

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

**STAFFING DIMENSIONS OF
LIBERTYVILLE, LLC**

Employer

and

**MATTHEW MEILLER AND
MARIBEL NOVELO**

Case 13-RD-095653

Joint Petitioner

and

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES (AFSCME) COUNCIL 31,
AFL-CIO, LOCAL 2452**

Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (the Act), a hearing was held before a hearing officer of the National Labor Relations Board (the Board). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.¹

¹Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings, made at the hearing, are free from prejudicial error and are affirmed.
2. The parties stipulated and I find that Staffing Dimensions of Libertyville, LLC (the Employer) is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.
3. The parties stipulated and I find that American Federation of State, County and Municipal Employees (AFSCME) Council 31, AFL-CIO, Local 2542 (the Union) is a labor organization within the meaning of the Act.
4. The Union claims to represent certain employees of the Employer.

I. ISSUES & PARTIES' POSITIONS

The Joint Petitioner² seeks to decertify the Union as the collective-bargaining representative of employees in a unit at the Winchester House facility in Libertyville, Illinois. The Union had represented this same unit of employees under the predecessor employer, the County of Lake, Illinois. The Employer hired a majority of the predecessor's employees and on December 2, 2011, the Employer recognized the Union as the exclusive collective-bargaining representative of its employees at Winchester House. The Union contends that the instant petition should be barred for a reasonable time because the Employer recognized the Union after it hired a representative complement of workers from the predecessor and initially set its own terms and conditions of employment. By contrast, the Employer does not believe that a bar to an election is appropriate because the bargaining relationship has been given a reasonable chance to succeed. The Employer and Joint Petitioner both contend that the unit employees should not be deprived of the right to exercise their free choice through a Board-conducted representation election.

II. DECISION

Upon examination of the underlying policies to bars for processing representation petitions, I find for the reasons set forth below:

1. The successor bar in the instant petition began on February 17, 2012, when the parties had their first bargaining session for a new collective-bargaining agreement.
2. Thus, at the time of the issuance of the instant decision the duration of the bar had elapsed.

Accordingly, **IT IS HEREBY ORDERED** that an election be conducted under the direction of the Regional Director for Region 13 in the following appropriate bargaining unit:

All full-time and regular part-time Cooks, Dietary Aides, Restorative Aides, Activity Aides, Unit Secretaries, Central Supply Coordinators, and Nurses Aides employed by Staffing Dimensions of Libertyville, LLC, at Winchester House currently located at 1125 North Milwaukee Avenue, Libertyville, Illinois; but, excluding, Registered Nurses, Licensed Practical Nurses, medical social workers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

5. A 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.

6.

² I take administrative notice of the decertification petition in 13-RD-077140 filed by Petitioner Matthew Meiller on March 21, 2012, and then withdrawn, of which the instant petition is a re-filing.

III. STATEMENT OF FACTS

The Union had two collective-bargaining agreements with the predecessor employer, County of Lake, Illinois, the unit involved in the instant petition and a unit of Registered Nurses (RNs), Licensed Practical Nurses (LPNs), and medical social workers. Around the expiration of both contracts, on November 30, 2010, the Union and the predecessor began negotiating successor agreements; however, bargaining was suspended in the spring of 2011 when the predecessor put out a request for proposals for a private company to take over operations at Winchester House. Health Dimensions Group (HDG) was awarded the operating contract and created the Employer to staff Winchester House.

On November 30, 2011, the Union requested recognition and demanded the Employer bargain while maintaining the status quo. The Employer began its operations at Winchester house the following day, December 1, 2011, setting new initial terms and conditions with regard to employees' wages, health insurance, time off, and attendance.

On December 2, 2011, the Employer recognized the Union as the collective-bargaining representative of both bargaining units.

On December 14, 2011, two Union representatives met with two Employer representatives who presented a financial incentive for employees to work over the holidays. The parties agreed to a per shift premium.

On February 17, 2012, the same two Union representatives met with a representative for the Employer and discussed how bargaining would proceed. The Employer presented a list of issues it wanted to address in negotiations and the Union requested information regarding employee benefits. The parties discussed whether, and how much, of the predecessor contract might be retained in the successor agreement. Potential bargaining dates were discussed and agreed to, as well as ground rules under which bargaining over economic issues would be postponed until after noneconomic issues were resolved.

On March 7, 2012, two to three Union representatives met with two to three representatives for the Employer. The Union raised issues about the Employer being short staffed.

On March 15, 2012, Union representatives and two employees met with representatives from the Employer and bargained over proposals the Union had made the previous day via e-mail. Bargaining continued the following day, March 16, 2012, and the Employer made its first written proposals on March 21, 2012. Over the next nine months, the parties had 16 more bargaining sessions that typically lasted between two to three hours each and resulted in tentative agreements on a majority of the noneconomic provisions with the exception of an attendance policy. Most economic issues remain open.

The instant petition was filed on December 31, 2012. As of the date of the hearing, January 11, 2013, the parties had two future bargaining sessions scheduled.

IV. ANALYSIS

The Union contends that the successor bar doctrine should be applied to the instant case.³ The Employer on the other hand argues that a bar is not applicable because the parties' bargaining relationship has been given a reasonable chance to succeed.

As recognized by the Board in *UGL-UNICCO Service Co.*, 357 NLRB No. 76 (2011) there can be no doubt that, under existing law, the transition from one employer to another threatens to seriously destabilize collective bargaining even when the new employer is required to recognize the incumbent union. A successor employer can freely choose (on any non-discriminatory basis) which of the predecessor's employees it will keep and which it will not hire. A successor employer can also reject any existing collective-bargaining agreement, and it will often be free to unilaterally establish all initial terms and conditions of employment.

Because the new relationship established in successorship is disruptive to the prior bargaining relationship, the Board in *UGL-UNICCO*, supra, restored its rule for successor bar. A bar creates a conclusive presumption of majority support, preventing any challenge to a union's representational status, whether by an employer's unilateral withdrawal of recognition from a union or by an election petition filed with the Board by an employer, by employees, or by a rival labor organization. The purpose of a successor bar, recognition bar, or certification bar is to allow a reasonable period of time for a newly established bargaining relationship to stabilize. As stated by the Supreme Court, "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed." *Frank Bros. Co. v. NLRB*, 321 U.S. 702 (1944). Based on the undisputed facts in this matter, this is clearly the case of a successor employer recognizing the union and establishing its own initial terms and conditions of employment before proceeding to bargain. In such a situation a "reasonable period of bargaining" should be a minimum of 6 months and a maximum of 1 year measured from the date of the first bargaining meeting between the union and the employer, where the burden is on the party asserting the bar to establish the reasonable period for bargaining should extend beyond the 6-month minimum by applying the factors set forth in *Lee Lumber & Building Materials Corp.*, 334 NLRB 399 (2001). See *UGL-UNICCO*, supra, slip op. at 9.

However, the facts of the instant case establish that the date of the parties' first bargaining meeting for a new contract was February 17, 2012, when the parties discussed ground rules and agreed to the order of negotiations and potential future dates for bargaining, and the Union requested information about employee benefits. See *Lawrence Livermore National Security*, 357 NLRB No. 23 at slip op. 5 (2011) (a bargaining situation involving a successor employer where the Board held that "negotiations had started ... with the discussion and agreement on ground rules and the Union's request for information"). Therefore, even if the

³ Although not argued by the Union, the voluntary recognition bar doctrine established in *Lamons Gasket Co.*, 357 NLRB No. 72 (2011) would return the same result.

insulated period was found to be the maximum 1 year, the successor bar elapsed February 17, 2013, which is before the issuance of this decision, and therefore an election should be held. See *Nevada Club*, 178 NLRB 81 fn. 7 (1969) (where a petition filed more than 90 days before the expiration of a collective-bargaining agreement was not barred because the Board's decision issued after the contract bar had elapsed).

IV. CONCLUSION

Based on the foregoing and the entire record herein, I find that the date of the first bargaining meeting between the Union and the successor Employer was no later than February 17, 2012 and, therefore, the maximum 1-year period for a successor bar under *UGL-UNICCO* concluded no later than February 17, 2013, which is before the issuance of this decision. Accordingly, I direct an immediate election.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit 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.⁴ Those eligible to vote are all full-time and regular part-time Cooks, Dietary Aides, Restorative Aides, Activity Aides, Unit Secretaries, Central Supply Coordinators, and Nurses Aides employed by Staffing Dimensions of Libertyville, LLC, at Winchester House currently located at 1125 North Milwaukee Avenue, Libertyville, Illinois; but, excluding, Registered Nurses, Licensed Practical Nurses, medical social workers, office clerical employees and guards, professional employees and supervisors as defined in the Act. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

⁴ In order to assure 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 that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 13 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 209 South La Salle Street, Suite 900, Chicago, Illinois 60604-1443 on or before **March 7, 2013**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

If you have any questions, please contact the Regional Office.

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 purposes by the American Federation of State, County and Municipal Employees (AFSCME) Council 31, AFL-CIO, Local 2452.

VI. 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 **March 14, 2013**.

In the Regional Office's initial correspondence, the parties were advised that the Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 28th day of February 2013.

/s/ *Peter Sung Ohr*

Peter Sung Ohr, Regional Director
National Labor Relations Board
Region 13
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