

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

BUDGET RENT A CAR DE PUERTO RICO, INC.,

Employer

and

UNION DE TRANSPORTE Y RAMAS ANEXAS,
UTRA,

Case 24-RC-111381

Petitioner

and

UNION DE TRONQUISTAS DE PUERTO RICO,
LOCAL 901, IBT,

Intervenor

DECISION AND ORDER

Budget Rent A Car de Puerto Rico, Inc. (the Employer) is engaged in the rental car business in Carolina, Puerto Rico.¹ On August 16, 2013, Union de Transporte y Ramas Anexas, UTRA (the Petitioner) filed a petition with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act, as amended, seeking to represent all regular full time and regular part time Customer Service

¹ Based on the stipulation of the parties, and the entire record in this proceeding, I find that The Employer is a Puerto Rico corporation engaged in the car rental business with its principal office and place of business in San Juan, Puerto Rico; during the past 12 months, a period which is representative of its annual operations described above generally, the Employer derived gross revenues valued in excess of \$500,000 and purchased and caused to be transported and delivered to its San Juan, Puerto Rico facilities, goods valued in excess of \$50,000 directly from points outside the Commonwealth of Puerto Rico; and at all material times the Employer has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

Representatives, Service Agents, Greeters, Mechanics, Bus Drivers, and Handymen employed by the Employer at the San Juan Airport and at a satellite office known as “Los Angeles Ward” in the City of Carolina, Puerto Rico but excluding all other employees, guards and supervisors as defined in the Act. The unit employees are currently represented by Union de Tronquistas de Puerto Rico, Local 901, IBT (the Intervenor).² There are approximately 26 employees included in the bargaining unit.

On August 26 2013, a hearing was held in this matter.³

The sole issue in this proceeding is whether the instant petition is barred by a collective-bargaining agreement based on the Board’s contract bar rules. Specifically, the Petitioner asserts that no contract bar exists because the collective-bargaining agreement between the Employer and the Intervenor is for a 5-year term beginning on May 1, 2010 and ending on May 1, 2015; the petition was filed after the expiration of the third year of the agreement, contracts having fixed terms longer than 5 years will only bar an election during their first 3 years, and the petition was filed after the first 3 years of the contract. The Employer and Intervenor contend that their current collective-bargaining agreement did not become effective until June 29, 2012 and continues in full force and effect until May 2, 2015, and therefore the agreement has a duration of less than 3 years, and processing of the petition is barred pursuant to the Board’s contract bar rules because it was untimely filed.

² The parties stipulated, and I find based on the record as a whole, that the Petitioner and the Intervenor are each labor organizations within the meaning of Section 2(5) of the National Labor Relations Act.

³ The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer, Petitioner and Intervenor each made oral arguments at the hearing, and the Employer submitted a post-hearing brief. I have carefully considered the parties’ oral arguments and the Employer’s brief.

For the reasons set forth below, I conclude that the contract bar doctrine is applicable in the present case and, thus, no question concerning representation exists. Accordingly, I conclude that the petition should be dismissed.

I. FACTS

The Employer and the Intervenor have had a collective-bargaining relationship with respect to the unit employees for approximately 25 to 30 years. The most recent collective-bargaining agreement between the Employer and Intervenor before their current contract was a 2-year agreement that expired on May 2, 2010. It appears that the parties did not begin to meet and bargain for a successor agreement until on or about December 16, 2010.

The Employer called as its witness its General Manager of 16 years, who was a member of its bargaining committee for negotiation of the current agreement with the Intervenor. The Petitioner called as its witness a 26 year employee of the Employer who served as one of the Intervenor's bargaining committee members, was the shop steward of the unit during the contract negotiations that led to the current agreement between the Employer and Intervenor, and apparently remains the shop steward. It appears from the record that both of these witnesses participated in negotiations throughout the process, up to and including the execution of the current agreement.⁴

It is undisputed that at the outset of the negotiations, the Employer proposed a 5-year collective bargaining agreement, but the details of that proposal are disputed. The Employer's General Manager testified that the the Employer offered the Intevenor a 5-year contract and the Intervenor did not accept the 5-year duration "at that moment." The General Manager later testified that the proposed five year contract would have

⁴ The Petitioner's witness testified that he initialed the agreement on behalf of the Intervenor.

expired in 2017. However, the Petitioner witness testified that the Employer proposed a 5-year contract that was to be effective from 2010 to 2015, and that the parties were in agreement on the duration of the agreement. In view of the fact that the Employer proposed the 5-year contract at the outset of negotiations, which began in December 2010, I conclude that the term proposed was from 2010 to 2015, rather than from 2012 to 2017.

The evidence reflects that on or about May 7, 2012, the Employer made a best and final contract offer to the Intervenor in writing at the bargaining table. Among other terms, that offer provided for wage increases retroactive to May 2, 2010, May 2, 2011 and May 2, 2012. It also provided for wage increases to be effective on May 2, 2013 and May 2, 2014. Certain other terms of the Employer's final contract offer were to take effect upon approval of the contract, including medical plan benefits, Christmas bonus, and uniform and mechanic's license allowances. The Employer's final offer included the proposed contract expiration date of May 1, 2015. It did not specify the effective date of the proposed contract. The Employer's communication about its final offer further stated:

It is no secret that we are still in the middle of a financial recession. Our reservations, fees, and rental durations have been going down consistently since 2009. Regardless of this, we have offered salary increases for a total of \$2.85 during five years, and plus we have offered increases in health and welfare, Christmas bonus, and an amount for uniforms. The total average for these increases in benefits equals an increase of more than 21 percent, way above the national average.

The Employer's best and final offer was also set forth in a letter from the Employer's attorney to the Intervenor dated May 7, 2012.

After receiving the Employer's proposal, the Intervenor's negotiating committee met to review it. On May 14, 2012, the Intervenor submitted the Employer's proposal to the bargaining unit employees for ratification, and the employees ratified the agreement. The shop steward, who conducted the ratification vote, testified that before the agreement was signed, the unit employees were informed in writing that the agreement would be from 2010 to 2015, and that the agreement was ratified by the unit employees on May 14, 2012.

It is undisputed that on June 29, 2012, the agreement, consisting of 31 pages, was reviewed, article by article, initialed and signed by representatives of the Employer and the Intervenor. The recognition clause of the agreement covers the classification of employees in the unit sought by the petition. Article XXX of the agreement states:

This agreement will be effective upon its execution and will remain in full effect until May 2, 2015, and thereafter, on an annual basis unless either of the parties notifies the other party if its desire to modify or terminate this agreement in writing 60 days before its expiration date, or any of its future anniversary dates.

As noted above, the agreement was executed on June 29, 2012, as stated on page 29, following Article XXX, and just above the signatures of the parties. The 31 numbered pages of the collective-bargaining agreement were initialed by the respective bargaining committees. The cover page and table of contents were not initialed or signed and there is some question as to whether or not those items were part of the agreement when it was signed, as discussed herein.

Appendix A of the collective-bargaining agreement provides for the payment of wage increases to unit employees retroactive to May 2, 2010, May 2, 2011 and May 2, 2012, for those unit employees who were on the payroll as of those dates and who had

been working continuously. No other terms of the agreement have a retroactive application.

The cover page of the agreement reads:

COLLECTIVE BARGAINING AGREEMENT
BETWEEN
BUDGET RENT A CAR DE PUERTO RICO, INC.
AND
UNION DE TRONQUISTAS DE PUERTO RICO, LOCAL 901
2010-2015

The cover page and the table of contents are in the same font and type size as the rest of the agreement that contains the parties' initials and signatures, and thus appears to be a part of the agreement.⁵ When asked to explain why the cover page states 2010 to 2015, the Employer's General Manager, who was a member of the Employer committee that negotiated the agreement, testified that the Employer did that "as an internal process" because the agreement provides for retroactive salary increases. He further testified that he could not recall who created the cover page, but he thought it may have been a misunderstanding, that the Intervenor had proposed the retroactive wage increases, and that the wage increases were the only term of the agreement that had a retroactive effect. The General Manager further testified that the parties' negotiators understood that they were negotiating a 3-year agreement. In response to a leading

⁵ The copy of the agreement in evidence as Employer's Exhibit 1 has what appear to be two cover pages as its first two pages. The cover page described above is actually the second page of the exhibit. The top page of the exhibit is printed in a larger font than the rest of the agreement in evidence, and it appears from testimony that it was recently added to the exhibit and was not part of the parties' agreement. The top page contains the Employer's name and address, does not mention the Intervenor, and states that it is "From: June 29, 2012 Until: May 1, 2015." The Petitioner's witness, who, as noted was on the Intervenor's bargaining committee, testified without contradiction that he had never seen the top page of the exhibit until the date of the hearing, August 16, 2013. It appears that the actual cover page of the agreement is the second page of Employer Exhibit 1. The Employer's counsel also referred to the second page of Employer's Exhibit 1 as the cover page of the collective-bargaining agreement.

question from the Employer's counsel, the General Manager testified that the cover page and the table of contents that were made part of the final agreement were not part of the negotiations. However, based on the record as a whole, I find that the cover page and table of contents were included with the agreement when it was signed on June 29, 2012.

II. ANALYSIS

A. The contract-bar doctrine

The longstanding contract-bar doctrine sets forth that collective-bargaining agreements having a definite duration for terms up to 3 years will bar an election for their entire period. *General Cable Corp.*, 139 NLRB 1123, 1125 (1962). A timely petition for an election may be filed more than 60 days but not more than 90 days before the expiration date of such a contract.⁶ *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). A long-term contract having a duration of more than 3 years operates as a bar for as much of its term as does not exceed 3 years. *General Cable Corp.*, 139 NLRB 1123, 1125 (1962); *General Dynamics Corp.*, 175 NLRB 1035, 1036 (1969). Since contracts with a duration in excess of 3 years are treated as if they were limited to a reasonable period (3 years) for the purpose of the Board's contract bar rules, a petition is dismissed where it is not filed during the "window period" of more than 60 but no more than 90 days prior to the third anniversary date, rather than the expiration date designated in the contract. *Union Carbide Corp.*, 190 NLRB 191, 192 (1971).

⁶ An exception to this rule is that the "window period" for filing a petition during the term of a collective-bargaining agreement of up to 3 years in the health care industry is more than 90 days but no more than 120 days before the expiration of the agreement. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975).

The 3-year period during which a contract operates as a bar runs from its effective date. *Benjamin Franklin Paint Co.*, 124 NLRB 54 (1959). To achieve its contract-bar objectives, the Board looks to the contract's fixed term or duration, because it is this term on the face of the contract to which employees and outside unions look to determine the appropriate time to file a representation petition. The length of the term of the contract as well as its adequacy must therefore be ascertainable on its face, with no resort to parol evidence, for it to be a bar. *South Mountain Healthcare & Rehabilitation Center*, 344 NLRB 375 (2005); *Cind-R-Lite Co.*, 239 NLRB 1255, 1256 (1979); *Union Fish Co.*, 156 NLRB 187, 192 (1965). Both the effective date and the expiration date of the contract must be clear 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).

B. Notwithstanding the cover page and the extrinsic evidence that a 5-year agreement was considered by the parties, the language of the collective-bargaining agreement unambiguously establishes that it is effective by its terms from the date of its execution, April 29, 2012, until May 2, 2015. Accordingly, the agreement is a contract of slightly less than 3 years, and it bars the processing of the petition.

The Employer and the Intervenor assert that there is a contract bar because their collective-bargaining agreement was signed and put into effect on June 29, 2012, with an expiration date of May 1, 2015. The Petitioner, on the other hand, claims that the document is a 5-year contract that commenced on May 2, 2010, because the cover page states "2010-2015;" Appendix A requires the Employer to pay retroactive wage increases covering the period from May 2, 2010 to June 29, 2012; the Employer proposed a 5-year agreement; and the Employer's best and final offer referred to salary increases for a total of \$2.85 during five years.

I find that it is unnecessary to resort to parol evidence, such as the Employer's communication to the Intervenor about its best and final offer, to determine the effective dates of the collective-bargaining agreement between the Employer and Intervenor in this case because the effective dates are sufficiently unambiguous. The cover page's reference to "2010-2015" does not negate the clear intent of Article XXX of the agreement and the agreement as a whole that it is effective on the date of its execution, which was June 29, 2012, and therefore the current agreement was within its 3-year term as of August 16, 2013, the date the petition was filed. *Benjamin Franklin Paint Co.*, 124 NLRB 54 (1959).

Moreover, the current agreement only provides for retroactive wage increases, and does not provide for retroactivity of any other term. This supports the plain language of Article XXX showing that the contract did not take effect until June 29, 2012. By reading the agreement as a whole, employees, the Petitioner and other outside unions can readily determine that the fixed term of the collective-bargaining agreement is from June 29, 2012 to May 2, 2015.⁷

Although it is an unfair labor practice case, rather than a representation case, *Spectrum Health-Kent Community Campus*, 355 NLRB 580 (2010), enfd. 647 F.3d 341 (D.C. Cir. 2011), incorporating by reference *Spectrum Health-Kent Community Campus*, 353 NLRB 996 (2010), involves facts similar to those in the instant case. *Spectrum* involved the unlawful withdrawal of recognition of a union based on the employer's reliance on the contract dates set forth on the cover page of its collective-bargaining agreement with the union and the fact that certain terms of the agreement were

⁷ In fact, the parties' collective-bargaining agreement has only operated as a contract bar since June 29, 2012, a period of about 15 months.

retroactive. The Board affirmed the decision of the Administrative Law Judge (ALJ) rejecting the contentions that the expressed term of an agreement should be extended retroactively because the cover page of the agreement conflicted with the express language in the agreement, and because particular contract terms were retroactive.⁸
353 NLRB at 1001-1002.

For the above reasons, I find that there is a contract bar to the processing of the petition, and no question concerning representation may be raised at this time.

III. ORDER

It is hereby ordered that the petition is dismissed.

IV. 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, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST/EDT on October 11, 2013. The request may not be filed by facsimile.⁹

DATED at Tampa, Florida this 27th day of September, 2013.



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⁸ In *Spectrum* the ALJ found that the effective dates of the agreement were ambiguous, and relied on parol evidence. I find, to the contrary, that the similar facts in this case do not establish that the effective dates of the collective-bargaining agreement between the Employer and the Union are ambiguous.

⁹ The request may be submitted electronically through the Agency's website at www.nlr.gov, as well as by hard copy. To file the request electronically, go to the Agency's website at www.nlr.gov, select File Case Documents, enter the NLRB Case Number, and follow the detailed instructions.