

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

MASTEC NORTH AMERICA, INC.

Employer

and

TONY E. VELAZQUEZ, JR.

03-RD-105232

Petitioner

and

**INTERNATIONAL ASSOCIATION OF MACHINISTS &
AEROSPACE WORKERS, AFL-CIO, DL 15**

Union

**UNION'S REQUEST FOR REVIEW
TO THE NATIONAL LABOR RELATIONS BOARD**

**I.A.M.A.W. DISTRICT 15
James M. Conigliaro, Esq.
Attorney for Union**

**652 4th Avenue
Brooklyn, New York 11232**

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Pursuant to Section 102.67 of the Rules and Regulations of the National Labor Relations Board, the International Association of Machinists and Aerospace Workers, AFL-CIO, DL15 (the "Union"), by and through counsel, files this Request for Review of the Decision and Direction of Election ("DDE") issued on June 18, 2013, by the Regional Director for the Third Region.

I. BACKGROUND AND BASIS FOR REVIEW

Mastec North America, Inc. ("Mastec" or the "Employer") is engaged in the business of installing satellite television services with an office located south of Buffalo, in Hamburg, New

York. On May 16, 2012, the Union was certified as the bargaining agent for the employees at Mastec. After several negotiation sessions over an eleven-month period, two primary issues that remained as of April 25, 2013, were both resolved when the Union agreed to the Employer's wage offer and its offer of a one-year contract. Norman Shreve, the Union's business representative and negotiator, asked Eric Simon, Esq., the Employer's counsel and negotiator, for a clean copy of the agreement to present for ratification. On May 1, Eric Simon emailed a copy of the agreement to Shreve, which he stated was a "draft of the proposals as tentatively agreed to at the bargaining table." From that point a series of emails were exchanged that purported to finalize all remaining issues. However, both parties did not actually execute the agreement until May 22, 2013 and May 29, 2013, respectively. As a result of a decertification petition filed on May 16th, a hearing was held at the Third Region where the sole issue raised was whether a collective bargaining agreement between the Employer and the Union barred the processing of the petition. At the hearing, the Union contended that a complete collective-bargaining agreement that was ratified by its members existed before the petition was filed. The Employer asserted that a collective-bargaining agreement did not exist before the petition was filed because a *signed* document evidencing that the parties had reached a collective-bargaining agreement had not existed as of the date the petition was filed. Based on the record and its application of Board law, the Region found that no contract existed as of the date of the petition and thus could not serve to bar the processing of the petition.

Specifically, notwithstanding that a formal agreement had not been signed by the parties at the time the petition was filed, the Region found that an exchange of emails was sufficient enough to overcome the lack of actual signatures. Further, the Region found no issue with the fact that a complete agreement may have been reached on the same day the petition was filed. In

fact, the only issue as to why the Region found the agreement could not constitute a bar to the petition was because the agreement “lacked a definite term until after the decertification petition was filed.” In sum, the agreement could have constituted a bar to the petition had the agreement contained a clear effective date.

The Union respectfully requests the Board grant this Request to Review because the Regional Director’s Decision is based on an erroneous principle that the effective date of the agreement must be expressly written *within* a formal document.

II. ANALYSIS

The Region, in relying on *South Mountain Healthcare and Rehabilitation Center*, 344 NLRB 375 (2005), stated:

“To serve as a bar to a petition, a contract must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship. *Cind-R-Lite Co.*, 239 NLRB 1255, 1256 (1979) (citing *Appalachian Shale Products Co.*, 121 NLRB 1160, 1163 (1958)). Both an effective date and an expiration date are material terms of a contract. *Id.* Unless these dates are apparent from the face of the contract, without resort to parol evidence, the contract will not serve as a bar. *Id.* 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 and Rubber Company*, 181 NLRB 509 (1970).”

Applying the above principles, the Region found that because the duration clause in the draft agreement provided blank spaces as to the exact effective date, the agreement could not bar the petition. However, although cited to by the Region, it appears that the Region did not fully apply the principles followed in *Cooper Tire and Rubber Company*, 181 NLRB 509 (1970). In *Cooper Tire*, the Board held that a contract term could be definite without the effective date and the termination date being set out in the duration clause by the exact month and day. *Id.* There, the term of the agreement as set forth in the contract stated that the agreement shall become

effective “_____, 1968 and shall remain in full force and effect until _____, 1971 and thereafter for yearly periods.” *Id.* at 509. As a result, the Regional Director in that case found that the collective-bargaining agreement between the Employer and the Union was of indefinite duration and did not constitute a bar to the that petition. *Id.* However, the Board in that case reversed the Regional Director’s decision and examined other provisions of the contract in order to indicate when the parties intended on the contract to become effective. *Id.*

It is accurate, as the Board stated in *Cooper Tire* and in this matter, that the Board may not resort to parol evidence and that the date must be apparent from the face of the contract. However, in this case, the Region found that the complete agreement did not consist of one formal document but instead consisted of a series of documents including a number of electronic messages. Thus, if the complete agreement consisted of a number of documents, the Region must examine all of those documents when ascertaining the effective date of the agreement and not merely the duration clause itself. In the Region’s DDE, it appears that the Region only relied upon the duration clause in the tentative agreement and the Wage Rates listed in Appendix 1 of the agreement without resort to the exchange of emails that together made-up the complete agreement.

The testimony introduced at trial indicates that the parties agreed to a one-year duration during the parties’ last negotiation session in April. Further, testimony was also introduced that the tentative agreement was subject only to the ratification of the membership. It is the Union’s contention that a fair reading of the emails that were transmitted between the parties would indicate that a May 3rd effective date was agreed upon. This May 3rd effective date is further substantiated given the fact that this was the actual date that was inserted into the contract when it was fully executed by May 21st. Unfortunately, as specified in the DDE, the Region did not

properly analyze all of the documents and simply relied upon the duration clause and Appendix 1 of the agreement.

It is for these reasons, the Union respectfully requests the Board to reverse the Regional Director's decision and hold that the agreement between the Union and Mastec serves to bar any petition that was filed during the term of the current collective bargaining agreement.

DATED this the 10th of July, 2013

Respectfully submitted,

By: /s/ James M. Conigliaro
JAMES M. CONIGLIARO
ATTORNEY FOR THE UNION

CERTIFICATE OF SERVICE

I certify that I have on the 10th day of July 2013, I served a copy of the Request for Review of the Union, International Association of Machinists and Aerospace Workers, AFL-CIO, DL15, in the above-captioned matter by NLRB e-filing system to:

Lester A. Heltzer
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

I further certify that I have served upon the following persons by electronic mail and First Class Mail:

Tony E. Velazquez
41 Iroquois Avenue
Lancaster, New York 14086
Tj21087@aol.com

Eric P. Simon
Attorney at Law
Jackson Lewis LLP
666 Third Avenue
New York, N.Y. 10017
simone@jacksonlewis.com