which, when installed, become an integral part of the structure and are necessary to any general use of the structure. This includes such service facilities as plumbing, heating, air conditioning and lighting..."

*C.I.M. Mechanical Co.*, 275 NLRB 685, 691 (1985). Although these definitions are broad and inclusive, what emerges is that construction work is characterized, not by the

equipment or tools used by workers, but by what is accomplished by them—namely the building of structures and other installations “affixed to the land.”

From these definitions it seems clear that at least some of the Employer’s maintenance and repair work at PacifiCorp’s power plants falls within the definition of construction work. Given the evidence that the Employer apparently engages in such diverse and substantial projects as road building, earthen dam construction, heavy excavation, and pipeline and mine construction, it can probably even be classified as a “construction industry” employer. But this does not directly address the issue because an employer engaged in construction-industry work may nevertheless employ non-construction bargaining units governed by 9(a). See, e.g., *Granite Construction Co.*, 330 NLRB 205, 205 n.5 (1999) (employer’s construction bargaining units were governed by 8(f), but the rock, sand, and gravel bargaining units that were engaged in manufacturing were governed by 9(a)); *Malcom Boring Co., Inc.*, 259 NLRB 597 (1981) (companies that constituted a single employer had a pre-hire agreement under Section 8(f) covering construction employees, but a separate unit of non-construction shop employees could not be bound by the pre-hire agreement). As explained below, the definition of “construction work” does not extend to include the waste disposal work done by the unit of employees formerly employed by Ashworth.

Unit employees are not substantially involved in building, repairing, or maintaining any building or other structure. Instead, their primary function is to load, transport, and dispose of waste ash and slurry for a power plant. Trucking and delivery services are not considered construction work, even when employees are making deliveries to and from construction sites. *Irving Ready Mix*, 357 NLRB No. 105 (2011).

Further, the employer's characterization of the work required to maintain the waste cell as "construction" stretches the meaning of construction beyond the Board's definition. The reality is that unit employees primarily remove topsoil, dump waste in a large hole, and then eventually replace the topsoil. There is no evidence in the record that the unit employees were, for example, building roads, retaining walls, drainage, outbuildings, or any other structures. While employees may use dozers and graders at the waste site, the result is not any improvement "affixed to the land," but a landfill relating to the ongoing operation of a power plant. Therefore, these employees are not, and have never been, primarily engaged in construction work.

Moreover, the construction projects that bargaining unit employees were occasionally dispatched to perform after the employees were hired and the Union had already requested recognition would not transform this unit into a construction unit. It is undisputed that the Employer had hired a representative complement of employees as of its takeover of the waste disposal operation on September 1 and that the Union requested recognition on September 5 . The record shows that there was no hiatus in the waste disposal operation during the transition to the new contractor. The obligation to recognize the Union attached at the time that the Employer hired a representative complement of employees and the Union requested recognition. Thus, any decision to assign other "construction" type work thereafter would not be relevant to the obligation to recognize the Union. *Torch Operation Co.*, 322 NLRB 939 (1997) (where there was no hiatus in transfer of operations, the duty to bargain attached to the successor Employer prior to changes made that the Employer asserted showed a lack of substantial continuity of operations with the predecessor).

Further, even assuming that assignments given to unit employees since the demand for recognition were relevant to establish whether there was substantial continuity of operations with the predecessor, and could be considered construction work, employees of a construction industry employer must be “substantially engaged” in construction work in order to fall within the ambit of Section 8(f). *Techno Construction Corp.*, 333 NLRB 75, 84 (2001). This means that construction “need not constitute a majority of their work,” but must be “more than minimal.” *Id.* In this case, there was only evidence of two specific occasions where employees were dispatched to construction projects, one of which employed just three employees for two days. A third – repairing damaged piers – was scheduled to begin the day of the hearing, but the Employer did not specify how many unit employees would be involved, how long they would be working on the project, or what work unit employees would be performing. Further, there was no evidence on the record about how frequently unit employees are sent to help with these maintenance projects, except that employee Tucker testified that employees spend 99 percent of their time working in ash disposal.

Furthermore, the evidence shows that the projects at issue were unrelated to the employees’ regular unit work. The leak repairs and cement removal were done at the power plant, not at the waste site. As Project Manager LeRoy testified, employees only help with such projects after they are caught up on their normal waste management work. Additionally, employees use a different job number on their time card when doing such work, because these construction projects are done under the Employer’s maintenance contract, not the waste management contract. Because such work is both minimal and extraneous to the normal work of the bargaining unit, this evidence does

not show that bargaining unit employees “substantially engaged” in construction work at the time the bargaining obligation attached. Therefore, I find that these employees are non-construction industry employees. Thus, Section 9(a), and not 8(f), governs the Union’s bargaining relationship with the Employer. Accordingly, the 9(a) presumption of continuing majority status and the attending successorship doctrine apply to this bargaining unit.

## **II. THE SUCCESSOR BAR DOCTRINE PROHIBITS FURTHER PROCESSING OF THIS PETITION**

The Union was the exclusive bargaining representative of Ashworth’s employees under Section 9(a) of the Act. Ashworth had a six-decade bargaining relationship with this non-construction bargaining unit, during which it executed a series of collective-bargaining agreements recognizing the Union as the “exclusive representative of the employees.” The last such agreement was facially valid.<sup>6</sup> When an employer and a union enter into a facially valid collective-bargaining agreement covering non-construction employees, the Board will presume (a) that the union enjoyed majority status at the time the contract was executed, and (b) that it continues to enjoy majority status beyond the life of the contract. *Henry Bierce Co.*, 328 NLRB 646, 658 (1999); see also *Pioneer Associates v. NLRB*, 578 F.2d 835, 838 (1978) (citing *Shamrock Dairy, Inc.*, 119 NLRB 998, 1002 (1957) (the Board will presume that an employer acted lawfully in executing the collective-bargaining agreement). The Union is, therefore, entitled to a presumption of majority status with regard to this bargaining unit.<sup>7</sup>

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<sup>6</sup> I also note that the most recent contract between Ashworth and the Union did not contain a union security provision with a seven day grace period or a hiring hall provision that might suggest a Section 8(f) relationship between those parties.

<sup>7</sup> Indeed, the Employer could not challenge the legality of Ashworth’s original recognition of the Union at this point, even if it wished to do so, because that issue is time-barred under Section 10(b) of the Act.

I find that this Employer is a successor to Ashworth Transfer under *NLRB v. Burns*, 406 U.S. 272. As noted above, it is undisputed that by September 5, the date the Union requested bargaining, the Employer had hired 22 of 23 of Ashworth's employees to perform the same work that they did previously, and has hired no additional employees. Thus, as of September 5, the majority of the Employer's employees in the unit was comprised of the predecessor's former employees. Furthermore, I find that there was substantial continuity in operations. The Employer provided services to the same client as its predecessor, PacifiCorp, without any hiatus in operations. Further, it is undisputed that the unit employees' job functions did not change when they were hired by the Employer. They continued to do the same work, hauling waste from power plants to on-site waste areas. There was no testimony about the bargaining unit's supervisory structure or personnel, except that Project Manager LeRoy is currently a supervisor of the former Ashworth employees, so it is not clear how this affected employees on a day-to-day basis. The Employer informed employees that they were no longer required to maintain a CDL, but this was not a significant departure, because, according to both unit employees who testified, their jobs remained the same. Accordingly, from the unit employees' point of view, which is the perspective from which continuity is measured, very little changed.

The one thing that did change was the Employer's introduction of new and better equipment.<sup>8</sup> The Employer provided a new grader, a push dozer, and a trackhoe. Unit employee Walls testified that this made his work more efficient, and unit employee

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See *Local 6, Amalgamated Indus. Serv. Workers Union*, 324 NLRB 647, 659 (1997) (citing *Stanwood Thriftmart*, 216 NLRB 852, 853 (1975)); accord *Casale Indus.*, 311 NLRB 951, 953 (1993).

<sup>8</sup> The Employer asserts in its brief that a "paradigm shift" occurred as new cell construction was performed by the Employer. This is belied by the testimony of its witness, Petitioner Walls, who testified that he worked on the new cell development while employed by Ashworth.

Tucker testified that he had to “eyeball” the waste pile before the Employer provided a grader when it assumed operations. So it is undisputed that the new machinery changed the way employees did their jobs. Nevertheless, the Board will find substantial continuity, even where there is new equipment or better processes, when the change simply “lends speed to the same basic operation” or amounts to “a better way of doing the same thing.” *Scroll Casual*, 278 NLRB 10, 13-14 (1986). It is undisputed that employees were doing the same job functions of loading, transporting, dumping, and grading fly ash. The fact that employees were able to do these same jobs better or faster with the new equipment does not defeat the otherwise substantial continuity in this case. Thus, considering the totality of circumstances, I find that the Employer is a successor to Ashworth.

Because the Employer is a *Burns* successor to a 9(a) bargaining relationship, there is no doubt that the successor bar applies here. Under the holding of *UGL-UNICCO*, the Union’s presumption of continued majority is irrebuttable, and, therefore, further processing of this or any other representation petition is barred for a reasonable period of time. 357 NLRB No. 76, slip op. at 11. Based on this record, it appears that the Employer met with employees and unilaterally set their initial terms and conditions of employment shortly before they were hired. Accordingly, the “reasonable period for bargaining” will be no less than six months and no longer than one year from the parties’ first bargaining session. *Id.*, slip op. at 13. If a petition is filed after the first six months, the Board will apply the multifactor analysis of *Lee Lumber*, 334 NLRB 399 (2001), to determine whether a reasonable period has passed.<sup>9</sup>

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<sup>9</sup> At that time, the Board will consider, “(1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated and of the parties’ bargaining processes; (3) the amount of

Finally, I am not persuaded by the Employer's argument that the Union's failure to demonstrate its majority support during contract negotiations has any bearing on the processing of the petition at this time. The Board recognizes that "fluctuations in employee sentiment" are intrinsic to successorship situations. *UGL-UNICCO*, 357 NLRB No. 76, slip op. at 10. The Board's stated goal in reinstating the successor bar is to provide some stability in the face of this uncertainty. This has two effects. First, the Union enjoys an irrebuttable presumption of majority status and is under no obligation to prove its majority. Second, the Employer, as a successor, is not entitled to rely on the employees' petition indicating that they no longer wish to be represented by the Union. *Crown Textile Company*, 335 NLRB 201, 202 (2001) (finding a successor bar under the Board's *St. Elizabeth Manor* rule). The Union's majority status can be challenged after a reasonable period for bargaining has passed, or two years after the execution date of any contract reached by the parties. *UGL-UNICCO*, slip op. at 13.

Accordingly, after carefully considering the entire record and based upon guidance from the Board law discussed herein, I have determined that this petition shall be dismissed.

## **ORDER**

IT IS ORDERED that the petition in this matter is dismissed.

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time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at an impasse." *Lee Lumber*, 334 NLRB at 402.

## 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 and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14<sup>th</sup> Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by January 17, 2013. The request may be filed electronically through the Agency's website, [www.nlrb.gov](http://www.nlrb.gov),<sup>10</sup> but may not be filed by facsimile.

DATED at Denver, Colorado this 3rd day of January, 2013.

/s/ Wanda Pate Jones  
Wanda Pate Jones, Regional Director  
National Labor Relations Board, Region 27  
600 17<sup>th</sup> St.,  
7<sup>th</sup> Floor, North Tower  
Denver, CO 80202

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<sup>10</sup> To file the request for review electronically, go to [www.nlrb.gov](http://www.nlrb.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.